Table of Contents

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

## FORM 20-F

**(Mark One)**

☐ **REGISTRATION STATEMENT PURSUANT TO SECTION 12(b) OR (g) OF THE SECURITIES EXCHANGE ACT OF 1934**

**OR**

☒ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

**For the fiscal year ended December 31, 2012**

**OR**

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

**OR**

☐ **SHELL COMPANY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

**Date of event requiring this shell company report**

**For the transition period from _____ to _____**

**Commission file number 1-14946**

# CEMEX, S.A.B. de C.V.

**(Exact name of Registrant as specified in its charter)**

**CEMEX PUBLICLY TRADED STOCK CORPORATION WITH VARIABLE CAPITAL**
**(Translation of Registrant's name into English)**

**United Mexican States**
**(Jurisdiction of incorporation or organization)**

**Avenida Ricardo Margáin Zozaya #325, Colonia Valle del Campestre, Garza García, Nuevo León, México 66265**
**(Address of principal executive offices)**

**Ramiro G. Villarreal Morales, (+ 5281) 8888-8888, (+ 5281) 8888-4399,**
**Avenida Ricardo Margáin Zozaya #325, Colonia Valle del Campestre, Garza García, Nuevo León, México 66265**
**(Name, Telephone, E-mail and/or Facsimile number and Address of Company Contact Person)**

**Securities registered or to be registered pursuant to Section 12(b) of the Act.**

| Title of each class | Name of each exchange on which registered |
|---|---|
| **Ordinary Participation Certificates (*Certificados de Participación Ordinarios*), or CPOs, each CPO representing two Series A shares and one Series B share, traded in the form of American Depositary Shares, or ADSs, each ADS representing ten CPOs.** | **New York Stock Exchange** |

**Securities registered or to be registered pursuant to Section 12(g) of the Act.**

**None**
**(Title of Class)**

**Securities for which there is a reporting obligation pursuant to Section 15(d) of the Act.**

**None**
**(Title of Class)**

Indicate the number of outstanding shares of each of the issuer's classes of capital or common stock as of the close of the period covered by the annual report.

10,852,835,253 CPOs
21,872,295,096 Series A shares (including Series A shares underlying CPOs)
10,936,147,548 Series B shares (including Series B shares underlying CPOs)

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☒ No ☐

If this report is an annual or transition report, indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934. Yes ☐ No ☒

Note—Checking the box above will not relieve any registrant required to file reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 from their obligations under those sections.

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). N/A

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

Large accelerated filer ☒ Accelerated filer ☐ Non-accelerated filer ☐

Indicate by check mark which basis of accounting the registrant has used to prepare the financial statements included in this filing:

U.S. GAAP ☐ International Financial Reporting Standards as issued by the International Accounting Standards Board ☒ Other ☐

If "Other" has been checked in response to the previous question, indicate by check mark which financial statement item the registrant has elected to follow. Item 17 ☐ Item 18 ☐

If this is an annual report, indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

## TABLE OF CONTENTS

### PART I

**PART II**



**PART III**

## INTRODUCTION

CEMEX, S.A.B. de C.V. is incorporated as a publicly traded stock corporation with variable capital ( *sociedad anónima bursátil de capital variable* ) organized under the laws of the United Mexican States, or Mexico. Except as the context otherwise may require, references in this annual report to "CEMEX," "we," "us" or "our" refer to CEMEX, S.A.B. de C.V. and its consolidated entities. See note 2 to our 2012 audited consolidated financial statements included elsewhere in this annual report.

## PRESENTATION OF FINANCIAL INFORMATION

Our consolidated financial statements included elsewhere in this annual report have been prepared in accordance with International Financial Reporting Standards, or IFRS, as issued by the International Accounting Standards Board, or IASB.

The regulations of the Securities and Exchange Commission, or SEC, do not require foreign private issuers that prepare their financial statements on the basis of IFRS (as published by the IASB) to reconcile such financial statements to U.S. GAAP. As such, while CEMEX, S.A.B. de C.V. has in the past reconciled its consolidated financial statements prepared in accordance with Mexican Financial Reporting Standards, or MFRS, to U.S. GAAP, those reconciliations are no longer presented in CEMEX, S.A.B. de C.V.'s filings with the SEC.

References in this annual report to "U.S.$" and "Dollars" are to U.S. Dollars, references to "€" are to Euros, references to "£" and "Pounds" are to British Pounds, references to "¥" and "Yen" are to Japanese Yen, and, unless otherwise indicated, references to "Ps," "Mexican Pesos" and "Pesos" are to Mexican Pesos. References to "billion" means one thousand million. The Dollar amounts provided below, unless otherwise indicated elsewhere in this annual report, are translations of Peso amounts at an exchange rate of Ps12.85 to U.S.$1.00, the CEMEX accounting rate as of December 31, 2012. However, in the case of transactions conducted in Dollars, we have presented the Dollar amount of the transaction and the corresponding Peso amount that is presented in our consolidated financial statements. These translations have been prepared solely for the convenience of the reader and should not be construed as representations that the Peso amounts actually represent those Dollar amounts or could be converted into Dollars at the rate indicated. From December 31, 2012 through April 19, 2013, the Peso appreciated by approximately 5.97% against the Dollar, based on the noon buying rate for Pesos. See "Item 3—Key Information —Selected Consolidated Financial Information."

The noon buying rate for Pesos on December 31, 2012 was Ps12.96 to U.S.$1.00 and on April 19, 2013 was Ps12.23 to U.S.$1.00.

References in this annual report to total debt plus other financial obligations do not include debt and other financial obligations of ours held by us. See notes 2L and 16B to our 2012 audited consolidated financial statements included elsewhere in this annual report for a detailed description of our other financial obligations. Total debt plus other financial obligations differs from the calculation of debt under our Facilities Agreement described herein.

## CERTAIN TECHNICAL TERMS

When used herein, the terms set forth below mean the following:

- **Aggregates** are sand and gravel, which are mined from quarries. They give ready-mix concrete its necessary volume and add to its overall strength. Under normal circumstances, one cubic meter of fresh concrete contains two metric tons of gravel and sand.
- **Clinker** is an intermediate cement product made by sintering limestone, clay, and iron oxide in a kiln at around 1,450 degrees Celsius. One metric ton of clinker is used to make approximately 1.1 metric tons of gray portland cement.
- **Gray cement**, used for construction purposes, is a hydraulic binding agent with a composition by weight of at least 95% clinker and 0% to 5% of a minor component (usually calcium sulfate) which, when mixed with sand, stone or other aggregates and water, produces either concrete or mortar.
- **Petroleum coke (petcoke)** is a byproduct of the oil refining coking process.
- **Ready-mix concrete** is a mixture of cement, aggregates, and water.
- **Tons** means metric tons. One metric ton equals 1.102 short tons.
- **White cement** is a specialty cement used primarily for decorative purposes.

# PART I

## Item 1—Identity of Directors, Senior Management and Advisors

Not applicable.

## Item 2—Offer Statistics and Expected Timetable

Not applicable.

## Item 3—Key Information

### Summary of Our Recent Financial History

On August 14, 2009, we entered into a financing agreement (the "2009 Financing Agreement"), which extended the final maturities of approximately U.S.$15 billion in syndicated and bilateral bank facilities and private placement notes to February 14, 2014. On July 5, 2012, we launched an exchange offer and consent request (the "Exchange Offer and Consent Request"), to eligible creditors under the 2009 Financing Agreement pursuant to which eligible creditors were requested to consent to certain amendments to the 2009 Financing Agreement, including the deletion of all mandatory prepayment provisions, the release of the collateral securing the 2009 Financing Agreement and other obligations secured by such collateral, and the deletion of certain representations, information undertakings, financial covenants, general undertakings and events of default thereunder (together, the "Amendment Consents"). In addition, we offered to exchange the indebtedness owed to such creditors under the 2009 Financing Agreement that were eligible to participate in the Exchange Offer and Consent Request (the "Participating Creditors") for (i) new loans (or, in the case of the private placement notes, new private placement notes) or (ii) up to U.S.$500 million of our 9.50% Senior Secured Notes due 2018 (the "September 2012 Notes"), in each case, in transactions exempt from registration under the Securities Act of 1933, as amended (the "Securities Act").

On September 17, 2012, we successfully completed the refinancing transactions contemplated by the Exchange Offer and Consent Request (collectively, the "Refinancing Transaction"), and we and certain of our subsidiaries entered into (a) an amendment and restatement agreement, dated September 17, 2012 (the "Amendment and Restatement Agreement"), pursuant to which the Amendment Consents with respect to the 2009 Financing Agreement were given effect, and (b) a facilities agreement, dated September 17, 2012 (the "Facilities Agreement"), pursuant to which we were deemed to borrow loans from those Participating Creditors participating in the Exchange Offer and Consent Request in principal amounts equal to the principal amounts of indebtedness subject to the 2009 Financing Agreement that was extinguished by such Participating Creditors. As a result of the Refinancing Transaction, participating creditors received (i) approximately U.S.$6.155 billion in aggregate principal amount of new loans and new private placement notes and (ii) U.S.$500 million aggregate principal amount of the September 2012 Notes. In addition, approximately U.S.$525 million aggregate principal amount of loans and private placement notes remained outstanding under the 2009 Financing Agreement as of September 17, 2012. The aggregate principal amount of loans and private placement notes outstanding under the 2009 Financing Agreement was subsequently reduced to approximately U.S.$55 million as of December 31, 2012, as a result of prepayments made in accordance with the Facilities Agreement.

As part of the Facilities Agreement, we pledged under pledge agreements or transferred to a trustee under a security trust substantially all the shares of CEMEX México, S.A. de C.V., or CEMEX Mexico, Centro Distribuidor de Cemento, S.A. de C.V., or Centro Distribuidor, Mexcement Holdings, S.A. de C.V., or Mexcement, Corporación Gouda, S.A. de C.V., CEMEX TRADEMARKS HOLDING Ltd., New Sunward Holding B.V., or New Sunward, and CEMEX España, S.A., or CEMEX España, as collateral (together, the "Collateral"), and all proceeds of such Collateral, to secure our payment obligations under the Facilities Agreement and under several other financing arrangements. These subsidiaries whose shares were pledged or transferred as part of the Collateral collectively own, directly or indirectly, substantially all our operations worldwide.

Since August 2009, we have completed a number of capital markets transactions and asset disposals, the majority of the proceeds of which have been used to repay indebtedness, to improve our liquidity position and for general corporate purposes. Such capital market transactions consisted of:

- in September 2009, the sale of a total of 1,495 million CPOs, directly or in the form of ADSs, in a global offering for approximately U.S.$1.8 billion in net proceeds;
- in December 2009, the issuance by CEMEX, S.A.B. de C.V. of approximately Ps4.1 billion (approximately U.S.$315 million) of 10% mandatory convertible notes due 2019 (the "Mandatory Convertible Notes"), in exchange for promissory notes previously issued by CEMEX, S.A.B. de C.V. in the Mexican capital markets (*Certificados Bursátiles*) ("CBs");
- in December 2009 and January 2010, the issuance by CEMEX Finance LLC of U.S.$1,750,000,000 aggregate principal amount of its 9.50% Senior Secured Notes due 2016 and €350,000,000 aggregate principal amount of its 9.625% Senior Secured Notes due 2017 (together, the "December 2009 Notes");
- in March 2010, the issuance by CEMEX, S.A.B. de C.V. of U.S.$715,000,000 aggregate principal amount of its 4.875% Convertible Subordinated Notes due 2015 (the "2010 Optional Convertible Subordinated Notes");
- in May 2010, the issuance by CEMEX España, acting through its Luxembourg branch, of U.S.$1,067,665,000 aggregate principal amount of its 9.25% Senior Secured Notes due 2020 and €115,346,000 aggregate principal amount of its 8.875% Senior Secured Notes due 2017 (together, the "May 2010 Notes"), in exchange for the U.S. Dollar-Denominated 6.196% Fixed-to-Floating Rate Callable Perpetual Debentures issued by C5 Capital (SPV) Limited, U.S. Dollar-Denominated 6.640% Fixed-to-Floating Rate Callable Perpetual Debentures issued by C8 Capital (SPV) Limited, U.S. Dollar-Denominated 6.722% Fixed-to-Floating Rate Callable Perpetual Debentures issued by C10 Capital (SPV) Limited and Euro-Denominated 6.277% Fixed-to-Floating Rate Callable Perpetual Debentures issued by C10-EUR Capital (SPV) Limited (collectively, the "Perpetual Debentures"), pursuant to a private placement exchange offer directed to the holders of Perpetual Debentures;
- in January 2011, the issuance by CEMEX, S.A.B. de C.V. of U.S.$1,000,000,000 aggregate principal amount of its 9.000% Senior Secured Notes due 2018 (the "January 2011 Notes");
- in March 2011, the issuance by CEMEX España, acting through its Luxembourg branch, of U.S.$125,331,000 aggregate principal amount of its 9.25% Senior Secured Notes due 2020 (the "Additional May 2010 Notes");
- in March 2011, the issuance by CEMEX, S.A.B. de C.V. of U.S.$1,667,500,000 aggregate principal amount of its 3.25% Convertible Subordinated Notes due 2016 and 3.75% Convertible Subordinated Notes due 2018 (together, the "2011 Optional Convertible Subordinated Notes");
- in April 2011, the issuance by CEMEX, S.A.B. de C.V. of U.S.$800,000,000 aggregate principal amount of its Floating Rate Senior Secured Notes due 2015 (the "April 2011 Notes");
- in July 2011, the issuance by CEMEX, S.A.B. de C.V. of U.S.$650,000,000 aggregate principal amount of its 9.000% Senior Secured Notes due 2018 (the "Additional January 2011 Notes");
- in March 2012, the issuance by CEMEX España, acting through its Luxembourg branch, of U.S.$703,861,000 aggregate principal amount of its 9.875% U.S. Dollar-Denominated Senior Secured Notes Due 2019 and €179,219,000 aggregate principal amount of its 9.875% Euro-Denominated Senior Secured Notes Due 2019 (together, the "March 2012 Notes"), in exchange for Perpetual Debentures and 4.75% Notes due 2014 (the "Eurobonds") issued by CEMEX Finance Europe B.V., a special purpose vehicle and wholly-owned subsidiary of CEMEX España, pursuant to separate private placement exchange offers directed to the holders of Perpetual Debentures and Eurobonds;
- in October 2012, the issuance by CEMEX Finance LLC of U.S.$1,500,000,000 aggregate principal amount of its 9.375% Senior Secured Notes due 2022 (the "October 2012 Notes"); and

- in November 2012, CEMEX Latam Holdings, S.A. ("CEMEX Latam"), a then wholly-owned subsidiary of CEMEX España, completed the sale of newly issued common shares in a concurrent public offering to investors in Colombia and a private placement to eligible investors outside of Colombia (together, the "CEMEX Latam Offering"), representing approximately 26.65% of CEMEX Latam's outstanding common shares. CEMEX Latam's common shares are listed on the Colombian Stock Exchange ( *Bolsa de Valores de Colombia S.A.*). The net proceeds to CEMEX Latam from the offering were approximately U.S.$960 million, after deducting underwriting discounts, commissions and offering expenses. CEMEX Latam used the net proceeds to repay a portion of the indebtedness owed to us, which we used for general corporate purposes, including the repayment of indebtedness. CEMEX Latam is the holding company for CEMEX's operations in Brazil, Colombia, Costa Rica, Guatemala, Nicaragua, Panama and El Salvador. As of December 31, 2012, CEMEX España owned approximately 73.35% of CEMEX Latam's outstanding common shares, excluding shares held in treasury.

As of December 31, 2012, our total debt plus other financial obligations were Ps218,026 million (U.S.$16,967 million) (principal amount Ps226,957 million (U.S.$17,662 million)), which does not include approximately Ps6,078 million (U.S.$473 million) of dual-currency notes underlying the Perpetual Debentures (collectively, the "Perpetual Notes"), but which does include our debt subject to the Facilities Agreement, which was approximately Ps52,406 million (U.S.$4,078 million) (principal amount Ps53,798 million (U.S.$4,187 million)), and our debt subject to the 2009 Financing Agreement, which was approximately Ps605 million (U.S.$47 million) (principal amount Ps703 million (U.S.$55 million)).

Since the beginning of 2013, we have engaged in the following additional capital market transactions:

- On March 25, 2013, CEMEX, S.A.B. de C.V. issued U.S.$600,000,000 aggregate principal amount of its 5.875% Senior Secured Notes due 2019 (the "March 2013 Notes") in transactions exempt from registration pursuant to Rule 144A and Regulation S under the Securities Act. The net proceeds from the offering of approximately U.S.$595 million were used for the repayment in full of the remaining indebtedness under the 2009 Financing Agreement of approximately U.S.$55 million and the remainder for general corporate purposes, including the purchase of Eurobonds in the Eurobond Tender Offer (as defined below).
- On March 28, 2013, we completed our purchase of €182,939,000 aggregate principal amount of Eurobonds through a cash tender offer (the "Eurobond Tender Offer") using a portion of the proceeds from the issuance of the March 2013 Notes, which Eurobonds were immediately cancelled.

We refer to the December 2009 Notes, May 2010 Notes, January 2011 Notes, Additional May 2010 Notes, April 2011 Notes, Additional January 2011 Notes, March 2012 Notes, September 2012 Notes, October 2012 Notes and March 2013 Notes, collectively, as the Senior Secured Notes. For a more detailed description of these transactions, see "Item 5—Operating and Financial Review and Prospects—Summary of Material Contractual Obligations and Commercial Commitments."

For the convenience of the reader, considering the impact of our recent financing transactions on our liquidity and financing obligations, we present amounts of debt and other financial obligations on as adjusted basis to give effect to important financing transactions completed between December 31, 2012 and the date of this annual report on Form 20-F. As of December 31, 2012, as adjusted to give effect to the issuance of the March 2013 Notes, the Eurobond Tender Offer and the prepayment of the 2009 Financing Agreement, our total debt plus other financial obligations were Ps221,971 million (U.S.$17,274 million) (principal amount Ps230,863 million (U.S.$17,966 million)), which does not include approximately Ps6,078 million (U.S.$473 million) of Perpetual Debentures, but which does include our debt subject to the Facilities Agreement, which was approximately Ps52,406 million (U.S.$4,078 million) (principal amount Ps53,798 million (U.S.$4,187 million)).

## Risk Factors

Many factors could have an adverse effect on our financial condition, cash flows and results of operations. We are subject to various risks resulting from changing economic, environmental, political, industry, business, financial and climate conditions. The factors we consider most important are described below.

***Economic conditions in some of the countries where we operate may adversely affect our business, financial condition and results of operations.***

The economic conditions in some of the countries where we operate have had and may continue to have a material adverse impact on our business, financial condition and results of operations throughout our operations worldwide. Our results of operations are highly dependent on the results of our operating subsidiaries in the United States, Mexico, South America and Western Europe. Despite measures taken by governments and central banks to address economic difficulties stemming from the global economic recession that began in late 2008, there is still a risk that these measures may not prevent the countries where we operate from experiencing future economic declines. The construction downturn has been more severe in countries that experienced the largest housing market expansion during the years of high credit availability (such as the United States, Spain, Ireland and the United Kingdom). Most government sponsored recovery efforts focus on fostering growth in demand from infrastructure projects. The infrastructure plans announced to date by many countries, including the United States and Mexico, may not stimulate economic growth or yield the expected results because of delays in implementation and/or bureaucratic issues, among other obstacles. A worsening of the economic crisis or delays in implementing any such plans could adversely affect demand for our products.

Recovery in the United States has been slow despite various measures taken by the federal government, including fiscal stimulus. The financial sector, in particular, has been slow to recover. Once the level of public stimulus decreases, it is possible that the private sector will be unable to sustain the U.S. recovery. Also, if the Federal Reserve removes extraordinary liquidity too late (given macroeconomic conditions) from the U.S. economy, such action could prompt an increase in inflationary expectations, capital outflows, a disorderly increase of interest rates and an economic recession. The U.S. economy could still be affected by uncertainty related to the fiscal adjustment and concerns that investments and expenditures will be postponed or canceled. Recovery in the housing sector, which, as of the date of this annual report, is driving demand for cement and building materials in the United States, could stall if recent employment gains falter. Infrastructure spending is dependent upon state fiscal results and political agreements being reached at the federal level.

A contraction of the Mexican economy or a decline in the Mexican construction or housing sectors would have an adverse effect on demand for our products and could have a material adverse effect on our results of operations and financial condition. Mexico’s dependence on the U.S. economy remains very significant and, therefore, any downturn in the economic outlook of the United States may hinder economic growth in Mexico. Exchange rate depreciation and/or volatility in the markets would adversely affect our operational and financial results. Large capital inflows, which are driven by accommodative monetary policies in advanced countries, and the search for higher returns on investments, can generate financial instability through credit booms and asset price bubbles, dampening future economic growth. A reversal of capital inflows resulting from a spike in risk aversion, or when advanced economies begin exiting their accommodative monetary policy, could have adverse effects on the Mexican economy generally and our financial results.

Euro area countries, particularly countries in the periphery, have faced a difficult economic environment due to the sovereign, institutional and financial crises. Although progress has been made through policy actions that are essential to reestablish the consistency of the Euro area (European Central Bank support, banking union, further fiscal integration), stability in the Euro area is still fragile and relevant details of such policies are still in the initial phases. Once these policies are decided, they will still need to be legislated and implemented. Delays and/or incomplete steps could trigger the erosion of incipient market confidence and our financial condition and results of operations could be further affected. Austerity measures being implemented by most European countries could result in larger than expected declines in infrastructure construction activity and demand for our

products. Weaker than expected economic growth and worsening financial conditions could negatively affect residential and private non-residential construction. The risks are more pronounced in those countries with a higher degree of previous market distortions (especially those experiencing real estate bubbles and durable goods overhangs prior to the crisis), such as Spain. In these countries, the adjustment process has been particularly painful and slow, given the severe fiscal constraints, the need for households to repair their balance sheets and the limitations on credit institutions that are in the process of deleveraging. Because of this, the residential adjustment could last longer than anticipated, while non-residential construction could experience a sharper decline than expected. At the same time, social risk in these countries (associated with austerity fatigue) could also negatively affect their economies, which could adversely affect demand for our products and, as a consequence, adversely affect our business, financial condition and results of operations. Moreover, a default by a Eurozone country on their debt or their exit from the Euro could have a negative affect not only on the country, but also on the rest of Europe, which could adversely affect demand for our products and, as a consequence, adversely affect our business, financial condition and results of operations. In the UK, economic recovery is proceeding very slowly despite the sizable monetary stimulus. The UK's exposure to financial market distress (given the weight of the financial sector in its economy) is significant. The significant trade links that Eastern European countries have with Western Europe make some of them susceptible to the Western European recession and political problems. The risk of spillover of financial and economic problems from one country to another is significant. Large financing needs in these countries also represent a significant vulnerability. Central European economies could face cuts in European Union Structural Funds (funds provided by the European Union to member states with the lowest national incomes per capita) in coming years that are larger than those currently being discussed in the European Parliament.

The Central and South American economies are also exposed to the risk of a decrease in overall economic activity. A new financial downturn, lower exports to the United States and Europe, lower remittances and lower commodity prices could represent an important risk for the region in the short term. This may translate into greater economic and financial volatility and lower growth rates, which could have a material adverse effect on demand and/or prices for our products, thereby adversely affecting our business and results of operations. The region is also receiving strong capital inflows associated with the excess of global liquidity, so the risk of asset bubbles, credit booms and economic overheating is also present, as well as the risk of a sudden reversal of flows. Political or economic volatility in the South American, Central American or the Caribbean countries in which we have operations may also have a negative impact on prices and demand for our products, which could adversely affect our business, financial condition and results of operations.

The Asia-Pacific region will likely be negatively affected if the economic landscape further deteriorates. Increased country risk and/or decreased confidence among global investors would also limit capital inflows and investments in the Asian region. A decline in Chinese economic growth (due to a disorderly correction of its imbalances or otherwise) would have negative spillover effects on the region. In the Middle East region, lower oil revenues and political risk could moderate economic growth and adversely affect construction investments. In Egypt, political instability and social risk persist. The uncertainty caused by this could dampen overall economic activity in Egypt, negatively affecting demand for building materials. Egypt´s large financial needs and the impediments to accessing financial support from multilateral institutions (due to the necessity for unpopular economic measures) could trigger a disorderly depreciation of the exchange rate. In addition, Egypt is subject to risks created by legal uncertainty.

Demand for our products is highly related to construction levels and depends, in large part, on residential and commercial construction activity as well as private and public infrastructure spending in the countries where we operate. Declines in the construction industry are correlated with declines in economic conditions. As a result, a deterioration in economic conditions in the countries where we operate could have a material adverse effect on our business, financial condition and results of operations. In addition, we cannot assure you that growth in the GDP of the countries where we operate will translate into a correlated increase in demand for our products.

If the economies of certain major countries where we operate were to continue to deteriorate and fall into an even deeper and longer lasting recession, or even a depression, our business, financial condition and results of operations would be adversely affected.

***Concerns regarding the European debt crisis and market perception concerning the instability of the Euro could affect our operating profits.***

We conduct business in many countries that use the Euro as their currency, or the Eurozone. Concerns persist regarding the debt burden of certain Eurozone countries and their ability to meet future financial obligations, the overall stability of the Euro and the suitability of the Euro as a single currency given the diverse economic and political circumstances in individual Eurozone countries.

These concerns could lead to the reintroduction of individual currencies in one or more Eurozone countries, or in more extreme circumstances, the possible dissolution of the Euro currency entirely. Should the Euro dissolve entirely, the legal and contractual consequences for holders of Euro-denominated obligations would be determined by laws in effect at such time. These potential developments, or market perceptions concerning these and related issues, could adversely affect the value of our Euro-denominated assets and obligations. In addition, concerns over the effect of this financial crisis on financial institutions in Europe and globally could have an adverse effect on the global capital markets, and more specifically on our ability, and the ability of our customers, suppliers and lenders to finance their respective businesses, to access liquidity at acceptable financing costs, if at all, and on the demand for our products.

Significant reductions in or changes to the U.S. federal government's budget or its spending priorities from one period to another, including the potential impact of a sequestration, could adversely affect our customers' and their demand for our products and services and could therefore materially adversely affect our business, financial condition and results of operations.

We are subject to the effects of general global economic and market conditions that are beyond our control. If these conditions remain challenging or deteriorate, our business, financial condition and results of operations could be materially adversely affected. Possible consequences from macroeconomic global challenges such as the debt crisis in certain countries in the European Union or slowing economies in parts of Asia, or the impact of continuing uncertainty associated with the budget "sequestration" in the U.S. federal government on our business, including insolvency of key suppliers resulting in product delays, inability of customers to obtain credit to finance purchases of our products, customer insolvencies and increased risk that customers may delay payments, fail to pay or default on credit extended to them, could have a material adverse effect on our results of operations or financial condition.

***The Facilities Agreement contains several restrictions and covenants. Our failure to comply with such restrictions and covenants could have a material adverse effect on us.***

The Facilities Agreement requires us to comply with several financial ratios and tests, including a consolidated coverage ratio of EBITDA to consolidated interest expense, for each period of four consecutive fiscal quarters (measured semi-annually), of not less than (i) 1.50:1 from the period ending December 31, 2012 up to and including the period ending June 30, 2014, (ii) 1.75:1 from the period ending December 31, 2014 up to and including the period ending June 30, 2015, (iii) 1.85:1 for the period ending December 31, 2015, (iv) 2:00:1 for the period ending June 30, 2016 and (v) 2.25:1 for the period of four consecutive fiscal quarters ending December 31, 2016. In addition, the Facilities Agreement allows us a maximum consolidated leverage ratio of total debt (including the Perpetual Debentures) to EBITDA for each period of four consecutive fiscal quarters (measured semi-annually) not to exceed (i) 7.00:1 for each period from the period ending December 31, 2012 up to and including the period ending December 31, 2013, (ii) 6.75:1 for the period ending June 31, 2014, (iii) 6.5:1 for the period ending December 31, 2014, (iv) 6.00:1 for the period ending June 30, 2015, (v) 5.50:1 for the period ending December 31, 2015, (vi) 5.00:1 for the period ending June 30, 2016 and (vii) 4.25:1 for the period ending December 31, 2016. Our ability to comply with these ratios may be affected by economic conditions and volatility in foreign exchange rates, as well as by overall conditions in the financial and capital markets. For the period ended December 31, 2012, we reported to the lenders under the Facilities Agreement a consolidated coverage ratio of 2.10:1 and a consolidated leverage ratio of 5.44:1, each as calculated pursuant to the Facilities

Agreement. Pursuant to the Facilities Agreement, we are prohibited from making aggregate annual capital expenditures in excess of U.S.$800 million (excluding certain capital expenditures, and joint venture investments and acquisitions by CEMEX Latam and its subsidiaries, which capital expenditures, joint venture investments and acquisitions at any time then incurred are subject to a separate aggregate limit of U.S.$350 million (or its equivalent)).

We are also subject to a number of negative covenants that, among other things, restrict or limit our ability to: (i) create liens; (ii) incur additional debt; (iii) change our business or the business of any obligor or material subsidiary (in each case, as defined in the Facilities Agreement); (iv) enter into mergers; (v) enter into agreements that restrict our subsidiaries' ability to pay dividends or repay intercompany debt; (vi) acquire assets; (vii) enter into or invest in joint venture agreements; (viii) dispose of certain assets; (ix) grant additional guarantees or indemnities; (x) declare or pay cash dividends or make share redemptions; (xi) issue shares; (xii) enter into certain derivatives transactions; (xiii) exercise any call option in relation to any perpetual bonds we issue unless the exercise of the call options does not have a materially negative impact on our cash flow; and (xiv) transfer assets from subsidiaries or more than 10% of shares in subsidiaries into or out of CEMEX España or its subsidiaries if those assets or subsidiaries are not controlled by CEMEX España or any of its subsidiaries.

The Facilities Agreement also contains a number of affirmative covenants that, among other things, require us to provide periodic financial information to the participating creditors. Pursuant to the Facilities Agreement, however, a number of those covenants and restrictions will automatically cease to apply or become less restrictive if (i) our consolidated leverage ratio for the two most recently completed semi-annual testing periods is less than or equal to 3.50:1; and (ii) no default under the Facilities Agreement is continuing. Restrictions that will cease to apply when we satisfy such conditions include the capital expenditure limitations mentioned above and several negative covenants, including limitations on our ability to declare or pay cash dividends and distributions to shareholders, limitations on our ability to repay existing financial indebtedness, certain asset sale restrictions, the quarterly cash balance sweep, certain mandatory prepayment provisions, and restrictions on exercising call options in relation to any perpetual bonds we issue (provided that creditors will continue to receive the benefit of any restrictive covenants that other creditors receive relating to other financial indebtedness of ours in excess of U.S.$75 million). At such time, several baskets and caps relating to negative covenants will also increase, including permitted financial indebtedness, permitted guarantees and limitations on liens. However, we cannot assure you that we will be able to meet the conditions for these restrictions to cease to apply prior to the final maturity date under the Facilities Agreement.

The Facilities Agreement contains events of default, some of which may be outside our control. Such events of default include defaults based on (i) non-payment of principal, interest, or fees when due; (ii) material inaccuracy of representations and warranties; (iii) breach of covenants; (iv) bankruptcy (*quiebra*) or insolvency (*concurso mercantil*) of CEMEX, S.A.B. de C.V., any other borrower under the Facilities Agreement or any other of our material subsidiaries (as defined in the Facilities Agreement); (v) inability to pay debts as they fall due or by reason of actual financial difficulties, suspension or threatened suspension of payments on debts exceeding U.S.$50 million or commencement of negotiations to reschedule debt exceeding U.S.$50 million; (vi) a cross-default in relation to financial indebtedness in excess of U.S.$50 million; (vii) a change of control with respect to CEMEX, S.A.B. de C.V.; (viii) certain changes to the ownership of any of our subsidiary obligors under the Facilities Agreement, unless the proceeds of such disposal are used to prepay Facilities Agreement debt; (ix) enforcement of the share security; (x) final judgments or orders in excess of U.S.$50 million that are neither discharged nor bonded in full within 60 days thereafter; (xi) any restrictions not already in effect as of September 17, 2012 limiting transfers of foreign exchange by any obligor for purposes of performing material obligations under the Facilities Agreement; (xii) any material adverse change arising in the financial condition of CEMEX, S.A.B. de C.V. and each of its subsidiaries, taken as a whole, which more than 66.67% of the Facilities Agreement creditors determine would result in our failure, taken as a whole, to perform payment obligations under the Facilities Agreement; and (xiii) failure to comply with laws or our obligations under the Facilities Agreement cease to be legal. If an event of default occurs and is continuing, upon the authorization of 66.67% of

the Facilities Agreement creditors, the creditors have the ability to accelerate all outstanding amounts due under the Facilities Agreement. Acceleration is automatic in the case of insolvency.

We cannot assure you that we will be able to comply with the restrictive covenants and limitations contained in the Facilities Agreement. Our failure to comply with such covenants and limitations could result in an event of default, which could materially and adversely affect our business and financial condition.

***If we are unable to comply with the milestones for addressing the maturities of certain indebtedness pursuant to the Facilities Agreement, the maturity date of our indebtedness under the Facilities Agreement will automatically reset, or "spring-back," to earlier dates.***

The Facilities Agreement requires us to (a) on or before March 5, 2014, redeem, purchase, repurchase, refinance or extend the maturity date of 100% of the Eurobonds to a maturity date falling after December 31, 2017, or the maturity date of the indebtedness under the Facilities Agreement will become March 5, 2014, (b) on or before March 15, 2015, redeem, convert into equity, purchase, repurchase, refinance or extend the maturity date of 100% of the 2010 Optional Convertible Subordinated Notes to a maturity date falling after December 31, 2017, or the maturity date of the indebtedness under the Facilities Agreement will become March 15, 2015, (c) on or before September 30, 2015, redeem or extend the maturity date of 100% of the April 2011 Notes to a maturity date falling after December 31, 2017, or the maturity date of the indebtedness under the Facilities Agreement will become September 30, 2015, (d) on or before March 15, 2016, redeem, convert into equity, purchase, repurchase, refinance or extend the maturity date of 100% of the 3.25% Convertible Subordinated Notes due 2016 issued by CEMEX, S.A.B. de C.V. to a maturity date falling after December 31, 2017, or the maturity date of the indebtedness under the Facilities Agreement will become March 15, 2016, and (e) on or before December 14, 2016, redeem or extend the maturity date of 100% of the December 2009 Notes to a maturity date falling after December 31, 2017, or the maturity date of the indebtedness under the Facilities Agreement will become December 14, 2016.

We cannot assure you that we will be able to meet any or all of the above milestones for redeeming, converting into equity, purchasing, repurchasing or extending the maturities of our indebtedness. Failure to meet any of these milestones will result in a spring-back of the maturity date of our indebtedness under the Facilities Agreement, and we cannot assure you that at such time we will be able to repay such indebtedness.

***We pledged the capital stock of subsidiaries that represent substantially all of our business as collateral to secure our payment obligations under the Facilities Agreement, the Senior Secured Notes and other financing arrangements.***

As part of the Facilities Agreement, we pledged under pledge agreements or transferred to a trustee under a security trust, as collateral, the Collateral, and all proceeds of the Collateral to secure our payment obligations under the Facilities Agreement and under a number of other financing arrangements for the benefit of the creditors and holders of debt and other obligations that benefit from provisions in their instruments requiring that their obligations be equally and ratably secured. As of December 31, 2012, as adjusted to give effect to the issuance of the March 2013 Notes, the Eurobond Tender Offer and the prepayment of the 2009 Financing Agreement, the Collateral and all proceeds of such Collateral secured (i) Ps174,805 million (U.S.$13,603 million) (principal amount Ps177,060 million (U.S.$13,779 million) aggregate principal amount of debt under the Facilities Agreement and other financing arrangements and (ii) Ps9,078 million (U.S.$706 million aggregate principal amount of Perpetual Notes, which includes debt of ours held by us. These subsidiaries collectively own, directly or indirectly, substantially all of our operations worldwide. Provided that no default has occurred which is continuing under the Facilities Agreement, the Collateral will be released automatically if we meet specified debt reduction and financial covenant targets.

***We have a substantial amount of debt and other financial obligations maturing in the next several years. If we are unable to secure refinancing on favorable terms or at all, we may not be able to comply with our upcoming payment obligations. Our ability to comply with our principal maturities and financial covenants may depend on us making asset sales, and there is no assurance that we will be able to execute such sales on terms favorable to us or at all.***

As of December 31, 2012, as adjusted to give effect to the issuance of the March 2013 Notes, the Eurobond Tender Offer and the prepayment of the 2009 Financing Agreement, our total debt plus other financial obligations were Ps221,971 million (U.S.$17,274 million) (principal amount Ps230,863 million (U.S.$17,966 million)), which does not include approximately Ps6,078 million (U.S.$473 million) of Perpetual Debentures, but which does include our debt subject to the Facilities Agreement, which was approximately Ps52,406 million (U.S.$4,078 million) (principal amount Ps53,798 million (U.S.$4,187 million)). Of such total debt plus other financial obligations amount, approximately Ps5,140 million (U.S.$400 million) (principal amount Ps4,947 million (U.S.$385 million)) matures during 2014; Ps21,164 million (U.S.$1,647 million) (principal amount Ps21,806 million (U.S.$1,697 million)) matures during 2015; Ps33,654 million (U.S.$2,619 million) (principal amount Ps35,350 million (U.S.$2,751 million)) matures during 2016; Ps62,425 million (U.S.$4,858 million) (principal amount Ps63,543 million (U.S.$4,945 million)) matures during 2017 (including the remainder of the principal amount of debt under the Facilities Agreement) and Ps92,006 million (U.S.$7,160 million) (principal amount Ps97,840 million (U.S.$7,614 million)) matures after 2017. Additionally, as described above, if we are unable to comply with the milestones for addressing the maturities of certain indebtedness pursuant to the Facilities Agreement, the maturity date of our indebtedness under the Facilities Agreement will automatically spring-back to earlier dates.

If we are unable to comply with our upcoming principal maturities under our indebtedness or any milestones for addressing the maturities of certain indebtedness pursuant to the Facilities Agreement, or refinance or extend maturities of our indebtedness, our debt could be accelerated or the maturity date could spring-back. Acceleration of our debt or a spring-back of a maturity date would have a material adverse effect on our financial condition.

Although we have successfully refinanced a substantial portion of our debt maturing in 2014, our ability to comply with our financial covenants and payment obligations under the Facilities Agreement and other indebtedness, in the event we are unable to refinance our maturities or generate sufficient cash flow from operations, may depend on asset sales, and there is no assurance that we will be able to execute such sales on terms favorable to us or at all.

As a result of the restrictions under the Facilities Agreement and other debt instruments, the current global economic environment and uncertain market conditions, we may not be able to complete asset sales on terms that we find economically attractive or at all. Volatility in the credit and capital markets could significantly affect us due to its effect on the availability of funds to potential acquiring parties, including industry peers. In addition, high levels of consolidation in our industry in some jurisdictions may further limit potential assets sales to interested parties due to antitrust considerations. If we are unable to complete asset sales and our cash flow or capital resources prove inadequate, we could face liquidity problems and may not be able to comply with financial covenants and payment obligations under our indebtedness.

In addition, our levels of debt, contractual restrictions, and our need to deleverage may limit our planning flexibility and our ability to react to changes in our business and the industry, and may place us at a competitive disadvantage compared to competitors who may have lower leverage ratios and fewer contractual restrictions. There can also be no assurance that, because of our high leverage ratio and contractual restrictions, we will be able to maintain our operating margins and deliver financial results comparable to the results obtained in the past under similar economic conditions.

***We may not be able to generate sufficient cash to service all of our indebtedness or satisfy our short-term liquidity needs, and we may be forced to take other actions to satisfy our obligations under our indebtedness and our short-term liquidity needs, which may not be successful.***

Historically, we have addressed our liquidity needs (including funds required to make scheduled principal and interest payments, refinance debt, and fund working capital and planned capital expenditures) with operating cash flow, borrowings under credit facilities and receivables and inventory financing facilities, proceeds of debt and equity offerings and proceeds from asset sales.

As of December 31, 2012, we had U.S.$662 million funded under our securitization programs in the United States, France (which incorporated the sale of trade receivables in the United Kingdom) and Mexico. We cannot assure you that, going forward, we will be able to roll over or renew these programs, which could adversely affect our liquidity.

The continued weakness of the global economic environment and its adverse effects on our operating results may negatively affect our credit rating and the market value of our common stock, our CPOs and our ADSs. If current economic pressures continue or worsen, we may be dependent on the issuance of equity as a source to repay our existing indebtedness, including indebtedness under the Facilities Agreement. Although we have been able to raise debt, equity and equity-linked capital in the recent past, previous conditions in the capital markets in 2008 and 2009 were such that traditional sources of capital were not available to us on reasonable terms or at all. As a result, we cannot assure you that we will be able to successfully raise additional debt or equity capital on terms that are favorable to us or at all.

The Facilities Agreement restricts us from incurring additional debt, subject to a number of exceptions. The limitation on incurrence of debt covenant under the Facilities Agreement permits us to incur a liquidity facility or facilities in an amount not to exceed U.S.$400 million. In addition, the Facilities Agreement requires (i) proceeds from asset disposals, incurrences of debt and issuances of equity and excess cash flow to be applied to the prepayment of the indebtedness under the Facilities Agreement, subject to our right to retain cash on hand up to U.S.$625 million in the first three quarters of any fiscal year and U.S.$725 million in the fourth quarter of any fiscal year, including the amount of undrawn commitments of a permitted liquidity facility or facilities (unless the proceeds are used to refinance existing indebtedness on the terms set forth in the Facilities Agreement), and (ii) proceeds reserved from asset disposals, permitted refinancings and cash on hand to be applied to the repayment of indebtedness under the Facilities Agreement and of other indebtedness as permitted under the Facilities Agreement.

We and our subsidiaries have sought and obtained waivers and amendments to several of our debt instruments relating to a number of financial ratios in the past. Our ability to comply with these ratios may be affected by current global economic conditions and volatility in foreign exchange rates and the financial and capital markets. We may need to seek waivers or amendments in the future. However, we cannot assure you that any future waivers or amendments, if requested, will be obtained. If we or our subsidiaries are unable to comply with the provisions of our debt instruments, and are unable to obtain a waiver or amendment, the indebtedness outstanding under such debt instruments could be accelerated. Acceleration of these debt instruments would have a material adverse effect on our financial condition.

If the global economic environment deteriorates further and our operating results worsen significantly, if we were unable to complete debt or equity offerings or if our planned divestitures and/or our cash flow or capital resources prove inadequate, we could face liquidity problems and may not be able to comply with our upcoming principal payments under our indebtedness or refinance our indebtedness.

***The indentures governing the Senior Secured Notes and the terms of our other indebtedness impose significant operating and financial restrictions, which may prevent us from capitalizing on business opportunities and may impede our ability to refinance our debt and the debt of our subsidiaries.***

As of December 31, 2012, as adjusted to give effect to the issuance of the March 2013 Notes, the Eurobond Tender Offer and the prepayment of the 2009 Financing Agreement, there were U.S.$8,697 million and €645 million aggregate principal amount of Senior Secured Notes outstanding under the indentures governing such notes, excluding those held by us. The indentures governing the Senior Secured Notes and the other instruments governing our consolidated indebtedness impose significant operating and financial restrictions on us. These restrictions will limit our ability, among other things, to: (i) incur debt; (ii) pay dividends on stock; (iii) redeem stock or redeem subordinated debt; (iv) make investments; (v) sell assets, including capital stock of subsidiaries; (vi) guarantee indebtedness; (vii) enter into agreements that restrict dividends or other distributions from restricted subsidiaries; (viii) enter into transactions with affiliates; (ix) create or assume liens; (x) engage in mergers or consolidations; and (xi) enter into a sale of all or substantially all of our assets.

These restrictions could limit our ability to seize attractive growth opportunities for our businesses that are currently unforeseeable, particularly if we are unable to incur financing or make investments to take advantage of these opportunities.

These restrictions may significantly impede our ability, and the ability of our subsidiaries, to develop and implement refinancing plans in respect of our debt or the debt of our subsidiaries.

Most of the covenants are subject to a number of important exceptions and qualifications. The breach of any of these covenants could result in a default under the indentures governing the Senior Secured Notes, as well as certain other existing debt obligations, as a result of the cross-default provisions contained in the instruments governing such debt obligations. In the event of a default under the indentures governing the Senior Secured Notes, holders of the Senior Secured Notes could seek to declare all amounts outstanding under such Senior Secured Notes, together with accrued and unpaid interest, if any, to be immediately due and payable. If the indebtedness under the Senior Secured Notes, or certain other existing debt obligations were to be accelerated, we cannot assure you that our assets would be sufficient to repay in full that indebtedness or our other indebtedness.

Furthermore, upon the occurrence of any event of default under the Facilities Agreement, or other credit facilities or any of our other debt, the lenders could elect to declare all amounts outstanding thereunder, together with accrued interest, to be immediately due and payable. If the lenders accelerate payment of those amounts, we cannot assure you that our assets would be sufficient to repay in full those amounts or to satisfy our other liabilities.

In addition, in connection with the entry into new financings or amendments to existing financing arrangements, our and our subsidiaries' financial and operational flexibility may be further reduced as a result of more restrictive covenants, requirements for security and other terms that are often imposed on sub-investment grade entities.

***CEMEX, S.A.B. de C.V.'s ability to repay debt and pay dividends depends on our subsidiaries' ability to transfer income and dividends to us.***

CEMEX, S.A.B. de C.V. is a holding company with no significant assets other than the stock of its direct and indirect subsidiaries and its holdings of cash and marketable securities. In general, CEMEX, S.A.B. de C.V.'s ability to repay debt and pay dividends depends on the continued transfer to it of dividends and other income from its wholly-owned and non-wholly-owned subsidiaries. The ability of CEMEX, S.A.B. de C.V.'s subsidiaries to pay dividends and make other transfers to it is limited by various regulatory, contractual and legal constraints. The Facilities Agreement restricts CEMEX, S.A.B. de C.V.'s ability to declare or pay cash dividends. In addition, the indentures governing the Senior Secured Notes also limit CEMEX, S.A.B. de C.V.'s ability to pay dividends.

The ability of CEMEX, S.A.B. de C.V.'s subsidiaries to pay dividends, and make loans and other transfers to it is generally subject to various regulatory, legal and economic limitations. Depending on the jurisdiction of organization of the relevant subsidiary, such limitations may include solvency and legal reserve requirements, dividend payment restrictions based on interim financial results or minimum net worth and withholding taxes on loan interest payments. For example, our subsidiaries in Mexico are subject to Mexican legal requirements, which provide that a corporation may declare and pay dividends only out of the profits reflected in the year-end financial statements that are or have been approved by its stockholders. In addition, such payment can be approved by a subsidiary's stockholders only after the creation of a required legal reserve (equal to one fifth of the relevant company's capital) and compensation or absorption of losses, if any, incurred by such subsidiary in previous fiscal years.

CEMEX, S.A.B. de C.V. may also be subject to exchange controls on remittances by its subsidiaries from time to time in a number of jurisdictions. In addition, CEMEX, S.A.B. de C.V.'s ability to receive funds from these subsidiaries may be restricted by covenants in the debt instruments and other contractual obligations of those entities.

CEMEX, S.A.B. de C.V. currently does not expect that existing regulatory, legal and economic restrictions on its subsidiaries' ability to pay dividends and make loans and other transfers to it will negatively affect its ability to meet its cash obligations. However, the jurisdictions of organization of CEMEX, S.A.B. de C.V.'s subsidiaries may impose additional and more restrictive regulatory, legal and/or economic limitations. In addition, CEMEX, S.A.B. de C.V.'s subsidiaries may not be able to generate sufficient income to pay dividends or make loans or other transfers to it in the future. Any material additional future limitations on our subsidiaries could adversely affect CEMEX, S.A.B. de C.V.'s ability to service our debt and meet its other cash obligations.

***We are subject to restrictions due to non-controlling interests in our consolidated subsidiaries.***

We conduct our business through subsidiaries. In some cases, third-party shareholders hold non-controlling interests in these subsidiaries. Various disadvantages may result from the participation of non-controlling shareholders whose interests may not always be aligned with ours. Some of these disadvantages may, among other things, result in our inability to implement organizational efficiencies and transfer cash and assets from one subsidiary to another in order to allocate assets most effectively.

***We have to service our debt and other financial obligations denominated in U.S. Dollars with revenues generated in Mexican Pesos or other currencies, as we do not generate sufficient revenue in U.S. Dollars from our operations to service all our debt and other financial obligations denominated in U.S. Dollars. This could adversely affect our ability to service our obligations in the event of a devaluation or depreciation in the value of the Peso, or any of the other currencies of the countries in which we operate, compared to the U.S. Dollar. In addition, our consolidated reported results and outstanding indebtedness are significantly affected by fluctuations in exchange rates between the Peso and other currencies.***

A substantial portion of our total debt plus other financial obligations is denominated in U.S. Dollars. As of December 31, 2012, as adjusted to give effect to the issuance of the March 2013 Notes, the Eurobond Tender Offer and the prepayment of the 2009 Financing Agreement, our debt and other financial obligations denominated in U.S. Dollars represented approximately 83% of our total debt plus other financial obligations, which does not include approximately U.S.$389 million of U.S. Dollar-denominated Perpetual Debentures. Our U.S. Dollar-denominated debt must be serviced with funds generated by our subsidiaries. Although we have substantial U.S. operations, we continue to rely on our non-U.S. assets to generate revenues to service our U.S. Dollar-denominated debt. Consequently, we have to use revenues generated in Mexican Pesos, Euros or other currencies to service our U.S. Dollar-denominated obligations. See "Item 5—Operating and Financial Review and Prospects—Qualitative and Quantitative Market Disclosure—Interest Rate Risk, Foreign Currency Risk and Equity Risk—Foreign Currency Risk." A devaluation or depreciation in the value of the Peso, Euro, Pound or any of the other currencies of the countries in which we operate, compared to the U.S. Dollar, could

adversely affect our ability to service our debt. In 2012, Mexico, the United Kingdom, Germany, France, the rest of Northern Europe region (which includes our subsidiaries in Ireland, the Czech Republic, Austria, Poland, Hungary and Latvia, and which we refer to as our Rest of Northern Europe region), Spain, Egypt, the rest of the Mediterranean region (which includes our subsidiaries in Croatia, the UAE and Israel, and which we refer to as our Rest of the Mediterranean region) and Colombia, which are our main non-U.S. Dollar-denominated operations, together generated approximately 62% of our total net sales in Peso terms (approximately 21%, 7%, 7%, 6%, 6%, 2%, 3%, 4% and 6%, respectively) before eliminations resulting from consolidation. In 2012, approximately 19% of our net sales in Peso terms were generated in the United States. During 2012, the Peso appreciated approximately 8% against the U.S. Dollar, the Euro appreciated approximately 2% against the Dollar and the Pound appreciated approximately 4% against the U.S. Dollar. If we enter into currency hedges in the future, these may not be effective in covering all our currency-related risks. Our consolidated reported results for any period and our outstanding indebtedness as of any date are significantly affected by fluctuations in exchange rates between the Peso and other currencies, as those fluctuations influence the amount of our indebtedness when translated into Mexican Pesos and also result in foreign exchange gains and losses as well as gains and losses on derivative contracts, including those entered into to hedge our exchange rate exposure.

In addition, as of December 31, 2012, as adjusted to give effect to the issuance of the March 2013 Notes, the Eurobond Tender Offer and the prepayment of the 2009 Financing Agreement, our Euro-denominated total debt plus other financial obligations represented approximately 12% of our total debt plus other financial obligations, which does not include the approximately €64 million aggregate principal amount of Euro-denominated Perpetual Debentures.

***Our use of derivative financial instruments has negatively affected our operations, especially in volatile and uncertain markets.***

We have used, and may continue to use, derivative financial instruments to manage the risk profile associated with interest rates and currency exposure of our debt, to reduce our financing costs, to access alternative sources of financing and to hedge some of our financial risks. However, we cannot assure you that our use of such instruments will allow us to achieve these objectives due to the inherent risks in any derivatives transaction. The Facilities Agreement and other debt instruments significantly restrict our ability to enter into derivative transactions.

As of December 31, 2012, our derivative financial instruments that had a potential impact on other financial income (expense) consisted of equity forward contracts on third-party shares and equity derivatives on shares of CEMEX, S.A.B. de C.V. (including our capped call transactions in connection with the 2010 Optional Convertible Subordinated Notes and the 2011 Optional Convertible Subordinated Notes, as well as the conversion options embedded in these notes), a forward instrument over the Total Return Index of the Mexican Stock Exchange, and interest rate derivatives related to energy projects.

Most derivative financial instruments are subject to margin calls in case the threshold set by the counterparties is exceeded. The cash required to cover margin calls in several scenarios may be substantial and may reduce the funds available to us for our operations or other capital needs. The mark-to-market changes in some of our derivative financial instruments are reflected in our statement of operations, which could introduce volatility in our controlling interest net loss and our related ratios. For the years ended December 31, 2011 and 2012, the recognition of changes in the fair value of derivative financial instruments during the applicable period represented a net loss of approximately Ps329 million (U.S.$26 million) and a net loss of approximately Ps98 million (U.S.$8 million), respectively. In the current environment, the creditworthiness of our counterparties may deteriorate substantially, preventing them from honoring their obligations to us. We maintain equity derivatives that in a number of scenarios may require us to cover margin calls that could reduce our cash availability. If we enter into new derivative financial instruments, or with respect to our existing derivative financial instruments (including our outstanding equity derivative positions), we may incur net losses from our derivative financial instruments. See notes 2L, 16B, 16D and 16E to our 2012 audited consolidated financial statements included elsewhere in this annual report.

***We may fail to obtain or renew or may experience material delays in obtaining requisite governmental approvals, licenses and permits for the conduct of our business.***

We require various approvals, licenses, permits and certificates in the conduct of our business. We cannot assure you that we will not encounter significant problems in obtaining new or renewing existing approvals, licenses, permits and certificates required in the conduct of our business, or that we will continue to satisfy the conditions to which such approvals, licenses, permits and certificates are granted. There may also be delays on the part of regulatory and administrative bodies in reviewing our applications and granting approvals. If we fail to obtain and/or maintain the necessary approvals, licenses, permits and certificates required for the conduct of our business, we may be required to incur substantial costs or temporarily suspend the operation of one or more of our production facilities, which could have a material adverse effect on our business, financial condition, results of operations and prospects.

***We may not be able to realize the expected benefits from acquisitions, some of which may have a material impact on our business, financial condition and results of operations.***

Our ability to realize the expected benefits from acquisitions depends, in large part, on our ability to integrate acquired operations with our existing operations in a timely and effective manner. These efforts may not be successful. Although we may seek to dispose of assets to reduce our overall leverage and the Facilities Agreement and other debt instruments restrict our ability to acquire assets, we may in the future acquire new operations and integrate such operations into our existing operations, and some of such acquisitions may have a material impact on our business, financial condition and results of operations. We cannot assure you that we will be successful in identifying or acquiring suitable assets in the future. If we fail to achieve the anticipated cost savings from any acquisitions, our business, financial condition and results of operations could be materially and adversely affected.

***Higher energy and fuel costs may have a material adverse effect on our operating results.***

Our operations consume significant amounts of power and fuel, the cost of which has significantly increased worldwide in recent years. Power and fuel prices generally reflect a certain volatility, particularly in times of political turbulence in Iran, Iraq and other countries in the Middle East and Africa, such as has been recently experienced. We cannot assure you that our operations would not be materially adversely affected in the future if energy and fuel costs increase.

In addition, if our efforts to increase our use of alternative fuels are unsuccessful, we would be required to use traditional fuels, which would increase our energy and fuel costs and could have a material adverse effect on our business, financial condition and results of operations.

***The introduction of substitutes for cement, concrete or aggregates into the market and the development of new construction techniques could have a material adverse effect on our business, financial condition and results of operations.***

Materials such as plastic, aluminum, ceramics, glass, wood and steel can be used in construction as a substitute for cement, concrete or aggregates. In addition, other construction techniques, such as the use of dry wall, could decrease the demand for cement, concrete and/or aggregates. Further, research aimed at developing new construction techniques and modern materials may introduce new products in the future that reduce the demand for cement, concrete and/or aggregates. The use of substitutes for cement, concrete or aggregates could cause a significant reduction in the demand and prices for our products.

***We operate in highly competitive markets and if we do not compete effectively, our results of operations will be harmed.***

The markets in which we operate are highly competitive and are served by a variety of established companies with recognized brand names, as well as new market entrants. Companies in these markets compete based on a variety of factors, often employing aggressive pricing strategies to gain market share. For example, CEMEX Colombia's results of operations have been negatively affected in the past by the pricing strategies of its competitors. Our ability to increase our net sales depends, in part, on our ability to compete effectively and maintain or increase our market share. We compete with different types of companies and based on different factors in each market. For example, in the relatively consolidated cement and ready-mix concrete industries, we generally compete based on quality and value proposition. In the more fragmented market for aggregates, we generally compete based on capacity and price. In certain areas of the markets in which we compete, some of our competitors may be more established, benefit from greater brand recognition or have greater manufacturing and distribution channels and other resources than we do. If we are not able to compete effectively, we may lose market share, our net sales could decline or grow at a slower rate and our business and results of operations would be harmed.

***A substantial amount of our total assets consists of intangible assets, including goodwill. We have recognized charges for goodwill impairment in the past, and if market or industry conditions deteriorate further, additional impairment charges may be recognized.***

Our audited consolidated financial statements have been prepared in accordance with IFRS, under which goodwill is not amortized and is tested for impairment when impairment indicators exist or at least once a year during the fourth quarter of each year, by determining the recoverable amount of the groups of cash-generating units to which goodwill has been allocated, which recoverable amount consists of the higher of the corresponding fair value, less cost to sell, and the corresponding value in use, represented by the discounted amount of estimated future cash flows expected to be generated by those groups of cash-generating units to which goodwill has been allocated. An impairment loss is recognized under IFRS if the recoverable amount is lower than the net book value of the groups of cash-generating units to which goodwill has been allocated. We determine the discounted amount of estimated future cash flows over periods of 5 to 10 years, depending on each specific country's economic cycle. If the value in use of a group of cash-generating units to which goodwill has been allocated is lower than its corresponding carrying amount, we determine its corresponding fair value using methodologies generally accepted in the markets to determine the value of entities, such as multiples of operating EBITDA and/or by reference to other market transactions. Impairment tests are sensitive to the projected future prices of our products, trends in administrative, selling and distribution expenses, local and international economic trends in the construction industry, as well as the long-term growth expectations in the different markets, among other factors. We use pre-tax discount rates, which are applied to pre-tax cash flows for each reporting unit. Undiscounted cash flows are significantly sensitive to the growth rates in perpetuity used. Likewise, discounted cash flows are significantly sensitive to the discount rate used. The higher the growth rate in perpetuity applied, the higher the amount of undiscounted future cash flows by reporting unit obtained. Conversely, the higher the discount rate applied, the lower the amount of discounted estimated future cash flows by reporting unit obtained. See note 15C to our 2012 audited consolidated financial statements included elsewhere in this annual report.

Due to the important role that economic factors play in testing goodwill for impairment, a further downturn in the economies where we operate could necessitate new impairment tests and a possible downward readjustment of our goodwill for impairment under IFRS. Such an impairment test could result in additional impairment charges which could be material to our financial statements.

***We are subject to litigation proceedings, including antitrust proceedings, that could harm our business if an unfavorable ruling were to occur.***

From time to time, we are and may become involved in litigation and other legal proceedings relating to claims arising from our operations in the normal course of business. As described in, but not limited to, "Item 4—Information on the Company—Regulatory Matters and Legal Proceedings" of this annual report, we are currently subject to a number of significant legal proceedings, including, but not limited to, those relating to tax matters in Mexico, as well as antitrust investigations in Europe. In addition, our Egyptian subsidiary, Assiut Cement Company ("ACC"), is involved in an Egyptian legal proceeding relating to our acquisition of ACC. Litigation is subject to inherent uncertainties, and unfavorable rulings may occur. We cannot assure you that these or other legal proceedings will not materially affect our ability to conduct our business in the manner that we expect or otherwise adversely affect us should an unfavorable ruling occur.

***Our operations are subject to environmental laws and regulations.***

Our operations are subject to a broad range of environmental laws and regulations in each of the jurisdictions in which we operate. The enactment of stricter laws and regulations, or stricter interpretation of existing laws or regulations, may impose new risks or costs on us or result in the need for additional investments in pollution control equipment, which could result in a material decline in our profitability.

In late 2010, the U.S. Environmental Protection Agency ("EPA") issued the final portland cement national emission standard ("Portland Cement NESHAP") for hazardous air pollutants under the federal Clean Air Act ("CAA"). This rule required portland cement plants to limit emissions of mercury, total hydrocarbons, hydrochloric acid and particulate matter by September 2013. The EPA also promulgated New Source Performance Standards (the "NSPS") for cement plants at the same time. CEMEX, along with others in its industry, challenged these rules in administrative and judicial proceedings. In December 2011, the D.C. Circuit Court of Appeals remanded the Portland Cement NESHAP to EPA and directed the agency to recompute the standards, but rejected all challenges to the NSPS rule. In February 2013, EPA issued a revised final NESHAP rule that relaxed emissions limits for particulate matter as compared to the 2010 NESHAP rule, left the emissions limits for mercury, total hydrocarbons, and hydrochloric acid unchanged, and moved the compliance deadline to September 2015. It is expected that the revised Portland Cement NESHAP rule will again be challenged in federal court. We are unable to predict whether such a challenge would result in the rule being remanded again to EPA, or whether such a remand would result in a more or less stringent Portland Cement NESHAP. If the final Portland Cement NESHAP and NSPS rules result in more stringent emission requirements for portland cement plants, these rules could have a material impact on our business operations, which we expect would be consistent with the impact on the cement industry as a whole.

In February 2013, EPA issued revised final emissions standards under the CAA for commercial and industrial solid waste incinerators ("CISWI"). Under the CISWI rule, if a material being used in a cement kiln as an alternative fuel is classified as a solid waste, the plant must comply with CISWI standards. The CISWI rule covers nine pollutants, and imposes more stringent emissions limits on certain pollutants also regulated under the Portland Cement NESHAP. The CISWI rule may be challenged in federal court. We are unable to predict whether such a challenge would result in the rule being remanded to EPA, or whether such a remand would result in a more or less stringent CISWI standards. If the CISWI rule takes effect in its current form, and if kilns at CEMEX plants are determined to be CISWI kilns due to the use of certain alternative fuels, the emissions standards imposed by the CISWI rule could have a material impact on our business operations.

In June 2010, EPA proposed regulating Coal Combustion Products ("CCPs") generated by electric utilities and independent power producers as a hazardous or special waste under the Resource Conservation and Recovery Act. CEMEX uses CCPs as a raw material in the cement manufacturing process, as well as a supplemental cementitious material in some of our ready-mix concrete products. It is too early to predict how EPA will ultimately regulate CCPs, but if CCPs are regulated as a hazardous or special waste in the future, it may

result in changes to the formulation of our products away from those formulations that employ CCPs as a raw or supplemental cementitious material. Based on current information, we believe, although we cannot assure you, that such matters will not have a material impact on us. EPA has not announced a timetable for issuing the final CCP rule, although one is expected in 2013.

The cement manufacturing process requires the combustion of large amounts of fuel and creates carbon dioxide ("CO2") as a by-product of the calcination process. Therefore, efforts to address climate change through federal, state, regional and international laws and regulations requiring reductions in emissions of greenhouse gases ("GHGs") can create economic risks and uncertainties for our business. Such risks could include the cost of purchasing allowances or credits to meet GHG emission caps, the cost of installing equipment to reduce emissions to comply with GHG limits or required technological standards, or decreased profits or losses arising from decreased demand for our goods or higher production costs resulting directly or indirectly from the imposition of legislative or regulatory controls. EPA has promulgated a series of regulations pertaining to emissions of GHGs from industrial sources. EPA issued the Mandatory Reporting of GHGs Rule, effective December 29, 2009, which requires certain covered sectors, including cement manufacturing, with GHG emissions above an established threshold to inventory and report their GHG emissions annually on a facility-by-facility basis. We do not expect this rule to have a material economic impact on us.

In 2010, EPA issued a final rule that establishes GHG thresholds for the New Source Review Prevention of Significant Deterioration ("PSD") and Title V Operating Permit programs. The rule "tailors" the requirements of these CAA permitting programs to limit which facilities will be required to obtain PSD and Title V permits for GHG emissions. Cement production facilities are included within the categories of facilities required to obtain permits, provided that their GHG emissions exceed the thresholds in the tailoring rule. The PSD program requires new major sources of regulated pollutants and major modifications at existing major sources to secure pre-construction permits, which establish, among other things, limits on pollutants based on Best Available Control Technology ("BACT"). According to EPA's rules, stationary sources, such as cement manufacturing, which are already regulated under the PSD program for non-GHG pollutants, need to apply for a PSD permit for any GHG emissions increases above 75,000 tons/year of carbon dioxide equivalent ("CO2E"). Therefore, new cement plants and existing plants undergoing modification which are major sources for non-GHG pollutants regulated under the CAA need to acquire a PSD permit for construction or modification activities that increase CO2E by 75,000 or more tons/year, and would have to determine and install BACT controls for those emissions. Furthermore, any new source that emits 100,000 tons/year of CO2E or any existing source that emits 100,000 tons/year of CO2E and undergoes modifications that would emit 75,000 tons/year of CO2E, must comply with PSD obligations. Although this has been challenged in litigation, it is now in effect and facilities in the United States are complying with these requirements. Complying with these PSD permitting requirements can involve significant costs and delay. The costs of future GHG-related regulation of our facilities through these efforts or others could have a material economic impact on our U.S. operations and the U.S. cement manufacturing industry.

On the legislative front, during the past few years, various bills have been introduced in the U.S. Congress seeking to establish caps or other limits on GHG emissions. Any legislation imposing significant costs or limitations on raw materials, fuel or production, or requirements for reductions of GHG emissions, could have a significant impact on the cement manufacturing industry and a material economic impact on our U.S. operations, including competition from imports in countries where such costs are not imposed on manufacturing.

In addition to pending U.S. federal regulation and legislation, states and regions are establishing or seeking to establish their own programs to reduce GHG emissions, including from manufacturing sectors. For example, California passed AB 32 into law in 2006, which, among other things, seeks a statewide reduction of GHG emissions to 1990 levels by 2020 and places responsibility with the California Air Resources Board ("CARB") to develop the implementing regulations which, among other things, requires the minimization of leakage to the extent feasible. In October 2011, CARB approved a cap-and-trade program that went into effect on January 1, 2013 for the utility and industrial sectors, including the cement sector. Under the current regulatory framework,

we expect that CARB will distribute free emission allowances to industrial facilities under an output-based benchmark system based on each industrial sector's leakage risk. The cement sector was placed in the high leakage risk category. Based on its placement in the high leakage risk category we expect that the cement industry as a whole will receive a free allowance allocation rate of approximately 94% of its emission obligation in 2013 which would decline ratably with the cap adjustment to 87% in 2020. The output-based benchmark system creates incentives for industrial facilities to reduce their GHG intensity. We are actively pursuing initiatives to substitute lower carbon fuels for fossil fuels, improve our energy efficiency and utilize renewable power in an effort to economically reduce our direct and indirect GHG emission intensities. However, even with these ongoing efforts and the expected distribution of free allowances and CARB-mandated power rebates to us, we cannot assure you that the overall costs of complying with a cap-and-trade program will not have a material impact on our operations in California.

In 2007, CARB approved a regulation that will require California equipment owners/operators to reduce diesel particulate and nitrogen oxide emissions from in-use off-road diesel equipment and to meet progressively more restrictive emission targets. In 2008, CARB approved a similar regulation for in-use on-road diesel equipment. The emission targets will require us to retrofit our California-based equipment with diesel emission control devices or replace equipment with new engine technology in accordance with certain deadlines, which will result in higher equipment related expenses or capital investments. We may incur substantial expenditures to comply with these requirements. In December 2010, CARB amended both regulations to grant economic relief to affected fleets by extending certain compliance dates and modifying compliance requirements.

In the European Union, cement plants are regulated according to two directives which have been transposed into domestic law by member states. The first is the Directive on Integrated Pollution Prevention and Control (2008/1/EC) ("IPPC Directive"), which adopts an integrated approach by taking into account the whole environmental performance of the plant. It requires cement works to have a permit containing emission limit values and other conditions based on the application of best available techniques ("BAT") with a view to preventing or, where this is not practicable, minimising emissions of pollutants likely to be emitted in significant quantities in air, water or land. Permit conditions also have to address energy efficiency, waste minimization, prevention of accidental emissions and site restoration. To assist the permitting authorities and companies in determining the BAT, the European Commission organises an exchange of information between experts from the member states, industry and environmental organisations. This results in the adoption and publication by the European Commission of BAT Reference Documents ("BREFs") for the industry sectors covered by the IPPC Directive. A key element of the BREFs are the conclusions on BAT ("BAT conclusions") which are used as a reference for setting permit conditions.

The second Directive relates to the Incineration of Waste (2000/76/EC) ("Incineration Directive"). Its aim is to prevent or limit, as far as practicable, negative effects on the environment, in particular pollution by emissions in air, soil, surface water and groundwater and the resulting risks to human health, from incineration and co-incineration plants, the latter including cement and lime kilns. The Incineration Directive seeks to achieve its aim by setting and maintaining stringent operational conditions and technical requirements, as well as emission limit values for a range of pollutants including dust, nitrogen oxides, sulphur dioxide, hydrogen chloride, heavy metals and dioxins.

On 6 January 2011, the Industrial Emissions Directive (2010/75/EU) ("IED") came into force. The IED updates and merges seven pieces of existing legislation, including the IPPC Directive and the Incineration Directive which it will eventually replace. It will apply to new installations from 6 January 2013 and to existing installations (other than large combustion plants) from 6 January 2014. Under the IED, operators of industrial installations, including cement plants, are required to obtain an integrated permit from the relevant permitting authority in the member states. As with the IPPC Directive, permit conditions, including emission limit values, must be based on BAT. However, there is an important difference between the two directives. Under the IPPC Directive, the BAT reference documents are considered as guidance only. This is not the case under the IED. Where BAT conclusions specify emission levels, permitting authorities are required to set emission limit values

that do not exceed these levels. They may derogate from this requirement only where the costs associated with the achievement of the emission levels associated with the BAT disproportionately outweigh the environmental benefits due to the geographical location, the local environmental conditions or the technical characteristics of the installation concerned. The permitting authorities must document the reasons for the derogation from the emission limit values in the permit, including the result of the cost-benefit assessment. In April 2013, the European Commission published new BAT conclusions under the IED for Cement, Lime and Magnesium Oxide, together with specific emission levels. While it is too early to assess what impact the IED will have on our operations, it is reasonable to assume that there will be an impact given the change in regulatory approach heralded by the legislation and the fact that it will be key to the permitting of the cement industry in the EU.

On the international front, we actively monitor negotiations of the United Nations Framework Convention on Climate Change ("UNFCCC"). In 1997, as part of the UNFCCC, 197 governments adopted the Kyoto Protocol to limit and reduce GHG emissions. The Kyoto Protocol set legally binding emission reduction targets for 37 industrialised countries and the European Union. Under the Kyoto Protocol, industrialised countries agreed to reduce their collective GHG emissions by 5% against 1990 levels over the five year period 2008-2012 ("first commitment period"); future mandatory targets were expected to be established for commitment periods after 2012. To compensate for the sting of binding targets, the Kyoto Protocol allows three "flexibility" mechanisms to be used by parties in meeting their emission limitation commitments: the Clean Development Mechanism ("CDM"), Joint Implementation ("JI") and International Emissions Trading.

In November-December 2012, at the UN Climate Change Conference in Doha, Qatar, certain parties, including the UK and the European Union, adopted the Doha Amendment to the Kyoto Protocol and committed to reduce GHG emissions by at least 18% below 1990 levels in the eight year period from 2013 to 2020 ("second commitment period").

We operate in countries that are signatories to the Kyoto Protocol, including European Union member states. Hence, our operations in the United Kingdom, Spain, Germany, Latvia and Poland, as well as our operations in Croatia, which is in the process of EU accession, are subject to binding caps on CO2 emissions imposed pursuant to the European Union's emissions trading system ("ETS") that was established by Directive 2003/87/EC to implement the Kyoto Protocol. Under the ETS, a cap or limit is set on the total amount of CO2 emissions that can be emitted by the power plants, energy-intensive installations (including cement plants) and commercial airlines that are covered by the system. The cap is reduced over time, so that the total amount of emissions will decrease. Within the cap, companies receive or buy emission allowances. These allowances are tradable so as to enable companies that manage to reduce their emissions to sell their excess allowances to companies that are not reaching their emissions objectives. In addition to carbon allowances, the ETS also allows the use of Kyoto Protocol units (the Emission Reduction Unit, representing a tonne of carbon saved by a project under the JI mechanism, and the Certified Emission Reduction unit under the CDM). The ETS recognizes these units as equivalent to its carbon allowances and allows them to be used by companies for compliance up to a certain limit to offset their carbon emissions in the EU. After each year, a company must surrender enough carbon allowances to cover all its emissions. Failure to meet the emissions caps is subject to significant monetary penalties. For further detail, see "Item 3—Key Information—Risk Factors—Our operations are subject to environmental laws and regulations."

The ETS consists of three trading phases: Phase I which lasted from January 1, 2005 to December 31, 2007, Phase II, which lasted from 1 January 2007 to 31 December 2012, and was intended to meet commitments under the Kyoto first commitment period, and Phase III which commenced on 1 January 2013 and will end on 31 December 2020. Prior to the commencement of each of ETS Phases I and II, each member state was responsible for publishing its National Allocation Plan, a document which sets out a national cap on the total amount of carbon allowances during each relevant trading phase and the methodology by which the cap would be allocated to the different sectors in the ETS and their respective installations. Each member state's cap contributed to an overall EU cap on emissions, where one carbon allowance must be surrendered to account for 1 tonne of carbon emitted. The carbon allowances were mostly distributed for free by each member state to its ETS

installations, although some member states also used a fraction of their material cap for auctioning, mainly to power generators. Under ETS Phase III, however, the system of National Allocation Plans has been be replaced by a single EU-wide, top-down, cap on CO2 emissions, with allocation for all installations made according to harmonized EU rules and set out in each member state's National Implementation Measures. Restrictions have been introduced on the extent to which Kyoto Protocol units can be used to offset EU carbon emissions, and auctioning, not free allocation, has become the default method for distributing allowances. For those allowances that are still given away free, as discussed below, harmonized rules apply based on EU-wide benchmarks of emissions performance.

EU policymakers see the free allocation of allowances as a principle way to reduce the risk of carbon leakage—that is, the risk that energy-intensive industries, facing higher costs because of the ETS, will move their facilities beyond the EU's borders to countries that do not have climate change controls, thus resulting in a leakage of CO2 emissions without any environmental benefits . In 2009, a list of ETS sectors deemed to be at significant risk of carbon leakage was formally adopted by the European Commission, following agreement by member states and the European Parliament. The list included the cement production sector, on the basis that the additional costs imposed by the ETS would lead to a 30% or more increase in production costs as a proportion of the "gross value added". Sectors classified as deemed to be at significant risk of carbon leakage will continue to receive 100% of their benchmark allocation of allowances free of charge during 2013 and 2014. By contrast, sectors that are not considered at risk of carbon leakage will receive 80% of their benchmark allowances for free in 2013, declining to 30% by 2020.

In accordance with European Commission Decision of 27 April 2011 (2011/278/EU), the number of allowances to be allocated to installations for free will be based on a combination of historic activity levels at that installation and an EU benchmark of carbon efficiency for the production of a particular product—for example, clinker. An installation's historic activity level is calculated by taking the median of its annual production levels during the baseline period, either 2005 to 2008 or, where historic activity levels are higher, 2009/10. The product benchmark is based on the average carbon emissions of the top 10% most "carbon efficient" EU installations for a particular product during 2007/8, where carbon efficiency is measured by carbon intensity or carbon emission per tonne of product. Based on these criteria, we expect that the aggregate amount of allowances that will be annually allocated for free to CEMEX in Phase III of the ETS will be sufficient to operate, assuming that the cement industry continues to be considered at significant risk of carbon leakage. However, a review of the sectors deemed to be at significant risk is to take place in 2014 and it is possible that the cement industry could lose that status. Indeed, commentators argue that many of the assumptions that were used to determine which sectors should be deemed to be at significant risk are now obsolete. For example, the 2009 quantitative analysis that was relied upon forecast that ETS prices would stabilise at €30/ton CO2, but in fact prices are significantly lower than that. A determination that the cement industry should no longer be regarded as at significant risk of carbon leakage could have a material impact on our operations.

An installation can only receive its full allocation of free allowances if it is deemed to have not partially ceased under the "partial cessation rule" of the ETS. Partial cessation applies where a sub-installation which contributes at least 30% of the installation's final annual amount of emissions allocated, or contributes to more than 50,000 allowances, reduces its activity level by at least 50% of its historic activity levels. If activity levels are reduced to between 50% and 75% of the historic activity level, the amount of free carbon allowances the sub-installation will receive will reduce by half in the following year; if activity levels are reduced by 75% to 90% compared to historic activity levels, the amount of free carbon allowances the sub-installation will receive will reduce by 75% in the following year; and if activity levels are reduced by 90% or more compared to historic activity levels, no allowances shall be allocated free of charge the following year in respect of the sub-installation concerned. This represents a change from ETS Phase II, in which the rules for partial cessation were defined by each member state's NAP and often did not result in any reduction in the level of free allocation, but an installation was no longer entitled to a free allocation from the following year if it had permanently ceased operating. The new rules are therefore more stringent, and to the extent that they result in our plants foregoing free carbon allowances, they could represent a significant loss of revenue, since carbon allowances are also tradable.

As a result of continuing uncertainty regarding final allocation of free allowances, it is premature to draw conclusions regarding the overall position of all of our European cement plants. Also, separate cap-and-trade schemes may be adopted in individual countries outside the European Union. For example, since 2013 in Croatia, who are due to become members of the European Union on July 1, 2013 after which their scheme will in due course be incorporated into that of the EU ETS.

Under the ETS, we seek to reduce the impact of any excess emissions by either reducing the level of CO2 released in our facilities or by implementing CDM projects under the Kyoto Protocol in emerging markets. We have registered 12 CDM projects; in total, these projects have the potential to reduce almost 1.7 million metric tons of CO2-E emissions per year. If we are not successful in implementing emission reductions in our facilities or obtaining credits from CDM projects, we may have to purchase a significant amount of allowances in the market, the cost of which may have a significant impact on our operating results.

Given the uncertain nature of the actual or potential statutory and regulatory requirements for GHG emissions at the federal, state, regional and international levels, we cannot predict the impact on our operations or financial condition or make a reasonable estimate of the potential costs to us that may result from such requirements. However, the impact of any such requirements, whether individually or cumulatively, could have a material economic impact on our operations in the United States and in other countries.

Cement production raises a number of health and safety issues. As is the case with other companies in our industry, some of our aggregate products contain varying amounts of crystalline silica, a common mineral. Also, some of our construction and material processing operations release, as dust, crystalline silica that is in the materials being handled. Excessive, prolonged inhalation of very small-sized particles of crystalline silica has allegedly been associated with respiratory disease (including silicosis). As part of our annual due diligence, we work with our stakeholders to verify that certain health and safety protocols are in place as regards the management of silica and its health effects. Nonetheless, under various laws we may be subject to future claims related to exposure to these or other substances.

Other health and safety issues include: burns arising from contact with hot cement kiln dust or dust on preheater systems; noise, including from chutes and hoppers, milling plants, exhaust fans and blowers; the potential for dioxin formation if chlorine-containing alternative fuels are introduced into kilns; plant cleaning and maintenance activities involving working at height or in confined or other awkward locations, and the storage and handling of coal and petcoke, which, in their finely ground state, can pose a risk of fire or explosion. While we actively seek to minimise the risk posed by these issues, personal injury claims may be made, and substantial damages awarded, against us. We may also be required to change our operational practices, involving material capital expenditure.

Under certain environmental laws and regulations, liability associated with investigation or remediation of hazardous substances can arise at a broad range of properties, including properties currently or formerly owned or operated by CEMEX, as well as facilities to which we sent hazardous substances or wastes for treatment, storage or disposal. Such laws and regulations may apply without regard to causation or knowledge of contamination. We occasionally evaluate various alternatives with respect to our facilities, including possible dispositions or closures. Investigations undertaken in connection with these activities (or ongoing operational or construction activities) may lead to hazardous substance releases or discoveries of historical contamination that must be remediated, and closures of facilities may trigger compliance requirements that are not applicable to operating facilities. While compliance with these laws and regulations has not materially adversely affected our operations in the past, we cannot assure you that these requirements will not change and that compliance will not adversely affect our operations in the future. Furthermore, we cannot assure you that existing or future circumstances or developments with respect to contamination will not require us to make significant remediation or restoration expenditures.

As part of our insurance-risk governance approach, from time to time we evaluate the need to address the financial consequences of environmental laws and regulations through the purchase of insurance. As a result we

do arrange certain types of environmental impairment insurance policies for both site-specific, as well as multi-site locations. We also organize non-specific environmental impairment insurance as part of the provision of a broader corporate insurance strategy. These latter insurance policies are designed to offer some assistance to our financial flexibility to the extent that the specifics of an environmental incident could give rise to a financial liability. However, we cannot assure you that a given environmental incident will be covered by the environmental insurance we have in place, or that the amount of such insurance will be sufficient to offset the liability arising from the incident.

See "Item 4—Information on the Company—Regulatory Matters and Legal Proceedings—Environmental Matters."

***We are an international company and are exposed to risks in the countries in which we have significant operations or interests.***

We are dependent, in large part, on the economies of the countries in which we market our products. The economies of these countries are in different stages of socioeconomic development. Consequently, like many other companies with significant international operations, we are exposed to risks from changes in foreign currency exchange rates, interest rates, inflation, governmental spending, social instability and other political, economic or social developments that may materially affect our business, financial condition and results of operations.

As of December 31, 2012, we had operations in Mexico, the United States, the United Kingdom, Germany, France, Rest of Northern Europe (which includes our subsidiaries in Ireland, the Czech Republic, Austria, Poland, Hungary and Latvia, as well as trading activities in Scandinavia and Finland), Egypt, Spain, Rest of the Mediterranean (which includes our subsidiaries in Croatia, the UAE and Israel), Colombia and Rest of South America and the Caribbean (which includes our subsidiaries in Costa Rica, the Dominican Republic, Panama, Nicaragua, Puerto Rico, Guatemala, Argentina and other assets in the Caribbean region), the Philippines and Rest of Asia (which includes our subsidiaries in Thailand, Bangladesh, China and Malaysia).

For a geographic breakdown of our net sales for the year ended December 31, 2012, see "Item 4—Information on the Company—Geographic Breakdown of Net Sales for the Year Ended December 31, 2012."

Our operations in the South America and the Caribbean region are faced with several risks that are more significant than in other countries. These risks include political instability and economic volatility. For example, on August 18, 2008, Venezuelan officials took physical control of the facilities of CEMEX Venezuela, S.A.C.A., or CEMEX Venezuela, following the issuance on May 27, 2008 of governmental decrees confirming the expropriation of all of CEMEX Venezuela's assets, shares and business.

Our operations in Egypt, the UAE and Israel have experienced instability as a result of, among other things, civil unrest, extremism and the deterioration of general diplomatic relations in the region. We cannot assure you that political turbulence in Egypt, Libya and other countries in Africa and the Middle East will abate in the near future or that neighboring countries will not be drawn into conflicts or experience instability. In addition, our operations in Egypt are subject to political risks, such as confiscation, expropriation and/or nationalization. See "Item 4—Information on the Company—Regulatory Matters and Legal Proceedings—Other Legal Proceedings—Egypt Share Purchase Agreement."

In January 2011, protests and demonstrations demanding a regime change began taking place across Egypt, which resulted in former President Hosni Mubarak resigning from his post on February 11, 2011. Subsequently, Mr. Mubarak transferred government powers to the Egyptian Army. The Supreme Council of the Armed Forces of Egypt dissolved the Egyptian parliament, suspended the nation's constitution, and formed a committee to recommend constitutional changes to facilitate a political transition through democratic elections. Following some delays, elections for a new parliament took place between November 2011 and January 2012. Elections

held in May and June of 2012 witnessed the victory of Mohamed Morsi as the fifth president of Egypt. Despite a return to civilian rule, demonstrations and protests have continued to take place across Egypt. Although CEMEX's operations in Egypt have not been immune from disruptions resulting from the turbulence in Egypt, CEMEX continues with its cement production, dispatch and sales activities as of the date of this annual report. Risks to CEMEX's operations in Egypt include a potential reduction in overall economic activity in Egypt, which could affect demand for building materials, and interruptions in services, such as banking, which could have a material adverse effect on our operations in Egypt.

There have been terrorist attacks and ongoing threats of future terrorist attacks in countries in which we maintain operations. We cannot assure you that there will not be other attacks or threats that will lead to an economic contraction or erection of material barriers to trade in any of our markets. An economic contraction in any of our major markets could affect domestic demand for cement and could have a material adverse effect on our operations.

***Our operations can be affected by adverse weather conditions.***

Construction activity, and thus demand for our products, decreases substantially during periods of cold weather, when it snows or when heavy or sustained rainfalls occur. Consequently, demand for our products is significantly lower during the winter in temperate countries and during the rainy season in tropical countries. Winter weather in our European and North American operations significantly reduces our first quarter sales volumes, and to a lesser extent our fourth quarter sales volumes. Sales volumes in these and similar markets generally increase during the second and third quarters because of normally better weather conditions. However, high levels of rainfall can adversely affect our operations during these periods as well. Such adverse weather conditions can adversely affect our business, financial condition and results of operations if they occur with unusual intensity, during abnormal periods, or last longer than usual in our major markets, especially during peak construction periods.

***We will be adversely affected by any significant or prolonged disruption to our production facilities.***

Any prolonged and/or significant disruption to our production facilities, whether due to repair, maintenance or servicing, industrial accidents, unavailability of raw materials such as energy, mechanical equipment failure, human error or otherwise, will disrupt and adversely affect our operations. Additionally, any major or sustained disruptions in the supply of utilities such as water or electricity or any fire, flood or other natural calamities or communal unrest or acts of terrorism may disrupt our operations or damage our production facilities or inventories and could adversely affect our business, financial condition and results of operations.

We typically shut down our facilities to undertake maintenance and repair work at scheduled intervals. Although we schedule shut downs such that not all of our facilities are shut down at the same time, the unexpected shut down of any facility may nevertheless affect our business, financial condition and results of operations from one period to another.

***We are dependent on information technology and our systems and infrastructure, as well as those provided by our third-party service providers, face certain risks, including cyber security risks.***

We rely on a variety of information technology and automated operating systems to manage or support our operations. The proper functioning of these systems is critical to the efficient operation and management of our business. In addition, these systems may require modifications or upgrades as of a result of technological changes or growth in our business. These changes may be costly and disruptive to our operations, and could impose substantial demands on management time. Our systems, as well as those provided by our third-party service providers, may be vulnerable to damage or disruption caused by circumstances beyond our control, such as physical or electronic break-ins, catastrophic events, power outages, natural disasters, computer system or

network failures, viruses or malware, unauthorized access and cyber attacks. Although we take steps to secure our systems and electronic information, these security measures may not be adequate. Any significant disruption to our systems could adversely affect our business, financial condition and results of operations.

***Activities in our business can be dangerous and can cause injury to people or property in certain circumstances.***

Our production facilities require individuals to work with chemicals, equipment and other materials that have the potential to cause harm and injury when used without due care. An accident or injury that occurs at our facilities could result in disruptions to our business and have legal and regulatory consequences and we may be required to compensate such individuals or incur other costs and liabilities, any and all of which could adversely affect our reputation, business, financial condition, results of operations and prospects.

***Labor activism and unrest, or failure to maintain satisfactory labor relations, could adversely affect our results of operations.***

Labor activism and unrest may adversely affect our operations and thereby adversely affect our business, financial condition, results of operations and prospects. Although our operations have not been affected by any significant labor dispute in the past, we cannot assure you that we will not experience labor unrest, activism, disputes or actions in the future, some of which may be significant and could adversely affect our business, financial condition, results of operations and prospects.

***Our insurance coverage may not cover all the risks to which we may be exposed.***

We face the risks of loss and damage to our property and machinery due to fire, theft and natural disasters such as floods. Such events may cause a disruption to or cessation of our operations. While we believe that we have adequate and sufficient coverage, in line with industry practices, in some instances our insurance coverage may not be sufficient to cover all of our potential unforeseen losses and liabilities. In addition, our insurance coverage may not cover all the risks to which we may be exposed. If our losses exceed our insurance coverage, or if we are not covered by the insurance policies we have taken up, we may be liable to cover any shortfall or losses. Our insurance premiums may also increase substantially because of such claims. In such circumstances, our financial results may be adversely affected.

***Our success depends on key members of our management.***

Our success depends largely on the efforts and strategic vision of our executive management team. The loss of the services of some or all of our executive management could have a material adverse effect on our business, financial condition and results of operations.

The execution of our business plan also depends on our ongoing ability to attract and retain additional qualified employees. For a variety of reasons, particularly with respect to the competitive environment and the availability of skilled labor, we may not be successful in attracting and retaining the personnel we require. If we are unable to hire, train and retain qualified employees at a reasonable cost, we may be unable to successfully operate our business or capitalize on growth opportunities and, as a result, our business, financial condition and results of operations could be adversely affected.

***The Mexican tax consolidation regime may have an adverse effect on our cash flow, financial condition and net income.***

During November 2009, the Mexican Congress approved a general tax reform, effective as of January 1, 2010. Specifically, the tax reform requires CEMEX, S.A.B. de C.V. to retroactively pay taxes (at current rates) on items in past years that were eliminated in consolidation or that reduced consolidated taxable income

("Additional Consolidation Taxes"). This tax reform requires CEMEX, S.A.B. de C.V. to pay taxes on certain previously exempt intercompany dividends, certain other special tax items, and operating losses generated by members of the consolidated tax group not recovered by the individual company generating such losses within the succeeding 10-year period, which may have an adverse effect on our cash flow, financial condition and net income. This tax reform also increases the statutory income tax rate from 28% to 30% for the years 2010 to 2012, 29% for 2013, and 28% for 2014 and future years. However, in December 2012, the Federal Revenue Law (Ley de Ingresos de la Federación) applicable in 2013, established that the statutory income tax rate remained at 30% in 2013, then lowered it to 29% for 2014 and 28% for 2015 and future years.

For the 2010 fiscal year, CEMEX was required to pay (at the new, 30% tax rate) 25% of the Additional Consolidation Taxes for the period between 1999 and 2004, with the remaining 75% payable as follows: 25% in 2011, 20% in 2012, 15% in 2013 and 15% in 2014. Additional Consolidation Taxes arising after 2004 are taken into account in the sixth fiscal year after their occurrence and will be payable over the succeeding five years in the same proportions (25%, 25%, 20%, 15% and 15%).

On June 30, 2010, CEMEX paid approximately Ps325 million (approximately U.S.$25 million as of December 31, 2012, based on an exchange rate of Ps12.85 to U.S.$1.00) of Additional Consolidation Taxes. This first payment represented 25% of the Additional Consolidation Taxes for the period between 1999 and 2004. On March 31, 2011, CEMEX paid approximately Ps506 million (approximately U.S.$39 million as of December 31, 2012, based on an exchange rate of Ps12.85 to U.S.$1.00). This amount covered the second payment, which together with the first payment represented 50% of the Additional Consolidation Taxes for the period between 1999 and 2004, and also included the first payment of 25% of the Additional Consolidation Taxes corresponding to 2005. On March 30, 2012, CEMEX paid Ps698 million (approximately U.S.$54 million as of December 31, 2012, based on an exchange rate of Ps12.85 to U.S.$1.00). This third payment together with the first and second payments represented 70% of the Additional Consolidation Taxes for the "1999-2004" period, 50% of the Additional Consolidation Taxes for the "2005" period and it also included the first payment of 25% of the Additional Consolidation Taxes for the "2006" period. As of December 31, 2012, our estimated payment schedule of taxes payable resulting from changes in the tax consolidation regime is as follows: approximately Ps2 billion in 2013: approximately Ps2.6 billion in 2014; approximately Ps2.7 billion in 2015; and approximately Ps7.2 billion in 2016 and thereafter. As of December 31, 2012, we have paid an aggregate amount of approximately Ps1.5 billion of Additional Consolidation Taxes. See "Item 4—Information on the Company—Regulatory Matters and Legal Proceedings—Tax Matters" and notes 2O and 19D to our 2012 audited consolidated financial statements included elsewhere in this annual report.

On February 15, 2010, we filed a constitutional challenge (*juicio de amparo*) to the January 1, 2010 tax reform described above. However, we cannot assure you that we will prevail in this constitutional challenge. On June 3, 2011 we were notified of a favorable verdict at the first stage of the trial; the Mexican tax authorities filed an appeal (*recurso de revisión*) before the Mexican Supreme Court, which is pending.

***It may be difficult to enforce civil liabilities against us or our directors, executive officers and controlling persons.***

We are a publicly traded stock corporation with variable capital (*sociedad anónima bursátil de capital variable*) organized under the laws of Mexico. Substantially all of our directors and officers and some of the persons named in this annual report reside in Mexico, and all or a significant portion of the assets of those persons may be, and the majority of our assets are, located outside the United States. As a result, it may not be possible for you to effect service of process within the United States upon such persons or to enforce against them or against us in U.S. courts judgments predicated upon the civil liability provisions of the federal securities laws of the United States. We have been advised by our General Counsel, Lic. Ramiro G. Villarreal, that there is doubt as to the enforceability in Mexico, either in original actions or in actions for enforcement of judgments of U.S. courts, of civil liabilities predicated on the U.S. federal securities laws.

***The protections afforded to non-controlling shareholders in Mexico are different from those in the United States and may be more difficult to enforce.***

Under Mexican law, the protections afforded to non-controlling shareholders are different from those in the United States. In particular, the legal framework and case law pertaining to disputes between shareholders and us, our directors, our officers or our controlling shareholders, if any, are less developed under Mexican law than under U.S. law. Mexican law generally only permits shareholder derivative suits (i.e., suits for our benefit as opposed to the direct benefit of our shareholders) and there are different procedural requirements for bringing shareholder lawsuits, such as shareholder derivative suits, which differ from those you may be familiar with under U.S. and other laws. There is also a substantially less active plaintiffs' bar dedicated to the enforcement of shareholders' rights in Mexico than in the United States. As a result, in practice it may be more difficult for our non-controlling shareholders to enforce their rights against us or our directors or controlling shareholders than it would be for shareholders of a U.S. company.

***ADS holders may only vote the Series B shares represented by the CPOs deposited with the ADS depositary through the ADS depositary and are not entitled to vote the Series A shares represented by the CPOs deposited with the ADS depositary or to attend shareholders' meetings.***

Under the terms of the ADSs and CEMEX, S.A.B. de C.V.'s by-laws, a holder of an ADS has the right to instruct the ADS depositary to exercise voting rights only with respect to Series B shares represented by the CPOs deposited with the depositary, but not with respect to the Series A shares represented by the CPOs deposited with the depositary. ADS holders will not be able to directly exercise their right to vote unless they withdraw the CPOs underlying their ADSs (and, in the case of non-Mexican holders, even if they do so, they may not vote the Series A shares represented by the CPOs) and may not receive voting materials in time to ensure that they are able to instruct the depositary to vote the CPOs underlying their ADSs or receive sufficient notice of a shareholders' meeting to permit them to withdraw their CPOs to allow them to cast their vote with respect to any specific matter. In addition, the depositary and its agents may not be able to send out voting instructions on time or carry them out in the manner an ADS holder has instructed. As a result, ADS holders may not be able to exercise their right to vote and they may lack recourse if the CPOs underlying their ADSs are not voted as they requested. In addition, ADS holders are not entitled to attend shareholders' meetings. ADS holders will also not be permitted to vote the CPOs underlying the ADSs directly at a shareholders' meeting or to appoint a proxy to do so without withdrawing the CPOs. If the ADS depositary does not receive voting instructions from a holder of ADSs in a timely manner such holder will nevertheless be treated as having instructed the ADS depositary to give a proxy to a person we designate to vote the B shares underlying the CPOs represented by the ADSs in his/her discretion. The ADS depositary or the custodian for the CPOs on deposit may represent the CPOs at any meeting of holders of CPOs even if no voting instructions have been received. The CPO trustee may represent the A shares and the B shares represented by the CPOs at any meeting of holders of A shares or B shares even if no voting instructions have been received. By so attending, the ADS depositary, the custodian or the CPO trustee, as applicable, may contribute to the establishment of a quorum at a meeting of holders of CPOs, A shares or B shares, as appropriate.

***Non-Mexicans may not hold CEMEX, S.A.B. de C.V.'s Series A shares directly and must have them held in a trust at all times.***

Non-Mexican investors in CEMEX, S.A.B. de C.V.'s CPOs or ADSs may not directly hold the underlying Series A shares, but may hold them indirectly through CEMEX, S.A.B. de C.V.'s CPO trust. Upon the early termination or expiration of the 30-year term of CEMEX, S.A.B. de C.V.'s CPO trust, the Series A shares underlying CEMEX, S.A.B. de C.V.'s CPOs held by non-Mexican investors must be placed into a new trust similar to the current CPO trust for non-Mexican investors to continue to hold an economic interest in such shares. We cannot assure you that a new trust similar to the CPO trust will be created or that the relevant authorization for the creation of the new trust or the transfer of our Series A shares to such new trust will be obtained. In that event, since non-Mexican holders currently cannot hold Series A shares directly, they may be required to sell all of their Series A shares to a Mexican individual or corporation.

***Preemptive rights may be unavailable to ADS holders.***

ADS holders may be unable to exercise preemptive rights granted to CEMEX, S.A.B. de C.V.'s shareholders, in which case ADS holders could be substantially diluted following future equity or equity-linked offerings. Under Mexican law, whenever CEMEX, S.A.B. de C.V. issues new shares for payment in cash or in kind, CEMEX, S.A.B. de C.V. is generally required to grant preemptive rights to CEMEX, S.A.B. de C.V.'s shareholders, except if the shares are issued in respect of a public offering or if the relevant shares underlie convertible securities. However, ADS holders may not be able to exercise these preemptive rights to acquire new shares unless both the rights and the new shares are registered in the United States or an exemption from registration is available. We cannot assure you that we would file a registration statement in the United States at the time of any rights offering.

**Mexican Peso Exchange Rates**

Mexico has had no exchange control system in place since the dual exchange control system was abolished in November 1991. The Mexican Peso has floated freely in foreign exchange markets since December 1994, when the Mexican Central Bank ( *Banco de México*) abandoned its prior policy of having an official devaluation band. Since then, the Peso has been subject to substantial fluctuations in value. The Peso depreciated against the U.S. Dollar by approximately 20.5% in 2008, appreciated against the U.S. Dollar by approximately 5% and 6% in 2009 and 2010, respectively, depreciated against the U.S. Dollar by approximately 11.5% in 2011 and appreciated against the U.S. Dollar by approximately 9% in 2012. These percentages are based on the exchange rate that we use for accounting purposes, or the CEMEX accounting rate. The CEMEX accounting rate represents the average of three different exchange rates that are provided to us by Banco Nacional de México, S.A., integrante del Grupo Financiero Banamex, or Banamex. For any given date, the CEMEX accounting rate may differ from the noon buying rate for Mexican Pesos in New York City published by the U.S. Federal Reserve Bank of New York.

The following table sets forth, for the periods and dates indicated, the end-of-period, average and high and low points of the CEMEX accounting rate as well as the noon buying rate for Mexican Pesos, expressed in Mexican Pesos per U.S.$1.00.

| | CEMEX Accounting Rate | | | | Noon Buying Rate | | | |
|---|---|---|---|---|---|---|---|---|
| Year Ended December 31, | End of Period | Average(1) | High | Low | End of Period | Average(1) | High | Low |
| 2008 | 13.74 | 11.21 | 13.96 | 9.87 | 13.83 | 11.15 | 13.92 | 9.92 |
| 2009 | 13.09 | 13.51 | 15.57 | 12.62 | 13.06 | 13.50 | 15.41 | 12.63 |
| 2010 | 12.36 | 12.67 | 13.21 | 12.15 | 12.38 | 12.64 | 13.19 | 12.16 |
| 2011 | 13.96 | 12.45 | 14.21 | 11.50 | 13.95 | 12.43 | 14.25 | 11.51 |
| 2012 | 12.85 | 13.16 | 14.37 | 12.56 | 12.96 | 13.15 | 14.37 | 12.63 |
| Monthly (2012) | | | | | | | | |
| October | 13.10 | | | | 13.09 | | 13.09 | 12.71 |
| November | 12.96 | | | | 12.92 | | 13.25 | 12.92 |
| December | 12.85 | | | | 12.96 | | 13.01 | 12.72 |
| Monthly (2013) | | | | | | | | |
| January | 12.70 | | | | 12.73 | | 12.79 | 12.59 |
| February | 12.79 | | | | 12.78 | | 12.88 | 12.63 |
| March | 12.34 | | | | 12.32 | | 12.80 | 12.32 |
| April(2) | 12.26 | | | | 12.23 | | 12.34 | 12.07 |

(1) The average of the CEMEX accounting rate or the noon buying rate for Mexican Pesos, as applicable, on the last day of each full month during the relevant period.

(2) April noon buying rates and CEMEX accounting rates are through April 19, 2013.

On April 19, 2013, the CEMEX accounting rate was Ps12.26 to U.S.$1.00. Between January 1, 2013 and April 19, 2013, the Peso appreciated by approximately 5.97% against the U.S. Dollar, based on the noon buying rate for Mexican Pesos.

For a discussion of the financial treatment of our operations conducted in other currencies, see "—Selected Consolidated Financial Information."

**Selected Consolidated Financial Information**

Our consolidated financial statements as of and for the three years ended December 31, 2012 have been derived from our audited consolidated financial statements and have been prepared in accordance with IFRS. For our annual reports prior to fiscal year 2011, the first year we adopted IFRS, our consolidated financial statements were prepared in accordance with MFRS. The regulations of the SEC do not require foreign private issuers that prepare their financial statements on the basis of IFRS (as published by IASB) to reconcile such financial statements to U.S. GAAP. As such, while CEMEX has in the past reconciled its consolidated financial statements prepared in accordance with MFRS to U.S. GAAP, those reconciliations are no longer presented in our filings with the SEC.

The financial data set forth below as of December 31, 2012 and 2011 and for each of the years ended December 31, 2012, 2011 and 2010 have been derived from, and should be read in conjunction with, and are qualified in their entirety by reference to, our 2012 audited consolidated financial statements and the notes thereto included elsewhere in this annual report.

The operating results of newly acquired businesses are consolidated in our financial statements beginning on the acquisition date. Therefore, all periods presented do not include operating results corresponding to newly acquired businesses before we assumed control. As a result, the financial data for the years ended December 31, 2012, 2011 and 2010 may not be comparable to that of prior periods.

Non-Peso amounts included in the financial statements are first translated into U.S. Dollar amounts, in each case at a commercially available or an official government exchange rate for the relevant period or date, as applicable, and those U.S. Dollar amounts are then translated into Peso amounts at the CEMEX accounting rate, described under "—Mexican Peso Exchange Rates," as of the relevant period or date, as applicable.

The U.S. Dollar amounts provided below and, unless otherwise indicated elsewhere in this annual report, are translations of Peso amounts at an exchange rate of Ps12.85 to U.S.$1.00, the CEMEX accounting rate as of December 31, 2012. However, in the case of transactions conducted in U.S. Dollars, we have presented the U.S. Dollar amount of the transaction and the corresponding Peso amount that is presented in our consolidated financial statements. These translations have been prepared solely for the convenience of the reader and should not be construed as representations that the Peso amounts actually represent those U.S. Dollar amounts or could be converted into U.S. Dollars at the rate indicated. The noon buying rate for Mexican Pesos on December 31, 2012 was Ps12.96 to U.S.$1.00. Between January 1, 2013 and April 19, 2013, the Peso appreciated by approximately 5.97% against the U.S. Dollar, based on the noon buying rate for Mexican Pesos.

**CEMEX, S.A.B. DE C.V. and Subsidiaries**
**Selected Consolidated Financial Information**

| | As of and For the Year Ended December 31, | | |
|---|---|---|---|
| | 2010 | 2011 | 2012 |
| | (in millions of Mexican Pesos, except ratios and share and per share amounts) | | |
| **Statement of Operations Information:** | | | |
| Net sales | Ps 177,641 | Ps 189,887 | Ps 197,036 |
| Cost of sales(1) | (127,845) | (136,167) | (138,711) |
| Gross profit | 49,796 | 53,720 | 58,325 |
| Administrative, selling and distribution expenses | (39,060) | (41,656) | (41,125) |
| Operating earnings before other expenses, net(2) | 10,736 | 12,064 | 17,200 |
| Other expense, net | (6,335) | (5,449) | (5,692) |
| Operating earnings(2) | 4,401 | 6,615 | 11,508 |
| Financial items(3) | (15,276) | (18,841) | (17,358) |
| Equity in income (loss) of associates | (487) | (334) | 728 |
| Loss before income tax | (11,362) | (12,560) | (5,122) |
| Non-controlling net income | 46 | 21 | 662 |
| Controlling interest net loss | (13,482) | (24,788) | (11,881) |
| Basic loss per share(4)(5) | (0.39) | (0.71) | (0.34) |
| Diluted loss per share(4)(5) | (0.39) | (0.71) | (0.34) |
| Number of shares outstanding(4)(6)(7) | 30,065 | 31,410 | 32,808 |
| **Balance Sheet Information:** | | | |
| Cash and cash equivalents | 8,354 | 16,128 | 12,478 |
| Property, machinery and equipment, net | 221,271 | 233,709 | 212,301 |
| Total assets | 504,881 | 541,652 | 478,770 |
| Short-term debt | 5,618 | 4,673 | 596 |
| Long-term debt | 188,776 | 203,798 | 177,539 |
| Non-controlling interest and Perpetual Debentures(8) | 19,443 | 16,602 | 14,488 |
| Total controlling stockholders' equity | 163,744 | 155,101 | 141,112 |
| **Other Financial Information:** | | | |
| Net working capital(9) | 18,692 | 23,690 | 19,667 |
| Book value per share(4)(7)(10) | 5.45 | 4.94 | 4.30 |
| Operating margin | 6.0% | 6.4% | 8.7% |
| Operating EBITDA(11) | 29,844 | 29,600 | 34,384 |
| Ratio of Operating EBITDA to interest expense(11) | 2.0 | 1.8 | 1.9 |
| Capital expenditures | 6,963 | 7,577 | 10,026 |
| Depreciation and amortization | 19,108 | 17,536 | 17,184 |
| Net cash flow provided by operating activities before interest and income taxes paid in cash | 25,952 | 23,616 | 29,897 |
| Basic loss per CPO(4)(5) | (1.17) | (2.13) | (1.02) |
| Total debt plus other financial obligations | 210,619 | 249,372 | 218,026 |
| Total debt plus other financial obligations, as adjusted to give effect to the issuance of the March 2013 Notes, the Eurobond Tender Offer and the prepayment of the 2009 Financing Agreement(12) | — | — | 221,971 |

(1) Cost of sales includes depreciation, amortization and depletion of assets involved in production, freight expenses of raw materials used in our producing plants, delivery expenses of our ready-mix concrete business and expenses related to storage in producing plants. Our cost of sales excludes (i) expenses related to personnel and equipment comprising our selling network and those expenses related to warehousing at

the points of sale, which are included as part of our administrative and selling expenses line item, and (ii) freight expenses of finished products from our producing plants to our points of sale and from our points of sale to our customers' locations, which are all included as part of our distribution expenses line item.

(2) The line item "Operating earnings before other expenses, net" was titled by CEMEX in prior years as "Operating income." The line item "Operating earnings" was titled by CEMEX in prior years as "Operating income after other expenses, net." See note 2A to our 2012 audited consolidated financial statements included elsewhere in this annual report.

(3) Financial items includes financial expenses and our other financial (expense) income, net, which includes our financial income, results from financial instruments, net (derivatives and marketable securities), foreign exchange results, effects of net present value on assets and liabilities and others, net. See note 7 to our 2012 audited consolidated financial statements included elsewhere in this annual report.

(4) CEMEX, S.A.B. de C.V.'s capital stock consists of Series A shares and Series B shares. Each of CEMEX, S.A.B. de C.V.'s CPOs represents two Series A shares and one Series B share. As of December 31, 2012, approximately 99.2% of CEMEX, S.A.B. de C.V.'s outstanding share capital was represented by CPOs. Each of CEMEX, S.A.B. de C.V.'s ADSs represents ten CPOs.

(5) Loss per share are calculated based upon the weighted average number of shares outstanding during the year, as described in note 22 to our 2012 audited consolidated financial statements included elsewhere in this annual report. Basic loss per CPO is determined by multiplying the basic loss per share for each period by three (the number of shares underlying each CPO). Basic loss per CPO is presented solely for the convenience of the reader and does not represent a measure under IFRS.

(6) CEMEX, S.A.B. de C.V. did not declare a dividend for fiscal years 2010, 2011 and 2012. At each of CEMEX, S.A.B. de C.V.'s 2010, 2011 and 2012 annual general ordinary shareholders' meetings, held on February 24, 2011, February 23, 2012 and March 21, 2013, respectively, CEMEX, S.A.B. de C.V.'s shareholders approved a recapitalization of retained earnings. New CPOs issued pursuant to each such recapitalization were allocated to shareholders on a pro-rata basis. As a result, shares equivalent to approximately 401 million CPOs, approximately 418.7 million CPOs and approximately 437.5 million CPOs were allocated to shareholders on a pro-rata basis in connection with the 2010, 2011 and 2012 recapitalizations, respectively. In each case, CPO holders received one new CPO for each 25 CPOs held and ADS holders received one new ADS for each 25 ADSs held. There was no cash distribution and no entitlement to fractional shares.

(7) Based upon the total number of shares outstanding at the end of each period, expressed in millions of shares, and includes shares subject to financial derivative transactions, but does not include shares held by our subsidiaries.

(8) As of December 31, 2010, 2011 and 2012, non-controlling interest includes U.S.$1,320 million (Ps16,310 million), U.S.$938 million (Ps13,089 million) and U.S.$473 million (Ps6,078 million), respectively, that represents the nominal amount of Perpetual Debentures, denominated in U.S. Dollars and Euros, issued by consolidated entities. In accordance with IFRS, these securities qualify as equity due to their perpetual nature and the option to defer the coupons.

(9) Net working capital equals trade receivables, less allowance for doubtful accounts plus inventories, net, less trade payables.

(10) Book value per share is calculated by dividing the total controlling stockholders' equity by the number of shares outstanding.

(11) Operating EBITDA equals operating earnings before other expenses, net, amortization and depreciation expenses. Operating EBITDA and the ratio of Operating EBITDA to interest expense are presented because we believe that they are widely accepted as financial indicators of our ability to internally fund capital expenditures and service or incur debt. Operating EBITDA and such ratios should not be considered as indicators of our financial performance, as alternatives to cash flow, as measures of liquidity or as being comparable to other similarly titled measures of other companies. Under IFRS, while there are line items that are customarily included in statements of operations prepared pursuant to IFRS, such as net sales, operating costs and expenses and financial revenues and expenses, among others, the inclusion of certain subtotals, such as operating earnings before other expenses, net, and the display of such statement of operations varies significantly by industry and company according to specific needs. Operating EBITDA is

reconciled below to operating earnings before other expenses, net, as reported in the statements of operations, and to net cash flows provided by operating activities before interest and income taxes paid in cash, as reported in the statement of cash flows. Interest expense under IFRS does not include coupon payments and issuance costs of the Perpetual Debentures issued by consolidated entities of approximately Ps1,624 million in 2010, approximately Ps1,010 million in 2011 and approximately Ps453 million in 2012, as described in note 20D to our 2012 audited consolidated financial statements included elsewhere in this annual report.

| | For the Year Ended December 31, | | |
|---|---|---|---|
| | 2010 | 2011 | 2012 |
| | (in millions of Mexican Pesos) | | |
| **Reconciliation of operating EBITDA to net cash flows provided by operating activities before interest and income taxes paid in cash** | | | |
| Operating EBITDA | Ps 29,844 | Ps 29,600 | Ps 34,384 |
| Less: | | | |
| Operating depreciation and amortization expense | 19,108 | 17,536 | 17,184 |
| Operating earnings before other expenses, net | 10,736 | 12,064 | 17,200 |
| Plus/minus: | | | |
| Changes in working capital excluding income taxes | (623) | (727) | (2,048) |
| Depreciation and amortization expense | 19,108 | 17,536 | 17,184 |
| Other items, net | (3,269) | (5,257) | (2,439) |
| Net cash flow provided by operating activities before interest and income taxes paid in cash | Ps 25,952 | Ps 23,616 | Ps 29,897 |

(12) The table below shows a reconciliation of total debt plus other financial obligations to total debt plus other financial obligations, as adjusted to give effect to the issuance of the March 2013 Notes, the Eurobond Tender Offer and the prepayment of the 2009 Financing Agreement.

| | As of December 31, 2012 | | | | |
|---|---|---|---|---|---|
| (Amounts in millions) | Less than 1 year | 1-3 Years | 3-5 Years | More than 5 Years | Total |
| Total debt plus other financial obligations | Ps 7,574 | 30,022 | 96,070 | 84,360 | 218,026 |
| Total debt plus other financial obligations | U.S.$ 590 | 2,336 | 7,476 | 6,565 | 16,967 |
| **Effect of March 2013 Notes, the Eurobond Tender Offer and the Prepayment of the 2009 Financing Agreement** | | | | | |
| March 2013 Notes | U.S.$ — | — | — | 595 | 595 |
| Eurobonds | U.S.$ — | (241) | — | — | (241) |
| 2009 Financing Agreement | U.S.$ — | (47) | — | — | (47) |
| Total debt and other financial obligations, as adjusted to give effect to the issuance of the March 2013 Notes, the Eurobond Tender Offer and the prepayment of the 2009 Financing Agreement | U.S.$ 590 | 2,048 | 7,476 | 7,160 | 17,274 |
| Total debt and other financial obligations, as adjusted to give effect to the issuance of the March 2013 Notes, the Eurobond Tender Offer and the prepayment of the 2009 Financing Agreement | Ps 7,582 | 26,317 | 96,067 | 92,006 | 221,971 |

## Item 4—Information on the Company

Unless otherwise indicated, references in this annual report to our sales and assets, including percentages, for a country or region are calculated before eliminations resulting from consolidation, and thus include intercompany balances between countries and regions. These intercompany balances are eliminated when calculated on a consolidated basis.

### Business Overview

CEMEX, S.A.B. de C.V. is a publicly traded stock corporation with variable capital, or *sociedad anónima bursátil de capital variable*, organized under the laws of Mexico, with our principal executive offices in Avenida Ricardo Margáin Zozaya #325, Colonia Valle del Campestre, Garza García, Nuevo León, 66265, México. Our main phone number is (+ 5281) 8888-8888.

CEMEX, S.A.B. de C.V. was founded in 1906 and was registered with the Mercantile Section of the Public Registry of Property and Commerce in Monterrey, N.L., Mexico, on June 11, 1920 for a period of 99 years. At our 2002 annual general ordinary shareholders' meeting, this period was extended to the year 2100. Beginning April 2006, CEMEX's full legal and commercial name is CEMEX, Sociedad Anónima Bursátil de Capital Variable.

CEMEX is one of the largest cement companies in the world, based on annual installed cement production capacity as of December 31, 2012 of approximately 94.8 million tons. We are the largest ready-mix concrete company in the world with annual sales volumes of approximately 55 million cubic meters and one of the largest aggregates companies in the world with annual sales volumes of approximately 159 million tons, in each case based on our annual sales volumes in 2012. We are also one of the world's largest traders of cement and clinker, having traded approximately 8.8 million tons of cement and clinker in 2012. CEMEX, S.A.B. de C.V. is a holding company primarily engaged, through our operating subsidiaries, in the production, distribution, marketing and sale of cement, ready-mix concrete, aggregates, clinker and other construction materials throughout the world, and that provides reliable construction-related services to customers and communities in more than 50 countries throughout the world.

We operate globally, with operations in Mexico, the United States, Northern Europe, the Mediterranean, South America and the Caribbean and Asia. We had total assets of approximately Ps479 billion (U.S.$37 billion) as of December 31, 2012, and an equity market capitalization of approximately Ps152,429.58 million (U.S.$13,386.05 million) as of April 19, 2013.

As of December 31, 2012, our main cement production facilities were located in Mexico, the United States, Spain, Egypt, Germany, Colombia, the Philippines, Poland, the Dominican Republic, the United Kingdom, Croatia, Panama, Latvia, Puerto Rico, Thailand, Costa Rica and Nicaragua. As of December 31, 2012, our assets (after eliminations), cement plants and installed capacity, on an unconsolidated basis by region, were as set forth below. Installed capacity, which refers to theoretical annual production capacity, represents gray cement equivalent capacity, which counts each ton of white cement capacity as approximately two tons of gray cement capacity, and includes installed capacity of cement plants that have been temporarily closed.

| | As of December 31, 2012 | | |
|---|---|---|---|
| | Assets After Eliminations (in Billions of Mexican Pesos) | Number of Cement Plants | Installed Cement Production Capacity (Millions of Tons Per Annum) |
| Mexico(1) | 79 | 15 | 29.3 |
| United States(2) | 208 | 13 | 17.1 |
| Northern Europe | | | |
| United Kingdom | 29 | 2 | 2.4 |
| Germany | 13 | 2 | 4.9 |
| France | 14 | — | — |
| Rest of Northern Europe(3) | 18 | 3 | 4.6 |
| The Mediterranean | | | |
| Spain(4) | 22 | 8 | 11.0 |
| Egypt | 7 | 1 | 5.4 |
| Rest of the Mediterranean(5) | 10 | 3 | 2.4 |
| South America and the Caribbean | | | |
| Colombia | 16 | 2 | 4.0 |
| Rest of South America and the Caribbean(6) | 17 | 5 | 8.0 |
| Asia | | | |
| Philippines | 8 | 2 | 4.5 |
| Rest of Asia(7) | 3 | 1 | 1.2 |
| Corporate and Other Operations | 35 | — | — |
| Total | 479 | 57 | 94.8 |

The above table includes our proportional interest in the installed capacity of companies in which we hold a non-controlling interest.

(1) "Number of cement plants" and "installed cement production capacity" includes two cement plants that have been temporarily closed with an aggregate annual installed capacity of 2.7 million tons of cement.

(2) "Number of cement plans" and "installed cement production capacity" includes two cement plants that have been temporarily closed with an aggregate annual installed capacity of 2.1 million tons of cement.

(3) Refers primarily to our operations in Ireland, the Czech Republic, Austria, Poland, Hungary and Latvia, as well as trading activities in Scandinavia and Finland. For purposes of the columns labeled "Assets after eliminations" and "Installed cement production capacity," includes our approximate 33% interest, as of December 31, 2012, in a Lithuanian cement producer that operated one cement plant with an annual installed capacity of 1.3 million tons of cement as of December 31, 2012. For purposes of "number of cement plants" and "installed cement production capacity" includes one cement plant that has been temporarily closed with an aggregate annual installed capacity of 1.5 million tons of cement.

(4) For purposes of "number of cement plants" and "installed cement production capacity" includes one cement plant that has been temporarily closed with an aggregate annual installed capacity of 0.1 million tons of cement.

(5) Refers primarily to our operations in Croatia, the UAE and Israel.

(6) Includes our operations in Costa Rica, Panama, Puerto Rico, the Dominican Republic, Nicaragua, Peru, Jamaica and other countries in the Caribbean, Guatemala and small ready-mix concrete operations in Argentina.

(7) Includes our operations in Thailand, Bangladesh, China and Malaysia.

During most of the last two decades, we embarked on a major geographic expansion program to diversify our cash flows and enter markets whose economic cycles within the cement industry largely operate independently from those of Mexico and which offer long-term growth potential. We have built an extensive network of marine and land-based distribution centers and terminals that give us marketing access around the world. The following is our only significant acquisition over the last five years:

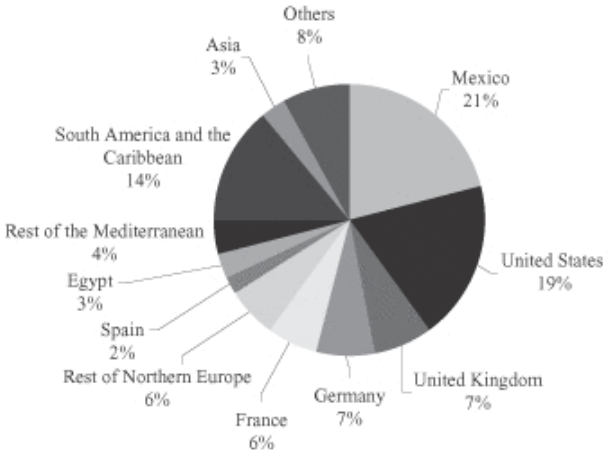
- In August 2011, as a result of Ready Mix USA's exercise of its put option (see note 15B to our 2012 audited consolidated financial statements included elsewhere in this annual report), and after performance of the obligations by both parties under the put option agreement, effective as of August 1, 2011, through the payment of approximately U.S.$352 million (approximately Ps4,914 million), we acquired our former joint venture partner's interests in CEMEX Southeast, LLC and Ready Mix USA, LLC, including a non-compete and a transition services agreement. See "Item 5—Operating and Financial Review and Prospects—Results of Operations—Investments, Acquisitions and Divestitures—Investments and Acquisitions" for additional information regarding the Ready Mix USA put option right.

As part of our strategy, we periodically review and reconfigure our operations in implementing our post-merger integration process, and we sometimes divest assets that we believe are less important to our strategic objectives. The following have been our most significant divestitures and reconfigurations over the last five years:

- In November 2012, CEMEX Latam, a then wholly-owned subsidiary of CEMEX España, completed the sale of newly issued common shares in the CEMEX Latam Offering, representing approximately 26.65% of CEMEX Latam's outstanding common shares. CEMEX Latam is the holding company for CEMEX's operations in Brazil, Colombia, Costa Rica, Guatemala, Nicaragua, Panama and El Salvador. See "Item 5—Operating and Financial Review and Prospects—Results of Operations—Investments, Acquisitions and Divestitures—Divestitures" for additional information regarding the CEMEX Latam Offering.
- On August 27, 2010, we completed the sale of seven aggregates quarries, three resale aggregate distribution centers and one concrete block manufacturing facility in Kentucky to Bluegrass Materials Company, LLC for U.S.$88 million in proceeds.
- On October 1, 2009, we completed the sale of our Australian operations to a subsidiary of Holcim Ltd. ("Holcim"). The net proceeds from this sale were approximately $2.02 billion Australian Dollars (approximately U.S.$1.7 billion).
- On June 15, 2009, we sold three quarries (located in Nebraska, Wyoming and Utah) and our 49% joint venture interest in the operations of a quarry located in Granite Canyon, Wyoming, to Martin Marietta Materials, Inc. for U.S.$65 million.
- On December 26, 2008, we sold our Canary Islands operations (consisting of cement and ready-mix concrete assets in Tenerife and 50% of the shares in two joint-ventures, Cementos Especiales de las Islas, S.A. (CEISA) and Inprocoi, S.L.) to several Spanish subsidiaries of Cimpor Cimentos de Portugal SGPS, S.A. for €162 million (approximately U.S.$227 million).
- During 2008, we sold in several transactions our operations in Italy consisting of four cement grinding mill facilities for an aggregate amount of approximately €148 million (approximately U.S.$210 million).

**Geographic Breakdown of Net Sales for the Year Ended December 31, 2012**

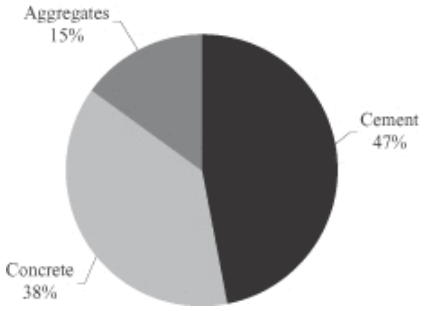
The following chart indicates the geographic breakdown of our net sales, before eliminations resulting from consolidation, for the year ended December 31, 2012:




For a description of a breakdown of total revenues by geographic markets for each of the years ended December 31, 2010, 2011 and 2012, please see "Item 5—Operating and Financial Review and Prospects."

**Breakdown of Net Sales by Product for the Year Ended December 31, 2012**

The following chart indicates the breakdown of our net sales by product, after eliminations resulting from consolidation, for the year ended December 31, 2012:




**Our Business Strategy**

We seek to continue to strengthen our global leadership by growing profitably through our integrated positions along the cement value chain and maximizing our overall performance by employing the following strategies:

***Focus on our core business of cement, ready-mix concrete and aggregates***

We plan to continue focusing on our core businesses, the production and sale of cement, ready-mix concrete and aggregates, and the vertical integration of these businesses, leveraging our global presence and extensive operations worldwide. We believe that managing our cement, ready-mix concrete and aggregates operations as an integrated business allows us to capture a greater portion of the cement value chain, as our established

presence in ready-mix concrete secures a distribution channel for our cement products. Moreover, we believe that, in most cases, vertical integration brings us closer to the end consumer by allowing us to offer comprehensive building solutions. We believe that this strategic focus has historically enabled us to grow our existing businesses and expand our operations internationally, particularly in high-growth markets and higher-margin products. In approximately 20 years, we evolved from primarily a Mexican cement producer to a global building materials company with a diversified product portfolio across a balanced mix of developed and emerging economies that provides comprehensive building solutions.

We intend to continue focusing on our most promising, structurally attractive markets with considerable infrastructure needs and housing requirements, where we have substantial market share and benefit from competitive advantages. Despite the current economic and political turmoil, we believe that some of the countries in which we operate (particularly Mexico, the United States, Colombia and the Philippines) are poised for economic growth, as significant investments are made in infrastructure, notably by the economic stimulus programs that have been announced by governments in some of these markets.

We are focused on managing costs and maintaining profitability in the current economic environment, and we believe that we are well-positioned to benefit when the construction cycle recovers. A combination of continued government stimulus spending and renewed focus on infrastructure investment in many of our markets, along with some recovery for housing and for non-residential construction sectors, could translate into substantial growth in demand for our products.

We will continue to analyze our current portfolio and monitor opportunities for asset divestitures, as evidenced by the disposals we have made in the last few years in Central and South America, the United States, Spain, Italy, Australia and elsewhere.

***Provide our customers with the best value proposition***

We aspire to be the supplier of choice for our customers, whether governmental entities, construction firms that operate in the countries in which we operate or individuals building or expanding their family's first home. We seek a clear understanding of what our customers require to meet their needs and provide them with the most efficient and effective building solutions for their construction project, large or small. We are committed to suiting our customers' needs by providing them with not only high quality and tailor-made products, but also with reliable and cost-efficient building solutions.

We believe that by pursuing our objective of integrating our business along the cement value chain, we can improve and broaden the value proposition that we provide to our customers. We believe that by offering integrated solutions, we can provide our customers more reliable sourcing as well as higher quality services and products.

We continue to focus on developing new competitive advantages that will differentiate us from our competitors. We are evolving from a traditional supplier of building materials into a fully integrated building solutions provider in many of the countries in which we operate, mostly in infrastructure projects which make extensive use of our cement and concrete products. For example, in Mexico alone, we have paved more than 10,000 kilometers of concrete highways and roads. We have also provided tailor-made solutions for important infrastructure projects in the country, including the Baluarte Bicentennial Bridge and La Yesca Dam in Jalisco and Nayarit. We also continue innovating with new products, and launched new global ready-mix brands designed using proprietary admixtures developed by our researchers.

We strive to provide superior building solutions in the markets we serve. To this end, we tailor our products and services to suit customers' specific needs, from home construction, improvement and renovation to industrial and marine/hydraulic applications. Our porous paving concrete, for example, is best suited for sidewalks and roadways because it allows rainwater to filter into the ground, reducing flooding and helping to maintain groundwater levels. In contrast, our significantly less permeable and highly resistant concrete products are well-suited for applications in coastal, marine and other harsh environments.

Our global building materials trading network, which is one of the largest in the world, plays a fundamental and evolving role in fulfilling our objectives. Our network of strategically located terminals allows us to build strong relationships with reliable suppliers and shippers around the world, which we believe translates into a superior value proposition for our customers. We can direct building materials (primarily cement, clinker and slag) from markets with excess capacity to markets where they are needed most and, in the process, optimize the allocation of our worldwide production capacity.

***Maximize our operating efficiency***

We have a long history of successfully operating world-class cement production facilities in developed and emerging markets and have demonstrated our ability to produce cement at a lower cost compared to industry standards in most of these markets. We continue to strive to reduce our overall production related costs for all of our products and corporate overhead through disciplined cost management policies and through improving efficiencies by removing redundancies. We have implemented several worldwide standard platforms as part of this process and have also started different initiatives, such as a system designed to improve our operating processes worldwide. In addition, we implemented centralized management information systems throughout our operations, including administrative, accounting, purchasing, customer management, budget preparation and control systems, which have helped us to achieve cost efficiencies, and have also reached a strategic agreement with International Business Machines Corporation ("IBM") expected to improve some of our business processes. We have also transferred key processes like procurement and trading from a centralized model to a regional model and are simplifying and delayering our business to accelerate decision-making and maximize efficiency. In a number of our core markets, such as Mexico, we launched aggressive initiatives aimed at reducing the use of fossil fuels, consequently reducing our overall energy costs.

Furthermore, significant economies of scale in key markets often allow us to obtain competitive freight contracts for key components of our cost structure, such as fuel and coal, among others.

Through a worldwide import and export strategy, we will continue to seek to optimize capacity utilization and maximize profitability by redirecting our products from countries experiencing economic downturns to target export markets where demand may be greater. Our global trading system enables us to coordinate our export activities globally and take advantage of demand opportunities and price movements worldwide allowing our regions to have access to information required to execute our trading activities. Should demand for our products in the United States improve, we believe we are well-positioned to service this market through our established presence in the southern and southwestern regions of the country and our ability to import to the United States.

Our industry relies heavily on natural resources and energy, and we use cutting-edge technology to increase energy efficiency, reduce carbon dioxide emissions and optimize our use of raw materials and water. We are committed to measuring, monitoring and improving our environmental performance. In the last few years, we have implemented various procedures to improve the environmental impact of our activities as well as our overall product quality, such as a reduction of carbon dioxide emissions, an increased use of alternative fuels to reduce our reliance on primary fuels, an increased number of sites with local environmental impact plans in place and the use of alternative raw materials in our cement.

***Strengthen our capital structure and regain our financial flexibility***

In light of the global economic environment and our substantial amount of indebtedness, we have been focusing, and expect to continue to focus, on strengthening our capital structure and regaining financial flexibility through reducing our debt and cost of debt, improving cash flow generation and extending maturities. As of December 31, 2012, we had reduced total debt plus Perpetual Debentures by approximately U.S.$5.6 billion since June 2009. This ongoing effort has included the following key strategic initiatives:

***Global Refinancing***. On August 14, 2009, we entered into the 2009 Financing Agreement, which extended the maturities of approximately U.S.$15 billion in syndicated and bilateral bank facilities and private placement obligations and had a final principal payment date of February 14, 2014. On September 17, 2012, we successfully

completed the Refinancing Transaction, whereby we refinanced a substantial portion of the remaining outstanding amounts under the 2009 Financing Agreement by entering into (a) the Amendment and Restatement Agreement to the 2009 Financing Agreement and (b) the Facilities Agreement. Upon consummation of the Refinancing Transaction, creditors under the Facilities Agreement received (i) approximately U.S.$6.155 billion in aggregate principal amount of new loans and new private placement notes and (ii) U.S.$500 million aggregate principal amount of the September 2012 Notes, leaving approximately U.S.$525 million aggregate principal amount of loans and private placement notes outstanding under the 2009 Financing Agreement. Subsequently, we applied the proceeds of the October 2012 Notes to prepay the Facilities Agreement, and we applied the proceeds of the CEMEX Latam Offering to prepay the 2009 Financing Agreement and the Facilities Agreement. As of December 31, 2012, as adjusted to give effect to the issuance of the March 2013 Notes, the Eurobond Tender Offer and the prepayment of the 2009 Financing Agreement, we had repaid the 2009 Financing Agreement in full and had reduced the aggregate principal amount of loans and private placement notes outstanding under the Facilities Agreement to U.S.$4.187 billion, all of which matures on February 14, 2017 (subject to our complying with the milestones for addressing the maturities of certain indebtedness pursuant to the Facilities Agreement). Maintaining market terms and achieving an appropriate size, tenor and pricing for our overall corporate financing facilities is an ongoing objective of ours. Consistent with this objective, we maintain an ongoing dialogue with our creditors regarding refinancing alternatives for our upcoming maturities.

***Asset Divestitures or Asset Swaps***. We have continued a process to divest assets in order to reduce our debt and streamline operations, taking into account our cash liquidity needs and prevailing economic conditions and their impact on the value of the asset or business unit being divested. For the year ended December 31, 2012, we sold assets for approximately U.S.$227 million, plus an additional U.S.$960 million consisting of an approximate 26.65% interest in CEMEX Latam. We still expect to sell non-core assets or swap certain assets to streamline our operations, if we deem it necessary.

***Global Cost-Reduction and Pricing Initiatives*** . In response to decreased demand in most of our markets as a result of the global economic recession, in 2008 we identified and began implementing global cost-reduction initiatives intended to reduce our annual cost structure to a level consistent with the decline in demand for our products. Such global cost-reduction initiatives encompass different undertakings, including headcount reductions, capacity closures across the cement value chain and a general reduction in global administrative, selling and distribution expenses. During the first half of 2011, CEMEX launched a company-wide program aimed at enhancing competitiveness, providing a more agile and flexible organizational structure and supporting an increased focus on the company's markets and customers. For the year ended December 31, 2012, we reached our target of U.S.$400 million in annualized cost savings through the implementation of this program, which contemplated an improvement in underperforming operations, a reduction in selling, general and administrative costs and the optimization of the company's organizational structure.

In connection with the implementation of our cost-reduction initiatives, and as part of our ongoing efforts to eliminate redundancies at all levels and streamline corporate structures to increase our efficiency and reduce administrative, selling and distribution expenses, we have reduced our global headcount by approximately 29%, from 56,791 employees as of December 31, 2008 to 43,905 employees as of December 31, 2012. Both figures exclude personnel from our operations in Australia sold in October 2009 and our operations in Venezuela, which were expropriated in 2008, but do not give effect to any other divestitures.

Also as part of these initiatives, since 2009, we have temporarily shut down (some for a period of at least two months) several cement production lines in order to rationalize the use of our assets and reduce the accumulation of our inventories. We have also announced the permanent closure of some of our cement plants, such as our Davenport cement plant located in northern California in 2010. Similar actions were taken in our ready-mix concrete and aggregates businesses. Such rationalizations included, among others, our operations in Mexico, the United States, Spain and the United Kingdom. During 2011, due to the low levels of construction activity and increased costs, we implemented a minimum margin strategy in our Arizona operations through the closure of under-utilized facilities and the reduction of headcount, among other actions designed to improve the profitability of our operations in the region.

Furthermore, during 2012, we achieved energy cost-savings by actively managing our energy contracting and sourcing, and by increasing our use of alternative fuels. We believe that these cost-saving measures better position us to quickly adapt to potential increases in demand and thereby benefit from the operating leverage we have built into our cost structure.

We have also introduced a comprehensive pricing strategy for our products that is expected to more fully reflect and capture the high value-creating capability of our products and services. Our strategy focuses on value enhancement, optimizing gains in customer relationships and in generating sufficient returns that would allow us to reinvest in our business. Under this strategy we are establishing internal procedures and guidelines that are expected to support our approach to pricing our different products and services.

***Optimizing Capital Expenditures***. In light of weak demand for our products throughout a considerable part of our markets, during 2011 and 2010 we reduced capital expenditures related to maintenance and expansion of our operations to approximately U.S.$468 million during 2011, from approximately U.S.$555 million during 2010 and approximately U.S.$636 million during 2009 (in each case excluding acquisitions and capital leases). These reductions in capital expenditures were in response to weak demand for our products has were implemented to maximize our free cash flow generation available for debt service and debt reduction, consistent with our ongoing efforts to strengthen our capital structure, improve our conversion of operating EBITDA to free cash flow and regain our financial flexibility. During 2012, while still optimizing our maintenance and expansion capital expenditures and as a result of a higher demand for our products in certain markets in which we operate, we increased capital expenditures related to maintenance and expansion of our operations to approximately U.S.$609 million, from approximately U.S.$468 million in 2011. Pursuant to the Facilities Agreement, we are prohibited from making aggregate annual capital expenditures in excess of U.S.$800 million (excluding certain capital expenditures, and joint venture investments and acquisitions by CEMEX Latam and its subsidiaries, which capital expenditures, joint ventures investments and acquisitions at any time then incurred are subject to a separate aggregate limit of U.S.$350 million (or its equivalent)) until the debt under the Facilities Agreement has been repaid in full. We believe that these restrictions on capital expenditures do not diminish our world-class operating and quality standards and we may opportunistically increase capital expenditures in some of the markets in which we operate, if necessary, to take advantage of improved market conditions.

***Recruit, retain and cultivate world-class managers***

Our senior management team has a strong track record operating diverse businesses throughout the cement value chain in emerging and developed economies globally.

We will continue to focus on recruiting and retaining motivated and knowledgeable professional managers. We encourage managers to regularly review our processes and practices, and to identify innovative management and business approaches to improve our operations. By rotating our managers from one country to another and from one area of our operations to another, we can increase their diversity of experience and knowledge of our business.

***Foster our sustainable development***

Our priorities include sustainable construction, affordable housing and infrastructure, enhancing our carbon strategy, environmental and biodiversity management, health and safety, strengthening local communities and partnering with key stakeholders.

*Lead in Sustainable Construction*. We are focused on delivering solutions to the increasingly complex and inter-connected infrastructure demands of society in a manner that improves the future of cities and the environment. We recognize that creating sustainable infrastructure goes beyond building materials; it requires broad collaboration that encompasses all involved parties in the planning, financing, construction, ownership and maintenance of the structure. Moreover, we seek to continually expand the range of applications and

sustainability benefits that our products support. For example, during 2012, we, together with our partners, made significant progress in the development, promotion, and market introduction of several technologies, including the following:

- Wall construction using panels of EPS (Expanded Polystyrene) covered with a newly developed type of mortar called Gunite or Shotcrete. This technology, which is already available in Egypt, the UAE and Mexico, combines the durability and structural strength of traditional walls made of reinforced concrete with lower construction costs, as well as better thermal comfort and energy efficiency.
- First successful tests were made with the use of our new Insularis concrete in molds. We expect that the further development of this technology will result in both reduced construction costs and improved energy efficiency.

Given the positive impact on both cost and energy efficiency, these technologies are particularly relevant for the affordable housing sector.

Strategic and selective external collaboration are key in helping transform the construction industry and the solutions it provides to cities. Our ongoing participation in the World Business Council for Sustainable Development's Urban Infrastructure Initiative (UII) has allowed us to engage with cities in the earliest stages of urban planning, contributing the necessary external perspective to help city authorities turn their sustainability visions into action. During 2012, UII teams have worked in diverse cities around the globe, including Tilburg (The Netherlands), Philadelphia (United States), Kobe (Japan) and Guadalajara (Mexico) to demonstrate the value of providing early business input into city planning and to set the stage for ongoing work. We assumed the leading role during the workshops in Guadalajara, the first Latin American city to work with the UII. As a result, the team presented distinct solutions and proposals on four key topics that demanded attention in the city: mobility and logistics; buildings and housing; security and social development; and waste management.

We have also started to work with a regional network in Mexico to develop a local model to address more specifically the unique dynamics of Latin American cities. During 2013, we expect to develop further studies in cities such as Queretaro, Torreon, Puebla and Merida.

*Affordable Housing and Infrastructure.* We are a leading provider of affordable housing and high-scale infrastructure, as well as substantive contributors to the socioeconomic development of emerging markets throughout the world. During 2012, we completed approximately 315 infrastructure projects, representing more than 8.3 million square meters of pavement for highways, mass transit projects, airport runways and city streets.

We have also made significant progress in meeting the need for affordable housing in our markets. In 2012 alone, we contributed to the construction of approximately 2,942 affordable homes in Mexico and Latin America, representing more than 131,000 square meters of affordable housing. This brings the total for the first three years of this initiative to almost 7,800 units, exceeding 315,000 square meters. In 2012, we expanded the initiative to the Dominican Republic, Puerto Rico and Colombia.

Notable projects include:

- 800-unit project in Oaxaca, Mexico where CEMEX is rebuilding homes for those that suffered from the earthquake in September 2012;
- 700-unit Higuamo development in the Dominican Republic;
- Four high-rise projects with a total of more than 5,000 units awarded to CEMEX by the government of Colombia. This vertical building type will significantly contribute to the re-densification of cities and has made CEMEX a pioneer in vertical affordable housing in Mexico after its use in a housing project of 100 units in Jalisco, Mexico.

In 2013, we plan to introduce other construction systems, such as ICF (Insulated Concrete Forms) or precast concrete, and develop strategies for expanding our affordable housing efforts in the United States and Europe.

*Enhance our Carbon Strategy.* Climate change poses significant challenges to our society, and we are committed to applying our skills, technologies and determination to contribute to the development of a low-carbon economy. We have been successful in increasing alternative fuel substitution rates to approximately 27.1% in 2012, well on track to meet our ambitious target of 35% substitution rate by 2015. During 2012, five new projects qualified for Certified Emission Reduction ("CER") credits under the CDM. In total, we have 13 projects that qualify for CERs under the CDM. In addition, CEMEX has also successfully registered in the United States a carbon reduction initiative under a voluntary program known as Verified Carbon Standard.

Implementation of the CEMEX CO2 Footprint Tool has grown from 29% of our sites in 2010 to 100% of cement, aggregate and ready-mix sites under our operational control in 2012. This tool allows us to measure the greenhouse gas emissions of our cement, ready-mix concrete and aggregates products.

*Excellence in Environmental and Biodiversity Management.* We are committed to mitigating the impacts that our facilities, quarries and logistics have on their surrounding communities and ecosystems. Toward this end, we have a set of global initiatives that include: monitoring and controlling air emissions; managing land and conserving biodiversity within and around sites; minimizing disturbances, such as noise, vibration and traffic; optimizing water use; and reducing and recycling waste. During 2012, changes in the geographic pattern of our production (such as the reduction in the Northern Europe and the Mediterranean region, where we have full coverage in operating kilns) prevented us from increasing the percentage of clinker produced with continuous monitoring of major emissions, which remained flat at 80%. However, we maintain our commitment of full monitoring by the end of 2015.

We are also on track to achieve our target of 100% of implemented rehabilitation plans and Biodiversity Action Plans ("BAPs") for our quarries by 2015. We continued our successful partnership with BirdLife International, and after developing our BAP standard in the previous year, we implemented this methodology at six pilot sites in 2012, one in each CEMEX region. In two regions, we completed key project stages and for the remaining four regions, we created work plans. In addition, in 2012, we continued working in partnership with the International Union for Conservation of Nature, jointly developing a protocol to standardize water measurement and management at our operations. Starting this year, the methodology will be rolled out to all of the businesses in the countries in which CEMEX operates in order to minimize the company's water footprint and increase its water efficiency.

*Strengthen Communities.* Bringing together economic, educational and people resources, we are creating innovative solutions to social challenges and more sustainable communities. CEMEX strives to identify the needs and concerns of the communities where we operate and collaborate to address them. By leveraging CEMEX's strengths and experience, we jointly develop project proposals that are relevant to each community.

*Patrimonio Hoy* is our flagship community initiative that helps low-income families realize their dream of home ownership. Combining the global presence of CEMEX distribution with the power of microcredit, the program offers families financial and technical assistance in the construction of their homes. With more than 100 offices in Latin America, during 2012, we reached almost 43,000 new partners, bringing the accumulated total to 396,845. In 2012 we built more than 447,000 square meters of living space, resulting in an accumulated total of more than 3 million square meters.

In the Philippines, CEMEX leaders recognized that a shortage of quality housing was a threat to employee quality of life, their productivity and the company's ability to retain staff. CEMEX developed a customized housing solution based on input from the employees about their living preferences. The result was the Las Casas de Naga iHouse pilot project. Serving as the community developer, CEMEX is coordinating all aspects of planning, development and construction of 180 homes in a community that will feature playgrounds, urban agriculture, multi-purpose buildings and sports courts, sound roads, efficient water and waste management, a grocery store and transportation to and from the cement plant.

In 2012, we added 36 new Productive Centers for Self-employment ("PCS") in Mexico and 3 in Colombia. There are now 76 PCS serving these countries, and we plan to expand the program to Nicaragua in 2013.

In 2012, CEMEX also became founding partner of New Employment Opportunities, an initiative to prepare young people, particularly disadvantaged ones, for entry level jobs in Latin America and the Caribbean. Other founding partners include the Multilateral Investment Fund, the Inter-American Development Bank (IADB), the International Youth Foundation (IYF), Caterpillar and Microsoft among others.

*Partnership with Key Stakeholders.* We continuously interact with a wide variety of stakeholders to discuss and address society's pressing needs. Within our sustainability model, we have defined four core stakeholder groups: our people, our neighbors, our business partners and our world. Beyond this, we actively engage with our sustainability reporting advisory panel, a group of leading experts, who provide important and valuable advice. In 2012, 97% of our operations have community engagement plans and 54% of our operations have employee volunteering programs.

In 2012, we completed the third phase of our Supplier Sustainability Program by issuing our Code of Conduct for Doing Business with Us. The code is based on the result of a benchmark study analyzing industry best practices, the 10 UN Global Compact principles and the procurement clauses contained in the CEMEX Code of Ethics and Business Conduct.

We also continued to leverage our knowledge and resources and promote our sustainability priorities and vision through strategic global partnerships and memberships with recognized global and local organizations, such as the Clinton Initiative, Conservation International and Earth Focus, MIT Concrete Sustainability Hub, The Cement Sustainability Initiative from the World Business Council for Sustainable Development, among many others.

*Health and Safety.* In 2012, CEMEX began implementing a new Global Health and Safety Management System to bring alignment and structure to health and safety activities while empowering leaders to choose solutions that work best locally. We find that leadership driven initiatives are having the greatest impact on our health and safety performance with most countries seeing significant improvement in their key performance indicators. LEGACY, our health and safety leadership training course, has continued to be a success across our worldwide operations with courses being run on a regular basis for managers at all levels. While no level of fatalities are acceptable, in 2012, the combined number of employee, contractor and third-party fatalities in connection with CEMEX activities went down by 59% compared to 2011. In addition, our employee Lost-Time Injury rate (per million hours worked) decreased to 2.0 in 2012, a 13% reduction compared to 2011. There was also a 8.0% improvement in the 2012 CEMEX Total Recordable Injury Frequency Rate compared to 2011, with a rate of 6.0 compared to 6.5 the year before. However, the Sickness Absence Rate for CEMEX increased from 1.8 to 2.5 in 2012 when compared to 2011.

100% of our operations have a Health and Safety Management System implemented. To complement these systems, we continue to promote the CEMEX Health Essentials, which provides managers in all business units with practical and easy-to-use materials on 12 key topics including heart and back health, stress management and nutrition.

The following table sets forth our performance indicators with respect to safety by geographic location for the year ended December 31, 2012:

| | Mexico | United States | Northern Europe | The Mediterranean | South America and the Caribbean | Asia | Total CEMEX |
|---|---|---|---|---|---|---|---|
| Total fatalities, employees, contractors and other third parties(#) | 8 | 1 | 1 | 5 | 2 | 1 | 18 |
| Fatalities employees(#) | — | 1 | — | — | — | — | 1 |
| Fatality rate employees(1) | — | 1.07 | — | — | — | — | 0.22 |
| Lost-Time injuries (LTI), employees(#) | 85 | 64 | 15 | 7 | 41 | 2 | 214 |
| Lost-Time injuries (LTI), contractors(#) | 41 | — | 14 | 7 | 35 | 5 | 103 |
| Lost-Time injury (LTI) frequency rate, employees per million hours worked | 3.07 | 3.03 | 0.67 | 0.75 | 3.20 | 0.69 | 2.00 |

(1) Incidents per 10,000 people in a year.

**Our Products**

We always strive to provide superior building solutions in the markets we serve. To this end, we tailor our products and services to suit customers' specific needs, from home construction, improvement and renovation to agricultural, industrial and marine/hydraulic applications.

***Cement***

Cement is a binding agent, which, when mixed with sand, stone or other aggregates and water, produces either ready-mix concrete or mortar. Whether in bags or in bulk, we provide our customers with high-quality branded cement products and services. We tap our professional knowledge and experience to develop customized products that fulfill our clients' specific requirements and foster sustainable construction. In many of the countries where we have cement operations, a large proportion of cement sold is a bagged, branded product. We often deliver the product to a large number of distribution outlets such that our bagged, branded cement is available to the end users in a point of sale in close proximity to where the product will be used. We strive to develop brand identity and recognition in our bagged product.

We manufacture cement through a closely controlled chemical process, which begins with the mining and crushing of limestone and clay, and, in some instances, other raw materials. The clay and limestone are then pre-homogenized, a process which consists of combining different types of clay and limestone. The mix is typically dried, then fed into a grinder which grinds the various materials in preparation for the kiln. The raw materials are calcined, or processed, at a very high temperature in a kiln, to produce clinker. Clinker is the intermediate product used in the manufacture of cement. For limestone, clay and gypsum, requirements are based on chemical composition that, depending on the other materials available, matches with the quality demanded by the production process. For cement limestone, clay and gypsum, we run chemical tests to prepare the mining plan of the quarry, to confirm material quality and reduce variations in the mineral content. We consider that limestone and clay quality of our cement raw material quarries are adequate for the cement production process.

There are two primary processes used to manufacture cement: the dry process and the wet process. The dry process is more fuel efficient. As of December 31, 2012, 55 of our 57 operative production plants used the dry process and two used the wet process. Our operative production plants that use the wet process are located in Nicaragua and the United Kingdom. In the wet process, the raw materials are mixed with water to form slurry, which is fed into a kiln. Fuel costs are greater in the wet process than in the dry process because the water that is added to the raw materials to form slurry must be evaporated during the clinker manufacturing process. In the dry

process, the addition of water and the formation of slurry are eliminated, and clinker is formed by calcining the dry raw materials. In the most modern application of this dry process technology, the raw materials are first blended in a homogenizing silo and processed through a pre-heater tower that utilizes exhaust heat generated by the kiln to pre-calcine the raw materials before they are calcined to produce clinker.

Clinker and gypsum are fed in pre-established proportions into a cement grinding mill where they are ground into an extremely fine powder to produce finished cement. We primarily cover our gypsum needs from third parties; however, we also operate gypsum quarries in the United States, Spain, the Dominican Republic and Egypt.

***Ready-Mix Concrete***

Ready-mix concrete is a combination of cement, fine and coarse aggregates, admixtures (which control properties of the concrete including plasticity, pumpability, freeze-thaw resistance, strength and setting time), and water. We tailor our ready-mix concrete to fit our clients' specific needs. By changing the proportion of water, aggregates, and cement in the mix, we modify our concrete's resistance, manageability, and finish. We also use additives to customize our concrete consistent with the transportation time from our plant to the project, weather conditions at the construction site, and the project's specifications. From our water-resistant to our self-compacting concrete, we produce a great variety of specially designed concrete to meet the many challenges of modern construction.

***Aggregates***

We are one of the world's largest suppliers of aggregates: primarily the crushed stone, sand and gravel, used in virtually all forms of construction. Customers use our aggregates for a wide array of uses, from a key component in the construction and maintenance of highways, walkways, and railways to an indispensable ingredient in concrete, asphalt, and mortar.

Aggregates are obtained from land-based sources such as sand and gravel pits and rock quarries or by dredging marine deposits. See "—Description of our raw materials reserves."

*Hard Rock Production*. Rock quarries usually operate for at least 30 years and are developed in distinct benches or steps. A controlled explosion is normally used to release the rock from the working face. It is then transported by truck or conveyor to a crusher to go through a series of crushing and screening stages to produce a range of final sizes to suit customers' needs. Dry stone is delivered by road, rail or water from the quarry.

*Sand and Gravel Production*. Sand and gravel quarries are much shallower than rock quarries and are usually worked and restored in progressive phases. Water can either be pumped out of the quarries allowing them to be worked dry or they can be operated as lakes with extraction below water. A conveyor draws the raw material into the processing plant where it is washed to remove unwanted clay and to separate sand. Sand separated during processing is dewatered and stockpiled. Gravel then passes over a series of screens that sieve the material into different sizes. Processing separates the gravel into stockpiles in a range of sizes for delivery.

*Marine Aggregate Production*. A significant proportion of the demand for aggregates is satisfied from rivers, lakes, and seabeds. Marine resources are increasingly important to the sustainable growth of the building materials industry. Marine aggregates also play an important role in replenishing beaches and protecting coastlines from erosion. At sea, satellite navigation is used to position a vessel precisely within its licensed dredging area. Vessels trail a pipe along the seabed and use powerful suction pumps to draw sand and gravel into the cargo hold. Dredged material is discharged at wharves, where it is processed, screened and washed for delivery.

***Description of our raw materials reserves***

We are a leading global provider of building materials, including cement, ready-mix concrete and aggregates. Our cement production process begins with the mining and crushing of limestone and clay, and, in some instances, other raw materials. We have access to limestone and clay quarries near most of our cement plant sites worldwide since these minerals are the main raw materials in the cement production process.

In addition, we are one of the world's largest suppliers of aggregates, primarily hard rock, sand and gravel, obtained from quarries, to be used in ready-mix concrete and other concrete-based products such as blocks and pipes.

Customers use our aggregates for a wide array of purposes, from a key component in the construction and maintenance of highways, walkways, and railways to an indispensable ingredient in concrete, asphalt and mortar. Aggregates can be used in their natural state or crushed into smaller size pieces.

The types of mine mostly used to extract raw materials for aggregates and cement production, are open pit or open cut, which relate to deposits of economically useful minerals or rocks that are found near the land surface. Open-pit mines that produce raw material for our industry are commonly referred to as quarries. Open-pit mines are typically enlarged until either the mineral resource is exhausted, or an increasing ratio of overburden to exploitable material makes further mining uneconomic. In some cases, we also extract raw materials by dredging underwater deposits.

Aggregates and other raw materials for our own production processes are obtained mainly from our own sources. However, we may cover our aggregates and other raw material needs through the supply from third-parties. For the year ended December 31, 2012, approximately 13% of our total raw material needs were supplied by third-parties.

Reserves are considered as proven when all legal and environmental conditions have been met and permits have been granted. Proven reserves are those for which (i) the quantity is computed from dimensions revealed by drill data, together with other direct and measurable observations such as outcrops, trenches and quarry faces and (ii) the grade and/or quality are computed from the results of detailed sampling; and the sampling and measurement data are spaced so closely and the geologic character is so well defined that size, shape, depth and mineral content of reserves are well-established. Probable reserves are those for which quantity and grade and/or quality are computed from information similar to that used from proven reserves, but the sites for inspection, sampling, and measurement are farther apart or are otherwise less adequately spaced. The degree of assurance, although lower than that for proven reserves, is high enough to assume continuity between points of observation.

Our reserve estimates are prepared by CEMEX's engineers and geologists and are subject to annual review by our corporate staff jointly with the regional technical managers associated to our business units. On specific circumstances we have used the services of third-party geologists and/or engineers to validate our own estimates. Over the three-year period ended December 31, 2012, we have employed third-parties to review (i) our cement raw materials reserves estimates in Mexico, Colombia, the Dominican Republic, Puerto Rico and the Philippines, and (ii) our aggregates reserves estimates in France, Poland, Austria, the Czech Republic, Hungary, the United Kingdom, Germany, Ireland and Mexico.

Reserves determination incorporates only materials meeting specific quality requirements. For aggregates used in ready-mix concrete such requirements are based on hardness, shape and size; for cement raw materials (mainly limestone and clay), such requirements are based on a chemical composition that matches the quality demanded by the production process. In the case of cement raw materials, since chemical composition varies from production sites and even in the same site, we conduct geostatistical chemical tests and determine the best blending proportions to meet production quality criteria and to try to maintain an extraction ratio close to 100% of the reported reserves for such materials.

The main equipment utilized in our production sites is as follows:

- In our cement facilities: drills, crushers, kilns, coolers, mills, packing/loading machines, pay loaders, excavators, off-road trucks and other material handling equipment.
- In our ready-mix concrete facilities: batch plants, silos and mobile equipment and mixer trucks.
- In our aggregates facilities: drills, crushers, screens, belt conveyors, pay loaders, excavators, trucks and other material handling equipment.

We believe that our facilities are in general good condition, adequate for efficient operations.

During 2012, our total quarry material production was approximately 203 million tons, of which approximately 88% was used for own consumption to produce cement, ready-mix concrete, and/or other products which are later sold to the public and the remaining 12% was directly sold to customers.

Our estimates distinguish between owned and leased reserves, the later determined over the term of the lease contract, and include only those permitted reserves which are proven and probable. As of December 31, 2012, the total surface of property in our quarries operations (including cement raw materials quarries and aggregates quarries), was approximately 109,704 hectares, of which approximately 73% was owned by us and approximately 27% was managed through lease contracts.

As of December 31, 2012, we operated 151 cement raw materials quarries across our global operations, serving our facilities dedicated to cement production, which are located at or near the cement plant facilities. We estimate that our proven and probable cement raw material reserves, on a consolidated basis, have an average remaining life of approximately 71 years, assuming 2008-2012 average annual cement production (last five years average production).

The table set forth below presents our total permitted proven and probable cement raw materials reserves by geographic segment and material type extracted or produced in our cement raw materials quarries operations.

| Location | Mineral | Number of quarries | Property Surface (hectares) Owned | Property Surface (hectares) Leased | Reserves (Million tons) Proven | Reserves (Million tons) Probable | Reserves (Million tons) Total | Years to depletion | 2012 Annualized Production | 5 years aver. Annualized Production | Own Use |
|---|---|---|---|---|---|---|---|---|---|---|---|
| **Mexico(1)** | Limestone | 18 | 8,920 | 24 | 1,244 | 496 | 1,739 | 89 | 19.1 | 19.6 | 79% |
| | Clay | 16 | 8,445 | — | 142 | 156 | 298 | 82 | 4.7 | 3.6 | 100% |
| | Others | 1 | 100 | — | — | — | — | 141 | — | — | 100% |
| **United States(2)** | Limestone | 13 | 17,577 | — | 888 | 164 | 1,052 | 85 | 13.3 | 12.4 | 100% |
| | Clay | 2 | 132 | 7 | 24 | — | 24 | — | — | — | 0% |
| **Northern Europe** | | | | | | | | | | | |
| United Kingdom | Limestone | 3 | 681 | 107 | 134 | 43 | 177 | 82 | 1.9 | 2.2 | 100% |
| | Clay | 2 | 98 | — | 14 | 22 | 36 | 61 | 0.5 | 0.6 | 100% |
| Germany | Limestone | 3 | 597 | 49 | 31 | 120 | 151 | 40 | 3.8 | 3.8 | 91% |
| Rest of Northern Europe | Limestone | 3 | 740 | — | 94 | 45 | 139 | 30 | 4.5 | 4.6 | 94% |
| | Clay | 1 | 70 | — | 11 | 2 | 13 | 38 | 0.4 | 0.4 | 100% |
| **Central and South America and the Caribbean** | | | | | | | | | | | |
| Colombia | Limestone | 10 | 3,025 | 86 | 68 | 321 | 389 | 94 | 4.1 | 4.1 | 100% |
| | Clay | 2 | 183 | — | 2 | — | 2 | 9 | 0.2 | 0.2 | 100% |
| Rest of Central and South America and the Caribbean | Limestone | 21 | 988 | 186 | 228 | 542 | 771 | 117 | 6.1 | 6.6 | 100% |
| | Clay | 8 | 540 | 60 | 46 | 47 | 93 | 137 | 0.7 | 0.7 | 100% |
| | Others | 2 | 27 | 1,543 | 16 | 50 | 66 | 444 | 0.1 | 0.1 | 100% |
| **The Mediterranean** | | | | | | | | | | | |
| Spain | Limestone | 12 | 462 | 117 | 259 | 45 | 304 | 42 | 4.1 | 7.2 | 100% |
| | Clay | 6 | 64 | 72 | 8 | 7 | 15 | 22 | 0.5 | 0.7 | 100% |
| | Others | 2 | 102 | 9 | 1 | 13 | 14 | 81 | — | 0.2 | 0% |
| Egypt | Limestone | 2 | — | 157 | 288 | — | 288 | 51 | 5.7 | 5.7 | 100% |
| | Clay | 4 | — | 592 | 115 | — | 115 | 74 | 1.5 | 1.6 | 100% |
| | Others | 5 | — | 297 | 27 | — | 27 | 177 | 0.1 | 0.2 | 100% |
| Croatia | Limestone | 2 | 192 | 23 | 23 | — | 23 | 10 | 1.5 | 2.2 | 100% |
| **Asia** | | | | | | | | | | | |
| Philippines | Limestone | 4 | 120 | 47 | 57 | 64 | 121 | 29 | 4.3 | 4.2 | 0% |
| | Clay | 3 | 36 | — | — | 3 | 3 | 33 | 0.1 | 0.1 | 0% |
| | Others | 5 | 68 | 15 | 10 | 22 | 32 | 41 | 0.6 | 0.8 | 0% |
| Rest of Asia | Limestone | 1 | — | — | 5 | 9 | 14 | 10 | 0.7 | 1.4 | 15% |
| **CEMEX Consolidated** | Limestone | 92 | 33,303 | 797 | 3,319 | 1,850 | 5,169 | 70 | 69.2 | 74.04 | |
| | Clay | 44 | 9,567 | 731 | 363 | 237 | 600 | 77 | 8.6 | 7.79 | |
| | Others | 15 | 297 | 1,864 | 55 | 86 | 140 | 110 | 0.9 | 1.27 | |
| | Totals | 151 | 43,167 | 3,391 | 3,736 | 2,172 | 5,908 | 71 | 78.6 | 83.1 | |

(1) Our cement raw materials operations in Mexico include three limestone quarries that also produce hard rock aggregates.
(2) Our cement raw materials operations in the U.S. include one limestone quarry that also produces hard rock aggregates.

As of December 31, 2012, we operated 476 aggregates quarries across our global operations dedicated to serving our ready-mix and aggregates businesses. We estimate that our proven and probable aggregates reserves, on a consolidated basis, have an average remaining life of 36 years, assuming 2008-2012 average production (last five years average aggregates production).

The table set forth below, present our total permitted proven and probable aggregates reserves by geographic segment and material type extracted or produced in our aggregates quarries operations.

| Location | Mineral | Number of quarries | Property Surface (hectares) Owned | Property Surface (hectares) Leased | Reserves (Million tons) Proven | Reserves (Million tons) Probable | Reserves (Million tons) Total | Years to depletion | 2012 Annualized Production | 5 years aver. Annualized Production | Own Use |
|---|---|---|---|---|---|---|---|---|---|---|---|
| **Mexico** | Hardrock | 6 | 881 | 25 | 184 | 244 | 429 | 113 | 4.1 | 3.8 | 54% |
| | Sand & Gravel | 2 | — | 57 | 2 | 7 | 9 | 16 | 0.6 | 0.6 | 54% |
| | Others | 8 | 128 | 175 | 14 | 75 | 89 | — | — | — | 0% |
| **United States** | Hardrock | 16 | 13,732 | 4,635 | 341 | 239 | 580 | 34 | 22.6 | 16.9 | 28% |
| | Sand & Gravel | 85 | 7,961 | 9,727 | 561 | 149 | 709 | 36 | 18.4 | 19.9 | 40% |
| | Others | 14 | 1,682 | 1,072 | 47 | 140 | 187 | 64 | 2.0 | 2.9 | 23% |
| **Northern Europe** | | | | | | | | | | | |
| United Kingdom | Hardrock | 9 | 330 | 756 | 403 | — | 403 | 77 | 5.2 | 5.2 | 50% |
| | Sand & Gravel | 92 | 3,915 | 2,441 | 167 | 124 | 291 | 52 | 5.6 | 5.6 | 47% |
| | Others | 17 | 350 | 304 | 120 | 18 | 138 | 47 | 3.0 | 3.0 | 50% |
| Germany | Hardrock | 3 | 89 | 39 | 14 | 21 | 35 | 26 | 1.6 | 1.4 | 0% |
| | Sand & Gravel | 36 | 1,900 | 916 | 82 | 129 | 210 | 18 | 11.2 | 11.6 | 0% |
| | Others | 6 | 30 | 645 | 86 | 32 | 118 | 25 | 4.9 | 4.7 | 0% |
| France | Hardrock | 9 | 78 | 373 | 118 | 7 | 125 | 33 | 3.2 | 3.8 | 0% |
| | Sand & Gravel | 32 | 954 | 1,429 | 159 | 44 | 203 | 25 | 8.3 | 8.1 | 0% |
| Rest of Northern Europe | Hardrock | 16 | 5 | 643 | 53 | 3 | 56 | 32 | 1.8 | 1.7 | 2% |
| | Sand & Gravel | 44 | 1,218 | 821 | 104 | 52 | 156 | 13 | 10.2 | 11.9 | 24% |
| | Others | 20 | 501 | 125 | 23 | 62 | 86 | 27 | 2.7 | 3.1 | 12% |
| **Central and South America and the Caribbean** | | | | | | | | | | | |
| Colombia | Sand & Gravel | 6 | 557 | — | 15 | 3 | 17 | 9 | 1.7 | 1.9 | 100% |
| Rest of Central and South America and the Caribbean | Hardrock | 1 | 150 | — | 15 | 3 | 18 | 45 | 0.3 | 0.4 | 0% |
| | Others | 10 | 1,823 | 871 | 20 | 187 | 207 | 72 | 1.2 | 2.9 | 45% |
| **The Mediterranean** | | | | | | | | | | | |
| Spain | Hardrock | 22 | 542 | 197 | 261 | 30 | 292 | 54 | 2.2 | 5.4 | 52% |
| | Sand & Gravel | 8 | 504 | 162 | 58 | 5 | 63 | 25 | 0.8 | 2.5 | 39% |
| | Others | 1 | — | 48 | 2 | 2 | 4 | 25 | — | 0.2 | 0% |
| Egypt | Others | 2 | — | 2 | — | 1 | 1 | 3 | 0.4 | 0.5 | 63% |
| Rest of the Mediterranean | Hardrock | 6 | 27 | 282 | 79 | 38 | 117 | 12 | 10.6 | 9.6 | 53% |
| | Sand & Gravel | 1 | — | 28 | 1 | — | 1 | 7 | 0.2 | 0.2 | 34% |
| **Asia** | | | | | | | | | | | |
| Rest of Asia | Hardrock | 4 | — | 17 | 12 | 6 | 18 | — | 0.6 | — | 0% |
| **CEMEX Consolidated** | Hardrock | 92 | 15,833 | 6,967 | 1,480 | 591 | 2,071 | 43 | 52.3 | 48.2 | |
| | Sand & Gravel | 306 | 17,009 | 15,582 | 1,150 | 511 | 1,660 | 27 | 57.2 | 62.3 | |
| | Others | 78 | 4,514 | 3,241 | 314 | 517 | 832 | 48 | 14.1 | 17.2 | |
| | Totals | 476 | 37,356 | 25,790 | 2,944 | 1,619 | 4,563 | 36 | 123.6 | 127.7 | |

***Related Products***

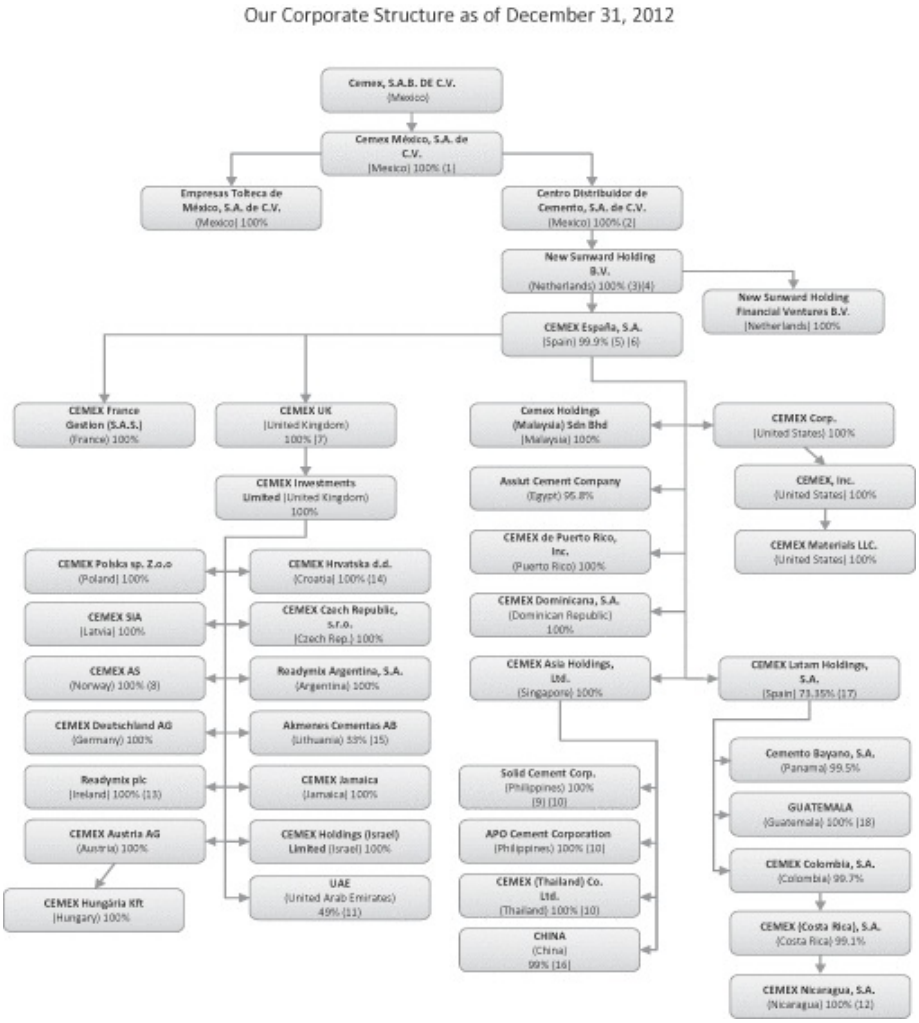
We rely on our close relationship with our customers to offer them complementary products for their construction needs, from rods, blocks, concrete tubing and asphalt to electrical supplies, paint, tile, lumber and other fixtures.

**User Base**

Cement is the primary building material in the industrial and residential construction sectors of most of the markets in which we operate. The lack of available cement substitutes further enhances the marketability of our product. The primary end-users of cement in each region in which we operate vary but usually include, among others, wholesalers, ready-mix concrete producers, industrial customers and contractors in bulk. Additionally, sales of bagged cement to individuals for self-construction and other basic needs are a significant component of the retail sector. The end-users of ready-mix concrete generally include homebuilders, commercial and industrial building contractors and road builders. Major end-users of aggregates include ready-mix concrete producers, mortar producers, general building contractors and those engaged in road building activity, asphalt producers and concrete product producers. In summary, because of their many favorable qualities, builders worldwide use our cement, ready-mix concrete and aggregates for almost every kind of construction project, from hospitals and highways to factories and family homes.

## Our Corporate Structure

We are a holding company, and operate our business through subsidiaries that, in turn, hold interests in our cement and ready-mix concrete operating companies, as well as other businesses. The following chart summarizes our corporate structure as of December 31, 2012. The chart also shows, for each company, our approximate direct or indirect percentage equity ownership or economic interest. The chart has been simplified to show only our major holding companies in the principal countries in which we operate and does not include all our intermediary holding companies and our operating company subsidiaries.




(1) Includes approximate 99.87% interest pledged as part of the Collateral.
(2) Includes approximate 99.99% interest pledged as part of the Collateral.
(3) Includes approximate 100% interest pledged as part of the Collateral.
(4) CEMEX, S.A.B. de C.V. and Centro Distribuidor indirectly hold 100% of New Sunward through other intermediate subsidiaries.
(5) Includes New Sunward's and CEMEX, S.A.B. de C.V.'s interest.
(6) Includes approximate 99.63% interest pledged as part of the Collateral.

(7) Includes CEMEX España's 69.39% interest and CEMEX France's 30.61% interest.
(8) On March 15, 2011, EMBRA AS changed its legal name to CEMEX AS. CEMEX AS is an operational company and also the holding company for operations in Finland, Norway and Sweden.
(9) Includes CEMEX Asia Holdings Ltd.'s ("Cemex Asia Holdings") 70% indirect economic interest and 30% equity ownership by CEMEX España.
(10) Represents CEMEX Asia Holdings' indirect economic interest.
(11) Represents our economic interest in three UAE companies: CEMEX Topmix LLC, CEMEX Supermix LLC and CEMEX Falcon LLC. We own a 49% equity interest in each of these companies, and we have purchased the remaining 51% of the economic benefits through agreements with other shareholders.
(12) Includes CEMEX (Costa Rica), S.A.'s 98% interest and CEMEX Latam's 2% indirect interest.
(13) On July 24, 2012, changed its name from Readymix plc to Readymix Limited.
(14) On December 4, 2009 Dalmacijacement d.d. changed its legal name to CEMEX Hrvatska d.d.
(15) Represents our 33.95% in ordinary shares and our 11.64% in preferred shares.
(16) Represents CEMEX Asia Holdings' economic interest in 2 companies in China: CEMEX Tianjin and CEMEX Qingdao, with a 99% interest in CEMEX Tianjin and a 100% interest in CEMEX Qingdao.
(17) Excludes CEMEX Latam shares held in CEMEX Latam's treasury.
(18) Represents CEMEX Latam's economic interest in six Guatemala companies: Global Cement, S.A., Global Concrete, S.A., Gestion Integral de Proyectos, S.A., Equipos para uso de Guatemala, S.A., Cementos de Centroamérica, S.A., and Line, S.A.

**Mexico**

*Overview*. Our operations in Mexico represented approximately 21% of our net sales in Peso terms before eliminations resulting from consolidation. As of December 31, 2012, our business in Mexico represented approximately 30% of our total installed cement capacity and approximately 17% of our total assets.

As of December 31, 2012, we owned 100% of the outstanding capital stock of CEMEX México. CEMEX México is a direct subsidiary of CEMEX, S.A.B. de C.V. and is both a holding company for some of our operating companies in Mexico and an operating company involved in the manufacturing and marketing of cement, plaster, gypsum, groundstone and other construction materials and cement by-products in Mexico. CEMEX México, indirectly, is also the holding company for our international operations. CEMEX México, together with its subsidiaries, accounts for a substantial part of the revenues and operating income of our operations in Mexico.

In September 2006, we announced a plan to construct a new kiln at our Tepeaca cement plant in Puebla, Mexico. The current production capacity of the Tepeaca cement plant is approximately 3.3 million tons of cement per year. The construction of the new kiln, which is designed to increase our total production capacity in the Tepeaca cement plant to approximately 7.4 million tons of cement per year, is expected to be completed in 2015. We anticipate spending a total of approximately U.S.$570 million on the construction of this new kiln, which includes capital expenditures of approximately U.S.$459 million incurred through the end of 2012. We did not make any capital expenditures for the construction of the new kiln in 2012. We expect to spend approximately U.S.$111 million through completion.

In 2001, we launched the Construrama program, a registered brand name for construction material stores. Through the Construrama program, we offer to an exclusive group of our Mexican distributors the opportunity to sell a variety of products under the Construrama brand name, a concept that includes the standardization of stores, image, marketing, products and services. As of December 31, 2012, approximately 800 independent concessionaries with more than 2,100 stores were integrated into the Construrama program, with nationwide coverage.

*Industry*. The Instituto Nacional de Estadística y Geografía (INEGI) indicates that total construction investment increased by approximately 4.1% (in real terms) in 2012, compared to 2011. This positive

performance was supported by the expansion of both residential (3.5%) and non-residential sectors (4.4%). In addition, public construction investment increased by approximately 6.5% and construction GDP increased approximately 3.3% (in real terms). INEGI has not yet published construction information for the first quarter of 2013.

Cement in Mexico is sold principally through distributors, with the remaining balance sold through ready-mix concrete producers, manufacturers of pre-cast concrete products and construction contractors. Cement sold through distributors is mixed with aggregates and water by the end user at the construction site to form concrete. Ready-mix concrete producers mix the ingredients in plants and deliver it to local construction sites in mixer trucks, which pour the concrete. Unlike more developed economies, where purchases of cement are concentrated in the commercial and industrial sectors, retail sales of cement through distributors in 2012 accounted for approximately 56% of Mexico's demand. Individuals who purchase bags of cement for self-construction and other basic construction needs are a significant component of the retail sector. We estimate that about 30% of total demand in Mexico comes from individuals who address their own construction needs. We believe that this large retail sales base is a factor that significantly contributes to the overall performance of the Mexican cement market.

The retail nature of the Mexican cement market also enables us to foster brand loyalty, which distinguishes us from other worldwide producers selling primarily in bulk. We own the registered trademarks for our brands in Mexico, such as "Tolteca," "Monterrey," "Maya," "Anáhuac," "Campana," "Gallo," and "Centenario." We believe that these brand names are important in Mexico since cement is principally sold in bags to retail customers who may develop brand loyalty based on differences in quality and service. In addition, we own the registered trademark for the "Construrama" brand name for construction material stores.

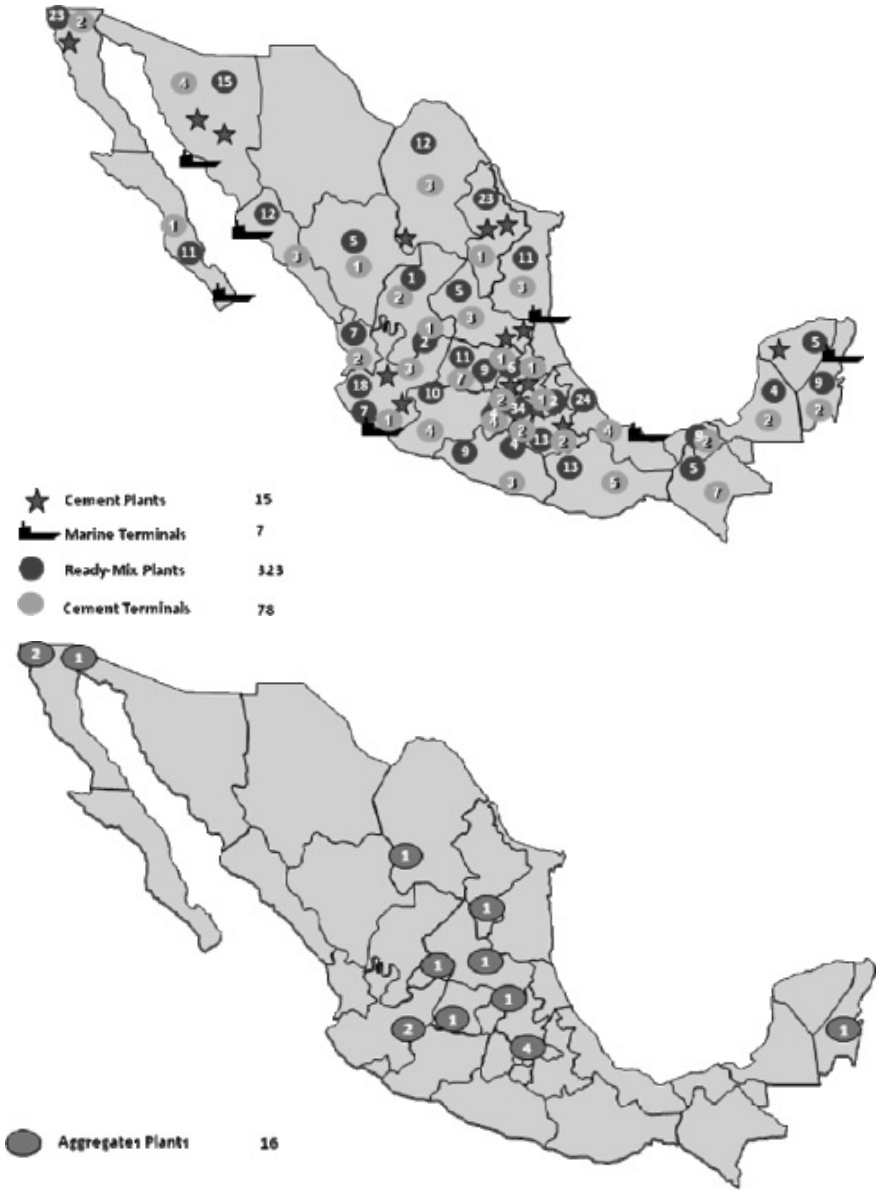
*Competition*. In the early 1970s, the cement industry in Mexico was regionally fragmented. However, over the last 40 years, cement producers in Mexico have increased their production capacity and the Mexican cement industry has consolidated into a national market, thus becoming increasingly competitive. The major cement producers in Mexico are CEMEX; Holcim Apasco, an affiliate of Holcim; Sociedad Cooperativa Cruz Azul, a Mexican operator; Cementos Moctezuma, an associate of Ciments Molins; Grupo Cementos de Chihuahua, S.A.B. de C.V., or Cementos Chihuahua, a Mexican operator, whose holding company is 49% owned by us; and Lafarge Cementos, a subsidiary of Lafarge. In 2013, a new cement producer, Elementia (Cementos Fortaleza), is expected to enter the market. The major ready-mix concrete producers in Mexico are CEMEX, Holcim Apasco, Sociedad Cooperativa Cruz Azul and Cementos Moctezuma.

Potential entrants into the Mexican cement market face various impediments to entry, including:

- the time-consuming and expensive process of establishing a retail distribution network and developing the brand identification necessary to succeed in the retail market, which represents the bulk of the domestic market;
- the lack of port infrastructure and the high inland transportation costs resulting from the low value-to-weight ratio of cement;
- the distance from ports to major consumption centers and the presence of significant natural barriers, such as mountain ranges, which border Mexico's east and west coasts;
- the strong brand recognition and the wide variety of special products with enhanced properties;
- the extensive capital expenditure requirements; and
- the length of time required for construction of new plants, which is approximately two years.

***Our Operating Network in Mexico***

During 2012, we operated 13 out of our total of 15 cement plants (two were temporarily shut down given market conditions) and 85 cement distribution centers (including seven marine terminals) located throughout Mexico. We operate modern cement plants on the Gulf of Mexico and Pacific coasts, allowing us to take advantage of low transportation costs to export to the United States, the Caribbean, and Central and South America.



***Products and Distribution Channels***

*Cement*. Our cement operations represented approximately 53% of net sales for our operations in Mexico before eliminations resulting from consolidation in 2012. Our domestic cement sales volume represented approximately 94% of our total cement sales volume in Mexico for 2012. As a result of the retail nature of the Mexican market, our operations in Mexico are not dependent on a limited number of large customers. The five most important distributors in the aggregate accounted for approximately 11% of our total cement sales in Mexico by volume in 2012.

*Ready-Mix Concrete*. Our ready-mix operations represented approximately 24% of net sales for our operations in Mexico before eliminations resulting from consolidation in 2012. Our ready-mix operations in Mexico purchase all their cement requirements from our cement operations in Mexico. Ready-mix concrete is sold through our own internal sales force and facilities network.

*Aggregates*. Our aggregates operations represented approximately 5% of net sales for our operations in Mexico before eliminations resulting from consolidation in 2012.

*Exports*. Our operations in Mexico export a portion of their cement production, mainly in the form of cement and to a lesser extent in the form of clinker. Exports of cement and clinker by our operations in Mexico represented approximately 6% of our total cement sales volume in Mexico for 2012. In 2012, approximately 17% of our cement and clinker exports from Mexico were to the United States, 32% to Central America and the Caribbean and 52% to South America.

The cement and clinker exports by our operations in Mexico to the United States are marketed through subsidiaries of CEMEX Corp., the holding company of CEMEX, Inc. All transactions between CEMEX and the subsidiaries of CEMEX Corp., which act as our U.S. importers, are conducted on an arm's-length basis.

*Production Costs*. Our cement plants in Mexico primarily utilize petcoke, but several are designed to switch to fuel oil and natural gas with minimum downtime. We have entered into two 20-year contracts with Petróleos Mexicanos, or PEMEX, pursuant to which PEMEX has agreed to supply us with a total of 1.75 million tons of petcoke per year, including TEG coke consumption, through 2023. Petcoke is petroleum coke, a solid or fixed carbon substance that remains after the distillation of hydrocarbons in petroleum and that may be used as fuel in the production of cement. The PEMEX petcoke contracts have reduced the volatility of our fuel costs. In addition, since 1992, our operations in Mexico have begun to use alternative fuels, to further reduce the consumption of residual fuel oil and natural gas. These alternative fuels represented approximately 18% of the total fuel consumption for our operations in Mexico in 2012.

In 1999, we reached an agreement with the Termoeléctrica del Golfo, or TEG, consortium for the financing, construction and operation of a 230 megawatt energy plant in Tamuin, San Luis Potosí, Mexico. We entered into this agreement in order to reduce the volatility of our energy costs. The total cost of the project was approximately U.S.$360 million. The power plant commenced commercial operations in April 2004. In February 2007, the original members of the consortium sold their participations in the project to a subsidiary of The AES Corporation. For additional information, see "Item 5—Operating and Financial Review and Prospects—Summary of Material Contractual Obligations and Commercial Commitments—Commercial Commitments."

In 2006, in order to take advantage of the high wind potential in the "Tehuantepec Isthmus," CEMEX and the Spanish company ACCIONA, S.A., or ACCIONA, formed an alliance to develop a wind farm project for the generation of 250 megawatts in the Mexican state of Oaxaca. We acted as promoter of the project, which was named "EURUS." ACCIONA provided the required financing, constructed the facility and currently operates the wind farm. The installation of 167 wind turbines in the farm was finished on November 15, 2009. For additional information, see "Item 5—Operating and Financial Review and Prospects—Summary of Material Contractual Obligations and Commercial Commitments—Commercial Commitments."

We have, from time to time, purchased hedges from third parties to reduce the effect of volatility in energy prices in Mexico. See "Item 5—Operating and Financial Review and Prospects—Liquidity and Capital Resources."

*Description of Properties, Plants and Equipment*. As of December 31, 2012, we had 15 wholly-owned cement plants located throughout Mexico, with a total installed capacity of 29.3 million tons per year, of which two were temporarily shut down given market conditions. We have exclusive access to limestone quarries and clay reserves near each of our plant sites in Mexico. We estimate that, as of December 31, 2012, the limestone and clay permitted proven and probable reserves of our operations in Mexico had an average remaining life of approximately 89 and 82 years, respectively, assuming 2008-2012 average annual cement production levels. As of December 31, 2012, all our production plants in Mexico utilized the dry process.

As of December 31, 2012, we had a network of 78 land distribution centers in Mexico, which are supplied through a fleet of our own trucks and rail cars, as well as leased trucks and rail facilities, and operated seven marine terminals. In addition, we had 323 (200 in operation) ready-mix concrete plants throughout 85 cities in Mexico, more than 2,500 ready-mix concrete delivery trucks and 16 aggregates quarries.

As part of our global cost-reduction initiatives we have made temporary capacity adjustments and rationalizations in four of our cement plants in Mexico. In addition, in 2012, we closed approximately 7% of our production capacity in our ready-mix plants throughout Mexico.

*Capital Expenditures*. We made capital expenditures of approximately U.S.$87 million in 2010, U.S.$89 million in 2011 and U.S.$98 million in 2012 in our operations in Mexico. We currently expect to make capital expenditures of approximately U.S.$90 million in our operations in Mexico during 2013.

**United States**

*Overview*. Our operations in the United States represented approximately 19% of our net sales in Peso terms before eliminations resulting from consolidation. As of December 31, 2012, our business in the United States represented approximately 18% of our total installed cement capacity and approximately 43% of our total assets. As of December 31, 2012, we held 100% of CEMEX, Inc., the main holding company of our operating subsidiaries in the United States.

As of December 31, 2012, we had a cement manufacturing capacity of approximately 17.1 million tons per year in our operations in the United States, including 1.2 million tons in proportional interests through non-controlling holdings. As of December 31, 2012, we operated a geographically diverse base of 13 cement plants located in Alabama, California, Colorado, Florida, Georgia, Kentucky, Ohio, Pennsylvania, Tennessee and Texas. As of that date, we also operated 47 rail, truck or water served active cement distribution terminals in the United States. As of December 31, 2012, we had 421 ready-mix concrete plants located in the Alabama, Arizona, California, Florida, Georgia, New Mexico, Nevada, North Carolina, Oregon, South Carolina, Tennessee, Texas and Washington and aggregates facilities in Alabama, Arizona, California, Florida, Georgia, New Mexico, Nevada, North Carolina, Oregon, South Carolina, Texas and Washington.

On July 1, 2005, we and Ready Mix USA, a privately owned ready-mix concrete producer with operations in the southeastern United States, established two jointly-owned limited liability companies, CEMEX Southeast, LLC, a cement company, and Ready Mix USA LLC, a ready-mix concrete company, to serve the construction materials market in the southeast region of the United States.

Pursuant to the terms of the limited liability company agreements, Ready Mix USA had a put option right, which, upon exercise, required us to acquire Ready Mix USA's interest in CEMEX Southeast, LLC and Ready Mix USA LLC. As a result of Ready Mix USA's exercise of its put option (see note 15B to our 2012 audited consolidated financial statements included elsewhere in this annual report), and after performance of the

obligations by both parties under the put option agreement, effective as of August 1, 2011, through the payment of approximately U.S.$352 million (approximately Ps4,914 million), we acquired our former joint venture partner's interests in CEMEX Southeast, LLC and Ready Mix USA, LLC, including a non-compete and a transition services agreement. See "Item 5—Operating and Financial Review and Prospects—Results of Operations—Investments, Acquisitions and Divestitures—Investments and Acquisitions" for additional information regarding the Ready Mix USA put option right.

On September 18, 2007, we announced our intention to begin the permitting process for the construction of a 1.7 million ton cement manufacturing facility near Seligman, Arizona. The state-of-the-art facility would manufacture cement to serve the future growth of Arizona, including the Phoenix metropolitan area. As a result of current market conditions and consistent with the reduction of our expansion capital expenditure program, we have delayed the completion of this project. As of December 31, 2009, we had spent a total of approximately U.S.$14 million on this project, and we did not incur capital expenditures from 2010 through 2012. We do not plan to incur capital expenditures in the construction of the Seligman Crossing Plant during 2013. Since 2011, due to the low levels of construction activity and increased costs, we implemented a minimum margin strategy in our Arizona operations, closed under-utilized facilities and reduced headcount, to pursue improvement in the profitability of our operations in the region.

With the acquisition of Mineral Resource Technologies, Inc. in August 2003, we became an important player in the fly ash market. Fly ash is a mineral residue resulting from the combustion of powdered coal in electric generating plants. Fly ash has the properties of cement and may be used in the production of more durable concrete. Mineral Resource Technologies, Inc. is one of the six largest fly ash companies in the United States, providing fly ash to customers in 25 states. We also own regional pipe and precast businesses, along with concrete block and paver plants in the Carolinas and Florida.

*Industry*. Demand for cement is derived from the demand for ready-mix concrete and concrete products which, in turn, is dependent on the demand for construction. The construction industry is composed of three major sectors: the residential sector, the industrial and commercial sector, and the public sector. The public sector is the most cement intensive sector, particularly for infrastructure projects such as streets, highways and bridges. While overall cement demand is sensitive to the business cycle, demand from the public sector is more stable and has helped to soften the decline in demand during periodic economic recessions.

The construction industry is now recovering from the recession experienced during 2008 and 2009, which was the worst downturn in over 70 years. The construction industry was hit particularly hard during this recession due to the collapse of the housing sector. The massive job losses during the recession pushed home foreclosures to record levels, which resulted in excess inventories and a decline of over 30% in home prices. As a result, new construction plummeted, with housing starts declining 73% from a peak of 2.1 million units in 2005 to only 554,000 units in 2009. The decline in housing and other construction activity resulted in a 45% decline in cement demand from 2006 to 2010. In addition, the massive losses in the financial sector led to government bailouts and financial reforms, such as the Dodd-Frank Wall Street Reform and Consumer Protection Act. These actions, together with unprecedented fiscal stimulus and expansionary monetary policies, helped pull the economy out of the recession in the second half of 2009. The economic recovery has proceeded at a relatively moderate pace, with real GDP growth of 2.4% in 2010, 1.8% in 2011 and 2.2% in 2012. With the economy growing again, the construction sector stabilized in 2010 and 2011 and joined the economy-wide recovery in 2012 with increased spending. Total nominal construction spending increased by 9.2% in 2012, with the residential sector up 16.8%, the industrial and commercial sector up 13.9% and the public sector up 3.5%. The residential sector is gaining some momentum due to affordability being at a record high and substantial pent-up demand coming back to the market. Housing inventories have returned to near record lows and home prices are increasing again in most markets. Housing starts increased 28% in 2012, from 609,000 in 2011 to 780,000 units in 2012, and reached a seasonally adjusted annual pace of 898,000 units in the fourth quarter of 2012. Cement demand has increased for the second consecutive year with actual 2012 reported cement demand up 8.9% over 2011. This follows a 2.7% increase in cement demand in 2011.

*Competition*. The cement industry in the United States is highly competitive. We compete with national and regional cement producers in the United States. Our principal competitors in the United States are Holcim, Lafarge, Buzzi-Unicem, Heidelberg Cement and Ash Grove Cement.

The independent U.S. ready-mix concrete industry is highly fragmented. According to the National Ready Mixed Concrete Association ("NRMCA"), it is estimated that there are about 6,000 ready-mix concrete plants that produce ready-mix concrete in the United States and about 55,000 ready-mix concrete mixer trucks that deliver the concrete to the point of placement. The NRMCA estimates that the value of ready-mix concrete produced by the industry is approximately U.S.$26 billion per year. Given that the concrete industry has historically consumed approximately 75% of all cement produced annually in the United States, many cement companies choose to develop concrete plant capabilities.

Aggregates are widely used throughout the United States for all types of construction because they are the most basic materials for building activity. The U.S. Geological Survey (USGS) estimates over 2 billion metric tons of aggregates were produced in 2012, an increase of about 7% over 2011. The U.S. aggregates industry is highly fragmented and geographically dispersed. The top ten producing states represent approximately 50% of all production. According to the USGS, during 2012, an estimated 4,000 companies operated approximately 6,500 sand and gravel sites and 1,550 companies operated 4,000 crushed stone quarries and 91 underground mines in the 50 U.S. states.

***Our Operating Network in the United States***

The maps below reflect the location of our operating assets, including our cement plants and cement terminals in the United States as of December 31, 2012.


***Products and Distribution Channels***

*Cement*. Our cement operations represented approximately 28% of our operations in the United States' net sales before eliminations resulting from consolidation in 2012. We deliver a substantial portion of cement by rail. Occasionally, these rail shipments go directly to customers. Otherwise, shipments go to distribution terminals where customers pick up the product by truck or we deliver the product by truck. The majority of our cement sales are made directly to users of gray portland and masonry cements, generally within a radius of approximately 200 miles of each plant.

*Ready-Mix Concrete*. Our ready-mix concrete operations represented approximately 33% of our operations in the United States' net sales before eliminations resulting from consolidation in 2012. Our ready-mix concrete operations in the United States purchase most of their cement requirements from our cement operations in the United States and roughly two-thirds of their aggregates requirements from our aggregates operations in the United States. Our ready-mix concrete products are mainly sold to residential, commercial and public contractors and to building companies.

*Aggregates*. Our aggregates operations represented approximately 16% of net sales for our operations in the United States before eliminations resulting from consolidation in 2012. We estimate that, as of December 31, 2012, the hard rock and sand/gravel permitted proven and probable reserves of our operations in the United States had an average remaining life of approximately 34 and 36 years, respectively, assuming 2008-2012 average annual cement production levels. Our aggregates are consumed mainly by our internal operations and by our trade customers in the ready-mix, concrete products and asphalt industries.

*Production Costs*. The largest cost components of our plants are electricity and fuel, which accounted for approximately 32% of our total production costs of our cement operations in the United States in 2012. We are currently implementing a program to gradually replace coal with more economic fuels, such as petcoke, tires and other alternative fuels, which has resulted in reduced energy costs. By retrofitting our cement plants to handle alternative energy fuels, we have gained more flexibility in supplying our energy needs and have become less vulnerable to potential price spikes. In 2012, the increased use of alternative fuels helped to offset the effect on our fuel costs of increasing coal prices. Power costs in 2012 represented approximately 16% of our cash manufacturing cost of our cement operations in the United States, which represents production cost before depreciation. We have improved the efficiency of our electricity usage of our cement operations in the United States, concentrating our manufacturing activities in off-peak hours and negotiating lower rates with electricity suppliers.

*Description of Properties, Plants and Equipment*. As of December 31, 2012, we operated 13 cement manufacturing plants in the United States, and had a total installed capacity of 17.1 million tons per year, including 1.2 million tons representing our proportional interests through associates in five other cement plants. We estimate that, as of December 31, 2012, the limestone permitted proven and probable reserves of our operations in the United States had an average remaining life of approximately 85 years, assuming 2008-2012 average annual cement production levels. As of that date, we operated a distribution network of 47 cement terminals. All of our 13 cement production facilities in 2012 were wholly-owned except for the Louisville, Kentucky plant, which is owned by Kosmos Cement Company, a joint venture in which we own a 75% interest and a subsidiary of Dyckerhoff AG owns a 25% interest. As of December 31, 2012, we had 421 wholly-owned ready-mix concrete plants and operated 74 aggregates quarries. As of December 31, 2012, we distributed fly ash through 14 terminals and seven third-party-owned utility plants, which operate both as sources of fly ash and distribution terminals. As of that date, we also owned 134 concrete block, paver, pipe, precast, asphalt and gypsum products distribution facilities.

We have continued to take a number of actions to streamline our operations and improve productivity, including temporary capacity adjustments and rationalizations in some of our cement plants, and shutdowns of ready-mix and block plants and aggregates quarries. We are currently utilizing approximately 69% of our ready-mix plants, 58% of our block manufacturing plants and 76% of our aggregates quarries in the United States.

On January 22, 2010, we announced the permanent closure of our Davenport cement plant located in northern California. The plant had been closed on a temporary basis since March 2009 due to the economic conditions. We have been serving our customers in the region through our extensive network of terminals in northern California, which are located in Redwood City, Richmond, West Sacramento and Sacramento. Since March 2009, our state-of-the-art cement facility in Victorville, California has provided and will continue to provide cement to this market more efficiently than the Davenport plant. Opened in 1906, Davenport was the least efficient of our 14 plants in the United States to operate. We sold a portion of the Davenport facility in 2011 for U.S.$30 million and a portion in 2012 for U.S.4.2 million.

*Capital Expenditures*. We made capital expenditures of approximately U.S.$75 million in 2010, U.S.$66 million in 2011 and U.S.$149 million in 2012 in our operations in the United States. We currently expect to make capital expenditures of approximately U.S.$131 million in our operations in the United States during 2013.

## Northern Europe

For the year ended December 31, 2012, our business in Northern Europe, which includes our operations in the United Kingdom, Germany, France and our Rest of Northern Europe segment, as described below, represented approximately 26% of our net sales before eliminations resulting from consolidation. As of December 31, 2012, our business in Northern Europe represented approximately 13% of our total installed capacity and approximately 15% of our total assets.

### Our Operations in the United Kingdom

*Overview*. Our operations in the United Kingdom represented approximately 7% of our net sales in Peso terms, before eliminations resulting from consolidation, and approximately 6% of our total assets, for the year ended December 31, 2012.

As of December 31, 2012, we held 100% of CEMEX Investments Limited, the main holding company of our operating subsidiaries in the United Kingdom. We are a leading provider of building materials in the United Kingdom with vertically integrated cement, ready-mix concrete, aggregates and asphalt operations. We are also an important provider of concrete and precast materials solutions such as concrete blocks, concrete block paving, flooring systems and sleepers for rail infrastructure.

*Industry.* According to the United Kingdom's Office for National Statistics, in 2012, the GDP of the United Kingdom was estimated to have contracted by 0.1% compared to 0.8% growth in 2011. Total construction output is estimated to have fallen by 8.8% in 2012, as compared to a 2.5% increase in 2011 over the preceding year. Both private and public sector housing are estimated to have fallen, with the decline in private housing less steep than in public housing. Infrastructure and other public works showed the steepest decline across all sectors, with industrial and commercial sector also showing significant decline. According to the Mineral Products Association, domestic cement demand reduced by approximately 7% in 2012 compared to 2011.

*Competition*. Our primary competitors in the United Kingdom are Lafarge, Heidelberg, Tarmac, and Aggregate Industries (a subsidiary of Holcim), each with varying regional and product strengths. In 2011, Lafarge and Tarmac announced an agreement to combine their cement, ready-mix concrete, aggregates, asphalt and contracting businesses in the United Kingdom in a 50:50 joint venture, Lafarge Tarmac JV. The transaction was subject to regulatory approvals and led to the required divestiture of a number of significant assets held by the parties. At the end of 2012, Mittal Investments was announced as the successful bidder for the divested assets, which included a cement plant, a network of 172 ready-mix plants, five aggregates quarries and two asphalt plants. The Lafarge Tarmac JV was completed in January 2013. The creation of Hope Construction Materials, following the acquisition by Mittal Investments of the combined asset portfolio of divested sites by Tarmac and Lafarge, introduced a new integrated competitor in the UK market.

***Our Operating Network in the United Kingdom***


***Products and Distribution Channels***

*Cement*. Our cement operations represented approximately 16% of net sales for our operations in the United Kingdom before eliminations resulting from consolidation for the year ended December 31, 2012. About 82% of our United Kingdom cement sales were of bulk cement, with the remaining 18% in bags. Our bulk cement is mainly sold to ready-mix concrete, concrete block and pre-cast product customers and contractors. Our bagged cement is primarily sold to national builders' merchants. During 2012, our operations in the United Kingdom imported approximately 129,000 metric tons of clinker, of which 100,000 metric tons were from our cement operations in Spain and 29,000 metric tons were from CRH plc in Ireland.

*Ready-Mix Concrete*. Our ready-mix concrete operations represented approximately 26% of net sales for our operations in the United Kingdom before eliminations resulting from consolidation in 2012. Special products, including self-compacting concrete, fiber-reinforced concrete, high strength concrete, flooring concrete and filling concrete, represented 16% of our 2012 United Kingdom sales volume. Our ready-mix concrete operations in the United Kingdom in 2012 purchased approximately 72% of their cement requirements from our cement operations in the United Kingdom and approximately 77% of their aggregates requirements from our aggregates operations in the United Kingdom. Our ready-mix concrete products are mainly sold to public, commercial and residential contractors.

*Aggregates*. Our aggregates operations represented approximately 24% of net sales for our operations in the United Kingdom before eliminations resulting from consolidation in 2012. In 2012, our United Kingdom aggregates sales were divided as follows: 52% were sand and gravel, 39% limestone and 9% hard stone. In 2012, 15% of our aggregates volumes were obtained from marine sources along the United Kingdom coast. In 2012, approximately 45% of our United Kingdom aggregates production was consumed by our own ready-mix concrete operations as well as our asphalt, concrete block and precast operations. We also sell aggregates to major contractors to build roads and other infrastructure projects.

***Production Costs***

*Cement*. In 2012, fixed production costs were reduced by 1%. Variable costs increased by 7%, primarily as a result of imported clinker and rising electricity costs. We continued to implement our cost reduction programs and increased the use of alternative fuels by 4% in 2012.

*Ready-Mix Concrete*. In 2012, we reduced fixed production costs by 4%, as compared to fixed production costs in 2011. Seven ready-mix plants were closed as part of our capacity management measures.

*Aggregates*. In 2012, we reduced fixed production costs by 4%, as compared to fixed production costs 2011. Five aggregates sites were closed in 2012.

*Description of Properties, Plants and Equipment*. As of December 31, 2012, we operated two cement plants and one clinker grinding facility in the United Kingdom (excluding Barrington, which was idled in November 2008 and is now permanently closed and dismantled). Assets in operation at year-end 2012 represent an installed cement capacity of 2.4 million tons per year. We estimate that, as of December 31, 2012, the limestone and clay permitted proven and probable reserves of our operations in the United Kingdom had an average remaining life of approximately 82 and 61 years, respectively, assuming 2008-2012 average annual cement production levels. As of December 31, 2012, we also owned five cement import terminals and operated 219 ready-mix concrete plants and 59 aggregates quarries in the United Kingdom. In addition, we had operating units dedicated to the asphalt, concrete blocks, concrete block paving, sleepers and flooring businesses in the United Kingdom.

In order to ensure increased availability of blended cements, which are more sustainable based on their reduced clinker factor and use of by-products from other industries, we built a grinding and blending facility at the Port of Tilbury, located on the Thames River east of London, in 2009. The facility, which started operations during May 2009, has an annual grinding capacity of approximately 1.2 million tons. In total, we spent approximately U.S.$93 million in the construction of this grinding and blending facility.

*Capital Expenditures*. We made capital expenditures of approximately U.S.$53 million in 2010, U.S.$47 million in 2011 and U.S.$43 million in 2012 in our operations in the United Kingdom. We currently expect to make capital expenditures of approximately U.S.$32 million in our operations in the United Kingdom during 2013.

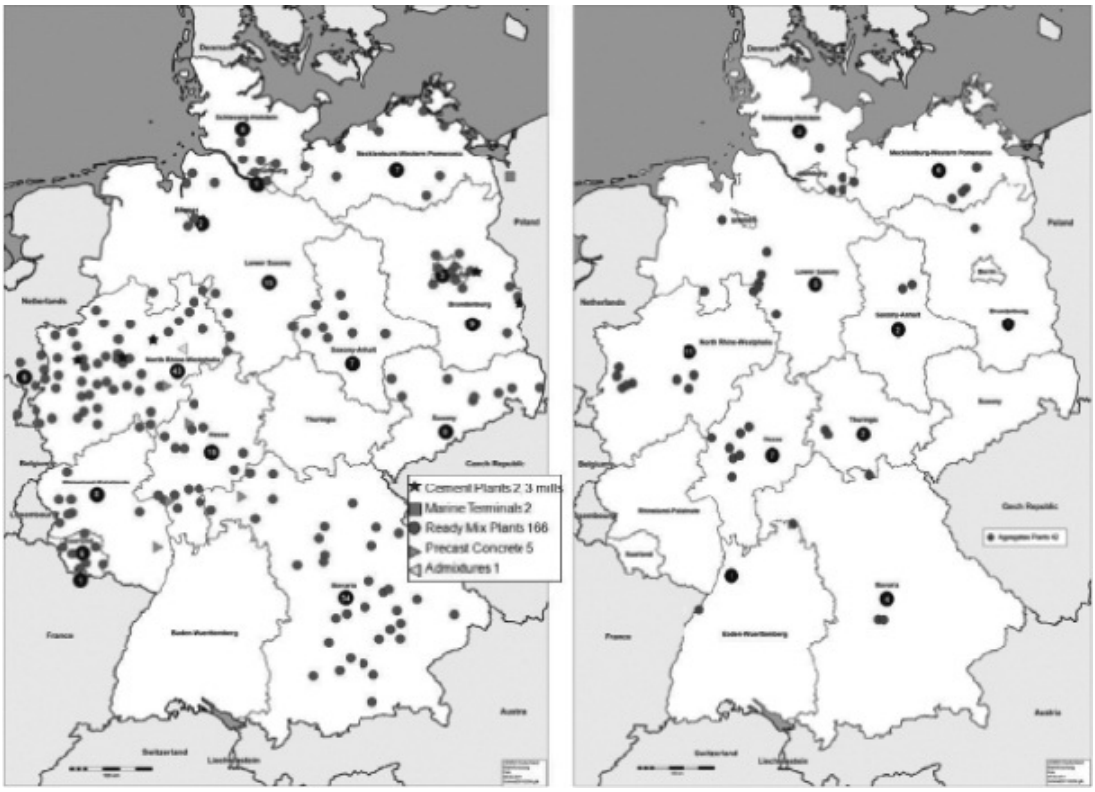
**Our Operations in Germany**

*Overview*. As of December 31, 2012, we held 100% of CEMEX Deutschland AG, our main subsidiary in Germany. We are a leading provider of building materials in Germany, with vertically integrated cement, ready-mix concrete, aggregates and concrete products operations (consisting mainly of prefabricated concrete ceilings and walls).

*Industry*. According to Euroconstruct, total construction output in Germany was stagnant in 2012, decreasing 0.2% compared to 2011. Construction in the residential sector increased by 3.0% during 2012. According to the German Cement Association, in 2012, the national cement consumption in Germany decreased by 5% to 26.6 million tons, while the ready-mix concrete market decreased by 5% and the aggregates market decreased by 6%.

*Competition*. Our primary competitors in the cement market in Germany are Heidelberg, Dyckerhoff (a subsidiary of Buzzi-Unicem), Lafarge, Holcim and Schwenk, a local German competitor. These competitors, along with CEMEX, represent a market share of about 82%, as estimated by us for 2012. The ready-mix concrete and aggregates markets in Germany are fragmented and regionally heterogeneous, with many local competitors. The consolidation process in the ready-mix concrete markets and aggregates market is moderate.

***Our Operating Network in Germany***




*Description of Properties, Plants and Equipment*. As of December 31, 2012, we operated two cement plants in Germany. As of December 31, 2012, our installed cement capacity in Germany was 4.9 million tons per year. We estimate that, as of December 31, 2012, the limestone permitted proven and probable reserves of our

operations in Germany had an average remaining life of approximately 40 years, assuming 2008-2012 average annual cement production levels. As of that date, our operations in Germany included three cement grinding mills, 172 ready-mix concrete plants, 42 aggregates quarries, two land distribution centers for cement, five land distribution centers for aggregates and two maritime terminals.

*Capital Expenditures*. We made capital expenditures of approximately U.S.$47 million in 2010, U.S.$26 million in 2011 and U.S.$35 million in 2012 in our operations in Germany. We currently expect to make capital expenditures of approximately U.S.$31 million in our operations in Germany during 2013.

***Our Operations in France***

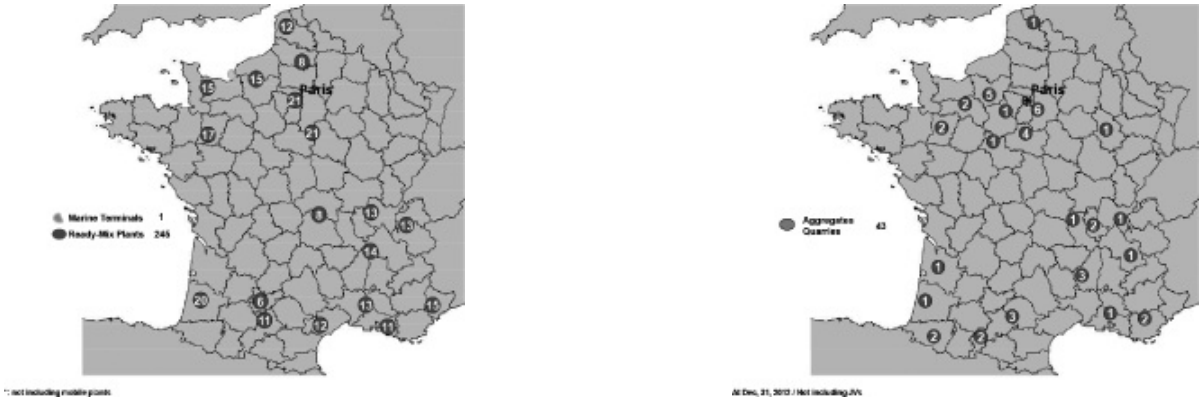
*Overview*. As of December 31, 2012, we held 100% of CEMEX France Gestion (S.A.S.), our main subsidiary in France. We are a leading ready-mix concrete producer and a leading aggregates producer in France. We distribute the majority of our materials by road and a significant quantity by waterways, seeking to maximize the use of this efficient and sustainable alternative.

*Industry*. According to the Ministry of Ecology, Sustainable Development and Energy, housing starts in the residential sector decreased by 19.6% in 2012 compared to 2011. According to market consensus data, buildings starts in 2012 compared to 2011 decreased by approximately 10% and demand from the public works sector decreased by approximately 2.1% over the same period.

According to the French cement producers association, total cement consumption in France in 2012 reached approximately 20 million tons, a 6.7% decrease compared to 2011. The decrease was primarily driven by a decrease in demand in the construction, residential and non-residential sectors, and a lower proportion from the public works sector.

*Competition*. Our main competitors in the ready-mix concrete market in France include Lafarge, Holcim, Italcementi and Vicat. Our main competitors in the aggregates market in France include Lafarge, Italcementi, Colas (Bouygues) and Eurovia (Vinci). Many of our major competitors in ready-mix concrete are subsidiaries of French cement producers, whereas we rely on sourcing cement from third parties.

***Our Operating Network in France***




*Description of Properties, Plants and Equipment*. As of December 31, 2012, we operated 245 ready-mix concrete plants in France, one maritime cement terminal located in LeHavre, on the northern coast of France, 15 land distribution centers, 43 aggregates quarries and 11 river ports.

*Capital Expenditures*. We made capital expenditures of approximately U.S.$23 million in 2010, U.S.$22 million in 2011 and U.S.$21 million in 2012 in our operations in France. We currently expect to make capital expenditures of approximately U.S.$19 million in our operations in France during 2013.

**Rest of Northern Europe**

Our operations in the Rest of Northern Europe, which as of December 31, 2012 consisted primarily of our operations in Ireland, the Czech Republic, Austria, Poland, Hungary and Latvia, as well as trading activities in Scandinavia and Finland, our other Northern European assets and our approximately 33% non-controlling interest in a Lithuanian company. These operations represented approximately 6% of our 2012 net sales in Peso terms, before eliminations resulting from consolidation, and approximately 3% of our total assets in 2012.

***Our Operations in the Republic of Ireland***

*Overview.* As of December 31, 2012, we held 100% of Readymix plc, our main subsidiary in the Republic of Ireland. On May 17, 2012, we acquired the 38.8% interest in Readymix plc that had not been owned by us for approximately €11 million. Our operations in the Republic of Ireland produce and supply sand, stone and gravel as well as ready-mix concrete, mortar and concrete blocks. As of December 31, 2012, we operated 21 ready-mix concrete plants, 17 aggregates quarries and 14 block plants located in the Republic of Ireland and Northern Ireland. During December 2012, the company sold its operations on the Isle of Man and signed an agreement to sell its operations in Northern Ireland. We expect that the sale of the business unit in Northern Ireland will be concluded during 2013, subject to approval of the relevant authorities.

*Industry.* According to Euroconstruct, total construction output in the Republic of Ireland is estimated to have decreased by 15% in 2012, reflecting the continued contraction in the housing sector. We estimate that total cement consumption in the Republic of Ireland and Northern Ireland reached 1.6 million tons in 2012, a decrease of 15% compared to total cement consumption in 2011.

*Competition.* Our main competitors in the ready-mix concrete and aggregates markets in the Republic of Ireland are CRH plc and the Kilsaran Group.

*Capital Expenditures.* We made capital expenditures of approximately U.S.$1 million in 2010, U.S.$1 million in 2011 and U.S.$1 million in 2012 in our operations in the Republic of Ireland. We currently expect to make capital expenditures of approximately U.S.$0.5 million in our operations in the Republic of Ireland during 2013.

***Our Operations in Poland***

*Overview.* As of December 31, 2012, we held 100% of CEMEX Polska Sp. ZO.O, or CEMEX Polska, our main subsidiary in Poland. We are a leading provider of building materials in Poland, serving the cement, ready-mix concrete and aggregates markets. As of December 31, 2012, we operated two cement plants and one grinding mill in Poland, with a total installed cement capacity of three million tons per year. As of December 31, 2012, we also operated 40 ready-mix concrete plants, seven aggregates quarries, six land distribution centers and two maritime terminals in Poland.

*Industry.* In addition, according to our estimates, total cement consumption in Poland reached approximately 16.1 million tons in 2012, a decrease of 17.5% compared to 2011.

*Competition.* Our primary competitors in the cement, ready-mix concrete and aggregates markets in Poland are Heidelberg, Lafarge, CRH and Dyckerhoff, Miebach.

*Capital Expenditures.* We made capital expenditures of approximately U.S.$10 million in 2010, U.S.$21 million in 2011 and U.S.$31 million in 2012 in our operations in Poland. We currently expect to make capital expenditures of approximately U.S.$24 million in our operations in Poland during 2013.

***Our Operations in the Czech Republic***

*Overview.* As of December 31, 2012, we held 100% of CEMEX Czech Republic, s.r.o., our main subsidiary in the Czech Republic. We are a leading producer of ready-mix concrete and aggregates in the Czech Republic. We also distribute cement in the Czech Republic. As of December 31, 2012, we operated 56 ready-mix concrete plants, seven gravel pits and six aggregates quarries in the Czech Republic. As of that date, we also operated one cement grinding mill and one cement terminal in the Czech Republic.

*Industry.* According to the Czech Statistical Office, total construction output in the Czech Republic decreased by 2.7% in 2012. The decrease was primarily driven by a continued slowdown in civil engineering works, low demand for housing and the negative impact of government saving measures on non-residential buildings. According to the Czech Cement Association, total cement consumption in the Czech Republic reached 3.7 million tons in 2012, a decrease of 0.2% compared to 2011.

*Competition.* Our main competitors in the cement, ready-mix concrete and aggregates markets in the Czech Republic are Heidelberg, Dyckerhoff, Holcim, Skanska and Lafarge.

*Capital Expenditures.* We made capital expenditures of approximately U.S.$5 million in 2010, U.S.$4 million in 2011 and U.S.$3 million in 2012 in our operations in the Czech Republic. We currently expect to make capital expenditures of approximately U.S.$5 million in our operations in the Czech Republic during 2013.

***Our Operations in Latvia***

*Overview.* As of December 31, 2012, we held 100% of CEMEX SIA, our operating subsidiary in Latvia. We are the only cement producer and a leading ready-mix concrete producer and supplier in Latvia. From our cement plant in Latvia we also supply markets in Estonia, Lithuania, Finland, northwest Russia and Belarus. As of December 31, 2012, we operated one cement plant in Latvia with an installed cement capacity of 1.2 million tons per year. As of that date, we also operated six ready-mix concrete plants in Latvia and one aggregates quarry.

In April 2006, we initiated an expansion project for our cement plant in Latvia in order to increase our cement production capacity by approximately 0.8 million tons per year to support strong demand in the region. The plant was fully commissioned during July 2010. Our total capital expenditure in the capacity expansion of this plant was approximately U.S.$411 million through 2012.

*Capital Expenditures.* In total, we made capital expenditures of approximately U.S.$24 million in 2010, U.S.$8 million in 2011 and U.S.$9 million in 2012 in our operations in Latvia. We currently expect to make capital expenditures of approximately U.S.$4 million in our operations in Latvia during 2013.

***Our Equity Investment in Lithuania***

*Overview.* As of December 31, 2012, we owned an approximate 33% interest in Akmenes Cementas AB, a cement producer in Lithuania, which operates one cement plant in Lithuania with an annual installed cement capacity of 1.3 million tons.

***Our Operations in Austria***

*Overview.* As of December 31, 2012, we held 100% of CEMEX Austria AG, our main subsidiary in Austria. We are a leading participant in the ready-mix concrete and aggregates markets in Austria and also produce admixtures. As of December 31, 2012, we owned 31 operating ready-mix concrete plants and operated eight additional plants through joint ventures and special purpose entities. We also owned 23 aggregates quarries, including four quarries which are currently operated by third parties, and had non-controlling interests in four quarries.

*Industry.* According to Euroconstruct, total construction output in Austria increased by 1.1% in 2012. This increase was primarily driven by higher spending on residential construction projects. Total cement consumption in Austria decreased by 4.4% in 2012 compared to 2011. The decrease was primarily driven by lower investments in infrastructure and office buildings.

*Competition.* Our main competitors in the ready-mix concrete and aggregates markets in Austria are Asamer, Lafarge, Lasselsberger, Strabag and Wopfinger.

*Capital Expenditures.* We made capital expenditures of approximately U.S.$3 million in 2010, U.S.$3 million in 2011 and U.S.$4 million in 2012 in our operations in Austria. We currently expect to make capital expenditures of approximately U.S.$4 million in our operations in Austria during 2013.

***Our Operations in Hungary***

*Overview.* As of December 31, 2012, we held 100% of CEMEX Hungária Kft., our main operating subsidiary in Hungary. As of December 31, 2012, we owned 32 ready-mix concrete plants and four aggregates quarries, and we had non-controlling interests in six other ready-mix concrete plants and one other aggregates quarry.

*Industry.* According to the Hungarian Central Statistical Office, total construction output in Hungary decreased by 8% in 2012 compared to 2011. The decrease was primarily driven by a lack of infrastructure projects in the country due to the slowdown of the economy.

*Competition.* Our main competitors in the ready-mix concrete and aggregates markets in Hungary are Heidelberg, Holcim, Frissbeton (Strabag) and Lasselsberger.

*Capital Expenditures.* We made capital expenditures of approximately U.S.$2 million in 2010, U.S.$1 million in 2011 and U.S.$1 million in 2012 in our operations in Hungary. We currently expect to make capital expenditures of approximately U.S.$2 million in our operations in Hungary during 2013.

***Our Operations in Other Northern European Countries***

*Overview.* As of December 31, 2012, we operated ten marine cement terminals in Finland, Norway and Sweden through CEMEX AS, a leading bulk-cement importer in the Nordic region.

*Capital Expenditures.* We made capital expenditures of approximately U.S.$0.5 million in 2010, U.S.$0.2 million in 2011 and U.S.$0.2 million in 2012 in our operations in Other Northern European countries. We currently do not expect to make any significant capital expenditures in our operations in Other Northern European countries during 2013.

**The Mediterranean**

For the year ended December 31, 2012, our business in the Mediterranean, which includes our operations in the Spain, Egypt and our Rest of the Mediterranean segment, as described below, represented approximately 9% of our net sales before eliminations resulting from consolidation. As of December 31, 2012, our business in the Mediterranean represented approximately 20% of our total installed capacity and approximately 8% of our total assets.

***Our Operations in Spain***

*Overview*. Our operations in Spain represented approximately 2% of our net sales in Peso terms, before eliminations resulting from consolidation, and approximately 5% of our total assets, for the year ended December 31, 2012.

As of December 31, 2012, we held 99.88% of CEMEX España, our main subsidiary in Spain. CEMEX España is also a holding company for most of our international operations.

Prior to October 1, 2012, our cement activities in Spain were conducted by CEMEX España, our ready-mix concrete activities in Spain were conducted by Hormicemex, S.A., a subsidiary of CEMEX España, and our aggregates activities in Spain were conducted by Aricemex, S.A., also a subsidiary of CEMEX España. Starting October 1, 2012, our cement operations in Spain were conducted by a new subsidiary, CEMEX España Operaciones, S.L.U. As of December 31, 2012, Aricemex, S.A and Hormicemex, S.A. were merged with CEMEX España Operaciones, S.L.U. As a result, all our cement, ready-mix concrete and aggregates activities are conducted by CEMEX España Operaciones, S.L.U. Most of our international operations and corporate services in Spain are still held by CEMEX España.

In March 2006, we announced a plan to invest approximately €47 million in the construction of a new cement mill and dry mortar production plant in the Port of Cartagena in Murcia, Spain, approximately €33 million of which had been spent through the end of 2012. The first phase, which includes the cement mill with production capacity of nearly one million tons of cement per year, was completed in the fourth quarter of 2007. Execution of the second phase, which includes the new dry mortar plant with a production capacity of 200,000 tons of dry mortar per year, has been delayed due to market conditions.

In February 2007, we announced that Cementos Andorra, a joint venture between us and Spanish investors (the Burgos family), intends to build a new cement production facility in Teruel, Spain. We hold a 99.99% interest in Cementos Andorra, and the Burgos family holds a 0.01% interest. The new cement plant was expected to have an annual capacity in excess of 650,000 tons. Our investment in the construction of the plant was expected to be approximately €138 million, including approximately €121 million through December 31, 2012. Due to the current market conditions in Spain, we are in the process of analyzing whether to relocate the installation to other markets where we have operations.

*Industry*. According to our latest estimates, in 2012, investment in the construction sector in Spain fell by approximately 12% compared to 2011, primarily as a result of the drop in investment in the non-residential construction sector (both public and private), which decreased approximately 15% during this period. Investment in the residential construction sector fell approximately 7% in 2012. According to the latest estimates from the Asociación de Fabricantes de Cemento de España (OFICEMEN), the Spanish cement trade organization, cement consumption in Spain decreased 34.0% in 2012 compared to 2011.

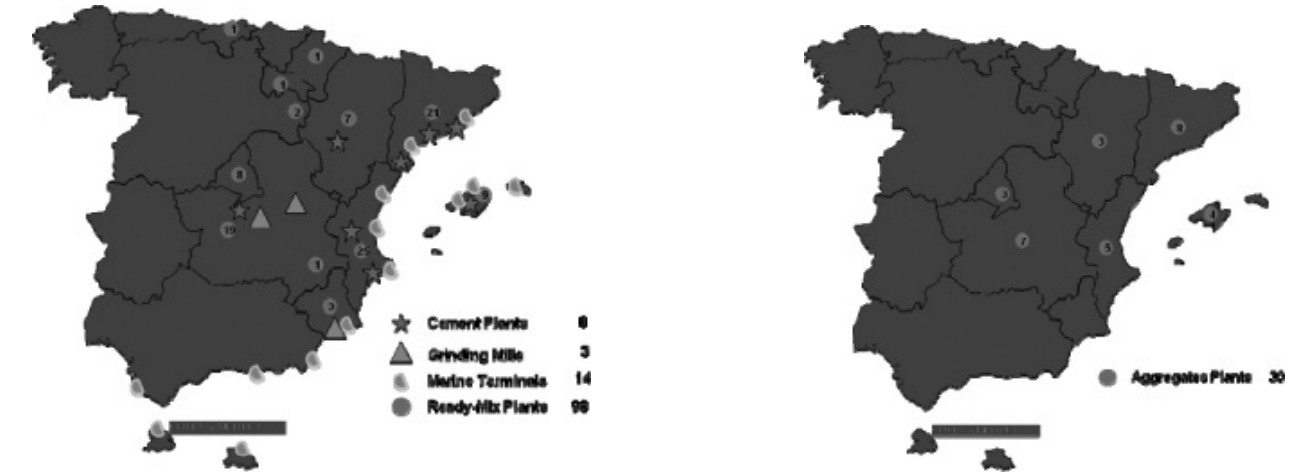
During the past several years, the level of cement imports into Spain has been influenced by the strength of domestic demand and fluctuations in the value of the Euro against other currencies. According to OFICEMEN, cement imports decreased 10.5% in 2007, 40% in 2008, 62% in 2009, 17% in 2010, 30% in 2011 and 15% in 2012. Clinker imports have been significant, with an increase of 26.8% in 2007, but experienced a sharp decline of 46% in 2008, 60% in 2009, 36% in 2010, 45% in 2011 and 78% in 2012. Imports primarily have had an impact on coastal zones, since transportation costs make it less profitable to sell imported cement in inland markets.

In past years, Spain has traditionally been one of the leading exporters of cement in the world, exporting up to 13 million tons per year. However, as of December 31, 2012, cement exports decreased to approximately 5.9 million tons per year. In recent years, Spanish cement and clinker export volumes have fluctuated, reflecting the rapid changes in demand in the Mediterranean basin as well as the strength of the Euro and changes in the domestic market. According to OFICEMEN, these export volumes decreased 22% in 2006 and 3% in 2007, increased 102% in 2008, 22% in 2009 and 33% in 2010, and decreased 1% in 2011 and 50% in 2012.

*Competition*. According to our estimates, as of December 31, 2012, we were one of the five largest multinational producers of clinker and cement in Spain. Competition in the ready-mix concrete industry is intense in large urban areas. The overall high degree of competition in the Spanish ready-mix concrete industry is

reflected in the multitude of offerings from a large number of concrete suppliers. We have focused on developing value added products and attempting to differentiate ourselves in the marketplace. The distribution of ready-mix concrete remains a key component of our business strategy in Spain.

***Our Operating Network in Spain***




***Products and Distribution Channels***

*Cement*. Our cement operations represented approximately 70% of net sales for our operations in Spain before eliminations resulting from consolidation in 2012. We offer various types of cement in Spain, targeting specific products to specific markets and users. In 2012, approximately 18% of CEMEX España's domestic sales volume consisted of bagged cement, and the remainder of CEMEX España's domestic sales volume consisted of bulk cement, primarily to ready-mix concrete operators, which include CEMEX España's own subsidiaries, as well as industrial customers that use cement in their production processes and construction companies.

*Ready-Mix Concrete*. Our ready-mix concrete operations represented approximately 18% of net sales for our operations in Spain before eliminations resulting from consolidation in 2012. Our ready-mix concrete operations in Spain in 2012 purchased almost 95% of their cement requirements from our cement operations in Spain, and approximately 58% of their aggregates requirements from our aggregates operations in Spain.

*Aggregates*. Our aggregates operations represented approximately 6% of net sales for our operations in Spain before eliminations resulting from consolidation in 2012.

*Exports*. Exports of cement and clinker by our operations in Spain, which represented approximately 43% of net sales for our operations in Spain before eliminations resulting from consolidation, decreased approximately 21% in 2012 compared to 2011, primarily as a result of a decrease in export volumes to other countries, in particular, those located in Africa and Europe. Export prices are generally lower than domestic market prices, and costs are usually higher for export sales. Of our total exports from Spain in 2012, 6% consisted of white cement, 32% of gray cement and 62% of clinker. In 2012, 3% of our exports from Spain were to Central America, 26% to Europe and the Middle East and 71% to Africa.

*Production Costs*. We have improved the efficiency of our operations in Spain by introducing technological improvements that have significantly reduced our energy costs, including the use of alternative fuels, in accordance with our cost reduction efforts. In 2012, we burned organic waste, tires and plastics as fuel, achieving

a 45% substitution rate for petcoke in our gray and white clinker kilns for the year. During 2013, we expect to increase the quantity of these alternative fuels and to reach a substitution level of around 60%.

*Description of Properties, Plants and Equipment*. As of December 31, 2012, our operations in Spain included eight cement plants located in Spain, with an annual installed cement capacity of 11 million tons, including 1 million tons of white cement. As of that date, we also owned two cement mills and operated one mill under a lease contract, 21 distribution centers, including seven land and 14 marine terminals, 98 ready-mix concrete plants, 30 aggregates quarries and 12 mortar plants. As of December 31, 2012, we owned eight limestone quarries located in close proximity to our cement plants and five clay quarries in our cement operations in Spain. We estimate that, as of December 31, 2012, the limestone and clay permitted proven and probable reserves of our operations in Spain had an average remaining life of approximately 42 and 22 years, respectively, assuming 2008-2012 average annual cement production levels.

As part of our global cost-reduction initiatives we have made temporary capacity adjustments and rationalizations in several cement plants in Spain. During 2012, three out of our eight cement plants have shut down their kilns (Castillejo, Alcanar and San Feliu), operating only as grinding mills. Additionally, approximately 58% of our ready-mix concrete plants in Spain also have been temporarily closed.

*Capital Expenditures*. We made capital expenditures of approximately U.S.$46 million in 2010, U.S.$39 million in 2011 and U.S.$26 million in 2012 in our operations in Spain. We currently expect to make capital expenditures of approximately U.S.$12 million in our operations in Spain during 2013.

***Our Operations in Egypt***

*Overview.* As of December 31, 2012, we had a 95.8% interest in Assiut Cement Company, or ACC, our main subsidiary in Egypt. As of December 31, 2012, we operated one cement plant in Egypt, with an annual installed capacity of approximately 5.4 million tons. This plant is located approximately 280 miles south of Cairo and serves the upper Nile region of Egypt, as well as Cairo and the delta region, Egypt's main cement market. We estimate that, as of December 31, 2012, the limestone and clay permitted proven and probable reserves of our operations in Egypt had an average remaining life of approximately 51 and 74 years, respectively, assuming 2008-2012 average annual cement production levels. In addition, as of December 31, 2012, we operated nine ready-mix concrete plants, of which three are owned and six are under management contracts, eight land distribution centers and one maritime terminal in Egypt. For the year ended December 31, 2012, our operations in Egypt represented approximately 3% of our net sales before eliminations resulting from consolidation and approximately 2% of our total assets.

See "—Regulatory Matters and Legal Proceedings—Other Legal Proceedings—Egypt Share Purchase Agreement" for a description of the legal proceeding relating to the share purchase agreement, signed in November 1999 between CEMEX, S.A.B. de C.V. and state-owned Metallurgical Industries Holding Company, pursuant to which CEMEX, S.A.B. de C.V. acquired a controlling interest in ACC.

*Industry.* According to our estimates, the Egyptian market consumed approximately 51.3 million tons of cement during 2012, based on government data (local and imported cement). Cement consumption increased by approximately 5.0% in 2012 compared to 2011, which was mainly attributed to political events taking place in 2011 that slowed cement consumption. As of December 31, 2012, the cement industry in Egypt had a total of 21 cement producers, with an aggregate annual installed cement capacity of approximately 68.7 million tons.

*Competition.* According to the ministry of Investment official figures, during 2012, Holcim and Lafarge (Cement Company of Egypt), CEMEX (Assiut) and Italcementi (Suez Cement, Torah Cement and Helwan Portland Cement), four of the largest cement producers in the world, represented approximately 39% of the total installed capacity in Egypt. Other significant competitors in Egypt are Arabian Cement, Titan (Alexandria Portland Cement and Beni Suef Cement), Ameriyah (Cimpor), National, Sinai (Vicat), Sinai White cement

(Cementir), South Valley, Nile Valley, El Sewedy, Army Cement, Aswan Medcom, Misr Beni Suef and Misr Quena Cement Companies, in addition to two new cement producers that entered the market in 2012, Al Nahda Cement and Egyptian Kuwait Holding Co.

*Cement and Ready-Mix Concrete.* For the year ended December 31, 2012, cement represented approximately 84% and ready-mix concrete represented approximately 7% of net sales for our operations in Egypt before eliminations resulting from consolidation.

*Capital Expenditures.* We made capital expenditures of approximately U.S.$25 million in 2010, U.S.$13 million in 2011 and U.S.$21 million in 2012 in our operations in Egypt. We currently expect to make capital expenditures of approximately U.S.$21 million in our operations in Egypt during 2013.

**Rest of the Mediterranean**

Our operations in the Rest of the Mediterranean, which as of December 31, 2012, consisted primarily of our operations in Croatia, the UAE and Israel. These operations represented approximately 4% of our 2012 net sales in Peso terms, before eliminations resulting from consolidation, and approximately 1% of our total assets in 2012.

***Our Operations in South-East Europe***

*Overview.* As of December 31, 2012 , we held 100% of CEMEX Hrvatska d.d., our operating subsidiary in Croatia. We are the largest cement producer in Croatia based on installed capacity as of December 31, 2012, according to our estimates. We have three cement plants in Croatia with an annual installed capacity of 2.4 million tons. As of December 31, 2012, our cement plants in Croatia were not in operation due to inventory control, with the largest plant having operated until mid-December 2012. As of December 31, 2012, we operated 10 land distribution centers, four maritime cement terminals in Croatia, Bosnia & Herzegovina and Montenegro, seven ready-mix concrete facilities and one aggregates quarry in Croatia.

*Industry.* According to our estimates, total cement consumption in Croatia, Bosnia & Herzegovina and Montenegro reached almost 3.0 million tons in 2012, a decrease of 13% compared to 2011.

*Competition.* Our primary competitors in the cement market in Croatia are Nexe and Holcim.

*Capital Expenditures.* We made capital expenditures of approximately U.S.$10 million in 2010, U.S.$10 million in 2011 and U.S.$6 million in 2012 in our operations in South-East Europe. We currently expect to make capital expenditures of approximately U.S.$4 million in our operations in South-East Europe during 2013.

***Our Operations in the United Arab Emirates (UAE)***

*Overview.* As of December 31, 2012, we held a 49% equity interest (and 100% economic benefit) in three UAE companies: CEMEX Topmix LLC and CEMEX Supermix LLC, two ready-mix holding companies, and CEMEX Falcon LLC, which specializes in the trading and production of cement and slag. We are not allowed to have a controlling interest in these companies (UAE law requires 51% ownership by UAE nationals). However, through agreements with other shareholders in these companies, we have control over the remaining 51% of the economic benefits in each of the companies. As a result, we own a 100% economic interest in all three companies. As of December 31, 2012, we owned nine ready-mix concrete plants and a cement and slag grinding facility in the UAE, serving the markets of Dubai and Abu Dhabi.

*Capital Expenditures.* We made capital expenditures of approximately U.S.$2 million in 2010, U.S.$1 million in 2011 and U.S.$0.5 million in 2012 in our operations in the UAE. We currently expect to make capital expenditures of approximately U.S.$0.2 million in our operations in the UAE during 2013.

### *Our Operations in Israel*

*Overview.* As of December 31, 2012, we held 100% of CEMEX Holdings (Israel) Ltd., our main subsidiary in Israel. We are a leading producer and supplier of raw materials for the construction industry in Israel. In addition to ready-mix concrete and aggregates, we produce a diverse range of building materials and infrastructure products in Israel. As of December 31, 2012, we operated 55 ready-mix concrete plants, six aggregates quarries, one concrete products plant, one admixtures plant, one lime factory and one blocks factory in Israel.

*Capital Expenditures.* We made capital expenditures of approximately U.S.$6 million in 2010, U.S.$10 million in 2011 and U.S.$17 million in 2012 in our operations in Israel. We currently expect to make capital expenditures of approximately U.S.$19 million in our operations in Israel during 2013.

## South America and the Caribbean

For the year ended December 31, 2012, our business in South America and the Caribbean, which includes our operations in the Colombia and our Rest of South America and the Caribbean segment, as described below, represented approximately 14% of our net sales before eliminations resulting from consolidation. As of December 31, 2012, our business in South America and the Caribbean represented approximately 13% of our total installed capacity and approximately 7% of our total assets.

In November 2012, CEMEX Latam, a then wholly-owned subsidiary of CEMEX España, completed the sale of newly issued common shares in the CEMEX Latam Offering, representing approximately 26.65% of CEMEX Latam's outstanding common shares. CEMEX Latam is the holding company for CEMEX's operations in Brazil, Colombia, Costa Rica, Guatemala, Nicaragua, Panama and El Salvador. See "Item 5—Operating and Financial Review and Prospects—Results of Operations—Investments, Acquisitions and Divestitures—Divestitures" for additional information regarding the CEMEX Latam Offering.

### *Our Operations in Colombia*

*Overview*. As of December 31, 2012, CEMEX Latam owned approximately 99.7% of CEMEX Colombia, S.A., or CEMEX Colombia, our main subsidiary in Colombia. As of December 31, 2012, CEMEX Colombia was the second-largest cement producer in Colombia, based on installed capacity (4.0 million metric tons per year) as of December 31, 2012, according to the National Administrative Statistics Department, or DANE, in Colombia. For the year ended December 31, 2012, our operations in Colombia represented approximately 6% of our net sales before eliminations resulting from consolidation and approximately 3% of our total assets.

CEMEX Colombia has a significant market share in the cement and ready-mix concrete market in the "Urban Triangle" of Colombia comprising the cities of Bogotá, Medellín and Cali. During 2012, these three metropolitan areas accounted for approximately 37% of Colombia's cement consumption. CEMEX Colombia's Ibague plant, which uses the dry process and is strategically located in the Urban Triangle, is CEMEX Colombia's largest plant and had an annual installed capacity of 2.8 million tons as of December 31, 2012. CEMEX Colombia, through its Bucaramanga and Cúcuta plants, is also an active participant in Colombia's northeastern market. CEMEX Colombia's strong position in the Bogotá ready-mix concrete market is largely due to its access to a ready supply of aggregates deposits in the Bogotá area.

*Industry*. According our estimates, the installed capacity for cement in Colombia was 17.3 million tons in 2012. According to DANE, total cement consumption in Colombia reached 10.5 million tons during 2012, an increase of 3.4% from 2011, while cement exports from Colombia reached 0.4 million tons. We estimate that close to 40% of cement in Colombia is consumed by the self-construction sector, while the housing sector accounts for approximately 31% of total cement consumption and has been growing in recent years. The other construction segments in Colombia, including the public works and commercial sectors, account for the balance of cement consumption in Colombia.

*Competition*. "Grupo Empresarial Antioqueño," or Argos, has established a leading position in the Colombian coastal markets through Cementos Caribe in Barranquilla, Compañía Colclinker in Cartagena and Tolcemento in Tolú. The other principal cement producer is Holcim Colombia.

The ready-mix concrete industry in Colombia is fairly consolidated with the top three producers accounting for approximately 85% of the market as of December 31, 2012. CEMEX Colombia was the second-largest ready-mix concrete producer as of December 31, 2012. The largest and third-largest producers were Argos and Holcim, respectively.

The aggregates market in Colombia is characterized as very fragmented and is dominated by the informal market. CEMEX Colombia was the largest aggregates producer as of December 31, 2012. Approximately 88% of the aggregates market in Colombia is comprised of small independent producers as of December 31, 2012.

***Our Operating Network in Colombia***


***Products and Distribution Channels***

*Cement*. Our cement operations represented approximately 58% of net sales for our operations in Colombia before eliminations resulting from consolidation in 2012.

*Ready-Mix Concrete*. Our ready-mix concrete operations represented approximately 27% of net sales for our operations in Colombia before eliminations resulting from consolidation in 2012.

*Aggregates*. Our aggregates operations represented approximately 9% of net sales for our operations in Colombia before eliminations resulting from consolidation in 2012.

*Description of Properties, Plants and Equipment*. As of December 31, 2012, CEMEX Colombia owned two operating cement plants, having a total annual installed capacity of 4.0 million tons. Both plants utilize the dry process. In 2012, we replaced 36% of our total fuel consumed in CEMEX Colombia with alternative fuels, and we have an internal electricity generating capacity of 24.7 megawatts. We estimate that, as of December 31, 2012, the limestone and clay permitted proven and probable reserves of our operations in Colombia had an average remaining life of approximately 94 and 9 years, respectively, assuming 2008-2012 average annual cement production levels. The operating licenses for quarries in Colombia is renewed every 30 years; assuming

renewal of such licenses, we estimate having sufficient limestone reserves for our operations in Colombia for over 100 years assuming 2008-2012 average annual cement production levels. As of December 31, 2012, CEMEX Colombia owned nine land distribution centers, one mortar plant, 38 ready-mix concrete plants and six aggregates operations. As of that date, CEMEX Colombia also owned seven limestone quarries.

*Capital Expenditures*. We made capital expenditures of approximately U.S.$19 million in 2010, U.S.$20 million in 2011 and U.S.$81 million in 2012 in our operations in Colombia. We currently expect to make capital expenditures of approximately U.S.$75 million in our operations in Colombia during 2013.

## Rest of South America and the Caribbean

Our operations in the Rest of South America and the Caribbean, which as of December 31, 2012, consisted primarily of our operations in Costa Rica, Panama, Puerto Rico, the Dominican Republic, Nicaragua, Peru, Jamaica and other countries in the Caribbean, Guatemala and small ready-mix concrete operations in Argentina. These operations represented approximately 8% of our 2012 net sales in Peso terms, before eliminations resulting from consolidation, and approximately 4% of our total assets in 2012.

### *Our Operations in Costa Rica*

*Overview.* As of December 31, 2012, CEMEX Latam owned a 99.1% interest in CEMEX (Costa Rica), S.A., or CEMEX Costa Rica, our main operating subsidiary in Costa Rica and a leading cement producer in the country.

*Industry.* Approximately 1.3 million tons of cement were sold in Costa Rica during 2012, according to the *Cámara de la Construcción de Costa Rica*, the construction industry association in Costa Rica. The cement market in Costa Rica is a predominantly retail market, and we estimate that 54% of cement sold is bagged cement.

*Competition.* The Costa Rican cement industry currently includes two producers, CEMEX Costa Rica and Holcim Costa Rica. A third producer, Cementos David, closed its operations in May 2012.

*Description of Properties, Plants and Equipment.* As of December 31, 2012, CEMEX Costa Rica operated one cement plant in Costa Rica, with an annual installed capacity of 0.9 million tons, and operated a grinding mill in the capital city of San José. As of December 31, 2012, CEMEX Costa Rica had eight operational ready-mix concrete plants (one is dismantled), one aggregates quarry and one land distribution center.

*Exports*. During 2012, cement exports by our operations in Costa Rica represented approximately 18% of our total production in Costa Rica. In 2012, 60% of our cement exports from Costa Rica were to El Salvador, and the remaining exports were to Nicaragua.

*Capital Expenditures.* We made capital expenditures of approximately U.S.$10 million in 2010, U.S.$7 million in 2011 and U.S.$6 million in 2012 in our operations in Costa Rica. We currently expect to make capital expenditures of approximately U.S.$5 million in our operations in Costa Rica during 2013.

### *Our Operations in the Dominican Republic*

*Overview.* As of December 31, 2012, we held 100% of CEMEX Dominicana, S.A., or CEMEX Dominicana, our main subsidiary in the Dominican Republic and a leading cement producer in the country. CEMEX Dominicana's sales network covers the country's main consumption areas, which are Santo Domingo, Santiago de los Caballeros, La Vega, San Pedro de Macorís, Samaná and La Altagracia. CEMEX Dominicana also has a 12-year lease arrangement with the Dominican Republic government related to the mining of gypsum, which has enabled CEMEX Dominicana to supply all local and regional gypsum requirements.

*Industry.* In 2012, cement consumption in the Dominican Republic reached 2.6 million tons according to our estimates.

*Competition.* Our principal competitors in the Dominican Republic are Domicem, a mixed Italian/local cement producer that started cement production in 2005; Cementos Cibao, a local competitor; Cemento Colón, an affiliated grinding operation of Argos; Cementos Santo Domingo, a cement grinding partnership between a local investor and Cementos La Union from Spain; and Cementos Andinos, a Colombian cement producer which has an installed grinding operation and a partially constructed cement kiln.

*Description of Properties, Plants and Equipment.* As of December 31, 2012, CEMEX Dominicana operated one cement plant in the Dominican Republic, with an installed capacity of 2.6 million tons per year. As of that date, CEMEX Dominicana also owned 10 ready-mix concrete plants, one aggregates quarry, two land distribution centers and two marine terminals.

*Capital Expenditures.* We made capital expenditures of approximately U.S.$11 million in 2010, U.S.$9 million in 2011 and U.S.$10 million in 2012 in our operations in the Dominican Republic. We currently expect to make capital expenditures of approximately U.S.$6 million in our operations in the Dominican Republic during 2013.

***Our Operations in Panama***

*Overview.* As of December 31, 2012, CEMEX Latam held a 99.5% interest in Cemento Bayano, S.A., or Cemento Bayano, our main subsidiary in Panama and a leading cement producer in the country.

On February 6, 2007, we announced our expansion project to build a new kiln at our Bayano plant in Panama. The project was completed in the fourth quarter of 2009 and reached stable operations in the first quarter of 2010. Additional capital expenditures were required in 2010 and 2011 due to a change in the scope of the project. The new kiln increased our cement installed capacity to 2.1 million tons per year. As of December 31, 2012, we have spent approximately U.S.$242 million on the new kiln through 2012, and we currently expect to make capital expenditures of approximately U.S.$3 million in 2013 related to the new kiln.

*Industry.* Approximately 1.6 million cubic meters of ready-mix concrete were sold in Panama during 2012, according to our estimates. Cement consumption in Panama increased 34% in 2012, according to our estimates.

*Competition.* The cement industry in Panama includes three cement producers: Cemento Bayano, Cemento Panamá, an affiliate of Colombian Cementos Argos, and Cemento Interoceánico.

*Description of Properties, Plants and Equipment.* As of December 31, 2012, Cemento Bayano operated one cement plant in Panama, with an annual installed capacity of 2.1 million tons. As of that date, Cemento Bayano also owned and operated 14 ready-mix concrete plants, four aggregates quarries and three land distribution centers.

*Capital Expenditures.* We made capital expenditures of approximately U.S.$32 million in 2010, U.S.$17 million in 2011 and U.S.$9 million in 2012 in our operations in Panama. We currently expect to make capital expenditures of approximately U.S.$11 million in our operations in Panama during 2013. Capital expenditures in 2011 and 2012 include those related to the expansion of the Bayano plant described above.

***Our Operations in Nicaragua***

*Overview.* As of December 31, 2012, CEMEX Latam owned 100% of CEMEX Nicaragua, S.A., or CEMEX Nicaragua, our operating subsidiary in Nicaragua.

*The Cement Industry in Nicaragua.* According to our estimates, approximately 0.8 million tons of cement, approximately 175,000 cubic meters of ready-mix concrete and approximately 4.8 million tons of aggregates were sold in Nicaragua during 2012.

*Competition*. Two market participants compete in the Nicaraguan cement industry: CEMEX Nicaragua and Holcim (Nicaragua) S.A.

*Description of Properties, Plants and Equipment.* As of December 31, 2012, we leased and operated one fixed ready-mix concrete plant with an installed capacity of 0.6 million tons, four mobile plants, one aggregates quarry and one distribution center in Nicaragua. Since March 2003, CEMEX Nicaragua has also leased a 100,000 ton milling plant in Managua, which has been used exclusively for petcoke milling.

*Capital Expenditures.* We made capital expenditures of approximately U.S.$5 million in 2010, U.S.$4 million in 2011 and U.S.$5 million in 2012 in our operations in Nicaragua. We currently expect to make capital expenditures of approximately U.S.$3 million in our operations in Nicaragua during 2013.

***Our Operations in Puerto Rico***

*Overview.* As of December 31, 2012, we owned 100% of CEMEX de Puerto Rico, Inc., or CEMEX Puerto Rico, our main subsidiary in Puerto Rico.

*The Cement Industry in Puerto Rico.* In 2012, cement consumption in Puerto Rico reached 0.9 million tons according to our estimates.

*Competition.* The cement industry in Puerto Rico in 2012 was comprised of two cement producers: CEMEX Puerto Rico and San Juan Cement Co., an affiliate of Italcementi and Elefante Rojo Inc. (formerly Antilles Cement Co.).

*Description of Properties, Plants and Equipment.* As of December 31, 2012, CEMEX Puerto Rico operated one cement plant with an installed cement capacity of approximately 1.2 million tons per year. As of that date, CEMEX Puerto Rico also owned and operated 12 ready-mix concrete plants and two land distribution centers. CEMEX Puerto Rico owns an aggregate quarry, which is currently closed.

*Capital Expenditures.* We made capital expenditures of approximately U.S.$2 million in 2010, U.S.$2 million in 2011 and U.S.$4 million in 2012 in our operations in Puerto Rico. We currently expect to make capital expenditures of approximately U.S.$7 million in our operations in Puerto Rico during 2013.

***Our Operations in Guatemala***

*Overview.* As of December 31, 2012, CEMEX Latam owned 100% of Global Cement, S.A., our main subsidiary in Guatemala. As of December 31, 2012, we owned and operated one cement grinding mill in Guatemala with an installed capacity of 500,000 tons per year. In addition, we also owned and operated three land distribution centers and a clinker dome close to a maritime terminal in the southern part of the country, as well as four ready-mix plants.

*Capital Expenditures.* We made capital expenditures of approximately U.S.$2 million in 2010, U.S.$1 million in 2011 and U.S.$1 million in 2012 in Guatemala. We currently expect to make capital expenditures of approximately U.S.$2 million in our operations in Guatemala during 2013.

***Our Operations in Other South American and Caribbean Countries***

*Overview.* As of December 31, 2012, we held 100% of Readymix Argentina, S.A., which owns five ready-mix concrete plants in Argentina. Due to market conditions, only four of the five ready-mix concrete plants were in operation in 2012.

We believe that the Caribbean region holds considerable strategic importance because of its geographic location. As of December 31, 2012, we operated a network of eight marine terminals in the Caribbean region, which facilitated exports from our operations in several countries, including Mexico, the Dominican Republic, Puerto Rico and the United States. Three of our marine terminals are located in the main cities of Haiti, two are in the Bahamas, and one is in Manaus, Brazil. We also have a non-controlling interest in two other terminals, one in Bermuda and another in the Cayman Islands.

As of December 31, 2012, we had non-controlling positions in Trinidad Cement Limited, with cement operations in Trinidad and Tobago, Barbados and Jamaica, as well as a non-controlling position in Caribbean Cement Company Limited in Jamaica, National Cement Ltd. in the Cayman Islands and Maxcem Bermuda Ltd. in Bermuda. As of December 31, 2012, we also held a 100% interest in CEMEX Jamaica Limited, which operates a calcinated lime plant in Jamaica with a capacity of 120,000 tons per year. As of December 31, 2012, we also held a non-controlling position in Societe des Ciments Antillais, a company with cement operations in Guadalupe and Martinique.

*Capital Expenditures.* We made capital expenditures in our other operations in South America, Central America and the Caribbean of approximately U.S.$2 million in 2010, U.S.$1 million in 2011 and U.S.$3 million in 2012. We currently expect to make capital expenditures of approximately U.S.$3 million in our Other operations in South America, Central America and the Caribbean during 2013.

In April 2010, CEMEX announced its plans to contribute up to U.S.$100 million for a non-controlling interest in a vehicle originally named Blue Rock Cement Holdings S.A. which is now named TRG Blue Rock HBM Holdings S.à.r.l. (“Blue Rock -TRG”) that would invest in the cement and related industries. Blue Rock-TRG is managed by The Rohatyn Group and BK Cement Ltd. Depending on funds raised from third-party investors and the availability of financing, Blue Rock—TRG may decide to invest in different assets in the cement industry and/or related industries and/or enter into operating contracts providing for CEMEX’s assistance in the development, building and operation of the invested assets, if any. As of December 31, 2012, different projects are being considered but CEMEX does not have any investment in Blue Rock—TRG. Although we do not anticipate being in a control position to affect the decisions of Blue Rock -TRG’s management, given our investment and industry expertise, we are in discussions with Blue Rock -TRG’s management to enter into an operating contract providing for our assistance in the development, building and operation of the invested assets, if any. Depending on the amount raised from third-party investors and the availability of financing, Blue Rock -TRG’s management may also decide to invest in different assets in the cement industry and/or related industries.

**Asia**

For the year ended December 31, 2012, our business in Asia, which includes our operations in the Philippines and the Rest of Asia segment, as described below, represented approximately 3% of our net sales before eliminations resulting from consolidation. As of December 31, 2012, our business in Asia represented approximately 6% of our total installed capacity and approximately 3% of our total assets.

***Our Operations in the Philippines***

*Overview.* As of December 31, 2012, on a consolidated basis through various subsidiaries, we held 100% of the economic benefits of our two operating subsidiaries in the Philippines, Solid Cement Corporation and APO Cement Corporation. For the year ended December 31, 2012, our operations in the Philippines represented approximately 2% of our net sales before eliminations resulting from consolidation and approximately 2% of our total assets.

*The Cement Industry in the Philippines.* According to the Cement Manufacturers' Association of the Philippines (CEMAP), cement consumption in the Philippine market, which is primarily retail, totaled 18.4 million tons during 2012. Demand for cement in the Philippines increased by approximately 17.5% in 2012 compared to 2011.

As of December 31, 2012, the Philippine cement industry had a total of 19 cement plants. Annual installed clinker capacity is 21 million metric tons, according to CEMAP.

*Competition.* As of December 31, 2012, our major competitors in the Philippine cement market were Lafarge, Holcim, Taiheiyo, Pacific, Northern, Goodfound and Eagle.

*Description of Properties, Plants and Equipment.* As of December 31, 2012, our operations in the Philippines included two cement plants with an annual installed capacity of 4.5 million tons, one quarry dedicated to supply raw materials to our cement plants, 13 land distribution centers and four marine distribution terminals. We estimate that, as of December 31, 2012, the limestone and clay permitted proven and probable reserves of our operations in the Philippines had an average remaining life of approximately 29 and 33 years, assuming 2008-2012 average annual cement production levels.

On September 17, 2012, we announced that we intend to invest approximately U.S.$65 million to increase the cement production capacity of our APO plant in the Philippines by 1.5 million tons per year. This expansion is expected to be operational by the first quarter of 2014.

*Cement.* For the year ended December 31, 2012, our cement operations represented 100% of net sales for our operations in the Philippines before eliminations resulting from consolidation.

*Capital Expenditures.* We made capital expenditures of approximately U.S.$14 million in 2010, U.S.$36 million in 2011 and U.S.$19 million in 2012 in our operations in the Philippines. We currently expect to make capital expenditures of approximately U.S.$15 million in our operations in the Philippines during 2013.

## Rest of Asia

Our operations in the Rest of Asia, which as of December 31, 2012, consisted primarily of our operations in Thailand, Bangladesh, China and Malaysia. These operations represented approximately 1% of our 2012 net sales in Peso terms, before eliminations resulting from consolidation, and approximately 1% of our total assets in 2012.

### *Our Operations in Thailand*

*Overview.* As of December 31, 2012, we held, on a consolidated basis, 100% of the economic benefits of CEMEX (Thailand) Co. Ltd., or CEMEX (Thailand), our operating subsidiary in Thailand. As of December 31, 2012, CEMEX (Thailand) owned one cement plant in Thailand, with an annual installed capacity of approximately 0.8 million tons.

*The Cement Industry in Thailand.* According to our estimates, at December 31, 2012, the cement industry in Thailand had a total of 14 cement plants, with an aggregate annual installed capacity of approximately 55 million tons, from which the capacity to produce 10 million tons has been temporarily shut down. We estimate that there are six major cement producers in Thailand, four of which represent approximately 98% of installed capacity and 94% of the market.

*Competition.* Our major competitors in Thailand, which have a significantly larger presence than CEMEX (Thailand), are Siam Cement, Holcim, TPI Polene and Italcementi.

*Capital Expenditures.* We made capital expenditures of approximately U.S.$1 million in 2010, approximately U.S.$1 million in 2011 and U.S.$1 million in 2012. We currently expect to make capital expenditures of approximately U.S.$1 million in our operations in Thailand during 2013.

***Our Operations in Malaysia***

*Overview.* As of December 31, 2012, we held on a consolidated basis 100% of the economic benefits of our operating subsidiaries in Malaysia. We are a leading ready-mix concrete producer in Malaysia, with a significant share in the country's major urban centers. As of December 31, 2012, we operated 13 ready-mix concrete plants, two asphalt plants and three aggregates quarries in Malaysia.

*Competition.* Our main competitors in the ready-mix concrete and aggregates markets in Malaysia are YTL, Lafarge and Heidelberg.

*Capital Expenditures.* We made capital expenditures of approximately U.S.$2 million in 2010, U.S.$1 million in 2011 and U.S.$2 million in 2012 in our operations in Malaysia. We currently expect to make capital expenditures of approximately U.S.$3 million in our operations in Malaysia during 2013.

***Our Operations in Other Asian Countries***

*Overview.* Since April 2001, we have been operating a grinding mill near Dhaka, Bangladesh. As of December 31, 2012, this mill had a production capacity of 520,000 tons per year. A majority of the supply of clinker for the mill is produced by our operations in the region. In addition, since June 2001, we have also operated a cement terminal in the port of Taichung located on the west coast of Taiwan. In the fourth quarter of 2012, we sold our stake in the company that owned and operated this cement terminal.

As of December 31, 2012, we also operated four ready-mix concrete plants in China, located in the northern cities of Tianjin and Qingdao.

*Capital Expenditures.* We made capital expenditures of approximately U.S.$1 million in 2010, U.S.$2 million in 2011 and U.S.$2.3 million in 2012 in our operations in other Asian countries. We currently expect to make capital expenditures of approximately U.S.$3 million in our operations in other Asian countries during 2013.

**Our Trading Operations**

In 2012, we traded approximately 8.8 million tons of cementitious materials, including 8.0 million tons of cement and clinker. Approximately 82% of the cement and clinker trading volume in 2012 consisted of exports from our operations in Costa Rica, Croatia, the Dominican Republic, Egypt, Germany, Guatemala, Latvia, Mexico, Nicaragua, the Philippines, Poland, Puerto Rico, Spain and the United States. The remaining approximately 18% was purchased from third parties in countries, such as Belgium, China, Colombia, Croatia, Egypt, Honduras, Jamaica, Slovakia, South Korea, Spain, Taiwan, Thailand, the United States and Vietnam. As of December 31, 2012, we had trading activities in 106 countries. In 2012, we traded approximately 0.8 million metric tons of granulated blast furnace slag, a non-clinker cementitious material.

Our trading network enables us to maximize the capacity utilization of our facilities worldwide while reducing our exposure to the inherent cyclicality of the cement industry. We are able to distribute excess capacity to regions around the world where there is demand. In addition, our worldwide network of strategically located marine terminals allows us to coordinate maritime logistics on a global basis and minimize transportation expenses. Our trading operations also enable us to explore new markets without significant initial capital expenditure.

Freight rates, which account for a large share of the total import supply cost, have been subject to significant volatility in recent years. Our trading operations, however, have obtained significant savings by contracting maritime transportation in due time and by using our own and chartered fleet, which transported approximately 9% of our cement and clinker import volume during 2012.

In addition, based on our spare fleet capacity, we provide freight service to third parties, thus providing us with valuable shipping market information and generating additional revenues.

**Regulatory Matters and Legal Proceedings**

A description of material regulatory matter and legal proceedings affecting us is provided below.

**Antitrust Proceedings**

*Polish Antitrust Investigation.* Between May 31, 2006 and June 2, 2006, officers of the Polish Competition and Consumer Protection Office (the "Protection Office"), assisted by police officers, conducted a search of the Warsaw office of CEMEX Polska, one of our indirect subsidiaries in Poland, and of the offices of other cement producers in Poland. These searches took place as a part of the exploratory investigation that the head of the Protection Office had started on April 26, 2006. On January 2, 2007, CEMEX Polska received a notification from the Protection Office informing it of the formal initiation of an antitrust proceeding against all cement producers in Poland, including CEMEX Polska and another of our indirect subsidiaries in Poland. The notification alleged that there was an agreement between all cement producers in Poland regarding prices and other sales conditions for cement, an agreed division of the market with respect to the sale and production of cement, and the exchange of confidential information, all of which limited competition in the Polish market with respect to the production and sale of cement. On December 9, 2009, the Protection Office delivered to CEMEX Polska its decision against Polish cement producers related to an investigation which covered a period from 1998 to 2006. The decision imposes fines on a number of Polish cement producers, including CEMEX Polska. The fine imposed on CEMEX Polska is approximately Polish Zloty 115.56 million (approximately U.S.$35.49 million as of March 31, 2013, based on an exchange rate of Polish Zloty 3.2563 to U.S.$1.00), which is approximately 10% of CEMEX Polska's total revenue in 2008. CEMEX Polska disagrees with the decision, denies that it committed the practices alleged by the Protection Office and filed an appeal before the Polish Court of Competition and Consumer Protection on December 23, 2009. The Polish Court of Competition and Consumer Protection confirmed that CEMEX Polska's appeal met preliminary formal requirements and that it would conduct the case. On February 7, 2011, CEMEX Polska received a formal response to its appeal from the Protection Office in which the Protection Office made an application to the Polish Court of Competition and Consumer Protection to reject CEMEX Polska's appeal. The response from the Protection Office argued that CEMEX Polska's appeal is not justified, and it maintained all of the statements and arguments from the Protection Office's decision issued on December 9, 2009. On February 21, 2011, CEMEX Polska sent a letter to the Polish Court of Competition and Consumer Protection in which it kept its position and argumentation from the appeal and widely opposed the arguments and statements included in the response of the Protection Office. The decision on the fines will not be enforced until two appeal instances are exhausted. Based on the speed of review of the case by the court of first instance and on general Polish court practices, these two appeal proceedings could last until the end of 2014. As of December 31, 2012, the accounting provision created in relation with this proceeding was approximately Polish Zloty 74.8 million (approximately U.S.$22.97 million as of March 31, 2013, based on an exchange rate of Polish Zloty 3.2563 to U.S.$1.00). The first preliminary court hearing regarding the appeal filed by CEMEX Polska was held on February 27, 2013. During the hearing, the judge presiding over the case confirmed the court's decision to combine the separate appeals of six Polish cement producers in one joint case, as per the motion presented by CEMEX Polska, and reviewed the witness list proposed by CEMEX Polska, The next joint court hearing for all appeals filed by all six Polish cement producers is scheduled for September 18, 2013.

*Antitrust Investigations in Europe by the European Commission.* On November 4, 2008, officers of the European Commission, in conjunction with officials of the national competition enforcement authorities,

conducted unannounced inspections at our offices in Thorpe, United Kingdom, and Ratingen, Germany. Further to these inspections, on September 22 and 23, 2009, CEMEX's premises at Madrid, Spain, were also subject to an inspection by the European Commission.

In conducting these investigations, the European Commission alleged that we may have participated in anti-competitive agreements and/or concerted practices in breach of Article 101 of the Treaty on the Functioning of the European Union (formerly Article 81 of the EC Treaty) and Article 53 of the European Economic Area ("EEA") Agreement in the form of restrictions of trade flows in the EEA, including restrictions on imports into the EEA from countries outside the EEA, market sharing, price coordination and connected anticompetitive practices in the cement and related products markets. Since the inspections began, we have received requests for information and documentation from the European Commission during 2009 and 2010 and we have fully cooperated by providing the relevant information and documentation on time.

On December 8, 2010, the European Commission informed us that it decided to initiate formal proceedings with respect to the investigation of the aforementioned anticompetitive practices. These proceedings would affect Austria, Belgium, the Czech Republic, France, Germany, Italy, Luxembourg, the Netherlands, Spain and the United Kingdom. The European Commission indicated that we, as well as seven other companies, would be included in these proceedings. These proceedings may lead to an infringement decision, or if the objections raised by the European Commission are not substantiated, the case might be closed. This initiation of proceedings relieves the competition authorities of the Member States of the European Union of their competence to apply Article 101 of the Treaty on the Functioning of the European Union to the same case. We intend to defend our position vigorously in this proceeding and are fully cooperating and will continue to cooperate with the European Commission in connection with this matter.

On April 1, 2011, the European Commission notified CEMEX, S.A.B. de C.V. of a decision under Article 18(3) of Council Regulation (EC) No 1/2003 of December 16, 2002 on the implementation of the rules on competition set forth in Article 81 of the EC Treaty (current Articles 101 and 102 of the EC Treaty). The European Commission also requested that CEMEX, S.A.B. de C.V. deliver a material amount of information and documentation, which we effectively delivered on August 2, 2011, after requesting additional time.

CEMEX, S.A.B. de C.V. and several of its affiliates in Europe have filed an appeal before the General Court of the European Union for the annulment of the European Commission's decision for information and documentation on the grounds that such request is contrary to several principles of European Union Law. In addition, on June 17, 2011, CEMEX, S.A.B. de C.V. and several of its affiliates in Europe requested interim measures to the General Court of the European Union, asking for the suspension of the information and document request until the appeal was resolved. The President of the General Court of the European Union rejected the proposal for a suspension without considering the arguments of the main appeal. On December 21, 2011, CEMEX, S.A.B. de C.V. and several of its affiliates in Europe filed their reply to the European Commission's defense. The European Commission filed its rejoinder on March 27, 2012. A hearing with respect to the proceedings against CEMEX, S.A.B. de C.V. and several of its affiliates in Europe was held on February 6, 2013, with the hearings for all other companies being investigated expected to be held during April 2013. We currently estimate that the judgement will be issued during September 2013.

On November 29, 2011, the European Commission notified CEMEX, S.A.B. de C.V. of its decision that if, by December 15, 2011, the European Commission did not receive a confirmation that CEMEX, S.A.B. de C.V.'s reply submitted August 2, 2011 was complete, accurate and definitive, or if CEMEX, S.A.B. de C.V. did not submit a new reply with the necessary amendments and clarifications, the European Commission would impose a daily fine of €438,000 (approximately U.S.$561,898.65 as of March 31, 2013, based on an exchange rate of €0.7795 to U.S.$1.00). On December 15, 2011, we complied with the terms of this decision and submitted a new reply with the amendments and clarifications identified in the revision and audit process performed since August 2, 2011.

If the alleged infringements investigated by the European Commission are substantiated, significant penalties may be imposed on our subsidiaries operating in such markets. In that case, pursuant to European Union Regulation 1/2003, the European Commission may impose penalties of up to 10% of the total turnover of the relevant companies for the last year preceding the imposition of the fine for which the financial statements have been approved by the shareholders' meeting of the relevant companies. At this stage of the proceedings, as of March 31, 2013, the European Commission had not yet formulated a Statement of Objections against us and, as a result, the extent of the charges and the alleged infringements are unknown. Moreover, it is not clear which cement related products total turnover would be used as the basis for the determination of the possible penalties. As a consequence, we are not able to assess the likelihood of an adverse result or the amount of the potential fine, but if adversely resolved it may have a material adverse impact on our financial results.

*Antitrust Investigations in Spain by the CNC.* On September 22, 2009, the Investigative Department (*Dirección de Investigación*) of the Spanish Competition Commission (*Comisión Nacional de la Competencia* or "CNC"), applying exclusively national antitrust law, carried out another inspection, separate from the investigation conducted by the European Commission, in the context of possible anticompetitive practices in the production and distribution of mortar, ready-mix concrete and aggregates within the Chartered Community of Navarre ("Navarre"). We fully cooperated and provided the CNC inspectors all the information requested. On December 15, 2009, the CNC started a procedure against CEMEX España and four other companies with activities in Navarre for alleged practices prohibited under the Spanish competition law. The allegations against CEMEX España relate to several of our ready-mix plants located in Navarre, which we operated from January 2006 (as a result of our acquisition of RMC Group PLC) until September 2008, when we ceased operations for these plants.

On November 3, 2010, the CNC Investigative Department provided CEMEX España with a Statement of Facts (similar to a statement of objections under European Union competition law) that included allegations that could be construed as a possible infringement by CEMEX España of Spanish competition law in Navarre. The Statement of Facts was addressed to CEMEX España, but also indicated that its parent company, New Sunward, could be jointly and severally liable for the investigated behavior.

On December 10, 2010, after receiving CEMEX España's observations, the CNC Investigative Department notified CEMEX España of a proposed decision, summarizing its findings in the investigation. This proposed decision, which suggests the existence of an infringement, was submitted to the CNC Council, together with CEMEX España's opposition to all charges. On January 12, 2012, the CNC Council notified CEMEX España of its final decision on this matter, imposing a fine of approximately €500,000 (approximately U.S.$641,436.82 as of March 31, 2013, based on an exchange rate of €0.7795 to U.S.$1.00) against CEMEX España for price-fixing and market sharing in the concrete market of Navarre from June 2008 through September 2009.

CEMEX España denied any wrongdoing and on March 1, 2012 filed an appeal before the competent court (*Audiencia Nacional*), requesting the interim suspension of the decision from the court until a final judgment is issued. To that effect, it has requested the CNC Council to suspend the implementation of its decision until the court decided on the requested interim measure. On July 10, 2012, the court issued a resolution agreeing to the suspension of payment of the fine.

*Investigations in the UK.* On January 20, 2012, the United Kingdom Competition Commission, or the UK Commission, commenced a Market Investigation, ("MIR"), into the supply or acquisition of cement, ready-mix concrete and aggregates. This referral to the UK Commission was made by the Office of Fair Trading following an investigation by them of the aggregates sector. Those companies and persons invited to participate in the MIR are required by law to comply with certain requests for information and, if necessary, to attend hearings. The UK Commission is required to report on this investigation by no later than January 17, 2014. Our subsidiaries in the UK have been invited to participate in the MIR and will fully cooperate in this MIR. At this stage of the MIR, as of March 31, 2013, we are not able to assess what would be the scope of the recommendations made by the UK Commission, if any, or if such recommendations would have a material adverse impact on our results of operations.

*Antitrust Investigations in Mexico.* In January and March 2009, we were notified of two findings of presumptive responsibility against CEMEX issued by the Mexican Competition Authority (*Comisión Federal de Competencia* or "CFC"), alleging certain violations of Mexican antitrust laws. We believe these findings contain substantial violations of rights granted by the Mexican Constitution.

In February 2009, we filed a constitutional challenge (*juicio de amparo*) before the Circuit Court in Monterrey, Mexico, as well as a denial of the allegations, with respect to the first case. The Monterrey Circuit Court determined that CEMEX lacked standing since the notice of presumptive responsibility did not affect any of CEMEX's rights; therefore, CEMEX should wait until the CFC concludes its proceeding and issues a final ruling before raising its constitutional challenge again. However, in July 2010, in light of the possible violations to CEMEX's constitutional rights, the CFC terminated the existing proceeding and reinitiated a new proceeding against CEMEX to cure such violations. We believe that Mexican law does not entitle the CFC to reinitiate a new proceeding but only to continue with the original one. In August 2010, we filed a separate constitutional challenge ( *juicio de amparo*) before the District Court in Monterrey, Mexico, to argue against the reinitiated proceeding. The Monterrey District Court determined that the order to reinitiate the proceeding and the notice of presumptive responsibility did not affect any of CEMEX's rights. CEMEX subsequently filed an appeal before the Monterrey District Court, and the Monterrey Circuit Court determined that the CFC's termination of the proceedings in July 2010 was illegal and that it notified the CFC to the effect that it complies with the resolution issued. In February 2012, CEMEX was fined approximately Ps10.2 million (approximately U.S.$826,580.23 as of March 31, 2013, based on an exchange rate of Ps12.34 to U.S.$1.00) for anticompetitive practices and ordered to implement certain measures. CEMEX has appealed the resolution before the CFC and the Monterrey Circuit Court and denies any wrongdoing. In June 2012, the CFC confirmed its resolution. On July 2, 2012, CEMEX filed a separate constitutional challenge (*juicio de amparo*) before the District Court in Mexico D.F. As of April 15, 2013, a resolution regarding this constitutional challenge had not yet been issued. Simultaneously, CEMEX filed a claim before the Monterrey Circuit Court against the resolution issued by the CFC in June 2012. In this proceeding, the Monterrey Circuit Court determined that such resolution did not meet the Circuit Court's order and, consequently, that it did not comply with the resolution previously issued in this regard. As a result, the Monterrey Circuit Court nullified the fine previously imposed on CEMEX. On December 18, 2012, the CFC ruled against CEMEX, although the fine was excluded from the part of its decision relating to the resolution. On February 12, 2013, CEMEX filed an appeal against this new resolution before both the CFC and the Monterrey Circuit Court.

With respect to the second case, in April 2009, we filed a constitutional challenge ( *juicio de amparo*) before the Circuit Court in Monterrey, Mexico, and in May 2009, we filed a denial of the CFC's allegations. In November 2010, the Monterrey Circuit Court ordered the case to be heard by the District Court in Mexico D.F., claiming that it lacked appropriate jurisdiction. In December 2010, similar to the first case, the District Court in Mexico D.F. determined that CEMEX lacked standing with respect to its constitutional challenge ( *juicio de amparo*) since the notice of presumptive responsibility did not affect any of CEMEX's rights; therefore, CEMEX should wait until the CFC concludes its proceeding and issues a final ruling before raising its constitutional challenge again. CEMEX filed an appeal before the District Court in Mexico D.F. to argue against such determination. On October 14, 2011, the CFC determined that the case should be closed due to a lack of evidence to impose any sanctions. Third parties subsequently filed an appeal before the CFC to reconsider its ruling. The CFC recently confirmed its resolution to not impose any sanctions due to a lack of evidence. This decision was challenged by the plaintiffs before the District Court in Mexico D.F. through a constitutional challenge, which was dismissed because the plaintiffs lacked standing to challenge the CFC's decision.

*Antitrust Cartel Litigation in Germany.* On August 5, 2005, Cartel Damages Claims, SA (the "CDC"), filed a lawsuit in the District Court in Düsseldorf, Germany against CEMEX Deutschland AG and other German cement companies. CDC originally sought €102 million (approximately U.S.$130.85 million as of March 31, 2013, based on an exchange rate of €0.7795 to U.S.$1.00) in respect of damage claims by 28 entities relating to alleged price and quota fixing by German cement companies between 1993 and 2002, which entities had assigned their claims to CDC. CDC is a Belgian company established by two lawyers in the aftermath of the

German cement cartel investigation that took place from July 2002 to April 2003 by Germany's Federal Cartel Office, with the express purpose of purchasing potential damages claims from cement consumers and pursuing those claims against the alleged cartel participants. In January 2006, another entity assigned alleged claims to CDC, and the amount of damages being sought by CDC increased to €113.5 million plus interest (approximately U.S.$145.61 million plus interest as of March 31, 2013, based on an exchange rate of €0.7795 to U.S.$1.00). On February 21, 2007, the District Court allowed this lawsuit to proceed without going into the merits of this case by issuing an interlocutory judgment. All defendants appealed, but the appeal was dismissed on May 14, 2008. The lawsuit will proceed in a court of first instance.

In the meantime, CDC acquired new claims by assignment and announced an increase in the claim to €131 million (approximately U.S.$168.06 million as of March 31, 2013, based on an exchange rate of €0.7795 to U.S.$1.00). As of December 31, 2012, we had accrued liabilities regarding this matter for an amount of approximately €20 million (approximately U.S.$25.66 million as of March 31, 2013, based on an exchange rate of €0.7795 to U.S.$1.00), plus an additional €8.84 million (approximately U.S.$11.34 million as of March 31, 2013, based on an exchange rate of €0.7795 to U.S.$1.00) as interest over the principal amount of the claim.

In the first hearing on the merits of this case that was held on March 1, 2012, the District Court in Düsseldorf, Germany revealed several preliminary considerations on relevant legal questions and allowed the parties to submit their plea and reply on May 21, 2012. The decision was expected to be issued on July 20, 2012, but on that date, the court decided to postpone a decision until October 30, 2012. In the meantime, a new hearing was scheduled for January 17, 2013, which has been rescheduled to June 6, 2013 to allow the plaintiff time to prepare and submit its plea. As of the date of this annual report, we are unable to assess the likelihood of an adverse result and, because of the number of defendants, the potential damages that would be borne by us; however, if the final decision is adverse to us, it could have a material adverse impact on our business results.

*Antitrust Cases in Egypt.* On July 29, 2009, two Egyptian contractors filed separate lawsuits against four cement producers, including ACC, demanding compensation of 20 million Egyptian Pounds (approximately U.S.$2.94 million as of March 31, 2013, based on an exchange rate of Egyptian Pounds 6.8129 to U.S.$1.00) from the four cement producers, or approximately 5 million Egyptian Pounds (approximately U.S.$733,901.864 as of March 31, 2013, based on an exchange rate of Egyptian Pounds 6.8129 to U.S.$1.00) from each defendant. The plaintiffs are using a 2007 Egyptian court decision convicting all cement producers in Egypt, including ACC, of antitrust activities and price fixing as a precedent and as proof of their allegation.

On December 16, 2009, at the hearing for one of the cases, the plaintiffs requested the court to release ACC from the claim. On May 11, 2010, the court released ACC from the claim, and this case is now closed.

On April 24, 2010, at the hearing for the other case, the court decided to refer the matter back to the prosecutor's office for further investigation and for a report on the investigations to be presented at the next hearing, which was held on January 11, 2011. Thereafter, this case was dismissed and all charges against ACC were dropped. The plaintiffs subsequently filed their appeal to this ruling before the Court of Cassation. As of April 15, 2013, the Court of Cassation had not yet scheduled the first hearing of cassation for this case.

These cases are the first of their kind in Egypt due to the recent enactment of the Law on Competition Protection and Prevention of Monopolistic Practices No. 3 in 2005. Even if we prevail in the ongoing case, these claims may have an adverse impact on us if they were to become a precedent and may create a risk of similar claims in the future.

*Antitrust Cases in Florida*. In October 2009, CEMEX Corp. and other cement and concrete suppliers were named as defendants in several purported class action lawsuits alleging price-fixing in Florida. The purported class action lawsuits are of two distinct types: The first type was filed by entities purporting to have purchased cement or ready-mix concrete directly from one or more of the defendants. The second group of plaintiffs are entities purporting to have purchased cement or ready-mix concrete indirectly from one or more of the

defendants. Underlying all proposed suits is the allegation that the defendants conspired to raise the price of cement and concrete and hinder competition in Florida. On January 7, 2010, both groups of plaintiffs independently filed consolidated amended complaints substituting CEMEX, Inc. and some of its subsidiaries for the original defendant, CEMEX Corp. The corresponding CEMEX subsidiaries in the U.S. and the other defendants moved to dismiss the consolidated amended complaints. On October 12, 2010, the court granted in part the defendants' motion, dismissing from the case all claims relating to cement and reducing the applicable time period of the plaintiffs' claims. On October 29, 2010, the plaintiffs filed further amended complaints pursuant to the court's decision. On December 2, 2010, the corresponding CEMEX subsidiaries in the U.S. moved to dismiss the amended complaint filed by the indirect purchaser plaintiffs based on lack of standing. The corresponding CEMEX subsidiaries in the United States also answered the complaint filed by the direct purchaser plaintiffs. On January 4, 2011, both the direct and indirect purchaser plaintiffs filed further amended complaints, which the corresponding CEMEX subsidiaries in the United States answered on January 18, 2011. In March 2011, the direct and indirect purchaser plaintiffs filed motions for certification under Federal Rule of Civil Procedure 54(b), seeking the entry of final judgment pursuant to the court's October 12, 2010 order so they may appeal the dismissals to the Court of Appeals for the 11th Circuit. The court denied those motions on April 15, 2011. On September 21, 2011, both groups of plaintiffs filed motions for class certification. On January 3, 2012, the court denied both motions, ruling that the cases cannot proceed as class actions. On January 5, 2012, the court stayed both cases pending the resolution of any potential appeal of the court's ruling denying the motions for class certification. On January 17, 2012, the plaintiffs in the action involving entities that purchased ready-mix concrete directly from one or more of the defendants filed a petition with the Eleventh Circuit Court of Appeals, requesting that the Eleventh Circuit exercise its discretion to immediately review the trial court's decision denying their class certification motion. In early March 2012, the corresponding CEMEX subsidiaries in the United States and the other remaining defendants effected a settlement of both cases resulting in us having to pay approximately U.S.$460,000. The corresponding CEMEX subsidiaries in the United States did not admit any wrongdoing as part of the settlements and deny allegations of misconduct.

On October 26, 2010, CEMEX, Inc. received an Antitrust Civil Investigative Demand from the Office of the Florida Attorney General, which seeks documents and information in connection with an antitrust investigation by the Florida Attorney General into the ready-mix concrete industry in Florida. As of the date of this annual report, CEMEX, Inc. has complied with the Office of the Florida Attorney General with respect to the documents and information requested by the civil investigative demand, and it is unclear at this stage whether any formal proceeding will be initiated by the Office of the Florida Attorney General.

**Environmental Matters**

We are subject to a broad range of environmental laws and regulations in each of the jurisdictions in which we operate. These laws and regulations impose increasingly stringent environmental protection standards regarding, among other things, air emissions, wastewater discharges, the use and handling of hazardous waste or materials, waste disposal practices and the remediation of environmental damage or contamination. These laws and regulations expose us to the risk of substantial environmental costs and liabilities, including liabilities associated with divested assets and past activities and, in some cases, the acts and omissions of the previous owners or operators of a property or facility. Furthermore, in some jurisdictions, certain environmental laws and regulations impose liability, without regard to fault or the legality of the original activity at the time of the actions giving rise to liability.

To prevent, control and remediate environmental problems and maintain compliance with regulatory requirements, we maintain an environmental policy designed to monitor and control environmental matters. Our environmental policy requires each subsidiary to respect and comply with local laws and meet our own internal standards to minimize the use of non-renewable resources and the generation of hazardous and other wastes. We use processes that are designed to reduce the impact of our operations on the environment throughout all the production stages in all our operations worldwide. In addition, during 2012 we started the implementation of a global Environmental Management System (EMS) at our operating sites that provides a framework to facilitate the consistent and systematic implementation of practical, risk-based environmental management at all sites. As

of the date of this annual report, we expect to finish the implementation of the EMS at all of our operating sites by 2015. It will be used to support sites and businesses across CEMEX globally to document, maintain and continuously improve our environmental performance. We believe that, at present, a substantial part of our operations already comply with all material environmental laws applicable to us, as all our cement plants already have some kind of EMS (most of which are ISO 14000 certified), with the remaining implementation efforts directed mainly on our aggregates and ready-mix plants.

We regularly incur capital expenditures that have an environmental component or that are impacted by environmental regulations. However, we do not keep separate accounts for such mixed capital and environmental expenditures. Environmental expenditures that extend the life, increase the capacity, improve the safety or efficiency of assets or are incurred to mitigate or prevent future environmental contamination may be capitalized. Other environmental costs are expensed when incurred. For the years ended December 31, 2010, 2011 and 2012, our sustainability capital expenditures (including our environmental expenditures and investments in alternative fuels and cementitious materials) were approximately U.S.$93 million, approximately U.S.$95 million and U.S.$139 million, respectively. Our environmental expenditures may materially increase in the future.

The following is a discussion of environmental regulations and related matters in our major markets.

*Mexico*. We were one of the first industrial groups in Mexico to sign an agreement with the *Secretaría del Medio Ambiente y Recursos Naturales*, (the "SEMARNAT"), the Mexican government's environmental ministry, to carry out voluntary environmental audits in our 15 Mexican cement plants under a government-run program. In 2001, the Mexican environmental protection agency in charge of the voluntary environmental auditing program, the *Procuraduría Federal de Protección al Ambiente* (PROFEPA), which is part of SEMARNAT, completed the audit of our cement plants and awarded all our plants a *Certificado de Industria Limpia*, or Clean Industry Certificate, certifying that our plants are in full compliance with environmental laws. The Clean Industry Certificates are subject to renewal every two years. As of April 15, 2013, our operating cement plants had Clean Industry Certificates or were in the process of renewing them. We expect the renewal of all currently expired Clean Industry Certificates.

For over a decade, the technology for recycling used tires into an energy source has been employed in our plants located in Ensenada and Huichapan. By the end of 2006, all our cement plants in Mexico were using tires as an alternative fuel. Municipal collection centers in the cities of Tijuana, Mexicali, Ensenada, Mexico City, Reynosa, Nuevo Laredo and Guadalajara currently enable us to recycle an estimated 10,000 tons of tires per year. Overall, approximately 17.80% of the total fuel used in our operating cement plants in Mexico during 2012 was comprised of alternative fuels.

Between 1999 and March 31, 2013, our operations in Mexico have invested approximately U.S.$92.8 million in the acquisition of environmental protection equipment and the implementation of the ISO 14001 environmental management standards of the International Organization for Standardization ("ISO"). The audit to obtain the renewal of the ISO 14001 certification took place during January 2012. All our operating cement plants in Mexico have obtained the renewal of the ISO 14001 certification for environmental management systems.

On June 6, 2012 the General Law on Climate Change (*Ley General de Cambio Climático*) (the "Climate Change Law") was published in the Mexican Official Gazette. The Climate Change Law establishes a legal framework to regulate policies for climate change mitigation and adaptation. Many important provisions require the development of secondary legislation, and depend on the publication of subsequent implementing regulations, which are expected to take place within the twelve months following the publication of the Climate Change Law. Because secondary legislation has not yet been developed and corresponding regulations have not yet been implemented, at this stage, we do not have sufficient information to determine whether or not the measures that may be taken by the Mexican federal government in connection with the Climate Change Law will have a material impact on our business or operations. For instance, the Climate Change Law provides for the elaboration of a registry of the emissions that are generated by fixed sources. However, the detailed guidelines for reporting, including the scope and methodologies for calculation, will be developed by implementing

regulations yet to be developed. Companies that are required to report their emissions and fail to do so or that report false information will be fined. We do not expect any negative impact from this development as we already report our direct and indirect carbon dioxide emissions to SEMARNAT under a voluntary scheme. The Climate Change Law also allows for the establishment of specific greenhouse gas reduction targets in accordance with the respective contribution of each economic sector to the national greenhouse gas emissions. We cannot estimate at this time the impact, if any, that any measures related to this may have upon our operations in Mexico. Although the Climate Change Law does not establish a program for emissions trading, it does vest on the Mexican federal government the power to create, authorize and regulate such a scheme, which may be voluntary or binding. We are closely observing the development of implementing regulations and cannot estimate at this time the impact, if any, that any measures related to this may have upon our operations in Mexico.

*United States.* Our operating subsidiaries in the United States are subject to a wide range of U.S. federal, state and local laws, regulations and ordinances dealing with the protection of human health and the environment. These laws are strictly enforced and can lead to significant monetary penalties for noncompliance. These laws regulate, among other things, water discharges, noise, and air emissions, including dust, as well as the handling, use and disposal of hazardous and non-hazardous waste materials. These laws also create a shared liability scheme under which parties are held responsible for the cost of cleaning up releases to the environment of designated hazardous substances. We therefore may have to conduct environmental remediation associated with the disposal or release of hazardous substances at our various operating facilities, or at sites in the United States to which we sent hazardous waste for disposal. We believe that our current procedures and practices for handling and managing materials are generally consistent with industry standards and legal and regulatory requirements, and that we take appropriate precautions to protect employees and others from harmful exposure to hazardous materials. See "Item 3—Key Information—Risk Factors—Our operations are subject to environmental laws and regulations."

As of March 31, 2013, CEMEX, Inc. and its subsidiaries had accrued liabilities specifically relating to environmental matters in the aggregate amount of approximately U.S.$21.5 million. The environmental matters relate to (i) the disposal of various materials, in accordance with past industry practice, that might be categorized as hazardous substances or wastes, and (ii) the cleanup of hazardous substances or wastes at sites used or operated by CEMEX, Inc. including discontinued operations, either individually or jointly with other parties. Most of the proceedings are in the preliminary stages, and a final resolution might take several years. For purposes of recording the provision, CEMEX, Inc. considers that it is probable that a liability has been incurred and the amount of the liability is reasonably estimable, whether or not claims have been asserted, and without giving effect to any possible future recoveries. Based on information developed to date, CEMEX, Inc. does not believe it will be required to spend significant sums on these matters, in excess of the amounts previously recorded. The ultimate cost that might be incurred to resolve these environmental issues cannot be assured until all environmental studies, investigations, remediation work, and negotiations with, or litigation against, potential sources of recovery have been completed.

In 2007, the EPA launched a CAA enforcement initiative against the U.S. cement industry. The primary goal of the initiative is to assess the industry's historic compliance with the CAA's New Source Review program and to reduce emissions from the industry through the installation of add-on controls. CEMEX has actively engaged with the EPA on its investigations, which involve multiple CEMEX facilities, and has entered into three settlements involving a total of $4.4 million in civil penalties and a commitment to incur certain capital expenditures for pollution control equipment at its Victorville, California, Fairborn, Ohio and Lyons, Colorado plants. Although some of these proceedings are still in the initial stages, based on our past experience with such matters and currently available information, we believe, although we cannot assure you, that such cases will not have a material impact on our business or operations.

In 2002, CEMEX Construction Materials Florida, LLC (formerly Rinker Materials of Florida, Inc.) ("CEMEX Florida"), a subsidiary of CEMEX, Inc., was granted a federal quarry permit and was the beneficiary of another federal quarry permit for the Lake Belt area in South Florida. The permit held by CEMEX Florida

covered CEMEX Florida's SCL and FEC quarries. CEMEX Florida's Kendall Krome quarry is operated under the permit of which it was a beneficiary. The FEC quarry is the largest of CEMEX Florida's quarries measured by volume of aggregates mined and sold. CEMEX Florida's Miami cement mill is located at the SCL quarry and is supplied by that quarry, while the FEC and Kendall Krome quarries have supplied aggregates to CEMEX and third-party users. In response to litigation brought by environmental groups concerning the manner in which the federal quarry permits were granted, in January 2009, the U.S. District Court for the Southern District of Florida ordered the withdrawal of the federal quarry permits for CEMEX Florida's SCL, FEC and Kendall Krome quarries. The judge ruled that there were deficiencies in the procedures and analysis undertaken by the Army Corps of Engineers ("Corps") in connection with the issuance of the permits. Upon appeal, on January 21, 2010, the Eleventh Circuit Court of Appeals affirmed the district court's ruling withdrawing the federal quarry permits for the three CEMEX Florida quarries as well as other third-party federal quarry permits subject to the litigation. On January 29, 2010, the Corps completed a multi-year review commenced as a result of this litigation and issued a Record of Decision (ROD) supporting the issuance of new federal quarry permits for the FEC and SCL quarries. Excavation of new aggregates was stopped at the FEC and SCL quarries from January 20, 2009 until new permits were issued. The FEC permit was issued on February 3, 2010, and the SCL permit on February 18, 2010. The ROD also indicated that a number of potential environmental impacts must be addressed at the wetlands located at the Kendall Krome site before a new federal quarry permit may be issued for mining at that quarry. It is unclear how long it will take to fully address the Corps' concerns regarding mining in the Kendall Krome wetlands. While no new aggregates will be quarried from wetland areas at Kendall Krome pending the resolution of the potential environmental issues, the FEC and SCL quarries will continue to operate. If CEMEX Florida were unable to maintain the new Lake Belt permits, CEMEX Florida would need to source aggregates, to the extent available, from other locations in Florida or import aggregates. This would likely affect operating income from our Florida operations. Any adverse impacts on the Florida economy arising from the cessation or significant restriction of quarrying operations in the Lake Belt area could also have a material adverse effect on our financial results.

In 2006, the State of California adopted the Global Warming Solutions Act (Assembly Bill 32 or "AB32") setting into law a goal to reduce the State's carbon dioxide emissions to 1990 levels by 2020. As part of the measures derived from AB32, the California Air Resources Board developed a cap-and-trade program, to be enforced from 2013, that covers most industrial sources of greenhouse gas emissions in the State, including cement production facilities. The program involves allocating a number of allowances free of charge to covered installations, which must subsequently surrender back to the regulator a number of allowances or qualified offset credits matching their verified emissions during the compliance period. We expect that our Victorville cement plant will receive enough free allowances to operate during the first compliance period (2013-2014) without a material impact on its operating costs.

*Europe*. In Great Britain, future expenditure on closed and current landfill sites has been assessed and quantified over the period in which the sites are considered to have the potential to cause environmental harm, generally consistent with the regulatory view of up to 60 years from the date of closure. The assessed expenditure relates to the costs of monitoring the sites and the installation, repair and renewal of environmental infrastructure. The costs have been quantified on a net present value basis in the amount of approximately £131.4 million (approximately U.S.$199.64 million as of March 31, 2013, based on an exchange rate of £0.6582 to U.S.$1.00) as of December 31, 2012, and we made an accounting provision for this amount at December 31, 2012.

In 2003, the European Union adopted a directive in order to help it fulfill its commitments under the Kyoto Protocol on climate change. This directive defines and establishes a GHG emissions trading scheme ("ETS") within the European Union, i.e., it caps carbon dioxide emissions from installations involved in a number of sectors including, among others, the cement and lime. Installations covered by this regulation have to monitor their emissions of CO2 and surrender every year allowances (the right to emit one metric ton of CO2), or to a certain extent international offset credits, that cover their emissions. Up to 2012, allowances were issued by member states according to their National Allocation Plans, or NAPs. The NAPs not only set the total number of allowances for a given phase, but also defined how they are allocated among participating installations. From

2013 onwards allowances are allocated under a European-wide standard, which takes into account a best-of-class performance benchmark and, for each installation, its production of clinker during a reference period. Allowances are tradable so as to enable companies that manage to reduce their emissions to sell their excess allowances to companies that exceed their allocated quota. Failure to meet the emissions caps can subject a company to heavy penalties.

The international offset credits that installations are allowed to use, up to specified levels, to replace European allowances are issued under the flexible mechanisms of the Kyoto Protocol. The main source of those credits are projects registered under the so-called Clean Development Mechanism ("CDM"), but Joint Implementation ("JI") credits are also eligible subject to certain criteria; the difference between these credits is dependent on which country is hosting the project: CDM projects are implemented in developing countries, JI projects in developed ones.

After a favourable verdict in the case that the Republic of Latvia brought before the European General Court against the European Commission's rejection of the initial version of the Latvian NAP, the Latvian Ministry of Environmental Protection and Regional Development issued the Decision No. 46 of April 18, 2012 increasing the allocation of allowances to our Broceni plant. The European Commission has subsequently filed an appeal with the European Court of Justice against the Judgement of the General Court; the General Advocate has issued an opinion in favour of the Commission's legal grounds and subsequently contrary to the judgment of the European General Court. The outcome of this appeal is uncertain, as is the effect that a successful appeal by the Commission could have on the Decision that increased the allocation to our cement plant. A final judgement is expected to be passed within an approximate period of 4 years.

Croatia implemented during the years 2010 to 2012 an emissions trading scheme designed to be compatible with the one in force in the European Union, although no emission allowances could be exchanged between the two schemes. Starting in 2013 and in line with its EU accession process, Croatia will fully adopt the EU ETS Phase III legislation. We do not expect the adoption by Croatia of the EU emissions trading scheme to substantially affect our overall position.

On April 27, 2011, the European Commission adopted a Decision that states the rules, including the benchmarks of greenhouse gas emissions performance, to be used by the Member States in calculating the number of allowances to be annually allocated for free to industrial sectors (such as cement) that are deemed to be exposed to the risk of "carbon leakage". Based on the criteria contained in the adopted Decision and the proposed allocation figures included in the tables of National Implementation Measures submitted by the different EU Member States and Croatia for approval by the European Commission, we expect that the aggregate amount of allowances that will be annually allocated for free to CEMEX in Phase III of the ETS (2013—2020) will be sufficient to operate. This assessment stems from various factors, notably our efforts to reduce emissions per unit of clinker produced and reduced demand for our products due to the current economic circumstances.

Despite having already sold a substantial amount of allowances for Phase II of the ETS, we believe the overall volume of transactions is justified by our conservative emissions forecast, the stream of offset credits coming from our internal portfolio of CDM projects in Latin America and Egypt, and our expected long position in the initial years of Phase III of the ETS, meaning that the risk of having to buy allowances in the market is very low. As of March 31, 2013, the price of carbon dioxide allowances for Phase II on the spot market was approximately €4.74 per ton (approximately U.S.$6.08 as of March 31, 2013, based on an exchange rate of €0.7795 to U.S.$1.00). We are taking measures intended to minimize our exposure to this market, while continuing to supply our products to our customers.

### Tariffs

The following is a discussion of tariffs on imported cement in our major markets.

*Mexico*. Mexican tariffs on imported goods vary by product and have historically been as high as 100%. In recent years, import tariffs have been substantially reduced and currently range from none at all for raw materials to over 20% for finished products, with an average weighted tariff of approximately 3.7%. As a result of the North American Free Trade Agreement, or NAFTA, as of January 1, 1998, the tariff on cement imported into Mexico from the United States or Canada was eliminated. However, a tariff in the range of 7% ad valorem will continue to be imposed on cement produced in all other countries unless tariff reduction treaties are implemented or the Mexican government unilaterally reduces that tariff. While the reduction in tariffs could lead to increased competition from imports in our Mexican markets, we anticipate that the cost of transportation from most producers outside Mexico to central Mexico, the region of highest demand, will remain a barrier to entry.

*United States*. There are no tariffs on cement imported into the United States from any country, except Cuba and North Korea.

*Europe*. Member countries of the European Union are subject to the uniform European Union commercial policy. There is no tariff on cement imported into a country that is a member of the European Union from another member country or on cement exported from a European Union country to another member country. For cement imported into a member country from a non-member country, the tariff is currently 1.7% of the customs value. Any country with preferential treatment with the European Union is subject to the same tariffs as members of the European Union. Most Eastern European producers exporting cement into European Union countries currently pay no tariff.

### Tax Matters

*Mexico*. Pursuant to amendments to the Mexican Income Tax Law (*Ley del Impuesto sobre la Renta*), which became effective on January 1, 2005, Mexican companies with direct or indirect investments in entities incorporated in foreign countries, whose income tax liability in those countries is less than 75% of the income tax that would be payable in Mexico, were required to pay taxes in Mexico on passive income, such as dividends, royalties, interest, capital gains and rental fees obtained by such foreign entities, except for income derived from entrepreneurial activities in such countries, which is not subject to tax under these amendments. We filed two motions in the Mexican federal courts challenging the constitutionality of the January 1, 2005 amendments to the Mexican Income Tax Law. Although we had obtained a favorable ruling from the lower Mexican federal court, on September 9, 2008, the Mexican Supreme Court, on appeal, ruled against our constitutional challenge of the controlled foreign corporation tax rules in effect in Mexico for tax years 2005 to 2007. Because the Mexican Supreme Court's decision did not pertain to an amount of taxes due or other tax obligations, we had the right to self-assess any taxes due through the submission of amended tax returns. On March 1, 2012, we self-assessed the taxes corresponding to the 2005 tax year for a total amount, inclusive of surcharges and carry-forward charges, of approximately Mexican Ps4.6 billion (approximately U.S.$372.77 million as of March 31, 2013, based on an exchange rate of Mexican Ps12.34 to U.S.$1.00), of which 20%, equivalent to approximately Mexican Ps928 million (approximately U.S.$75.20 million as of March 31, 2013, based on an exchange rate of Mexican Ps12.34 to U.S.$1.00), was paid in connection with the submission of amended tax returns, which were filed on March 1, 2012. The remaining 80% of such total amount is due in January 2013, plus additional surcharges and carry-forward charges if we elect to extend the payment date and pay in thirty-six monthly installments, which can be prepaid at our option. Additionally, on July 5, 2012, we self-assessed the taxes corresponding to the 2006 tax year for a total amount, inclusive of surcharges and carry-forward charges, of approximately Mexican Ps1.1 billion (approximately U.S.$89.14 million as of March 31, 2013, based on an exchange rate of Mexican Ps12.34 to U.S.$1.00), of which 20%, equivalent to approximately Mexican Ps221 million (approximately U.S.$17.91 million as of March 31, 2013, based on an exchange rate of Mexican Ps12.34 to U.S.$1.00), was paid in connection with the submission of amended tax returns, which were filed on July 5, 2012. The remaining 80%

of such total amount is due in July 2013, plus additional surcharges and carry-forward charges if we elect to extend the payment date and pay in thirty-six monthly instalments, which can be prepaid at our option. We believe we have adequate provisions to cover self-assessments for the years 2005 and 2006. For the 2007 tax year, there is no tax due. The tax authorities in Mexico agreed with our self-assessment and with the procedure to determine the taxes due for the 2005 and 2006 tax years and, as a result, the tax authorities in Mexico may not assess additional amounts of taxes past due for those years. The Mexican Income Tax Law was again amended in 2008, as a result of which we do not expect any material adverse effect from the controlled foreign corporation tax rules for years subsequent to 2007. On December 17, 2012, the Mexican authorities published the decree of the Federation Revenues Law for the 2013 tax year. The decree contains a transitory amnesty provision that grants tax amnesty of up to 80% of certain tax proceedings originated before the 2007 tax period and 100% of interest and penalties of tax proceedings originated in the 2007 tax period and thereafter. CEMEX, S.A.B. opted to enter this amnesty program and therefore there are not any tax liabilities in connection to this matter as of March 31, 2013.

The Mexican Congress approved several amendments to the Mexican Asset Tax Law ( *Ley del Impuesto al Activo*) that came into effect on January 1, 2007. As a result of such amendments, all Mexican corporations, including us, were no longer allowed to deduct liabilities from calculation of the asset tax. We believed that the Asset Tax Law, as amended, was against the Mexican Constitution. We challenged the Asset Tax Law through appropriate constitutional action (*juicio de amparo*), and the Mexican Supreme Court ruled that the reform did not violate the Mexican Constitution. In addition, the Mexican Supreme Court ordered the lower courts to resolve all pending proceedings based upon criteria provided by the Mexican Supreme Court. However, we will not be affected by this resolution since we have already calculated and paid the applicable asset tax in accordance with the Mexican Asset Tax Law.

The asset tax was imposed at a rate of 1.25% on the value of most of the assets of a Mexican corporation. The asset tax was “complementary” to the corporate income tax (*impuesto sobre la renta*) and, therefore, was payable only to the extent it exceeded payable income tax.

In 2008, the Asset Tax Law was abolished and a new law applicable to all Mexican corporations was enacted, known as the *Impuesto Empresarial a Tasa Única* (Single Rate Corporate Tax), which is a form of alternative minimum tax.

In November 2009, the Mexican Congress approved a general tax reform, effective as of January 1, 2010. Specifically, the tax reform requires CEMEX to retroactively pay Additional Consolidation Taxes. This tax reform requires CEMEX to pay taxes on certain previously exempt intercompany dividends, certain other special tax items and operating losses generated by members of the consolidated tax group not recovered by the individual company generating such losses within the succeeding 10-year period, which may have a material adverse effect on our cash flow, financial condition and net income. The Additional Consolidation Taxes must be paid over a five-year time period. This tax reform also increased the statutory income tax rate from 28% to 30% for the years 2010 to 2012, then lowered it to 29% for 2013 and 28% for 2014 and future years. However, in December of 2012, the Federal Revenue Law ( *Ley de Ingresos de la Federación*) applicable in 2013, established that the statutory income tax rate will remain at 30% in 2013, and thereafter lowered to 29% for 2014 and 28% for 2015 and future years.

For the 2010 fiscal year, CEMEX was required to pay (at the new, 30% tax rate) 25% of the Additional Consolidation Taxes for the period between 1999 and 2004, with the remaining 75% payable as follows: 25% in 2011, 20% in 2012, 15% in 2013 and 15% in 2014. Additional Consolidation Taxes arising after the 2004 tax year are taken into account in the sixth fiscal year after such year and are payable over the succeeding five years in the same proportions (25%, 25%, 20%, 15% and 15%). Applicable taxes payable as a result of this tax reform are increased by inflation adjustments as required by Mexican Income Tax Law (*Ley del Impuesto Sobre la Renta*). In connection with these changes in the tax consolidation regime in Mexico, as of December 31, 2009, we recognized a liability of approximately Ps10.5 billion (approximately U.S.$850.89 million as of March 31, 2013, based on an exchange rate of Ps12.34 to U.S.$1.00), of which approximately Ps8.2 billion (approximately

U.S.$664.51 million as of March 31, 2013, based on an exchange rate of Mexican Ps12.34 to U.S.$1.00) was recognized under "Other non-current assets" in connection with the net liability recognized under the new tax law and that we expect to realize in connection with the payment of this tax liability, and approximately Ps2.2 billion (approximately U.S.$178.28 million as of March 31, 2013, based on an exchange rate of Ps12.34 to U.S.$1.00) was recognized against "Retained earnings" upon adoption of IFRS according to the new law, related to: (a) the difference between the sum of the equity of the controlled entities for tax purposes and the equity for tax purposes of the consolidated entity; (b) dividends from the controlled entities for tax purposes to CEMEX, S.A.B. de C.V.; and (c) other transactions among the companies included in the tax consolidation group that represented the transfer of resources within such group.

On February 15, 2010, we filed a constitutional challenge (*juicio de amparo*) against the January 1, 2010 tax reform described above. As of June 3, 2011, we were notified of a favorable verdict at the first stage of the trial; the Mexican tax authorities subsequently filed an appeal ( *recurso de revisión*) before the Mexican Supreme Court, which is pending.

On March 31, 2010, additional tax rules ( *miscelanea fiscal*) were published in connection with the general tax reform approved by the Mexican Congress in November 2009. These new rules provide certain taxpayers with benefits arising from the years 1999 to 2004.

On June 30, 2010, CEMEX paid approximately Ps325 million (approximately U.S.$26.34 million as of March 31, 2013, based on an exchange rate of Ps12.34 to U.S.$1.00) of Additional Consolidation Taxes. This first payment represented 25% of the Additional Consolidation Taxes for the "1999 to 2004" period. On March 31, 2011, CEMEX made a second payment of approximately Ps506 million (approximately U.S.$41.00 million as of March 31, 2013, based on an exchange rate of Ps12.34 to U.S.$1.00). This second payment, together with the first payment, represented 50% of the Additional Consolidation Taxes for the "1999-2004" period, and also included the first payment of 25% of the Additional Consolidation Taxes for the "2005" period. On March 30, 2012, CEMEX paid Ps698 million (approximately U.S. $56.56 million as of March 31, 2013, based on an exchange rate of Ps12.34 to U.S. $1.00). This third payment together with the first and second payments represented 70% of the Additional Consolidation Taxes for the "1999-2004" period, 50% of the Additional Consolidation Taxes for the "2005" period and it also included the first payment of 25% of the Additional Consolidation Taxes for the "2006" period. On March 27, 2013, CEMEX paid Ps 2 billion (approximately U.S.$162.07 million as of March 31, 2013, based on an exchange rate of Ps12.34 to U.S.$1.00). This fourth payment, together with the first, second and third payments represented 85% of the Additional Consolidation Taxes for the "1999-2004" period, 70% of the Additional Consolidation Taxes for the "2005" period, 50% of the Additional Consolidation Taxes for the "2006" period and 25% of the Additional Consolidation Taxes for the "2007" period. As of March 31, 2013, we have paid an aggregate amount of approximately Ps3.5 billion (approximately U.S. $283.63 million as of March 31, 2013, based on an exchange rate of Ps12.34 to U.S. $1.00) of Additional Consolidation Taxes.

In December 2010, pursuant to certain additional rules, the tax authorities granted the option to defer the calculation and payment of certain items included in the law in connection with the taxable amount for the difference between the sum of the equity of controlled entities for tax purposes and the equity of the consolidated entity for tax purposes. As a result, CEMEX reduced its estimated tax payable by approximately Ps2.9 billion (approximately U.S.$235.01 million as of March 31, 2013, based on an exchange rate of Ps12.34 to U.S.$1.00) against a credit to the income statement when the new tax enactment took place. In addition, after accounting for the following that took place in 2010: (a) cash payments of Ps325 million (approximately U.S.$26.34 million as of March 31, 2013, based on an exchange rate of Ps12.34 to U.S.$1.00); (b) income tax from subsidiaries paid to the parent company of Ps2.4 billion (approximately U.S.$194.49 million as of March 31, 2013, based on an exchange rate of Ps12.34 to U.S.$1.00); and (c) other adjustments of Ps358 million (approximately U.S.$29.01 million as of March 31, 2013, based on an exchange rate of Ps12.34 to U.S.$1.00), the estimated tax payable for tax consolidation in Mexico amounted to approximately Ps10.1 billion (approximately U.S.$818.48 million as of March 31, 2013, based on an exchange rate of Ps12.34 to U.S.$1.00) as of December 31, 2010. Furthermore,

after accounting for the following that took place in 2011: (a) cash payments in the amount of Ps506 million (approximately U.S.$41.00 million as of March 31, 2013, based on an exchange rate of Ps12.34 to U.S.$1.00); (b) income tax from subsidiaries paid to the parent company of Ps2.3 billion (approximately U.S.$186.39 million as of March 31, 2013, based on an exchange rate of Ps12.34 to U.S.$1.00); and (c) other adjustments of Ps485 million (approximately U.S.$39.30 million as of March 31, 2013, based on an exchange rate of Ps12.34 to U.S.$1.00), the estimated tax payable for tax consolidation in Mexico increased to approximately Ps12.4 billion (approximately U.S.$1,004.86 million as of March 31, 2013, based on an exchange rate of Ps12.34 to U.S.$1.00) as of December 31, 2011. Additionally, after accounting for the following that took place in 2012: (a) cash payments in the amount of Ps 698 million (approximately U.S. $56.56 million as of March 31, 2013, based on an exchange rate of Ps12.34 to U.S. $1.00), (b) income tax from the subsidiaries paid to the parent company of Ps2.1 billion (approximately U.S. $186.39 million as of March 31, 2013, based on an exchange rate of Ps12.34 to U.S. $1.00) and (c) other adjustments of Ps745 million (approximately U.S. $42.79 million as of March 31, 2013, based on an exchange rate of Ps12.34 to U.S. $1.00); as of December 31, 2012, the estimated tax payable for tax consolidation in Mexico increased to approximately Ps14.5 billion (approximately U.S. $1.18 billion as of March 31, 2013, based on an exchange rate of Ps12.34 to U.S. $1.00). In December 2012, the Federal Revenue Law ( *Ley de Ingresos de la Federación*) applicable in 2013 established that the statutory income tax rate remained at 30% in 2013, then lowered it to 29% for 2014 and 28% for 2015 and future years. As of March 31, 2013, our estimated payment schedule of taxes payable resulting from changes in the tax consolidation regime is as follows: approximately Ps2.6 billion (approximately U.S. $210.7 million as of March 31, 2013, based on an exchange rate of Ps12.34 to U.S. $1.00) in 2014; approximately Ps2.7 billion (approximately U.S. $218.80 million as of March 31, 2013, based on an exchange rate of Ps12.34 to U.S. $1.00) in 2015; and approximately Ps7.2 billion (approximately U.S. $583.47 million as of March 31, 2013, based on an exchange rate of Ps12.34 to U.S. $1.00) in 2016 and thereafter.

On January 21, 2011, the Mexican tax authorities notified CEMEX, S.A.B. de C.V. of a tax assessment for approximately Ps995.6 million (approximately U.S.$80.68 million as of March 31, 2013 based on an exchange rate of Ps12.34 to U.S.$1.00) pertaining to the 2005 tax year. The tax assessment is related to the corporate income tax in connection with the tax consolidation regime. As a result of a tax reform in 2005, instead of deducting purchases, the law allowed for the cost of goods sold to be deducted. However, since there were inventories as of December 31, 2004, a transition provision of the law allowed for the inventory to be accumulated as income (thus reversing the deduction via purchases) and then deducted from 2005 onwards as cost of goods sold. In order to compute the income resulting from the inventories in 2004, the law allowed this income to be offset against accumulated tax losses of some subsidiaries. The authorities argued that because of this offset, the right to use such losses at the consolidated level had been lost and, therefore, CEMEX had to increase its consolidated income or decrease its consolidated losses. CEMEX believes that there is no legal support for the conclusion of the authority and, on March 29, 2011, CEMEX challenged the assessment before the tax court.

On November 16, 2011, Mexican tax authorities notified Centro Distribuidor and Mexcement, both indirect subsidiaries of CEMEX, S.A.B. de C.V., of tax assessments, related to direct and indirect investments in entities considered to be preferential tax regimens for tax year 2004, in the amount of approximately Ps1.3 billion (approximately U.S.$105.35 million as of March 31, 2013, based on an exchange rate of Ps12.34 to U.S.$1.00) and approximately Ps759 million (approximately U.S.$61.51 million as of March 31, 2013, based on an exchange rate of Ps12.34 to U.S.$1.00).

On February 3, 2012, Centro Distribuidor and Mexcement filed a claim against the November 16, 2011 assessments.

*United States*. As of December 31, 2012, our U.S. subsidiaries and the Internal Revenue Service (IRS) reached a resolution regarding the income tax audits for the years 2005 through 2009 and also tax losses to applicable prior years to recover taxes previously paid. As of the date of this annual report, the audits for the years 2005 through 2009 have been settled and processed, and the IRS is conducting its audit of years 2010 and

2011. CEMEX believes it has adequately reserved for these matters and that the amounts are not expected to be material to our financial results. However, we cannot assure you that the outcome will not require further provisions for taxes.

*Colombia*. On November 10, 2010, the Colombian Tax Authority (*Dirección de Impuestos*) notified CEMEX Colombia of a proceeding (*requerimiento especial*) in which the Colombian Tax Authority rejected certain tax losses taken by CEMEX Colombia in its 2008 year-end tax return. In addition, the Colombian Tax Authority assessed an increase in taxes to be paid by CEMEX Colombia in the amount of approximately 43 billion Colombian Pesos (approximately U.S.$23.47 million as of March 31, 2013, based on an exchange rate of 1,832.20 Colombian Pesos to U.S.$1.00) and imposed a penalty in the amount of approximately 69 billion Colombian Pesos (approximately U.S.$37.66 million as of March 31, 2013, based on an exchange rate of 1,832.20 Colombian Pesos to U.S.$1.00). The Colombian Tax Authority argues that CEMEX Colombia is limited in its use of prior year tax losses to 25% of such losses per subsequent year. We believe that the tax provision that limits the use of prior year tax losses does not apply in the case of CEMEX Colombia because the applicable tax law was repealed in 2006. Furthermore, we believe that the Colombian Tax Authority is no longer able to review the 2008 tax return because the time to review such returns has already expired pursuant to Colombian law. In February 2011, CEMEX Colombia presented its arguments to the Colombian Tax Authority. On July 27, 2011, the Colombian Tax Authority issued its final determination, which confirmed the information in the November 10, 2010 proceeding notice (requerimiento especial). The official assessment was appealed by CEMEX Colombia on September 27, 2011, and the Colombian Tax Authority has one year to resolve the appeal. On July 31, 2012, the Colombian Tax Authority notified CEMEX Colombia of the resolution confirming the official liquidation. CEMEX Colombia filed a lawsuit on November 16, 2012.

On April 1, 2011, the Colombian Tax Authority notified CEMEX Colombia of a proceeding notice ( *requerimiento especial*) in which the Colombian Tax Authority rejected certain deductions taken by CEMEX Colombia in its 2009 year-end tax return. The Colombian Tax Authority assessed an increase in taxes to be paid by CEMEX Colombia in the amount of approximately 90 billion Colombian Pesos (approximately U.S.$49.12 million as of March 31, 2013, based on an exchange rate of 1,832.20 Colombian Pesos to U.S.$1.00) and imposed a penalty in the amount of approximately 144 billion Colombian Pesos (approximately U.S.$78.59 million as of March 31, 2013, based on an exchange rate of 1,832.30 Colombian Pesos to U.S.$1.00). The Colombian Tax Authority argues that certain expenses are not deductible for fiscal purposes because they are not linked to direct revenues recorded in the same fiscal year, without taking into consideration that future revenue will be taxed with income tax in Colombia. CEMEX Colombia responded to the proceeding notice (*requerimiento especial*) on June 25, 2011. On December 15, 2011, the Colombian Tax Authority issued its final determination, which confirmed the information in the special proceeding. CEMEX Colombia appealed the final determination on February 15, 2012 and the Colombian Tax Authority has one year to resolve the appeal.

On January 17, 2013, the Colombian Tax Authority notified CEMEX Colombia of the resolution confirming the official liquidation. The company has four months, subsequent to the date of the resolution, to appeal.

At this stage, we are not able to assess the likelihood of an adverse result or potential damages which could be borne by CEMEX Colombia in either of the special proceedings described above, but if adversely resolved, they could have a material adverse impact on our financial results.

**Other Legal Proceedings**

*Expropriation of CEMEX Venezuela and ICSID Arbitration*. On August 18, 2008, Venezuelan officials took physical control of the facilities of CEMEX Venezuela, following the issuance of several governmental decrees purporting to authorize the takeover by the government of Venezuela of all of CEMEX Venezuela's assets, shares and business. Around the same time, the Venezuelan government removed the board of directors of CEMEX Venezuela and replaced its senior management. On October 16, 2008, CEMEX Caracas, which held a 75.7% interest in CEMEX Venezuela, filed a request for arbitration against the government of Venezuela before

the International Centre for Settlement of Investment Disputes, or ICSID, seeking relief for the expropriation of their interest in CEMEX Venezuela. In the ICSID proceedings against Venezuela, CEMEX Caracas was seeking: (a) a declaration that the government of Venezuela was in breach of its obligations under a bilateral investment treaty between the Netherlands and Venezuela (the "Treaty"), the Venezuelan Foreign Investment Law and customary international law; (b) an order that the government of Venezuela restore to CEMEX Caracas their interest in, and control over, CEMEX Venezuela; (c) in the alternative, an order that the government of Venezuela pay CEMEX Caracas full compensation with respect to its breaches of the Treaty, the Venezuelan Foreign Investment Law and customary international law, in an amount to be determined in the arbitration, together with interest at a rate not less than LIBOR, compounded until the time of payment; and (d) an order that the government of Venezuela pay all costs of and associated with the arbitration, including CEMEX Caracas's legal fees, experts' fees, administrative fees and the fees and expenses of the arbitral tribunal. The ICSID Tribunal was constituted on July 6, 2009. The arbitral tribunal issued its decision in favor of jurisdiction on December 30, 2010.

Separately, the government of Venezuela had claimed that three cement transportation vessels, which the former CEMEX Venezuela transferred to a third party before the expropriation, continue to be the property of the former CEMEX Venezuela and obtained interim measures before Venezuelan courts barring further transfer or disposition of those vessels. The government of Venezuela attempted to enforce these interim measures in the courts of Panama, and on October 13, 2010, the Panamanian Supreme Civil Court confirmed its prior rejection of such attempt to give the Venezuelan interim measures legal effect in Panama. In December of 2010, the Venezuelan Attorney General's office filed a complaint before the Maritime Court of the First Instance, Caracas, again seeking an order for the transfer of the vessels and damages for the allegedly unlawful deprivation of Venezuela's use and enjoyment of the vessels.

On November 30, 2011, following negotiations with the government of Venezuela and its public entity Corporación Socialista de Cemento, S.A., a settlement agreement was reached between CEMEX Caracas and the government of Venezuela that closed on December 13, 2011. Under this settlement agreement, CEMEX Caracas received compensation for the expropriation of CEMEX Venezuela in the form of (i) a cash payment of approximately U.S.$240 million and (ii) notes issued by Petróleos de Venezuela, S.A. ("PDVSA") which nominal value and interest income to maturity totaled U.S.$360 million. Additionally, as part of the settlement, claims, including the above referenced claim regarding the three transportation vessels, among all parties and their affiliates were released, and all intercompany payments due (approximately U.S.$154 million) from or to CEMEX Venezuela to and from CEMEX affiliates, as the case may be, were cancelled. As a result of this settlement agreement, CEMEX Caracas and the government of Venezuela agreed to withdraw its ICSID arbitration.

*Colombian Construction Claims*. On August 5, 2005, the Urban Development Institute ( *Instituto de Desarrollo Urbano*) and an individual filed a lawsuit in the Fourth Anti-Corruption Court of Bogotá ( *Fiscalía Cuarta Anticorrupción de Bogotá* ) against a subsidiary of CEMEX Colombia, S.A. claiming that it was liable, along with the other members of the *Asociación Colombiana de Productores de Concreto*, or ASOCRETO, a union formed by all the ready-mix concrete producers in Colombia, for the premature distress of the roads built for the mass public transportation system of Bogotá using ready-mix concrete supplied by CEMEX Colombia and other ASOCRETO members. The plaintiffs allege that the base material supplied for the road construction failed to meet the quality standards offered by CEMEX Colombia and the other ASOCRETO members and/or that they provided insufficient or inaccurate information in connection with the product. The plaintiffs seek the repair of the roads in a manner which guarantees their service during the 20-year period for which they were originally designed, and estimate that the cost of such repair will be approximately 100 billion Colombian Pesos (approximately U.S.$54.58 million as of March 31, 2013, based on an exchange rate of 1,832.20 Colombian Pesos to U.S.$1.00). The lawsuit was filed within the context of a criminal investigation of two ASOCRETO officers and other individuals, alleging that the ready-mix concrete producers were liable for damages if the ASOCRETO officers were criminally responsible. On January 21, 2008, CEMEX Colombia was subject to a judicial order, issued by the court, sequestering a quarry called El Tunjuelo, as security for a possible future

money judgment to be rendered against CEMEX Colombia in these proceedings. The court determined that in order to lift this attachment and prevent further attachments, CEMEX Colombia was required within a period of ten days to deposit with the court in cash 337.8 billion Colombian Pesos (approximately U.S.$184.37 million as of March 31, 2013, based on an exchange rate of 1,832.20 Colombian Pesos to U.S.$1.00), instead of being allowed to post an insurance policy to secure such recovery. CEMEX Colombia asked for reconsideration, and the court allowed CEMEX to present an insurance policy. Nevertheless, CEMEX appealed this decision, in order to reduce the amount of the insurance policy, and also requested that the guarantee be covered by all defendants in the case. On March 9, 2009, the Superior Court of Bogotá reversed this decision, allowing CEMEX to offer a security in the amount of 20 billion Colombian Pesos (approximately U.S.$10.92 million as of March 31, 2013, based on an exchange rate of 1,832.20 Colombian Pesos to U.S.$1.00). CEMEX gave the aforementioned security, and on July 27, 2009, the Superior Court of Bogotá lifted the attachment on the quarry. One of the plaintiffs appealed this decision, but the Supreme Court of Bogotá confirmed the lifting of the attachment. At this stage, we are not able to assess the likelihood of an adverse result or, because of the number of defendants, the potential damages which could be borne by CEMEX Colombia. The preliminary hearing to dismiss was unsuccessful and the final argument stage concluded on August 28, 2012.

On October 10th the court nullified the accusation made against Jose Miguel Paz and Diego Jaramillo, (ASOCRETO officials). The judgment convicted Andres Camargo, former Director of the Urban Development Institute, and legal representatives of the builder and the auditor to a prison term of 85 months and a fine of 32 million Colombian Pesos (approximately U.S. $17,465.34 as of March 31, 2013, based on an exchange rate of 1,832.20 Colombian Pesos to U.S.$1.00).

As a consequence of the annulment, the judge ordered a restart of the proceedings against the ASOCRETO officers. The ruling can be appealed, but the practical effect of this decision is that the criminal action against ASOCRETO officers will be barred and, therefore, we expect that there will be no condemnation against CEMEX Colombia.

In addition, as a consequence of the prematurely faulty paving stones used in the " *Transmilenio—Autopista Norte*" project in Colombia, six citizen actions were brought against CEMEX Colombia. The Colombian Administrative Court nullified five of such actions and currently, only the popular action brought by the citizen Félix Ocampo, remains outstanding. In addition, the Urban Development Institute filed another popular action alleging that CEMEX Colombia made deceiving advertisements on the characteristics of the fluid filling of the material used. In the " *Transmilenio—Autopista Norte*" project, CEMEX Colombia participated solely and exclusively as supplier of the fluid filling and ready-mix concrete, which were delivered and received to the satisfaction of the contractor, fulfilling all the required technical specifications. Likewise, CEMEX Colombia did not participate in or have any responsibility on the design, materials or their corresponding technical specifications.

*Croatian Concession Litigation*. After an extended consultation period, in April 2006, the cities of Kaštela and Solin in Croatia published their respective Master (physical) Plans defining the development zones within their respective municipalities, adversely impacting the mining concession granted to Cemex Hrvatska d.d., or CEMEX Croatia, our subsidiary in Croatia, by the Government of Croatia in September 2005. During the consultation period, CEMEX Croatia submitted comments and suggestions to the Master Plans, but these were not taken into account or incorporated into the Master Plans by Kaštela and Solin. Most of these comments and suggestions were intended to protect and preserve the rights of CEMEX Croatia's mining concession. Immediately after publication of the Master Plans, CEMEX Croatia filed a series of lawsuits and legal actions before the local and federal courts to protect its acquired rights under the mining concessions, including: (i) on May 17, 2006, a constitutional appeal before the constitutional court in Zagreb, seeking a declaration by the court concerning CEMEX Croatia's constitutional claim for decrease and obstruction of rights earned by investment and seeking prohibition of implementation of the Master Plans; this appeal is currently under review by the constitutional court in Croatia, and we cannot predict when it will be resolved; and (ii) on May 17, 2006, an administrative proceeding before an administrative court seeking a declaration from the Government of Croatia

confirming that CEMEX Croatia acquired rights under the mining concessions. The administrative court subsequently ruled in favor of CEMEX Croatia, validating the legality of the mining concession granted to CEMEX Croatia by the Government of Croatia, in September 2005. As of April 15, 2013, we had not yet been notified of an official declaration from the constitutional court regarding the question of whether the cities of Solin and Kaštela, within the scope of their Master Plans, can unilaterally change the borders of exploited fields. We believe that a declaration of the constitutional court will enable us to seek compensation for the losses caused by the proposed border changes. On June 15, 2012, we were notified that the case had been transferred from the constitutional court to the administrative court as a result of a new law that places the administrative courts in charge of disputes relating to environmental planning. In order to alleviate the adverse impact of the Master Plans, we are currently in the process of negotiating a new revised mining concession.

*Florida Litigation Relating to the Brooksville South Project*. In November 2008, AMEC/Zachry, the general contractor for the Brooksville South expansion project in Florida, filed a lawsuit against CEMEX Florida in Florida State Court in Orlando (Complex Commercial Litigation Division), alleging delay damages, seeking an equitable adjustment to the Design/Build contract and payment of change orders. AMEC/Zachry sought U.S.$60.0 million as compensation. In February 2009, AMEC/Zachry filed an amended complaint asserting a claim by AMEC E&C Services, Inc. against CEMEX Materials, LLC ("CEMEX Materials") as the guarantor of the Design/Build contract. CEMEX Florida answered the suit, denying any breach of contract and asserting affirmative defenses and counterclaims against AMEC/Zachry for breach of contract. CEMEX Florida also asserted certain claims against AMEC, plc as the guarantor for the contract and FLSmidth, Inc. ("FLS") as the equipment manufacturer. FLS filed a variety of motions challenging CEMEX Florida's claims against FLS. Based upon the court rulings on FLS's motions, on July 16, 2010, CEMEX Florida amended its counterclaim against AMEC/Zachry and its crossclaim against FLS. CEMEX Florida asserted new claims against AMEC/Zachry for negligent misrepresentation, and reasserted its claims for common law indemnity, negligent misrepresentation and breach of contract against FLS. FLS also filed an amended answer asserting crossclaims against CEMEX Florida and CEMEX Materials for breach of contract and unjust enrichment. After an extensive motion practice and discovery phase of the case, the parties to this proceeding have entered into a settlement. The settlement of this matter will not have a material adverse effect on our results.

*Panamanian Height Restriction Litigation*. On July 30, 2008, the Panamanian *Autoridad de Aeronáutica Civil* denied a request by our subsidiary Cemento Bayano to erect structures above the permitted height restriction applicable to certain areas surrounding Calzada Larga Airport. This height restriction is set according to applicable legal regulations and reaches the construction area of the cement plant's second line. According to design plans, ten of the planned structures would exceed the permitted height. Cemento Bayano has formally requested the above-mentioned authority to reconsider its denial. On October 14, 2008, The Panamanian *Autoridad de Aeronáutica Civil* granted permission to construct the tallest building of the second line, under the following conditions: (a) Cemento Bayano shall assume any liability arising out of any incident or accident caused by the construction of such building; and (b) there will be no further permissions for additional structures. Cemento Bayano filed an appeal with respect to the second condition and has submitted a request for permission in respect to the rest of the structures. On March 13, 2009, the *Autoridad de Aeronáutica Civil* issued a ruling stating that (a) should an accident occur in the perimeter of the Calzada Larga Airport, an investigation shall be conducted in order to determine the cause and further responsibility; and (b) there will be no further permissions for additional structures of the same height as the tallest structure already granted. Therefore, additional permits may be obtained as long as the structures are lower than the tallest building, on a case-by-case analysis to be conducted by the authority. On June 11, 2009, the Panamanian *Autoridad de Aeronáutica Civil* issued a ruling denying a permit for additional structures above the permitted height restriction applicable to certain areas surrounding Calzada Larga Airport. On June 16, 2009, Cemento Bayano, S.A. requested the abovementioned authority to reconsider its denial. As of April 15, 2013, the *Panamanian Autoridad de Aeronaútica Civil* had not yet issued a ruling pursuant to our request for reconsideration. We will continue the negotiations with officials at the *Panamanian Autoridad de Aeronaútica Civil* in hopes of attaining a negotiated settlement that addresses all their concerns.

*Texas General Land Office Litigation*. The Texas General Land Office ("GLO") alleged that CEMEX Construction Materials South, LLC failed to pay approximately U.S.$550 million in royalties related to mining by CEMEX and its predecessors since the 1940s on lands that, when transferred originally by the State of Texas, contained reservation of mineral rights. The petition filed by the GLO also sought injunctive relief, although the State did not pursue such relief. On December 17, 2009, the Texas state district court granted CEMEX's motion for summary judgment finding that the GLO's claims had no merit. The GLO filed a Motion for Reconsideration that was denied by the court. The court severed the parties' ancillary claims, including CEMEX's counter claims and third-party claims against Texas Land Commissioner Jerry Patterson and the State's trespass to try title claim against CEMEX, from the case's central claims of breach of contract, conversion and injunction, holding that these ancillary claims should be held in abeyance until resolution of the GLO's appeal. The GLO filed its appeal on March 25, 2010. Both parties submitted briefs and the Court of Appeals heard oral arguments on May 3, 2011. On August 31, 2011, the El Paso Court of Appeals reversed the trial court's judgment and rendered judgment in favor of the State of Texas with respect to the ownership of the materials on the lands mined by CEMEX and its predecessors in interest. On November 16, 2011, CEMEX petitioned the Texas Supreme Court for review of the El Paso Court of Appeals' decision. On February 23, 2012, the GLO and CEMEX entered into an agreement to settle all claims, including claims for past royalties, without any admission of liability by CEMEX. Pursuant to the settlement, CEMEX will pay U.S.$750,000 in five equal installments of U.S.$150,000 per year and has entered into a royalty mining lease at the royalty rate required by the Texas Natural Resources Code on a going forward basis, beginning in September 2012. Further, CEMEX's pending appeal to the Texas Supreme Court has been withdrawn and all ancillary claims that were held in abeyance have been dismissed.

*Strabag Arbitration*. Following an auction process, CEMEX (through its subsidiary RMC Holding B.V.) entered into a share purchase agreement, dated July 30, 2008 (the "SPA"), to sell its operations in Austria (then consisting of 26 aggregates and 41 ready-mix concrete plants) and Hungary (then consisting of 6 aggregates, 29 ready-mix concrete and 4 paving stone plants) to Strabag SE, one of Europe's leading construction and building materials groups ("Strabag"), for €310 million (approximately U.S.$397.69 million as of March 31, 2013, based on an exchange rate of €0.7795 to U.S.$1.00). On February 10, 2009, the Hungarian Competition Council approved the sale of the Hungarian assets subject to the condition that Strabag sell the ready-mix concrete plant operating in Salgótarján to a third party within the next year. On April 28, 2009, the Austrian Cartel Court (Kartellgericht) approved the sale of the Austrian assets subject to the condition that Strabag sell to a third party several ready-mix concrete plants, including the Nordbahnhof plant in Vienna. The Nordbahnhof plant had, however, already been dismantled by the time of the approval, so this condition could not be satisfied. Contrary to CEMEX's recommendation that a supplementary application should have been made to the Austrian Cartel Court, Strabag and the Austrian competition authority appealed the decision of the Austrian Cartel Court. On July 1, 2009, Strabag gave notice of its purported rescission of the SPA, arguing that the antitrust condition precedent under the SPA had not been satisfied before the contractual cut-off date of June 30, 2009. On the same day, CEMEX notified Strabag that CEMEX considered their purported rescission invalid. In the face of Strabag's continued refusal to cooperate in making a supplementary application to the Austrian Cartel Court, CEMEX rescinded the SPA with effect from September 16, 2009. On October 19, 2009, we (through RMC Holding B.V.) filed a claim against Strabag before the International Arbitration Court of the International Chamber of Commerce, requesting a declaration that Strabag's rescission of the SPA was invalid, that CEMEX's rescission was lawful and effective and claiming damages in a substantial amount likely to exceed €150 million (approximately U.S.$192.43 million as of March 31, 2013, based on an exchange rate of €0.7795 to U.S.$1.00). On December 23, 2009, Strabag filed its answer to CEMEX's request for arbitration asking the tribunal to dismiss the claim and also filed a counterclaim for an amount of €800,000 (approximately U.S.$1.03 million as of March 31, 2013, based on an exchange rate of €0.7795 to U.S.$1.00) as damages and applied for security for costs in the amount of €1,000,000.00 (approximately U.S.$1.28 million as of March 31, 2013, based on an exchange rate of €0.7795 to U.S.$1.00) in the form of an on-demand bank guarantee. The security for costs application was withdrawn by Strabag on March 9, 2010. CEMEX considered Strabag's counterclaim to be unfounded. The arbitral tribunal was constituted on February 16, 2010 and a first procedural hearing was held on March 23, 2010 at which the parties agreed on the terms of reference and procedural rules in accordance with Article 18 of the ICC Rules of Arbitration. Pursuant to the procedural rules, on June 30, 2010, CEMEX

submitted its statement of claim and its list of witnesses. On October 29, 2010, Strabag submitted its statement of defense and counterclaim. On January 14, 2011, CEMEX submitted its reply and answer to Strabag's counterclaim. On March 7, 2011, Strabag submitted its rejoinder. Pursuant to Article 21 of the ICC Rules of Arbitration, the evidentiary hearing took place from May 2 to May 9, 2011. The hearing on quantum (attended by the quantum experts) took place on September 20, 2011. A second hearing on quantum was held on November 23 and 24, 2011. Post-hearing briefs were submitted on December 22, 2011, concluding that stage of the proceedings. The final award dated May 29, 2012, was notified to CEMEX on June 1, 2012. According to this final award, the arbitral tribunal declared that Strabag's rescission of the SPA was unlawful and ineffective, and ordered Strabag to pay to CEMEX: (i) damages in the amount of €30,000,000.00 (approximately U.S.$38.49 million as of March 31, 2013, based on an exchange rate of €0.7795 to U.S.$1.00) with interest thereon from the date of the Request for Arbitration (October 19, 2009) until payment in full at the rate of 8.32% per annum; (ii) default interest for the period of July 7, 2009 through September 16, 2009 in the amount of €4,946,182.00 (approximately U.S.$6.35 million as of March 31, 2013, based on an exchange rate of €0.7795 to U.S.$1.00) with interest thereon from the date of the statement of claim (June 30, 2010) until payment in full at the rate of 4% per annum; (iii) U.S.$250,000.00 as partial compensation for CEMEX's ICC costs of arbitration and (iv) €750,551.00 (approximately U.S.$962,862.09 as of March 31, 2013, based on an exchange rate of €0.7795 to U.S.$1.00) as compensation for CEMEX's legal costs incurred in the proceedings. Also, Strabag's counterclaim was dismissed. Strabag has filed an annulment action before the Swiss Federal Court on July 2, 2012.

In relation to the annulment process with the Swiss Federal Court, on July 20, 2012, Strabag paid us, through RMC Holdings B.V., the amounts ordered by the arbitral tribunal on its final award dated May 29, 2012 (principal plus surplus accrued interest) totalling €42,977,921.66 (approximately U.S.$55.14 million as of March 31, 2013, based on an exchange rate of €0.7795 to U.S.$1.00) and U.S.$250,520.55, and, in order to secure the potential obligation for RMC Holdings B.V. to repay these amounts to Strabag in the event that the Swiss Federal Supreme Court resolves to annul the May 29, 2012 final award, RMC Holdings B.V. pledged in favour of Strabag 496,355 shares (representing approximately a 33% stake) in its subsidiary Cemex Austria AG. On September 6, 2012, we presented our reply to the annulment action before the Swiss Federal Court.

The Swiss Federal Court has rendered its judgement on February 20, 2013. The Court has rejected the annulment action brought by Strabag and has ordered Strabag to bear the Court costs amounting to CHF100,000.00 (approximately U.S.$105,462.98 as of March 31, 2013, based on an exchange rate of CHF0.9482 to U.S.$1.00) and to compensate RMC Holdings B.V. with an amount of CHF200,000.00 (approximately U.S.$210,925.96 as of March 31, 2013, based on an exchange rate of CHF0.9482 to U.S.$1.00) for costs incurred in the proceedings. As a result, the pledge made in favor of Strabag was cancelled on March 4, 2013.

*Colombian Water Use Litigation*. On June 5, 2010, the District of Bogotá's environmental secretary ( *Secretaría Distrital de Ambiente de Bogotá* ) issued a temporary injunction suspending all mining activities at CEMEX Colombia's El Tunjuelo quarry, located in Bogotá, Colombia. As part of the temporary injunction, Holcim Colombia and Fundación San Antonio (local aggregates producers which also have mining activities located in the same area as the El Tunjuelo quarry) have also been ordered to suspend mining activities in that area. The District of Bogotá's environmental secretary alleges that during the past 60 years, CEMEX Colombia and the other companies have illegally changed the course of the Tunjuelo River, have used the percolating waters without permission and have improperly used the edge of the river for mining activities. In connection with the temporary injunction, on June 5, 2010, CEMEX Colombia received a formal notification from the District of Bogotá's environmental secretary informing it of the initiation of proceedings to impose fines against CEMEX Colombia. CEMEX Colombia has requested that the temporary injunction be revoked, arguing that its mining activities are supported by all authorizations required pursuant to the applicable environmental laws and that all the environmental impact statements submitted by CEMEX Colombia have been reviewed and authorized by the Environmental Ministry ( *Ministerio del Medio Ambiente, Vivienda y Desarrollo Territorial*). On June 11, 2010, the local authorities in Bogotá, in compliance with the District of Bogotá's environmental secretary's decision, sealed off the mine to machinery and prohibited the extraction of our aggregates inventory. Although there is not an official quantification of the possible fine, the District of Bogotá's environmental secretary has

publicly declared that the fine could be as much as 300 billion Colombian Pesos (approximately U.S.$163.74 million as of March 31, 2013, based on an exchange rate of 1,832.20 Colombian Pesos to U.S.$1.00). The temporary injunction does not currently compromise the production and supply of ready-mix concrete to any of our clients in Colombia. CEMEX Colombia is analyzing its legal strategy to defend itself against these proceedings. At this stage, we are not able to assess the likelihood of an adverse result, but if adversely resolved, it could have a material adverse impact on our financial results.

*Israeli Class Action Litigation*. On June 21, 2012, one of our subsidiaries in Israel was notified about an application for the approval of a class action suit against it. The application was filed by a homeowner who built his house with concrete supplied by our Israeli subsidiary in October 2010. According to the application, the plaintiff claims that the concrete supplied to him did not meet with the "Israel Standard for Concrete Strength No. 118" and that, as a result, our Israeli subsidiary acted unlawfully toward all of its customers who requested a specific type of concrete but that received concrete that did not comply with the Israeli standard requirements. As per the application, the plaintiff claims that the supply of the alleged non-conforming concrete has caused financial and non-financial damages to those customers, including the plaintiff. We presume that the class action would represent the claim of all the clients who purchased the alleged non-conforming concrete from our Israeli subsidiary during the past 7 years, the limitation period according to applicable laws in Israel. The damages that could be sought amount to approximately 276 million Israeli Shekels (approximately U.S.$75.66 million as of March 31, 2013, based on an exchange rate of 3.648 Israeli Shekels to U.S.$1.00). Our Israeli subsidiary has submitted a formal response to the corresponding court. At this stage, we believe the application is vexatious and should be dismissed without any expense to us. As of the date of this annual report, our subsidiary in Israel is analyzing the legal strategy to be employed and is also not able to assess the likelihood of the class action application being approved or, if approved, of an adverse result, but if adversely resolved, we do not believe the final resolutions would have a material adverse impact on our financial results.

*Egypt Share Purchase Agreement.* On September 13, 2012, ACC, through local media in Egypt, learned about a preliminary non-enforceable decision against ACC made by a court of first instance in Assiut, Egypt, regarding the annulment of a Share Purchase Agreement signed in November 1999 between CEMEX and state-owned Metallurgical Industries Company pursuant to which CEMEX acquired a controlling interest in ACC. On September 19, 2012, ACC received the formal notification of the ruling made by the Assiut court of first instance. On October 18, 2012, ACC filed an appeal which was followed by Metallurgical Industries Company's appeal filed on October 20, 2012. Hearings have been held on December 19, 2012, January 22, 2013 and April 16, 2013, with the next hearing scheduled to take place on June 16, 2013. At the January 22, 2013 hearing, the Assiut Court decided to join the appeals filed by each of ACC and the Metallurgical Industries Holding Company. At this stage, we are not able to assess the likelihood of an adverse result, but if adversely resolved, the final resolution could have a material adverse impact on our financial results.

As of the date of this annual report, we are involved in various legal proceedings involving product warranty claims, environmental claims, indemnification claims relating to acquisitions and similar types of claims brought against us that have arisen in the ordinary course of business. We believe we have made adequate provisions to cover both current and contemplated general and specific litigation risks, and we believe these matters will be resolved without any significant effect on our operations, financial position or results of operations. We are sometimes able to make and disclose reasonable estimates of the expected loss or range of possible loss, as well as disclose any provision accrued for such loss. However, for a limited number of ongoing legal proceedings, we may not be able to make a reasonable estimate of the expected loss or range of possible loss or may be able to do so but believe that disclosure of such information on a case-by-case basis would seriously prejudice our position in the ongoing legal proceedings or in any related settlement discussions. Accordingly, in these cases, we have disclosed qualitative information with respect to the nature and characteristics of the contingency, but have not disclosed the estimate of the range of potential loss.

## Item 4A—Unresolved Staff Comments

Not applicable.

## Item 5—Operating and Financial Review and Prospects

### Cautionary Statement Regarding Forward-Looking Statements

This annual report contains forward-looking statements within the meaning of the U.S. federal securities laws. We intend these forward-looking statements to be covered by the safe harbor provisions for forward-looking statements in the U.S. federal securities laws. In some cases, these statements can be identified by the use of forward-looking words such as "may," "should," "could," "anticipate," "estimate," "expect," "plan," "believe," "predict," "potential" and "intend" or other similar words. These forward-looking statements reflect our current expectations and projections about future events based on our knowledge of present facts and circumstances and assumptions about future events. These statements necessarily involve risks and uncertainties that could cause actual results to differ materially from our expectations. Some of the risks, uncertainties and other important factors that could cause results to differ, or that otherwise could have an impact on us or our subsidiaries, include:

- the cyclical activity of the construction sector;
- competition;
- general political, economic and business conditions in the markets in which we operate;
- the regulatory environment, including environmental, tax and acquisition-related rules and regulations;
- our ability to satisfy our obligations under the Facilities Agreement entered into with our major creditors and our obligations under the indentures that govern the Senior Secured Notes;
- our ability to consummate asset sales, achieve cost-savings from our cost-reduction initiatives and implement our global pricing initiatives for our products;
- weather conditions;
- natural disasters and other unforeseen events; and
- other risks and uncertainties described under "Item 3—Key Information—Risk Factors" and elsewhere in this annual report.

Readers are urged to read this annual report and carefully consider the risks, uncertainties and other factors that affect our business. The information contained in this annual report is subject to change without notice, and we are not obligated to publicly update or revise forward-looking statements. Readers should review future reports filed by us with the SEC.

This annual report also includes statistical data regarding the production, distribution, marketing and sale of cement, ready-mix concrete, clinker and aggregates. We generated some of this data internally, and some was obtained from independent industry publications and reports that we believe to be reliable sources. We have not independently verified this data nor sought the consent of any organizations to refer to their reports in this annual report.

### Overview

The following discussion should be read in conjunction with our audited consolidated financial statements included elsewhere in this annual report. Our financial statements have been prepared in accordance with IFRS.

The regulations of the SEC do not require foreign private issuers that prepare their financial statements on the basis of IFRS (as published by IASB) to reconcile such financial statements to U.S. GAAP. As such, while we had in the past reconciled our consolidated financial statements prepared in accordance with MFRS to U.S. GAAP, those reconciliations are no longer presented in our filings with the SEC.

The percentage changes in cement sales volumes described in this annual report for our operations in a particular country or region include the number of tons of cement and/or the number of cubic meters of ready-mix concrete sold to our operations in other countries and regions. Likewise, unless otherwise indicated, the net sales financial information presented in this annual report for our operations in each country or region includes the Mexican Peso amount of sales derived from sales of cement and ready-mix concrete to our operations in other countries and regions, which have been eliminated in the preparation of our consolidated financial statements included elsewhere in this annual report.

The following table sets forth selected consolidated financial information as of December 31, 2012 and 2011 and for each of the three years ended December 31, 2012 by principal geographic segment expressed as an approximate percentage of our total consolidated group. We operate in countries and regions with economies in different stages of development and structural reform and with different levels of fluctuation in exchange rates, inflation and interest rates. These economic factors may affect our results of business, financial condition and results of operations, depending upon the depreciation or appreciation of the exchange rate of each country and region in which we operate compared to the Mexican Peso and the rate of inflation of each of these countries and regions.

| | Net Sales For the Period Ended December 31, | | | Operating Earnings Before Other Expenses, Net For the Period Ended December 31, | | | Total Assets at December 31, | |
|---|---|---|---|---|---|---|---|---|
| | 2010(1) | 2011(1) | 2012(1) | 2010(2) | 2011(2) | 2012(2) | 2011(2) | 2012(2) |
| Mexico | 23% | 21% | 21% | 111% | 109% | 79% | 14% | 17% |
| United States | 17% | 16% | 19% | (78)% | (65)% | (35)% | 44% | 43% |
| Northern Europe | | | | | | | | |
| United Kingdom | 8% | 8% | 7% | (7)% | (1)% | 5% | 6% | 6% |
| Germany | 7% | 8% | 7% | (2)% | 1% | (2)% | 3% | 3% |
| France | 7% | 7% | 6% | 5% | 9% | 4% | 3% | 3% |
| Rest of Northern Europe | 6% | 7% | 6% | (1)% | 5% | 6% | 3% | 3% |
| The Mediterranean | | | | | | | | |
| Spain | 4% | 4% | 2% | 10% | 7% | 4% | 9% | 5% |
| Egypt | 5% | 3% | 3% | 35% | 20% | 11% | 1% | 2% |
| Rest of the Mediterranean | 4% | 4% | 4% | 4% | 6% | 4% | 2% | 1% |
| South America and the Caribbean | | | | | | | | |
| Colombia | 4% | 5% | 6% | 20% | 21% | 26% | 3% | 3% |
| Rest of South America and the Caribbean | 7% | 7% | 8% | 23% | 25% | 21% | 4% | 4% |
| Asia | | | | | | | | |
| Philippines | 2% | 2% | 2% | 9% | 2% | 3% | 2% | 2% |
| Rest of Asia | 2% | 1% | 1% | 1% | 1% | 1% | — | 1% |
| Corporate and Other Operations | 4% | 7% | 8% | (30)% | (40)% | (27)% | 6% | 7% |
| Combined | 183,522 | 202,260 | 209,911 | 10,736 | 12,064 | 17,200 | 541,652 | 478,770 |
| Eliminations | (5,881) | (12,373) | (12,875) | — | — | — | — | — |
| Consolidated | 177,641 | 189,887 | 197,036 | 10,736 | 12,064 | 17,200 | 541,652 | 478,770 |

(1) Percentages by reporting segment are determined before eliminations resulting from consolidation.
(2) Percentages by reporting segment are determined after eliminations resulting from consolidation.

**Critical Accounting Policies**

The preparation of financial statements in accordance with IFRS principles requires management to make estimates and assumptions that affect reported amounts of assets and liabilities and the disclosure of contingent

assets and liabilities at the date of the financial statements, as well as the reported amounts of revenues and expenses during the period. These assumptions are reviewed on an ongoing basis using available information. Actual results could differ from these estimates.

The main items subject to estimates and assumptions by management include, among others, impairment tests of long-lived assets, allowances for doubtful accounts and inventories, recognition of deferred income tax assets, as well as the measurement of financial instruments at fair value, and the assets and liabilities related to employee benefits. Significant judgment by management is required to appropriately assess the amounts of these assets and liabilities.

Identified below are the accounting policies we have applied under IFRS that are critical to understanding our overall financial reporting.

***Income Taxes***

Our operations are subject to taxation in many different jurisdictions throughout the world. Under IFRS, we recognize deferred tax assets and liabilities using a balance sheet methodology which requires a determination of the temporary differences between the financial statements carrying amounts and the tax basis of assets and liabilities. Our worldwide tax position is highly complex and subject to numerous laws that require interpretation and application and that are not consistent among the countries in which we operate. Significant judgment is required to appropriately assess the amounts of tax assets and liabilities. We record tax assets when we believe that the recoverability of the asset is determined to be probable in accordance with established accounting principles. If this determination cannot be made, a valuation allowance is established to reduce the carrying value of the asset.

For the recognition of deferred tax assets derived from net operating losses and their corresponding valuation reserve, we make an assessment of:

(a) the aggregate amount of self-determined tax loss carryforwards included in our income tax returns in each country where we consider that the tax authorities would not reject such self-determined tax loss carryforwards based on available evidence; and

(b) the likelihood of the recoverability of such tax loss carryforwards prior to their expiration through an analysis of estimated future taxable income.

If we consider that it is more likely than not that the tax authorities would reject a self-determined deferred tax asset, we would decrease such deferred tax assets. Likewise, if we consider that we would not be able to use a deferred tax carryforward asset before its expiration, we would increase our valuation reserve. Both situations would result in additional income tax expense in the income statement for the period in which such determination is made.

We consider all available positive and negative evidence including factors such as market conditions, industry analysis, our expansion plans, projected taxable income, carryforward periods, current tax structure, potential changes or adjustments in tax structure, tax planning strategies, future reversals of existing temporary differences, etc., in the determination of whether it is probable that such deferred tax assets will ultimately be realized.

Every reporting period, we analyze our actual results versus our estimates and adjust our tax asset valuations as necessary. If actual results vary from our estimates, the deferred tax asset and/or valuations may be affected and necessary adjustments will be made based on relevant information. Any adjustments recorded will affect our net income in such period.

Our overall strategy is to structure our worldwide operations to minimize or defer the payment of income taxes on a consolidated basis. Many of the activities we undertake in pursuing this tax reduction strategy are highly complex and involve interpretations of tax laws and regulations in multiple jurisdictions and are subject to review by the relevant taxing authorities. It is possible that the taxing authorities could challenge our application of these regulations to our operations and transactions. The taxing authorities have in the past challenged interpretations that we have made and have assessed additional taxes. Although we have, from time to time, paid some of these additional assessments, in general, we believe that these assessments have not been material and that we have been successful in sustaining our positions. No assurance can be given, however, that we will continue to be as successful as we have been in the past or that pending appeals of current tax assessments will be judged in our favor.

***Derivative financial instruments***

In compliance with the guidelines established by our risk management committee and the restrictions in our debt agreements, we use derivative financial instruments such as interest rate and currency swaps, currency and equity forward arrangements, and other instruments, in order to change the risk profile associated with changes in interest rates, the foreign exchange rates of debt agreements, or both, as an alternative source of financing, and as hedges of: (i) highly probable forecasted transactions, (ii) purchases of certain commodities, and (iii) our net assets in foreign subsidiaries. These instruments have been negotiated with institutions with significant financial capacity; therefore, we consider the risk of non-compliance with the obligations agreed upon by such counterparties to be minimal.

Derivative financial instruments are recognized as assets or liabilities in the balance sheet at their estimated fair values, and the changes in such fair values are recognized in the statements of operations for the period in which they occur, except for changes in the fair value of derivative instruments that are designated and effective as cash flow hedges and hedges of the net investment in foreign subsidiaries. For the years ended December 31, 2010, 2011 and 2012, we did not have derivative financing instruments designated as cash flows or fair value hedges. See note 16D to our 2012 audited consolidated financial statements included elsewhere in this annual report.

Interest accruals generated by derivative financial instruments are recognized as financial expense, adjusting the effective interest rate of the related debt.

Pursuant to their recognition at fair value under IFRS, our balance sheets and statements of operations are subject to volatility arising from variations in interest rates, exchange rates, share prices and the counterparties credit risk, among other conditions established in our derivative financial instruments. The estimated fair value under IFRS represents the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date, considering the counterparty's credit risk in the valuation, that is, an exit price or a market-based measurement.

The concept of exit price is premised on the existence of a market and market participants for the specific asset or liability. When there is no market and/or market participants willing to make a market, IFRS establishes a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (Level 1 measurements) and the lowest priority to measurements involving significant unobservable inputs (Level 3 measurements). The three levels of the fair value hierarchy are as follows:

- Level 1 inputs are quoted prices (unadjusted) in active markets for identical assets or liabilities that we have the ability to access at the measurement date.
- Level 2 inputs are inputs other than quoted prices that are observable for the asset or liability, either directly or indirectly.
- Level 3 inputs are unobservable inputs for the asset or liability.

Significant judgment and estimates by management are required to appropriately identify the corresponding level of fair value applicable to each derivative financing transaction, as well as to assess the amounts of the resulting assets and liabilities, mainly in respect of level 2 and level 3 fair values, in order to account for the effects of derivative financial instruments in the financial statements. See note 16D to our 2012 audited consolidated financial statements included elsewhere in this annual report.

The estimated fair values of derivative financial instruments fluctuate over time determined by measuring the effect of future relevant economic variables according to the yield curves shown in the market as of the reporting date. These values should be viewed in relation to the fair values of the underlying instruments or transactions, and as part of our overall exposure to fluctuations in foreign exchange rates, interest rates and prices of shares. The notional amounts of derivative financial instruments do not necessarily represent amounts exchanged by the parties and, therefore, are not a direct measure of our exposure through our use of derivatives. The amounts exchanged are determined on the basis of the notional amounts and other variables included in the derivative instruments.

***Impairment of long-lived assets***

Our balance sheet reflects significant amounts of long-lived assets (mainly fixed assets and goodwill) associated with our operations throughout the world. Many of these amounts have resulted from past acquisitions, which have required us to reflect these assets at their fair market values at the dates of acquisition. According to their characteristics and the specific accounting rules related to them, we assess the recoverability of our long-lived assets at least once a year, normally during the fourth quarter, as is the case for goodwill, or whenever events or circumstances arise that we believe trigger a requirement to review such carrying values, as is the case with property, machinery and equipment and intangible assets of definite life.

Goodwill is evaluated for impairment by determining the recoverable amount of the reporting units, which consists of the higher of the reporting units' fair value, less cost to sell such reporting units, and the reporting units' value in use, represented by the discounted amount of estimated future cash flows to be generated by such reporting units to which goodwill relates. A reporting unit refers to a group of one or more cash-generating units. Each reporting unit, for purposes of the impairment evaluation, consists of all operations in each country. We determine initially our discounted cash flows over periods of 5 to 10 years, depending on each specific country's economic cycle. If the value in use of a reporting unit is lower than its corresponding carrying amount, we determine the fair value of our reporting units using methodologies generally accepted in the market to determine the value of entities, such as multiples of Operating EBITDA and by reference to other market transactions, among others. An impairment loss under IFRS is recognized if the recoverable amount is lower than the net book value of the reporting unit.

For the years ended December 31, 2010, 2011 and 2012, the geographic segments we reported in note 4 to our 2012 audited consolidated financial statements included elsewhere in this annual report, each integrated by multiple cash-generating units, also represented our reporting units for purposes of testing goodwill for impairment. Based on our analysis, we concluded that the operating components that integrate the reported segments have similar economic characteristics, by considering: (a) the reported segments are the level used by us to organize and evaluate our activities in the internal information system, (b) the homogenous nature of the items produced and traded in each operative component, which are all used by the construction industry, (c) the vertical integration in the value chain of the products comprising each component, (d) the type of clients, which are substantially similar in all components, (e) the operative integration among operating components, evidenced by the adoption of shared service centers, and (f) the compensation system of any of our country operations is based on the consolidated results of the geographic segment and not on the particular results of the components.

Significant judgment is required to appropriately assess the recoverable amount, represented by the higher of the value in use and the fair value, less costs to sell, of our reporting units. Impairment evaluations are significantly sensitive to, among other factors, the estimation of future prices of our products, the development of

administrative, selling and distribution expenses, local and international economic trends in the construction industry, as well as the long-term growth expectations in the different markets. Likewise, the discount rates and the rates of growth in perpetuity used have an effect on such impairment evaluations. We use specific pre-tax discount rates for each reporting unit, which are applied to pre-tax cash flows. Our specific discount rates consider the weighted average cost of capital of each geographic segment. This determination requires substantial judgment and is highly complex when considering the many countries in which we operate, each of which has its own economic circumstances that have to be monitored. Undiscounted cash flows are significantly sensitive to the growth rates in perpetuity used. Likewise, discounted cash flows are significantly sensitive to the discount rate used. The higher the growth rate in perpetuity applied, the higher the amount obtained of undiscounted future cash flows by reporting unit. Conversely, the higher the discount rate applied, the lower the amount obtained of discounted estimated future cash flows by reporting unit. Additionally, we monitor the lives assigned to these long-lived assets for purposes of depreciation and amortization, when applicable. This determination is subjective and is integral to the determination of whether impairment has occurred.

During the last quarter of 2010, 2011 and 2012, we performed our annual goodwill impairment test. Based on our analyses, in 2010, we determined an impairment loss of goodwill for approximately Ps189 million (U.S.$15 million) associated with the reporting unit in Puerto Rico. In 2011, we determined an impairment loss of goodwill for approximately Ps145 million (U.S.$12 million) associated with the reporting unit in Latvia. In 2012, we determined there was no impairment loss of goodwill. The estimated impairment losses in 2010 and 2011 are mainly attributable to market dynamics in these countries and their position in their business economic cycle. In both reporting units, their net book value exceeded their respective recoverable amount. See note 15C to our 2012 audited consolidated financial statements included elsewhere in this annual report.

Discount rates and growth rates in perpetuity used in the reporting units that represent most of the consolidated balance of goodwill under IFRS in 2010, 2011 and 2012 are as follows:

| | Discount rates | | | Growth rates | | |
|---|---|---|---|---|---|---|
| Reporting units | 2010 | 2011 | 2012 | 2010 | 2011 | 2012 |
| United States | 10.0% | 10.7% | 9.9% | 2.5% | 2.5% | 2.5% |
| Spain | 11.2% | 12.0% | 11.5% | 2.5% | 2.5% | 2.5% |
| Mexico | 11.0% | 11.4% | 10.7% | 2.5% | 2.5% | 3.0% |
| Colombia | 11.1% | 11.6% | 10.7% | 2.5% | 2.5% | 3.5% |
| France | 10.7% | 11.5% | 10.3% | 2.5% | 2.5% | 1.9% |
| United Arab Emirates | 11.7% | 13.9% | 13.3% | 2.5% | 2.5% | 3.6% |
| United Kingdom | 10.7% | 11.0% | 10.3% | 2.5% | 2.5% | 2.7% |
| Egypt | 11.9% | 13.0% | 13.5% | 2.5% | 2.5% | 4.0% |
| Range of discount rates in other countries | 10.5% – 14.9% | 11.8% – 14.0% | 11.1% – 13.3% | 2.5% | 2.5% | 3.4% – 4.0% |

As of December 31, 2012, the discount rates used by CEMEX in its cash flow projections decreased by an average 5% from the values determined in 2011, mainly as a result of a reduction in the industry specific average cost of debt observed in 2012, as compared to the prior year. In respect to long-term growth rates, following general practice under IFRS, in 2012, CEMEX started the use of country specific rates.

In connection with CEMEX's assumptions included in the table above, as of December 31, 2010, 2011 and 2012, CEMEX performed sensitivity analyses to changes in assumptions, affecting the value in use of all groups of cash-generating units with an independent reasonable possible increase of 1% in the pre-tax discount rate, and an independent possible decrease of 1% in the long-term growth rate. In addition, CEMEX performed cross-check analyses for reasonableness of its results using multiples of Operating EBITDA. In order to arrive at these multiples, which represent a reasonableness check of CEMEX's discounted cash flow model, CEMEX determined a weighted average of multiples of Operating EBITDA to enterprise value observed in the industry. The average multiple was then applied to a stabilized amount of Operating EBITDA and the result was compared

to the corresponding carrying amount for each group of cash-generating units to which goodwill has been allocated. As of December 31, 2011 and 2012, CEMEX considered an industry weighted average Operating EBITDA multiple of 9.6 times and 10.3 times, respectively. CEMEX's own Operating EBITDA multiples to enterprise value as of the same dates were 10 times in 2011 and 10.6 times in 2012. The lowest multiple observed in CEMEX's benchmark as of December 31, 2011 and 2012 was 6.2 times and 7.2 times, respectively, and the highest being 22.1 times and 21.3 times, respectively.

As of December 31, 2012, the impairment charges resulting from the sensitivity analyses that would have resulted from an independent change of each one of the variables and/or by the use of multiples of Operating EBITDA, regarding the operating segment that presented a relative impairment risk, would have been as follows:

| As of December 31, 2012 | | Sensitivity analysis of described change in assumptions | | |
|---|---|---|---|---|
| (Amounts in millions) | Recognized impairment charges | Discount rate + 1pt | Long-term growth rate - 1pt | Multiples of Operating EBITDA |
| Spain | U.S.$ — | 99 | — | 39 |
| United Arab Emirates | — | 8 | — | — |

CEMEX will continue to monitor the evolution of the specific cash-generating units to which goodwill has been allocated that present relative goodwill impairment risk and, in the event that the relevant economic variables and the related cash flows projections would be negatively affected, it may result in a goodwill impairment loss in the future. As of December 31, 2010 and 2011, CEMEX made the sensitivity analyses to changes in assumptions mentioned above.

CEMEX has experienced a significant decline in its market capitalization with respect to levels prior to the 2008 global crisis, which CEMEX believes is due to factors such as: a) the contraction of the construction industry in the United States, which has experienced a continued slow recovery after the crisis of 2008, that has significantly affected CEMEX's operations in such country and consequently its overall generation of cash flows; b) CEMEX's significant amount of consolidated debt and its operation over the last few years under the Financing Agreement (note 16A), has also significantly affected CEMEX's valuation, considering the high uncertainty perceived by stakeholders regarding CEMEX's odds of successfully achieving the different milestones established with its main creditors; and c) the transfer of capital during the last few years, mainly due to high volatility generated by liquidity problems in certain European countries, from variable income securities in developing countries such as Mexico to fixed income securities in developed countries such as the United States. The market price of CEMEX's CPO has recovered significantly after CEMEX entering into the Facilities Agreement (note 16A). In U.S. Dollar terms, CEMEX's market capitalization increased by approximately 93% in 2012 compared to 2011, to approximately U.S.$10.8 billion ($138.7 billion).

Goodwill allocated to the United States accounted for approximately 77% of CEMEX's total amount of consolidated goodwill as of December 31, 2011 and 2012. In connection with CEMEX's determination of value in use relative to its groups of cash-generating units in the United States as of December 31, 2012 and 2011, CEMEX has considered several factors, such as the historical performance of such operating segment, including operating losses in recent years, the long-term nature of CEMEX's investment, the recent signs of recovery in the construction industry, the significant economic barriers for new potential competitors considering the high investment required, and the lack of susceptibility of the industry to technology improvements or alternate construction products, among other factors. CEMEX has also considered recent developments in its operations in the United States, such as the 7% and 20% increase in ready-mix concrete volumes in 2011 and 2012, respectively, and the 3% and 4% increase in 2011 and 2012, respectively, of ready-mix concrete prices, respectively, which are key drivers for cement consumption and CEMEX's profitability, and which trends are expected to continue over the next few years, as anticipated in CEMEX's cash flow projections.

In addition, as mentioned above, CEMEX performed a reasonableness test of the estimated value in use by performing a sensitivity analysis on key cash flow assumptions, and estimated the recoverable amount by using the method of multiples of Operating EBITDA.

Based on the above, considering economic assumptions that were verified for reasonableness with information generated by external sources, to the extent available, the value in use of the CEMEX's operating segment in the United States exceeded the respective carrying amount for goodwill impairment test purposes as of December 31, 2011 and 2012. The additional sensitivity analyses were as follows:

| Excess of value in use over carrying amount | 2011 | 2012 |
|---|---|---|
| Basic test | U.S.$4,114 | 3,933 |
| Sensitivity to plus 1 percent point in discount rate | 1,335 | 1,390 |
| Sensitivity to minus 1 percent point in long-term growth | 2,493 | 2,574 |
| Excess of multiples of Operating EBITDA over carrying amount | 781 | 1,106 |

As of December 31, 2011 and 2012, CEMEX considers that its combination of discount rate and long-term growth rate applied in the base model for its group of cash-generating units in the United States to which goodwill has been allocated reflect the particular risk factors existing as of the date of analysis.

In addition, CEMEX has significant balances of property, machinery and equipment. During 2011 and 2012, we recognized impairment losses of property, plant and equipment, mainly in connection with the permanent closing of operating assets for an aggregate amount of approximately Ps1,249 million (U.S.$89 million) and Ps542 million (U.S.$41 million), respectively. See note 14 to our 2012 audited consolidated financial statements included elsewhere in this annual report.

As of December 31, 2011 and 2012, the consolidated balances of property, machinery and equipment, net, represented approximately 43.1% and 44.3%, respectively, of CEMEX's total consolidated assets. Property, machinery and equipment are tested for impairment upon the occurrence of factors, such as a significant adverse event, changes in CEMEX's operating environment, changes in projected use or in technology, as well as expectations of lower operating results for each cash-generating unit, in order to determine whether their carrying amounts may not be recovered. In such cases, an impairment loss is recorded in the income statements for the period when such determination is made within "Other expenses, net." The impairment loss of an asset results from the excess of such asset's carrying amount over its recoverable amount, corresponding to the higher of the fair value of the asset, less costs to sell such asset, and the asset's value in use, the latter represented by the net present value of estimated cash flows related to the use and eventual disposal of the asset. Significant judgment by management is required to appropriately assess the fair values and values in use of these assets. The main assumptions utilized to develop these estimates are a discount rate that reflects the risk of the cash flows associated with the assets evaluated and the estimations of generation of future income. Those assumptions are evaluated for reasonableness by comparing such discount rates to available market information and by comparing to third-party expectations of industry growth, such as governmental agencies or industry chambers of commerce.

As a result of impairment tests conducted on several cash-generating units considering certain triggering events, mainly: a) the closing and/or reduction of operations of cement and ready-mix plants resulting from adjusting CEMEX's supply to current demand conditions and b) the transferring of installed capacity to more efficient plants, for the years ended December 31, 2012 and 2011, CEMEX adjusted the related fixed assets to their estimated value in use in those circumstances in which the assets would continue in operation based on estimated cash flows during their remaining useful life, or to their realizable value, in case of permanent shut down, and recognized impairment losses in the following countries for the following amounts:

| | For the Year Ended December 31, | |
|---|---|---|
| | 2011 | 2012 |
| | (in millions of Pesos) | |
| Ireland | Ps 790 | Ps 64 |
| Mexico | 101 | 203 |
| United Kingdom | 84 | — |
| Latvia | 68 | 38 |
| Colombia | 46 | — |
| Poland | 29 | 3 |
| Germany | 21 | 128 |
| Thailand | 15 | — |
| United States | 11 | 71 |
| Other countries | 84 | 35 |
| | Ps 1,249 | Ps 542 |

As of December 31, 2012, in connection with those items of property, machinery and equipment pertaining to cash-generating units that due to impairment indicators, such as the reduction of operations and/or the extended economic slowdown in the respective country that were subject to impairment tests and for which their recoverable amounts exceeded by 10% or less their respective carrying amounts, we first determined the value in use of the related cash-generating units represented by their discounted future cash flows, and in all cases, the value in use exceeded the respective carrying amounts. Consequently, as of December 31, 2012, we did not determine the fair value less costs to sell of such cash-generating units. As of December 31, 2011, the cash-generating units that represent relative impairment risk was as follows:

| Country | Related Assets | Excess of Value in Use Over Carrying Amount | Discount Rate(1) | Average Remaining Useful Life |
|---|---|---|---|---|
| United States | Machinery and equipment | Ps 105 | 10.7% | 21 years |

(1) As of December 31, 2011, for purposes of impairment testing of property, machinery and equipment, we considered after-tax discount rates applied to after-tax cash flow projections associated to the cash-generating units to which such assets relate. The use of these rates results in recoverable values that are significantly similar to the values that would be obtained by using pre-tax rates and pre-tax cash flows (as required by IAS 36—Impairment of assets).

As of December 31, 2011, the impairment charges resulting from the sensitivity analysis that would have resulted from a reasonable independent change in each of the relevant variables used to determine the related assets' value in use, regarding the cash-generating unit presented in the table above, would have been as follows:

| Country | Excess of Value in Use Over Carrying Amount | Recognized Impairment Losses | Discount Rate + 1pt | Remaining Useful Life – 10% |
|---|---|---|---|---|
| United States | Ps 105 | — | (105) | — |

As of December 31, 2011, we believe that the estimated useful lives of the assets subject to the impairment test above is reasonable. With respect to the discount rate, such rate is linked to the global cost of capital, which may increase in the future, subject to economic conditions in the United States.

***Valuation reserves on accounts receivable and inventories***

On a periodic basis, we analyze the recoverability of our accounts receivable and our inventories (supplies, raw materials, work-in-process and finished goods), in order to determine if due to credit risk or other factors in the case of our receivables and due to weather or other conditions in the case of our inventories, some receivables may not be recovered or certain materials in our inventories may not be utilizable in the production process or for sale purposes. If we determine such a situation exists, book values related to the non-recoverable assets are adjusted and charged to the income statement through an increase in the doubtful accounts reserve or the inventory obsolescence reserve, as appropriate. These determinations require substantial management judgment and are highly complex when considering the various countries in which we have operations, each having its own economic circumstances that require continuous monitoring, and our numerous plants, deposits, warehouses and quarries. As a result, final losses from doubtful accounts or inventory obsolescence could differ from our estimated reserves.

***Asset retirement obligations***

We recognize unavoidable obligations, legal or constructive, to restore operating sites upon retirement of tangible long-lived assets at the end of their useful lives. These obligations represent the net present value of estimated future cash flows to be incurred in the restoration process, and are initially recognized against the related assets' book value. The additional asset is depreciated during its remaining useful life. The increase of the liability, by the passage of time, is charged to the income statement of the period. Adjustments to the obligation for changes in the estimated cash flows or the estimated disbursement period are made against fixed assets, and depreciation is modified prospectively.

Asset retirement obligations are related mainly to future costs of demolition, cleaning and reforestation, so that at the end of their operation, raw materials extraction sites, maritime terminals and other production sites are left in acceptable condition. Significant judgment is required in assessing the estimated cash outflows that will be disbursed upon retirement of the related assets. See notes 17 and 24 to our 2012 audited consolidated financial statements included elsewhere in this annual report.

***Transactions in our own stock***

From time to time we have entered into various transactions involving our own stock. These transactions have been designed to achieve various financial goals but were primarily executed to give us a means of satisfying future transactions that may require us to deliver significant numbers of shares of our own stock. These transactions are described in detail in the notes to our 2012 audited consolidated financial statements included elsewhere in this annual report. We have viewed these transactions as hedges against future exposure even though they do not meet the definition of hedges under accounting principles. There is significant judgment necessary to properly account for these transactions, as the obligations underlying the related transactions are required to be reflected at market value, with the changes in such value reflected in our income statement, including the conversion options embedded in our optionally convertible notes. These transactions raise the possibility that we could be required to reflect losses on the transactions in our own shares without having a converse reflection of gains on the transactions under which we would deliver such shares to others. See note 16D to our 2012 audited consolidated financial statements included elsewhere in this annual report.

***Emission rights***

In some of the countries where we operate, such as in countries of the European Union, governments have established mechanisms aimed at reducing CO2 by means of which, industries releasing CO2 must submit to the environmental authorities at the end of a compliance period, emission rights for a volume equivalent to the tons of CO2 released. Since the mechanism for emissions reduction in the European Union has been in operation, a certain number of emission rights based on historical levels have been granted by the environmental authorities to industries free of cost. Therefore, companies are required to buy additional emission rights to meet any deficit

between actual CO2 emissions during the compliance period and emission rights held. Companies with surplus emission rights can also dispose of such surpluses in the market. In addition, the UNFCCC grants CERs to qualified CO2 emission reduction projects. CERs may be used in specified proportions to settle emission rights obligations in the European Union. We actively participate in the development of projects aimed to reduce CO2 emissions. Some of these projects have been awarded with CERs.

In the absence of an IFRS that defines the accounting treatment for these schemes, we account for the effects associated with CO2 emission reduction mechanisms as follows:

- Emission rights granted by governments are not recognized in the balance sheet considering their cost is zero.
- Revenues from the sale of any surplus of emission rights are recognized decreasing cost of sales; in the case of forward sale transactions, revenues are recognized upon physical delivery of the emission certificates.
- Emission rights and/or CERs acquired to hedge current CO2 emissions are recognized as intangible assets at cost, and are further amortized to cost of sales during the compliance period. In the case of forward purchases, assets are recognized upon physical reception of the emission certificates.
- We accrue a provision against cost of sales when the estimated annual emissions of CO2 are expected to exceed the number of emission rights, net of any benefit obtained through swap transactions of emission rights for CERs.
- CERs received from the UNFCCC are recognized as intangible assets at their development cost, which are attributable mainly to legal expenses incurred with authorities in the process of obtaining such CERs.
- We do not maintain emission rights, CERs and/or forward transaction with trading purposes.

The combined effect of the use of alternate fuels that help reduce the emission of CO2 and the downturn in produced cement volumes in the EU, has generated a surplus of emission rights held over the estimated CO2 emissions. From the consolidated surplus of emission rights, during 2010 and 2011, we sold an aggregate amount of approximately 13.4 million certificates, receiving revenues of approximately Ps1,417 million (U.S.$112 million) and Ps1,518 million (U.S.$122 million), respectively. During 2012, there were no sales of emission rights.

Significant judgment by management is required to appropriately assess estimated CO2 emissions and resulting excesses or deficit of allowances.

***Revenue recognition***

Our consolidated revenues represent the value, before tax on sales, of products and services sold by consolidated subsidiaries as a result of ordinary activities, after the elimination of related party transactions. Revenues are quantified at the fair value of the consideration received or receivable, decreased by any trade discounts or volume rebates granted to customers.

Revenue from the sale of goods and services is recognized when goods are delivered or services are rendered to customers, there is no condition or uncertainty implying a reversal thereof, and they have assumed the risk of loss. Revenues from trading activities, in which we acquire finished goods from a third party and subsequently we sell the goods to another third party, are recognized on a gross basis, considering that we assume the total risk of property on the goods purchased and we are not acting as agent or commissioner.

Revenues and costs associated with construction contracts are recognized in the period in which the work is performed by reference to the stage of completion of the contract activity at the end of the period, considering

that the following have been defined: (a) each party's enforceable rights regarding the asset to be constructed; (b) the consideration to be exchanged; (c) the manner and terms of settlement; (d) actual cost incurred and contract costs required to complete the asset are effectively controlled; and (e) it is probable that the economic benefits associated with the contract will flow to us.

**Results of Operations**

***Consolidation of Our Results of Operations***

Our audited consolidated financial statements include those subsidiaries in which we hold a controlling interest or which we otherwise control. Control exists when we have the power, directly or indirectly, to govern the administrative, financial and operating policies of an entity in order to obtain benefits from its activities.

Investments in associates are accounted for by the equity method, when we have significant influence, which is generally presumed with a minimum equity interest of 20% unless it is proven that we have significant influence with a lower percentage. Under the equity method, after acquisition, the investment's original cost is adjusted for the proportional interest of the holding company in the associate's equity and earnings, considering the effects of inflation.

All significant balances and transactions between related parties have been eliminated in consolidation.

For the periods ended December 31, 2010, 2011 and 2012, our consolidated results reflect the following transactions:

- In November 2012, CEMEX Latam, a then wholly-owned subsidiary of CEMEX España, completed the sale of newly issued common shares in the CEMEX Latam Offering, representing approximately 26.65% of CEMEX Latam's outstanding common shares. CEMEX Latam is the holding company for CEMEX's operations in Brazil, Colombia, Costa Rica, Guatemala, Nicaragua, Panama and El Salvador. CEMEX recognized within "Other equity reserves" a gain of approximately U.S.$630 million (approximately Ps8,096 million). See "—Investments, Acquisitions and Divestitures—Divestitures" for additional information regarding the CEMEX Latam Offering.
- In October 2012, Corporación Cementera Latinoamericana, S.L., an indirect subsidiary of CEMEX España, completed the acquisition of the 49% non-controlling interest in Global Cement, S.A., CEMEX's subsidiary in Guatemala, in a private transaction for approximately U.S.$54 million (approximately Ps694 million), recognizing within "Other equity reserves" a loss of approximately U.S.$32 million (approximately Ps411 million).
- On May 17, 2012, through a public tender offer commenced on March 12, 2012, and after compliance with applicable regulations in Ireland, Readymix Investments, an indirect subsidiary of CEMEX España, acquired the 38.8% interest in Readymix plc, our main subsidiary in Ireland, that had not been owned by us for approximately €11 million (U.S.$15 million or Ps187 million), for €0.25 per share in cash. The listing and trading of Readymix plc's shares on the Irish Stock Exchange was cancelled beginning on May 18, 2012.
- In August 2011, as a result of Ready Mix USA's exercise of its put option (see note 15B to our 2012 audited consolidated financial statements included elsewhere in this annual report), and after performance of the obligations by both parties under the put option agreement, effective as of August 1, 2011, through the payment of approximately U.S.$352 million (approximately Ps4,914 million), we acquired our former joint venture partner's interests in CEMEX Southeast, LLC and Ready Mix USA, LLC, including a non-compete and a transition services agreement. In accordance with the joint venture agreements, from the date on which Ready Mix USA exercised its put option until the date we acquired Ready Mix USA's interest, Ready Mix USA continued to control and manage Ready Mix USA, LLC. Nonetheless, based on IAS 27, considering the existence of a settlement price that could have been paid any time until September 30, 2011 at our election, Ready

Mix USA LLC's balance sheet was consolidated as of March 31, 2011 and its operating results beginning April 1, 2011. Upon consolidation, the purchase price was assigned to each joint venture in proportion to our relative contribution interest in CEMEX Southeast, LLC and Ready Mix USA, LLC considering the original fair values as of the dates of the agreements in 2005. We fully consolidated the acquisition of the minority interest in CEMEX Southeast, LLC, as of the acquisition date, and Ready Mix USA, LLC generated an aggregate gain of approximately U.S.$24 million (approximately Ps316 million), which was recognized within "Other expenses, net." During 2012, after the completion of the purchase price allocation, there were changes in the values of certain assets and liabilities, none of which were individually significant, which decreased the aggregate gain on purchase by approximately U.S.$1 million (approximately Ps13 million). Our annual report on Form 20-F for the year ended December 31, 2011 (the "2011 20-F") includes the balance sheet of Ready Mix USA, LLC as of December 31, 2011, based on the best estimate of its net asset's fair value as of the acquisition date of approximately Ps4,487 million, including cash and cash equivalents for approximately Ps912 million and debt for approximately Ps1,352 million, and its results of operations for the nine-month period ended December 31, 2011.

- On August 27, 2010, we completed the sale of seven aggregates quarries, three aggregate distribution centers and one concrete block manufacturing facility in Kentucky to Bluegrass Materials Company, LLC for U.S.$88 million in proceeds.

**Selected Consolidated Statement of Operations Data**

The following table sets forth our selected consolidated statement of operations data for each of the three years ended December 31, 2010, 2011 and 2012 expressed as a percentage of net sales. Pursuant to guidance set forth in SEC´s International Series Release No. 1285, File No. 57-15-04, we are only presenting three years of our selected consolidated statement of operation due to our adoption of IFRS on January 1, 2010.

| | For the Year Ended December 31, | | |
|---|---|---|---|
| | 2010 | 2011 | 2012 |
| Net sales | 100.0% | 100.0% | 100.0% |
| Cost of sales | (72.0) | (71.7) | (70.4) |
| Gross profit | 28.0 | 28.3 | 29.6 |
| Administrative and selling expenses | (14.5) | (13.4) | (11.9) |
| Distribution expenses | (7.5) | (8.5) | (9.0) |
| Total administrative, selling and distribution expenses | (22.0) | (21.9) | (20.9) |
| Operating earnings before other expenses, net | 6.0 | 6.4 | 8.7 |
| Other expenses, net | (3.5) | (2.9) | (2.9) |
| Operating earnings | 2.5 | 3.5 | 5.8 |
| Financial expense | (8.3) | (8.7) | (9.3) |
| Other financial income (expense), net | (0.3) | (1.2) | 0.5 |
| Equity in (loss) income of associates | (0.3) | (0.2) | 0.4 |
| Loss before income tax | (6.4) | (6.6) | (2.6) |
| Income taxes | (1.2) | (6.4) | (3.1) |
| Consolidated net loss | (7.6) | (13.0) | (5.7) |
| Non-controlling interest net loss | — | — | 0.3 |
| Controlling interest net loss | (7.6) | (13.0) | (6.0) |

**Year Ended December 31, 2012 Compared to Year Ended December 31, 2011**

Summarized in the table below are the percentage (%) increases (+) and decreases (-) for the year ended December 31, 2012 compared to the year ended December 31, 2011 in our domestic cement and ready-mix concrete sales volumes, as well as export sales volumes of cement and domestic cement and ready-mix concrete average prices for each of our geographic segments. The table below and the other volume data presented by geographic segment in this "—Selected Consolidated Statement of Operations Data" section are presented before eliminations resulting from consolidation (including those shown on note 4 to our 2012 audited consolidated financial statements included elsewhere in this annual report).

| | Domestic Sales Volumes | | Export Sales Volumes | Average Domestic Prices in Local Currency(1) | |
|---|---|---|---|---|---|
| Geographic Segment | Cement | Ready-Mix Concrete | Cement | Cement | Ready-Mix Concrete |
| Mexico | -1% | -2% | +62% | +3% | +5% |
| United States | +14% | +20% | — | +1% | +4% |
| **Northern Europe** | | | | | |
| United Kingdom | -7% | -12% | — | +3% | +2% |
| Germany | -10% | -5% | — | +3% | +1% |
| France | N/A | -5% | — | N/A | +2% |
| Rest of Northern Europe(2) | -18% | -10% | — | -9% | -9% |
| **The Mediterranean** | | | | | |
| Spain | -40% | -43% | -21% | +2% | +3% |
| Egypt | -10% | +2% | — | -2% | -11% |
| Rest of the Mediterranean(3) | -17% | +2% | — | -5% | -1% |
| **South America and the Caribbean** | | | | | |
| Colombia | +5% | +14% | — | +19% | +20% |
| Rest of South America and the Caribbean(4) | +7% | -4% | — | +2% | +9% |
| **Asia** | | | | | |
| Philippines | +15% | — | -92% | +7% | — |
| Rest of Asia(5) | +3% | -18% | — | +3% | Flat |

N/A = Not Applicable

(1) Represents the average change in domestic cement and ready-mix concrete prices in local currency terms. For purposes of a geographic segment consisting of a region, the average prices in local currency terms for each individual country within the region are first translated into U.S. Dollar terms (except for the Rest of Northern Europe and the Rest of the Mediterranean regions, which is translated first into Euros) at the exchange rates in effect as of the end of the reporting period. Variations for a region represent the weighted average change of prices in U.S. Dollar terms (except for the Rest of Northern Europe and the Rest of the Mediterranean regions, which represent the weighted average change of prices in Euros) based on total sales volumes in the region.

(2) Refers primarily to operations in Ireland, the Czech Republic, Austria, Poland, Hungary and Latvia, as well as trading activities in Scandinavia and Finland.

(3) Includes mainly the operations in Croatia, the UAE and Israel.

(4) Includes the operations in Costa Rica, Panama, Puerto Rico, the Dominican Republic, Nicaragua, Jamaica and other countries in the Caribbean, Guatemala, and small ready-mix concrete operations Argentina.

(5) Includes primarily our operations in Thailand, Bangladesh, China and Malaysia.

On a consolidated basis, our cement sales volumes decreased approximately 1%, from 66.8 million tons in 2011 to 65.8 million tons in 2012, and our ready-mix concrete sales volumes remained flat at 54.9 million cubic meters in each of 2011 and 2012. Our net sales increased approximately 4%, from Ps189.9 billion in 2011 to Ps197.0 billion in 2012, and our operating earnings before other expenses, net increased approximately 43%, from Ps12.1 billion in 2011 to Ps17.2 billion in 2012.

The following tables present selected financial information of net sales and operating earnings before other expenses, net for each of our geographic segments for the years ended December 31, 2012 and 2011. The net sales information in the table below is presented before eliminations resulting from consolidation (including those shown on note 4 to our 2012 audited consolidated financial statements included elsewhere in this annual report). Variations in net sales determined on the basis of Mexican Pesos include the appreciation or depreciation which occurred during the period between the local currencies of the countries in the regions vis-à-vis the Mexican Peso; therefore, such variations differ substantially from those based solely on the countries' local currencies:

| Geographic Segment | Variation in Local Currency(1) | Approximate Currency Fluctuations, Net of Inflation Effects | Variations in Mexican Pesos | Net Sales For the Year Ended December 31, 2011 | 2012 |
|---|---|---|---|---|---|
| | | | | (in millions of Mexican Pesos) | |
| Mexico | +2% | — | +2% | Ps 43,361 | Ps 44,412 |
| United States | +17% | +6% | +23% | 32,759 | 40,319 |
| **Northern Europe** | | | | | |
| United Kingdom | -12% | +5% | -7% | 15,757 | 14,620 |
| Germany | -7% | -3% | -10% | 15,975 | 14,406 |
| France | -4% | -2% | -6% | 14,170 | 13,324 |
| Rest of Northern Europe(2) | -9% | -2% | -11% | 14,278 | 12,778 |
| **The Mediterranean** | | | | | |
| Spain | -31% | -1% | -32% | 7,142 | 4,841 |
| Egypt | -8% | +6% | -2% | 6,516 | 6,382 |
| Rest of the Mediterranean(3) | Flat | +5% | +5% | 7,762 | 8,160 |
| **South America and the Caribbean** | | | | | |
| Colombia | +29% | +11% | +40% | 8,533 | 11,932 |
| Rest of South America and the Caribbean(4) | +11% | — | +11% | 14,852 | 16,450 |
| **Asia** | | | | | |
| Philippines | +17% | +10% | +27% | 3,701 | 4,704 |
| Rest of Asia(5) | -11% | +5% | -6% | 2,597 | 2,430 |
| **Others(6)** | -17% | +19% | +2% | 14,857 | 15,153 |
| Net sales before eliminations | | | +4% | Ps 202,260 | Ps 209,911 |
| Eliminations from consolidation | | | | (12,373) | (12,875) |
| **Consolidated net sales** | | | +4% | Ps 189,887 | Ps 197,036 |

| Geographic Segment | Variations in Local Currency(1) | Approximate Currency Fluctuations, Net of Inflation Effects | Variations in Mexican Pesos | Operating Earnings (Loss) Before Other Expenses, Net For the Year Ended December 31, 2011 | 2012 |
|---|---|---|---|---|---|
| | | | | (in millions of Mexican Pesos) | |
| Mexico | +3% | — | +3% | Ps 13,145 | Ps13,598 |
| United States | +31% | -8% | +23% | (7,907) | (6,056) |
| **Northern Europe** | | | | | |
| United Kingdom | >100% | N/A | >100% | (147) | 914 |
| Germany | <100% | N/A | <100% | 174 | (324) |
| France | -27% | -1% | -28% | 1,056 | 758 |
| Rest of Northern Europe(2) | >100% | N/A | +36% | 648 | 881 |
| **The Mediterranean** | | | | | |
| Spain | -25% | — | -25% | 894 | 671 |
| Egypt | -18% | -3% | -21% | 2,422 | 1,917 |
| Rest of the Mediterranean(3) | +4% | +8% | +12% | 682 | 761 |
| **South America and the Caribbean** | | | | | |
| Colombia | +68% | +8% | +76% | 2,568 | 4,509 |
| Rest of South America and the Caribbean(4) | +40% | -16% | +24% | 2,956 | 3,656 |
| **Asia** | | | | | |
| Philippines | +35% | +31% | +66% | 358 | 595 |
| Rest of Asia(5) | -46% | +15% | -31% | 51 | 35 |
| **Others(6)** | -17% | +19% | +2% | (4,836) | (4,715) |
| Operating earnings before other expenses, net | | | +43% | Ps 12,064 | Ps 17,200 |

N/A = Not Applicable

(1) Represents the average change in domestic cement and ready-mix concrete prices in local currency terms. For purposes of a geographic segment consisting of a region, the average prices in local currency terms for each individual country within the region are first translated into U.S. Dollar terms (except for the Rest of Northern Europe and the Rest of the Mediterranean regions, which is translated first into Euros) at the exchange rates in effect as of the end of the reporting period. Variations for a region represent the weighted average change of prices in U.S. Dollar terms (except for the Rest of Northern Europe and the Rest of the Mediterranean regions, which represent the weighted average change of prices in Euros) based on total sales volumes in the region.

(2) Refers primarily to operations in Ireland, the Czech Republic, Austria, Poland, Hungary and Latvia, as well as trading activities in Scandinavia and Finland.

(3) Includes mainly the operations in Croatia, the UAE and Israel.

(4) Includes the operations in Costa Rica, Panama, Puerto Rico, the Dominican Republic, Nicaragua, Jamaica and other countries in the Caribbean, Guatemala, and small ready-mix concrete operations Argentina.

(5) Includes primarily our operations in Thailand, Bangladesh, China and Malaysia.

(6) Our Others segment refers to: (i) cement trade maritime operations, (ii) our information technology solutions business (Neoris), (iii) CEMEX, S.A.B. de C.V. and other corporate entities and (iv) other minor subsidiaries with different lines of business.

*Net sales*. Our consolidated net sales increased approximately 4%, from Ps189.9 billion in 2011 to Ps197.0 billion in 2012. The increase was primarily attributable to higher prices in local currency terms in most of our regions, and the favorable effect of foreign exchange fluctuations to the Mexican Peso, partially mitigated by lower volumes from our operations in the Northern Europe and the Mediterranean regions. Set forth below is a quantitative and qualitative analysis of the various factors affecting our net sales on a geographic segment basis. The discussion of volume data and net sales information below are presented before eliminations resulting from consolidation (including those shown on note 4 to our 2012 audited consolidated financial statements included elsewhere in this annual report).

*Mexico*

Our domestic cement sales volumes from our operations in Mexico decreased approximately 1% in 2012 compared to 2011, and ready-mix concrete sales volumes decreased approximately 2% over the same period. Our net sales from our operations in Mexico represented approximately 21% of our total net sales for the year ended December 31, 2012, in Peso terms, before eliminations resulting from consolidation. The decreases in domestic cement and ready-mix concrete sales volumes were primarily attributable to homebuilder's working capital financing constraints, high levels of inventories and a decline in remittances, resulting in lower demand in the residential sector. In addition, private consumption and manufacturing activity were the main drivers of the demand in the industrial and commercial sector. Our cement export volumes of our operations in Mexico, which represented approximately 6% of our Mexican cement sales volumes for the year ended December 31, 2012, increased approximately 62% in 2012 compared to 2011, primarily as a result of higher export volumes to South America, Central America and the Caribbean. Of our total cement export volumes from our operations in Mexico during 2012, approximately 17% was shipped to the United States, 31% to Central America and the Caribbean and 52% to South America. Our average sales price of domestic cement from our operations in Mexico increased approximately 3%, in Peso terms, in 2012 compared to 2011, and our average sales price of ready-mix concrete increased approximately 5%, in Peso terms, over the same period. For the year ended December 31, 2012, cement represented approximately 53%, ready-mix concrete approximately 24% and our aggregates and other businesses approximately 23% of our net sales from our operations in Mexico before intra-sector eliminations within the segment and before eliminations from consolidation, as applicable.

As a result of the decreases in domestic cement and ready-mix concrete sales volumes, offset by the increases in domestic cement and ready-mix concrete average sales prices, our net sales in Mexico, in Peso terms, increased approximately 2% in 2012 compared to 2011.

*United States*

Our domestic cement sales volumes from our operations in the United States, which include cement purchased from our other operations, increased approximately 14% in 2012 compared to 2011, and ready-mix concrete sales volumes increased approximately 20% over the same period. The increases in domestic cement and ready-mix concrete sales volumes of our operations in the U.S. resulted primarily from improved demand from most of our markets. Low interest rates, affordability of housing at a record high and a return to low levels of inventories led to higher activity in the residential sector. In addition, demand from the industrial and commercial sector was strong during the year, while demand from the infrastructure structure improved marginally. Our operations in the United States represented approximately 19% of our total net sales for the year ended December 31, 2012, in Peso terms, before eliminations resulting from consolidation. Our average sales price of domestic cement of our operations in the United States increased approximately 1%, in U.S. Dollar terms, in 2012 compared to 2011, and our average sales price of ready-mix concrete increased approximately 4%, in U.S. Dollar terms, over the same period. For the year ended December 31, 2012, cement represented approximately 28%, ready-mix concrete approximately 33% and our aggregates and other businesses approximately 39% of net sales from our operations in the United States before intra-sector eliminations within the segment and before eliminations from consolidation, as applicable.

As a result of the increases in domestic cement and ready-mix concrete sales volumes and average sale prices, net sales from our operations in the United States, in U.S. Dollar terms, increased approximately 17% in 2012 compared to 2011.

***Northern Europe***

In 2012, our operations in the Northern Europe region consisted of our operations in the United Kingdom, Germany and France, which represent the most significant operations in this region, in addition to our Rest of Northern Europe segment, which refers primarily to our operations in Ireland, the Czech Republic, Austria, Poland, Hungary and Latvia, as well as trading activities in Scandinavia and Finland. Our net sales from our

operations in the Northern Europe region represented approximately 26% of our total net sales for the year ended December 31, 2012, in Peso terms, before eliminations resulting from consolidation. As of December 31, 2012, our operations in the Northern Europe region represented approximately 15% of our total assets. Set forth below is a quantitative and qualitative analysis of the effects of the various factors affecting our net sales for our main operations in the Northern Europe region.

*United Kingdom*

Our domestic cement sales volumes from our operations in the United Kingdom decreased approximately 7% in 2012 compared to 2011, and ready-mix concrete sales volumes decreased approximately 12% over the same period. The decreases in domestic cement and ready-mix concrete sales volumes resulted primarily from the economic recession and cuts in public spending, which led to lower construction levels. In addition, limited credit availability restricted the activity in the residential sector, while the performance of the industrial and commercial sector remained weak. Our operations in the United Kingdom represented approximately 7% of our total net sales for the year ended December 31, 2012, in Peso terms, before eliminations resulting from consolidation. Our average sales price of domestic cement from our operations in the United Kingdom increased approximately 3%, in Pound terms, in 2012 compared to 2011, and our average sales price of ready-mix concrete increased approximately 2%, in Pound terms, over the same period. For the year ended December 31, 2012, cement represented approximately 16%, ready-mix concrete approximately 26% and our aggregates and other businesses approximately 58% of net sales from our operations in the United Kingdom before intra-sector eliminations within the segment and before eliminations from consolidation, as applicable.

As a result of the decreases in domestic cement and ready-mix concrete sales volumes, partially offset by the increases in domestic cement and ready-mix concrete average sales prices, net sales from our operations in the United Kingdom, in Pound terms, decreased approximately 12% in 2012 compared to 2011.

*Germany*

Our domestic cement sales volumes from our operations in Germany decreased approximately 10% in 2012 compared to 2011, and ready-mix concrete sales volumes in those operations decreased approximately 5% over the same period. The decrease in domestic cement and ready-mix concrete sales volumes resulted primarily from a slowdown in the economy. Demand for building materials during 2012 was driven by the residential sector, which maintained favorable momentum with low mortgage rates and low levels of unemployment. Meanwhile, a reduction in government spending negatively affected the infrastructure sector, while bottlenecks in the construction industry and adverse weather conditions continued to restrict construction work and increased the backlog of projects. Our operations in Germany represented approximately 7% of our total net sales for the year ended December 31, 2012, in Peso terms, before eliminations resulting from consolidation. Our average sales price of domestic cement from our operations in Germany increased approximately 3%, in Euro terms, in 2012 compared to 2011, and our average sales price of ready-mix concrete increased approximately 1%, in Euro terms, over the same period. For the year ended December 31, 2012, cement represented approximately 25%, ready-mix concrete approximately 35% and our aggregates and other businesses approximately 40% of net sales from our operations in Germany before intra-sector eliminations within the segment and before eliminations from consolidation, as applicable.

As a result of the decreases in domestic cement and ready-mix concrete sales volumes, partially offset by the increases in domestic cement and ready-mix concrete average sales prices, net sales from our operations in Germany, in Euro terms, decreased approximately 7% in 2012 compared to 2011.

*France*

Our ready-mix concrete sales volumes from our operations in France decreased approximately 5% in 2012 compared to 2011. The decrease in ready-mix concrete sales volumes resulted primarily from a decline in demand in the residential sector that was mainly attributable to the elimination of tax incentives and limited

credit availability. Despite deteriorated market conditions, the residential sector continued to be the main driver of consumption. Our operations in France represented approximately 6% of our total net sales for the year ended December 31, 2012, in Peso terms, before eliminations resulting from consolidation. Our average sales price of ready-mix concrete of our operations in France increased approximately 2%, in Euro terms, in 2012 compared to 2011. For the year ended December 31, 2012, ready-mix concrete represented approximately 72% and our aggregates and other businesses approximately 28% of net sales from our operations in France before intra-sector eliminations within the segment and before eliminations from consolidation, as applicable.

As a result of the decrease in ready-mix concrete sales volumes, partially offset by the increase in ready-mix concrete average sales price, net sales from our operations in France, in Euro terms, decreased approximately 4% in 2012 compared to 2011.

*Rest of Northern Europe*

In 2012, our operations in our Rest of Northern Europe segment consisted primarily of our operations in Ireland, the Czech Republic, Austria, Poland, Hungary and Latvia, as well as trading activities in Scandinavia and Finland. Our domestic cement sales volumes of our operations in our Rest of Northern Europe segment decreased approximately 18% in 2012 compared to 2011, and ready-mix concrete sales volumes decreased approximately 10% over the same period. The decreases in domestic cement and ready-mix concrete sales volumes resulted primarily from harsh weather conditions and a slowdown of the economy, which led to low levels of investment and consumption. Our net sales from our operations in our Rest of Northern Europe segment represented approximately 6% of our total net sales for the year ended December 31, 2012, in Peso terms, before eliminations resulting from consolidation. Our average sales price of domestic cement from our operations in our Rest of Northern Europe segment decreased approximately 9%, in Euro terms, in 2012 compared to 2011, and our average sales price of ready-mix concrete decreased approximately 9%, in Euro terms, over the same period. For the year ended December 31, 2012, cement represented approximately 36%, ready-mix concrete approximately 43% and our aggregates and other businesses approximately 21% of net sales from our operations in our Rest of Northern Europe segment before intra-sector eliminations within the segment and before eliminations resulting from consolidation, as applicable.

As a result of the decreases in domestic cement and ready-mix concrete sales volumes and average sales prices, net sales in our Rest of Northern Europe segment, in Euro terms, decreased approximately 9% in 2012 compared to 2011.

***The Mediterranean***

In 2012, our operations in the Mediterranean region consisted of our operations in Spain and Egypt, which represent the most significant operations in this region, in addition to our Rest of the Mediterranean segment, which includes mainly our operations in Croatia, the UAE and Israel. Our net sales from our operations in the Mediterranean region represented approximately 9% of our total net sales for the year ended December 31, 2012, in Peso terms, before eliminations resulting from consolidation. As of December 31, 2012, our operations in the Mediterranean region represented approximately 8% of our total assets. Set forth below is a quantitative and qualitative analysis of the effects of the various factors affecting our net sales for our main operations in the Mediterranean region.

*Spain*

Our domestic cement sales volumes from our operations in Spain decreased approximately 40% in 2012 compared to 2011, while ready-mix concrete sales volumes decreased approximately 43% over the same period. The decreases in domestic cement and ready-mix concrete sales volumes resulted primarily from the adverse economic conditions. The performance of the residential sector remained negatively affected by high inventories and limited credit availability. In addition, continued fiscal austerity measures resulted in very low levels of

infrastructure spending. Our operations in Spain represented approximately 2% of our total net sales for the year ended December 31, 2012, in Peso terms, before eliminations resulting from consolidation. Our cement export volumes of our operations in Spain, which represented approximately 43% of our Spain cement sales volumes for the year ended December 31, 2012, decreased approximately 21% in 2012 compared to 2011, primarily as a result of lower export volumes to Africa and Europe. Of our total cement export volumes of our operations in Spain during 2012, approximately 26% was shipped to Europe and the Middle East, approximately 3% to Central America and the Caribbean and approximately 71% to Africa. Our average sales price of domestic cement of our operations in Spain increased approximately 2%, in Euro terms, in 2012 compared to 2011, and our average sales price of ready-mix concrete increased approximately 3%, in Euro terms, over the same period. For the year ended December 31, 2012, cement represented approximately 70%, ready-mix concrete approximately 18% and our aggregates and other businesses approximately 12% of net sales from our operations in Spain before intra-sector eliminations within the segment and before eliminations from consolidation, as applicable.

As a result of the decreases in domestic cement and ready-mix concrete sales volumes, partially offset by the increases in domestic cement and ready-mix concrete average sales prices, net sales from our operations in Spain, in Euro terms, decreased approximately 31% in 2012 compared to 2011.

*Egypt*

Our domestic cement sales volumes from our operations in Egypt decreased approximately 10% in 2012 compared to 2011, while ready-mix concrete sales volumes increased approximately 2% over the same period. The decrease in domestic cement sales volumes resulted primarily from decreased infrastructure spending, while the informal residential sector continued to be the main driver of demand. An effort from developers to complete unfinished projects increased the activity in the residential sector during the second half of the year; however, investments in projects in the infrastructure sector remained on hold. Our net sales from our operations in Egypt represented approximately 3% of our total net sales for the year ended December 31, 2012, in Peso terms. Our average sales price of domestic cement of our operations in Egypt decreased by approximately 2%, in Egyptian pound terms, in 2012 compared to 2011, and our average sales price of ready-mix concrete decreased approximately 11%, in Egyptian pound terms, over the same period. For the year ended December 31, 2012, cement represented approximately 84%, ready-mix concrete approximately 7% and our aggregates and other businesses approximately 9% of net sales from our operations in Egypt before intra-sector eliminations within the segment and before eliminations from consolidation, as applicable.

As a result of the decreases in domestic cement sales volumes and domestic cement and ready-mix concrete average sales prices, partially offset by the increase in ready-mix concrete sales volumes, our net sales in Egypt, in Egyptian pound terms, decreased approximately 8% in 2012 compared to 2011.

*Rest of the Mediterranean*

In 2012, our operations in our Rest of the Mediterranean segment consisted mainly of our operations in Croatia, the UAE and Israel. Our domestic cement sales volumes of our operations in our Rest of the Mediterranean segment decreased approximately 17% in 2012 compared to 2011, and ready-mix concrete sales volumes increased approximately 2% over the same period. The decrease in domestic cement sales volumes resulted primarily from lower construction levels due to cuts in public spending, adverse weather conditions and lower internal consumption. Our net sales from our operations in our Rest of the Mediterranean segment represented approximately 4% of our total net sales for the year ended December 31, 2012, in Peso terms, before eliminations resulting from consolidation. Our average sales price of domestic cement from our operations in our Rest of the Mediterranean decreased approximately 5%, in U.S. Dollar terms, in 2012 compared to 2011, and our average sales price of ready-mix concrete decreased approximately 1%, in U.S. Dollar terms, over the same period. For the year ended December 31, 2012, cement represented approximately 21%, ready-mix concrete approximately 55% and our aggregates and other businesses approximately 24% of our net sales from our operations in our Rest of the Mediterranean segment before intra-sector eliminations within the segment and before eliminations resulting from consolidation, as applicable.

As a result of the decreases in domestic cement sales volumes and domestic cement and ready-mix concrete average sales prices, offset by the increase in ready-mix concrete sales volumes, net sales in our Rest of the Mediterranean segment, in U.S. Dollar terms, remained flat in 2012 compared to 2011.

***South America and the Caribbean***

In 2012, our operations in the South America and the Caribbean region consisted of our operations in Colombia, which represents the most significant operation in this region, in addition to our Rest of South America and the Caribbean segment, which includes our operations in Costa Rica, Guatemala, Panama, Nicaragua, Puerto Rico, the Dominican Republic, Peru, Jamaica and other countries in the Caribbean, as well as small ready-mix concrete operations in Argentina. Some of these trading operations in the Caribbean region consist of the resale of cement produced by our operations in Mexico. Our net sales from our operations in the South America and the Caribbean region represented approximately 14% of our total net sales for the year ended December 31, 2012, in Peso terms, before eliminations resulting from consolidation. As of December 31, 2012, our operations in the South America and the Caribbean region represented approximately 7% of our total assets. Set forth below is a quantitative and qualitative analysis of the effects of the various factors affecting our net sales for our main operations in the South America and the Caribbean region.

*Colombia*

Our domestic cement volumes from our operations in Colombia increased approximately 5% in 2012 compared to 2011, and ready-mix concrete sales volumes increased approximately 14% over the same period. The increases in domestic cement and ready-mix concrete sales volumes resulted primarily from higher infrastructure sector activity, which benefited from ongoing projects and the initiation of new road projects towards the end of the year. The residential sector showed signs of recovery, mainly in low income housing due to the start of a support government program. In addition, higher confidence levels and favorable expectations for new trade agreements resulted in increased investment levels, primarily in warehouses and commercial buildings, which improved the performance of the industrial and commercial sector. Our net sales from our operations in Colombia represented approximately 6% of our total net sales for the year ended December 31, 2012, in Peso terms, before eliminations resulting from consolidation. Our average sales price of domestic cement from our operations in Colombia increased approximately 19%, in Colombian Peso terms, in 2012 compared to 2011, and our average sales price of ready-mix concrete increased approximately 20%, in Colombian Peso terms, over the same period. For the year ended December 31, 2012, cement represented approximately 58%, ready-mix concrete approximately 27% and our aggregates and other businesses approximately 15% of our net sales from our operations in Colombia before intra-sector eliminations within the segment and before eliminations from consolidation, as applicable.

As a result of the increases in domestic cement and ready-mix concrete sales volumes and average sales prices, net sales of our operations in Colombia, in Colombian Peso terms, increased approximately 29% in 2012 compared to 2011.

*Rest of South America and the Caribbean*

For the year ended December 31, 2012, our operations in our Rest of South America and the Caribbean segment included our operations in Costa Rica, Guatemala, Panama, Nicaragua, Puerto Rico, the Dominican Republic, Peru, Jamaica and other countries in the Caribbean, and small ready-mix concrete operations in Argentina. Our domestic cement volumes from our operations in our Rest of South America and the Caribbean segment increased approximately 7% in 2012 compared to 2011, and ready-mix concrete sales volumes decreased approximately 4% over the same period. This resulted primarily from new infrastructure and commercial projects, mainly in Panama and Costa Rica, offset by the completion of infrastructure projects in the Dominican Republic and Nicaragua. Our net sales from our operations in our Rest of South America and the Caribbean segment represented approximately 8% of our total net sales for the year ended December 31, 2012, in Peso terms, before eliminations resulting from consolidation. Our average sales price of domestic cement from

our operations in our Rest of South America and the Caribbean segment increased approximately 2%, in U.S. Dollar terms, in 2012 compared to 2011, and our average sales price of ready-mix concrete increased approximately 9%, in U.S. Dollar terms, over the same period. For the year ended December 31, 2012, cement represented approximately 73%, ready-mix concrete approximately 19% and our other businesses approximately 8% of net from our operations in our Rest of South America and the Caribbean segment before intra-sector eliminations within the segment and before eliminations from consolidation, as applicable.

As a result of the increases in domestic cement volumes and domestic cement and ready-mix concrete average sales prices, partially offset by the decrease in ready-mix concrete sales volumes, net sales of our operations in our Rest of South America and the Caribbean segment, in U.S. Dollar terms, increased approximately 11% in 2012 compared to 2011.

***Asia***

For the year ended December 31, 2012, our operations in the Asia region consisted of our operations in the Philippines, which represent the most significant operation in this region, in addition to our Rest of Asia segment, which includes our operations in Malaysia, Thailand, Bangladesh and China. Our net sales from our operations in the Asia region represented approximately 3% of our total net sales for the year ended December 31, 2012, in Peso terms, before eliminations resulting from consolidation. As of December 31, 2012, our operations in the Asia region represented approximately 3% of our total assets. Set forth below is a quantitative and qualitative analysis of the effects of the various factors affecting our net sales for our main operations in the Asia region.

*The Philippines*

Our domestic cement volumes from our operations in the Philippines increased approximately 15% in 2012 compared to 2011. The increase in domestic cement sales volumes resulted primarily from the increase in public and private spending activities. Stable levels of inflation and mortgage rates, as well as inflows from remittances, contributed to the growth in the residential sector. In addition, the industrial and commercial sector continued to grow during the same period. Our net sales from our operations in the Philippines represented approximately 2% of our total net sales for the year ended December 31, 2012, in Peso terms, before eliminations resulting from consolidation. Our average sales price of domestic cement from our operations in the Philippines increased approximately 7%, in Philippine Peso terms, in 2012 compared to 2011. For the year ended December 31, 2012, cement represented approximately 100% of our net sales from our operations in the Philippines before intra-sector eliminations within the segment and before eliminations from consolidation, as applicable.

As a result of the increases in domestic cement sales volumes and average sales price, net sales of our operations in the Philippines, in Philippine Peso terms, increased approximately 17% in 2012 compared to 2011.

*Rest of Asia*

For the year ended December 31, 2012, our operations in our Rest of Asia segment included our operations in Malaysia, Thailand, Bangladesh and China. Our domestic cement volumes from our operations in our Rest of Asia segment increased approximately 3% in 2012 compared to 2011, and ready-mix concrete sales volumes decreased approximately 18% over the same period resulted primarily from a decline in all of our markets mainly in China. Our net sales from our operations in our Rest of Asia segment represented approximately 1% of our total net sales for the year ended December 31, 2012, in Peso terms, before eliminations resulting from consolidation. Our average sales price of domestic cement from our operations in our Rest of Asia segment increased approximately 3%, in U.S. Dollar terms, in 2012 compared to 2011, and the average sales price of ready-mix concrete remained flat, in U.S. Dollar terms, over the same period. For the year ended December 31, 2012, cement represented approximately 39%, ready-mix concrete approximately 53% and our other businesses approximately 8% of net sales from our operations in our Rest of Asia segment before intra-sector eliminations within the segment and before eliminations from consolidation, as applicable.

As a result of the increases in our domestic cement sales volumes and domestic cement average sales price, offset by the decrease in ready-mix concrete sales volumes, net sales of our operations in our Rest of Asia segment, in U.S. Dollar terms, decreased approximately 11% in 2012 compared to 2011.

***Others***

Our Others segment includes our worldwide cement, clinker and slag trading operations, our information technology solutions company and other minor subsidiaries. Net sales of our Others segment decreased approximately 17% before intra-sector eliminations within the segment and before eliminations from consolidation, as applicable, in 2012 compared to 2011, in U.S. Dollar terms, primarily as a result of a decrease in worldwide cement volumes and a decrease in our other business, such as transport, public works, and coating and surfacing operations, partially offset by an increase in cement average sale price. For the year ended December 31, 2012, our trading operations' net sales represented approximately 37% and our information technology solutions company 21% of our Others segment's net sales.

*Cost of Sales*. Our cost of sales, including depreciation, increased approximately 2%, from Ps136.2 billion in 2011 to Ps138.7 billion in 2012, primarily due to higher electric power and raw material costs. As a percentage of net sales, cost of sales decreased from 71.7% in 2011 to 70.4% in 2012, mainly as a result of savings from our cost reduction initiatives and lower fuel costs. In our cement and aggregates business, we have several producing plants and many selling points. Our cost of sales includes freight expenses of raw materials used in our producing plants. However, our costs of sales excludes (i) expenses related to personnel and equipment comprising our selling network and those expenses related to warehousing at the points of sale, which were included as part of our administrative and selling expenses line item in the amount of approximately Ps8.1 billion in 2011 and Ps7.9 billion in 2012; and (ii) freight expenses of finished products from our producing plants to our points of sale and from our points of sale to our customers' locations, which were included as part of our distribution expenses line item (except for distribution or delivery expenses related to our ready-mix concrete business, which are included in our cost of sales), and which, for the years ended December 31, 2011 and 2012, represented Ps16.2 billion and Ps17.6 billion, respectively.

*Gross Profit*. For the reasons explained above, our gross profit increased approximately 9%, from approximately Ps53.7 billion in 2011 to approximately Ps58.3 billion in 2012. As a percentage of net sales, gross profit increased from approximately 28.3% in 2011 to 29.6% in 2012. In addition, our gross profit may not be directly comparable to those of other entities that include all their freight expenses in cost of sales. As described above, we include freight expenses of finished products from our producing plants to our points of sale and from our points of sale to our customers' locations within distribution expenses, which in aggregate represented costs of approximately Ps16.2 billion in 2011 and approximately Ps17.6 billion in 2012.

*Operating Earnings Before Other Expenses, Net*. For the reasons mentioned above, our operating earnings before other expenses, net increased approximately 43%, from approximately Ps12.1 billion in 2011 to approximately Ps17.2 billion in 2012. As a percentage of net sales, operating earnings before other expenses, net increased from approximately 6.4% in 2011 to 8.7% in 2012. Additionally, set forth below is a quantitative and qualitative analysis of the effects of the various factors affecting our operating earnings before other expenses, net on a geographic segment basis.

*Mexico*

Our operating earnings before other expenses, net from our operations in Mexico increased approximately 3%, in Peso terms, from an operating earnings before other expenses, net of approximately Ps13.1 billion in 2011 to an operating earnings before other expenses, net of approximately Ps13.6 billion in 2012. The increase resulted primarily from higher domestic cement and ready-mix concrete average sale prices, private consumption and manufacturing activity.

*United States*

Our operating loss before other expenses, net from our operations in the United States decreased approximately 23%, in Peso terms, from an operating loss before other expenses, net of approximately Ps7.9 billion in 2011 to an operating loss before other expenses, net of approximately Ps6.1 billion in 2012. The decrease resulted primarily from higher domestic cement and ready-mix concrete sale volumes and average sale prices, driven by the improvement in demand in most of our markets.

***Northern Europe***

*United Kingdom*

Our operating loss before other expenses, net from our operations in the United Kingdom decreased significantly, in Peso terms, from an operating loss before other expenses, net of approximately Ps147 million in 2011 to an operating earnings before other expenses, net of approximately Ps914 million in 2012. The increase resulted primarily from the changes to defined benefits plans, which led to a curtailment event and also affected prior service costs, generating a net gain in the operating results for 2012 of approximately Ps1,914 million (U.S.$146 million).

*Germany*

Our operating earnings before other expenses, net from our operations in Germany decreased significantly, in Peso terms, from an operating earnings before other expenses, net of approximately Ps174 million in 2011 to an operating loss before other expenses, net of approximately Ps324 million in 2012. The decrease resulted primarily from lower domestic cement and ready-mix concrete sales volumes caused by a slowdown in the economic environment.

*France*

Our operating earnings before other expenses, net from our operations in France decreased approximately 28%, in Peso terms, from an operating earnings before other expenses, net of approximately Ps1,056 million in 2011 to an operating earnings before other expenses, net of approximately Ps758 million in 2012. The decrease resulted primarily from lower ready-mix concrete sale volumes caused by the decline in demand in the residential sector.

*Rest of Northern Europe*

Our operating earnings before other expenses, net from our operations in our Rest of Northern Europe segment increased approximately 36%, in Peso terms, from an operating earnings before other expenses, net of approximately Ps648 million in 2011 to an operating earnings before other expenses, net of approximately Ps881 million in 2012. The increase resulted primarily from production cost reductions in all of our markets in the region.

***The Mediterranean***

*Spain*

Our operating earnings before other expenses, net from our operations in Spain decreased approximately 25%, in Peso terms, from an operating earnings before other expenses, net of approximately Ps894 million in 2011 to an operating earnings before other expenses, net of approximately Ps671 million in 2012. The decrease resulted primarily from lower domestic cement and ready-mix concrete sale volumes caused by adverse economic conditions that affected the performance of the residential sector.

*Egypt*

Our operating earnings before other expenses, net from our operations in Egypt decreased approximately 21%, in Peso terms, from an operating earnings before other expenses, net of approximately Ps2.4 billion in 2011 to an operating earnings before other expenses, net of approximately Ps1.9 billion in 2012. The decrease resulted primarily from a decline in domestic cement and ready-mix concrete sale volumes and average sales prices, caused by a decrease in infrastructure spending.

*Rest of the Mediterranean*

Our operating earnings before other expenses, net from our operations in our Rest of the Mediterranean segment increased approximately 12%, in Peso terms, from an operating earnings before other expenses, net of approximately Ps682 million in 2011 to an operating earnings before other expenses, net of approximately Ps761 million in 2012. The increase resulted primarily from higher domestic cement and ready-mix concrete sale volumes and average sale prices in Israel, as well as production cost reductions in Israel.

***South America and the Caribbean***

*Colombia*

Our operating earnings before other expenses, net from our operations in Colombia increased approximately 76%, in Peso terms, from an operating earnings before other expenses, net of approximately Ps2.6 billion in 2011 to an operating earnings before other expenses, net of approximately Ps4.5 billion in 2012. The increase resulted primarily from higher domestic cement and ready-mix sale concrete sale volumes and average sale prices driven by infrastructure sector activity and residential sector recovery.

*Rest of South America and the Caribbean*

Our operating earnings before other expenses, net from our operations in our Rest of South America and the Caribbean segment increased approximately 24%, in Peso terms, from an operating earnings before other expenses, net of approximately Ps3.0 billion in 2011 to an operating earnings before other expenses, net of approximately Ps3.7 billion in 2012. The increase resulted primarily from higher domestic cement sale volumes and domestic cement and ready-mix sale concrete average sale prices driven by new infrastructure and commercial projects.

***Asia***

*The Philippines*

Our operating earnings before other expenses, net from our operations in the Philippines increased approximately 66%, in Peso terms, from an operating earnings before other expenses, net of approximately Ps358 million in 2011 to an operating earnings before other expenses, net of approximately Ps595 million in 2012. The increase resulted primarily from higher domestic cement sale volumes and average sale prices driven by a positive trend in the industrial, commercial and residential sectors.

*Rest of Asia*

Our operating earnings before other expenses, net from our operations in our Rest of Asia segment decreased approximately 31%, in Peso terms, from an operating earnings before other expenses, net of approximately Ps51 million in 2011 to an operating earnings before other expenses, net of approximately Ps35 million in 2012. The decrease resulted primarily from a decline in ready-mix-concrete sale volumes partially offset by an increase in domestic cement sale volumes and average sale prices due to the decrease in project contracts and higher production costs in some countries.

***Others***

Our operating loss before other expenses, net from our operations in our Others segment decreased approximately 2%, in Peso terms, from an operating loss before other expenses, net of approximately Ps4.8 billion in 2011 to an operating loss before other expenses, net of approximately Ps4.7 billion in 2012. The increase resulted primarily from a decrease in worldwide cement volumes and a decrease in our other business, such as transport, public works, and coating and surfacing operations, partially offset by an increase in cement average sale price.

*Other Expenses, Net*. Our other expenses, net increased approximately 4%, in Peso terms, from approximately Ps5.4 billion in 2011 to approximately Ps5.7 billion in 2012. The increase resulted primarily from one-time restructuring costs of approximately Ps1,818 million in connection with a 10-year services agreement with IBM. See note 6 to our 2012 audited consolidated financial statements included elsewhere in this annual report. The increase was partially offset by the net effect of the compensation received as a result of the resolution of our legal proceeding with Strabag (see "Item 4—Information on the Company—Regulatory Matters and Legal Proceedings—Other Legal Proceedings—Strabag Arbitration") and by a decrease in impairment losses in 2012 compared with 2011.

The most significant items included under this caption for the years ended December 31, 2011 and 2012 are as follows:

| | For the Year Ended December 31, | |
|---|---|---|
| | 2011 | 2012 |
| | (in millions of Mexican Pesos) | |
| Impairment losses | Ps (1,751) | Ps (1,661) |
| Restructuring costs | (1,959) | (3,079) |
| Charitable contributions | (140) | (100) |
| Results from sales of assets and others, net | (1,599) | (852) |
| | Ps(5,449) | Ps(5,692) |

**Financial Items**

Pursuant to IFRS, financial items include:

- financial or interest expense on borrowed funds;
- financial income on cash and cash equivalents;
- changes in the fair value resulting from the valuation of financial instruments, including derivative instruments and marketable securities;
- foreign exchange gains or losses associated with monetary assets and liabilities denominated in foreign currencies; and
- accretion result from assets and liabilities and others.

| | For the Year Ended December 31, | |
|---|---|---|
| | 2011 | 2012 |
| | (in millions of Mexican Pesos) | |
| **Financial Items:** | | |
| Financial expense | Ps (16,627) | Ps (18,335) |
| Other financial (expense) income, net: | | |
| Financial income | 489 | 620 |
| Results from financial instruments | (76) | 178 |
| Foreign exchange result | (1,919) | 1,142 |
| Effects of net present value on assets and liabilities and others, net | (708) | (963) |
| | Ps (18,841) | Ps (17,358) |

Our aggregate financial items in 2012, which comprises financial expense and other financial (expense) income, net, as reported in our statements of operations, was a loss of approximately Ps17.4 billion, a decrease from a loss of approximately Ps18.8 billion in 2011. The components of the change are shown above.

Our financial expense increased approximately 10%, from approximately Ps16.6 billion in 2011 to approximately Ps18.3 billion in 2012, primarily attributable to the issuance of fixed rate instruments to prepay debt under 2009 Financial Agreement, including our senior secured notes.

Our other financial (expense) income, net comprises our financial income which increased 27%, from Ps489 million in 2011 to Ps620 million in 2012, primarily attributable to the interest earned from temporary investments. Our loss from our financial instruments decreased significantly from a loss of approximately Ps76 million in 2011 to a gain of approximately Ps178 million in 2012, primarily attributable to the disposal of notes issued by PDVSA (see "—CEMEX Venezuela") in which CEMEX recognized a net gain of approximately Ps169 million, including the effects recognized within other comprehensive income in prior years, and gains in our investments in private funds, partially offset by a negative valuation of derivatives related to shares of CEMEX, S.A.B. de C.V. Our foreign exchange result increased significantly, from a loss of approximately Ps1.9 billion in 2011 to a gain of approximately Ps1.1 billion in 2012, primarily attributable to the appreciation of the Euro, Mexican Peso and the Colombian Peso against the U.S. Dollar. The accretion expense, which represents the effects on our net assets and liabilities recognized at amortized cost due to the passage of time, increased from an expense of approximately Ps708 million in 2011 to an expense of Ps963 million in 2012.

*Derivative Financial Instruments*. For the years ended December 31, 2011 and 2012, our derivative financial instruments that had a potential impact on our other financial income (expense) consisted of equity forward contracts, a forward instrument over the Total Return Index of the Mexican Stock Exchange, interest rate derivatives related to energy projects and conversion options embedded in the 2010 Optional Convertible Subordinated Notes and the 2011 Optional Convertible Subordinated Notes, as discussed in note 16D to our 2012 audited consolidated financial statements included elsewhere in this annual report.

For the year ended December 31, 2012, our loss from our financial instruments decreased significantly for the reasons described above. See "—Liquidity and Capital Resources—Our Equity Forward Arrangements."

*Income Taxes.* Our income tax effect in the statement of operations, which is primarily comprised of current income taxes plus deferred income taxes, decreased from an expense of approximately Ps12.2 billion in 2011 to an expense of Ps6.1 billion in 2012. This decrease is mainly attributable to our current income tax expense, which decreased from an expense of approximately Ps14.3 billion in 2011 to an income of approximately Ps6.2 billion in 2012, resulting primarily from: a) an income tax benefit related to the expiration of the statute of limitations of uncertain tax positions for approximately Ps120 million in 2011 as compared to approximately Ps1,599 million in 2012 and b) an income tax benefit due to the reduction and settlements of uncertain tax

positions of approximately Ps2,634 million in 2011 as compared to Ps18,654 million in 2012, mainly attributed to a decree published by the Mexican authorities that granted an amnesty of certain tax proceedings of up to 80%, and the current situation of the tax uncertainties in Spain that have been re-measured.

Our deferred tax benefit decreased from a benefit of approximately Ps2.1 billion in 2011 to a expense of approximately Ps12.3 billion in 2012. The decrease in our deferred tax benefit was primarily attributable to the cancellation of deferred tax assets associated with tax loss carryforwards in Spain. See note 19 to our 2012 audited consolidated financial statements included elsewhere in this annual report. For each of the years ended December 31, 2011 and 2012, our approximate statutory income tax rate was 30%.

Our effective tax rate in 2011 resulted in a negative tax rate of 97.2%, considering a loss before income tax of approximately Ps12.6 billion, while our effective tax rate in 2012 resulted in a negative tax rate of 119%, considering a loss before income tax of approximately Ps5.1 billion. See "Item 3—Key Information—Risk Factors—The Mexican tax consolidation regime may have an adverse effect on cash flow, financial condition and net income."

*Consolidated Net Loss.* For the reasons described above, our consolidated net loss (before deducting the portion allocable to non-controlling interest) for 2012 decreased 55%, from a consolidated net loss of approximately Ps24.8 billion in 2011 to a consolidated net loss of approximately Ps11.2 billion in 2012.

*Non-controlling Interest Net Income.* Changes in non-controlling interest net income in any period reflect changes in the percentage of the stock of our subsidiaries held by non-associated third parties as of the end of each month during the relevant period and the consolidated net loss attributable to those subsidiaries. Non-controlling interest net gain increased, from a gain of Ps21 million in 2011 to a gain of Ps662 million in 2012, primarily attributable to the CEMEX Latam Offering, partially offset by our acquisition of the 49% non-controlling interest in an indirect holding company of Global Cement, S.A. during October, 2012 in a private transaction and the 38.8% acquisition of a non-controlling interest in Readymix Investments, an indirect subsidiary of CEMEX España, through a public tender offer commenced on March 12, 2012.

*Controlling Interest Net Loss.* Controlling interest net loss represents the difference between our consolidated net loss and non-controlling interest net loss, which is the portion of our consolidated net loss attributable to those of our subsidiaries in which non-associated third parties hold interests. Controlling interest net loss decreased 52%, from a net loss of approximately Ps24.8 billion in 2011 to a controlling interest net loss of approximately Ps11.9 billion in 2012.

**Year Ended December 31, 2011 Compared to Year Ended December 31, 2010**

Summarized in the table below are the percentage (%) increases (+) and decreases (-) for the year ended December 31, 2011 compared to the year ended December 31, 2010 in our domestic cement and ready-mix concrete sales volumes, as well as export sales volumes of cement and domestic cement and ready-mix concrete average prices for each of our geographic segments. The table below and the other volume data presented by geographic segment in this "—Selected Consolidated Statement of Operations Data" section are presented before eliminations resulting from consolidation (including those shown on note 4 to our audited consolidated financial statements included elsewhere in this annual report).

| | Domestic Sales Volumes | | Export Sales Volumes | Average Domestic Prices in Local Currency(1) | |
|---|---|---|---|---|---|
| Geographic Segment | Cement | Ready-Mix Concrete | Cement | Cement | Ready-Mix Concrete |
| Mexico | +1% | +6% | +19% | +3% | +6% |
| United States(2) | -2% | +7% | — | Flat | +3% |
| **Northern Europe** | | | | | |
| United Kingdom | +6% | +11% | — | +2% | +2% |
| Germany | +14% | +13% | — | -1% | Flat |
| France | N/A | +12% | — | N/A | +1% |
| Rest of Northern Europe(3) | +16% | +15% | — | +2% | +4% |
| **The Mediterranean** | | | | | |
| Spain | -19% | -21% | +6% | Flat | -1% |
| Egypt | -3% | -17% | — | -7% | -9% |
| Rest of the Mediterranean(4) | -6% | +13% | — | +2% | +5% |
| **South America and the Caribbean** | | | | | |
| Colombia | +5% | +29% | — | +10% | +6% |
| Rest of South America and the Caribbean(5) | +4% | +5% | — | +5% | +7% |
| **Asia** | | | | | |
| Philippines | -5% | — | +19% | -8% | — |
| Rest of Asia(6) | +8% | -8% | — | +2% | +12% |

N/A = Not Applicable

(1) Represents the average change in domestic cement and ready-mix concrete prices in local currency terms. For purposes of a geographic segment consisting of a region, the average prices in local currency terms for each individual country within the region are first translated into U.S. Dollar terms (except for the Rest of Northern Europe and the Rest of the Mediterranean regions, which is translated first into Euros) at the exchange rates in effect as of the end of the reporting period. Variations for a region represent the weighted average change of prices in U.S. Dollar terms (except for the Rest of Northern Europe and the Rest of the Mediterranean regions, which represent the weighted average change of prices in Euros) based on total sales volumes in the region.

(2) On August 27, 2010, we sold seven aggregates quarries, three resale aggregate distribution centers and one concrete block manufacturing facility all located in Kentucky.

(3) Refers primarily to operations in Ireland, the Czech Republic, Austria, Poland, Hungary and Latvia, as well as trading activities in Scandinavia and Finland.

(4) Includes mainly the operations in Croatia, the UAE and Israel.

(5) Includes the operations in Costa Rica, Panama, Puerto Rico, the Dominican Republic, Nicaragua, Jamaica and other countries in the Caribbean, Guatemala, and small ready-mix concrete operations Argentina.

(6) Includes primarily our operations in Thailand, Bangladesh, China and Malaysia.

On a consolidated basis, our cement sales volumes increased approximately 2%, from 65.6 million tons in 2010 to 66.8 million tons in 2011, and our ready-mix concrete sales volumes increased approximately 8%, from 51.0 million cubic meters in 2010 to 54.9 million cubic meters in 2011. Our net sales increased approximately 7%, from Ps177.6 billion in 2010 to Ps189.9 billion in 2011, and our operating earnings before other expenses, net increased approximately 12%, from Ps10.7 billion in 2010 to Ps12.1 billion in 2011.

The following tables present selected financial information of net sales and operating earnings before other expenses, net for each of our geographic segments for the years ended December 31, 2011 and 2010. The net sales information in the table below is presented before eliminations resulting from consolidation (including those shown on note 4 to our audited consolidated financial statements included elsewhere in this annual report). Variations in net sales determined on the basis of Mexican Pesos include the appreciation or depreciation which occurred during the period between the local currencies of the countries in the regions vis-à-vis the Mexican Peso; therefore, such variations differ substantially from those based solely on the countries' local currencies:

| Geographic Segment | Variation in Local Currency(1) | Approximate Currency Fluctuations, Net of Inflation Effects | Variations in Mexican Pesos | Net Sales For the Year Ended December 31, 2010 | 2011 |
|---|---|---|---|---|---|
| | | | | (in millions of Mexican Pesos) | |
| Mexico | +1% | — | +1% | Ps 42,907 | Ps 43,361 |
| United States(2) | +1% | +3% | +4% | 31,575 | 32,759 |
| **Northern Europe** | | | | | |
| United Kingdom | +7% | +3% | +10% | 14,320 | 15,757 |
| Germany | +12% | +6% | +18% | 13,524 | 15,975 |
| France | +12% | +4% | +16% | 12,179 | 14,170 |
| Rest of Northern Europe(3) | +7 | +15% | +22% | 11,677 | 14,278 |
| **The Mediterranean** | | | | | |
| Spain | -14% | +3% | -11% | 8,013 | 7,142 |
| Egypt | -11% | -8% | -19% | 8,053 | 6,516 |
| Rest of the Mediterranean(4) | +8% | -1% | +7% | 7,253 | 7,762 |
| **South America and the Caribbean** | | | | | |
| Colombia | +21% | +2% | +23% | 6,964 | 8,533 |
| Rest of South America and the Caribbean(5) | +8% | +13% | +21% | 12,315 | 14,852 |
| **Asia** | | | | | |
| Philippines | -10% | +2% | -8% | 4,014 | 3,701 |
| Rest of Asia(6) | +5% | -2% | +3% | 2,512 | 2,597 |
| **Others(7)** | +26% | +55% | +81% | 8,216 | 14,857 |
| Net sales before eliminations | | | +10% | Ps 183,522 | Ps 202,260 |
| Eliminations from consolidation | | | | (5,881) | (12,373) |
| **Consolidated net sales** | | | +7% | Ps 177,641 | Ps 189,887 |

| Geographic Segment | Variations in Local Currency(1) | Approximate Currency Fluctuations, Net of Inflation Effects | Variations in Mexican Pesos | Operating Earnings (Loss) For the Year Ended December 31, 2010 | 2011 |
|---|---|---|---|---|---|
| | | | | (in millions of Mexican Pesos) | |
| Mexico | +10% | — | +10% | Ps 11,934 | Ps 13,145 |
| United States(2) | -4% | +6% | +6% | (8,370) | (7,907) |
| **Northern Europe** | | | | | |
| United Kingdom | +80% | — | +80% | (723) | (147) |
| Germany | >100% | N/A | >100% | (270) | 174 |
| France | 91% | N/A | >100% | 516 | 1,056 |
| Rest of Northern Europe(3) | >100% | N/A | >100% | (112) | 648 |
| **The Mediterranean** | | | | | |
| Spain | -32% | +17% | -15% | 1,047 | 894 |
| Egypt | -36% | +1% | -35% | 3,699 | 2,422 |
| Rest of the Mediterranean(4) | >100% | N/A | +45% | 471 | 682 |
| **South America and the Caribbean** | | | | | |
| Colombia | +16% | +2% | +18% | 2,179 | 2,568 |
| Rest of South America and the Caribbean(5) | -3% | +23% | +20% | 2,462 | 2,956 |
| **Asia** | | | | | |
| Philippines | -58% | -6% | -64% | 996 | 358 |
| Rest of Asia(6) | -10% | -37% | -47% | 96 | 51 |
| **Others(7)** | +2% | -54% | -52% | (3,189) | (4,836) |
| Operating earnings before other expenses, net | | | +12% | Ps 10,736 | Ps 12,064 |

N/A = Not Applicable

(1) Represents the average change in domestic cement and ready-mix concrete prices in local currency terms. For purposes of a geographic segment consisting of a region, the average prices in local currency terms for each individual country within the region are first translated into U.S. Dollar terms (except for the Rest of Northern Europe and the Rest of the Mediterranean regions, which is translated first into Euros) at the exchange rates in effect as of the end of the reporting period. Variations for a region represent the weighted average change of prices in U.S. Dollar terms (except for the Rest of Northern Europe and the Rest of the Mediterranean regions, which represent the weighted average change of prices in Euros) based on total sales volumes in the region.

(2) On August 27, 2010, we sold seven aggregates quarries, three resale aggregate distribution centers and one concrete block manufacturing facility all located in Kentucky.

(3) Refers primarily to operations in Ireland, the Czech Republic, Austria, Poland, Hungary and Latvia, as well as trading activities in Scandinavia and Finland.

(4) Includes mainly the operations in Croatia, the UAE and Israel.

(5) Includes the operations in Costa Rica, Panama, Puerto Rico, the Dominican Republic, Nicaragua, Jamaica and other countries in the Caribbean, Guatemala, and small ready-mix concrete operations Argentina.

(6) Includes primarily our operations in Thailand, Bangladesh, China and Malaysia.

(7) Our Others segment refers to: (i) cement trade maritime operations, (ii) our information technology solutions business (Neoris), (iii) CEMEX, S.A.B. de C.V. and other corporate entities and (iv) other minor subsidiaries with different lines of business.

*Net sales*. Our consolidated net sales increased approximately 7%, from approximately Ps178 billion in 2010 to Ps190 billion in 2011. The increase in net sales was primarily attributable to higher volumes and prices in our main markets. The infrastructure and residential sectors continue to be the main drivers of demand in most of our markets. Set forth below is a quantitative and qualitative analysis of the effects of the various factors affecting our net sales on a geographic segment basis. The discussion of volume data below is presented before eliminations resulting from consolidation. The discussion of net sales information below is presented before the eliminations resulting from consolidation shown on note 4 of our 2012 audited consolidated financial statements included elsewhere in this annual report.

***Mexico***

Our domestic cement sales volumes from our operations in Mexico increased approximately 1% in 2011 compared to 2010, and ready-mix concrete sales volumes increased approximately 6% during the same period. Our net sales from our operations in Mexico represented approximately 21% of our total net sales for the year ended December 31, 2011, in Peso terms, before eliminations resulting from consolidation. The increases in domestic cement and ready-mix concrete sales volumes were primarily attributable to a modest growth in the self-construction sector. Our cement export volumes of our operations in Mexico, which represented approximately 3% of our Mexican cement sales volumes in 2011, increased approximately 19% in 2011 compared to 2010, primarily as a result of higher export volumes to the South America region. Of our total cement export volumes during 2011 from operations in Mexico, 22% was shipped to the United States, 36% to Central America and the Caribbean and 42% to South America. Our average domestic sales price of cement for our operations in Mexico increased approximately 3%, in Peso terms, in 2011 compared to 2010, and the average sales price of ready-mix concrete increased approximately 6%, in Peso terms, over the same period. For the year ended December 31, 2011, cement represented approximately 53%, ready-mix concrete approximately 23% and our aggregates and other businesses approximately 24% of our net sales for our operations in Mexico before intra-sector eliminations within the segment and before eliminations from consolidation, as applicable.

As a result of the increases in domestic cement and ready-mix concrete sales volumes and average sales prices, our net sales in Mexico, in Peso terms, increased approximately 1% in 2011 compared to 2010.

***United States***

Our domestic cement sales volumes from our operations in the United States, which include cement purchased from our other operations, decreased approximately 2% in 2011 compared to 2010, and ready-mix concrete sales volumes increased approximately 7% during the same period. The increases in our ready-mix concrete sales volumes of our operations in the United States resulted primarily from the consolidation of the Ready Mix USA joint venture in August 2011. During the year, construction activity in the residential sector remained relatively stagnant due to excess inventory, tight credit conditions, weak job market and lack of confidence in the economy. In addition, continued weakness in state fiscal conditions and uncertainty over federal funding negatively affected the infrastructure sector. The industrial and commercial sector continued to show improvement. Our net sales from our operations in the United States represented approximately 16% of our total net sales for the year ended December 31, 2011, in Peso terms, before eliminations resulting from consolidation. Our average sales price of domestic cement of our operations in the United States remained flat, in U.S. Dollar terms, in 2011 compared to 2010, and the average sales price of ready-mix concrete increased approximately 3%, in U.S. Dollar terms, over the same period. For the year ended December 31, 2011, cement represented approximately 29%, ready-mix concrete approximately 29% and our aggregates and other businesses approximately 42% of our net sales for our operations in the United States before intra-sector eliminations within the segment and before eliminations from consolidation, as applicable.

As a result of the increases in ready-mix concrete sales volumes and average sales prices, partially offset by the decrease in domestic cement sales volumes, our net sales in the United States, in U.S. Dollar terms, increased approximately 1% in 2011 compared to 2010.

***Northern Europe***

In 2011, our operations in the Northern Europe region consisted of our operations in the United Kingdom, Germany and France, which represent the most significant operations in this region, in addition to our Rest of Northern Europe segment, which refers primarily to our operations in Ireland, the Czech Republic, Austria, Poland, Hungary and Latvia, as well as trading activities in Scandinavia and Finland. Our net sales from our operations in the Northern Europe region represented approximately 30% of our total net sales for the year ended December 31, 2011, in Peso terms, before eliminations resulting from consolidation. As of December 31, 2011, our operations in the Northern Europe region represented approximately 15% of our total assets. Set forth below is a quantitative and qualitative analysis of the effects of the various factors affecting our net sales for our main operations in the Northern Europe region.

*United Kingdom*

Our domestic cement sales volumes from our operations in the United Kingdom increased approximately 6% in 2011 compared to 2010, and ready-mix concrete sales volumes increased approximately 11% during the same period. The main driver of construction activity during the year was the infrastructure sector, although a slowdown was apparent during the second half of the year. Similarly, after a positive first half of the year, the residential sector was constrained by weak market fundamentals during the second half of the year, which made it difficult for buyers to obtain mortgages. The industrial and commercial sector was negatively affected by economic instability that accelerated during the second half of 2011. Our net sales from our operations in the United Kingdom represented approximately 8% of our total net sales for the year ended December 31, 2011, in Peso terms, before eliminations resulting from consolidation. Our average domestic sales price of cement from our operations in the United Kingdom increased approximately 2%, in Pound terms, in 2011 compared to 2010, and the average price of ready-mix concrete increased approximately 2%, in Pound terms, over the same period. For the year ended December 31, 2011, cement represented approximately 15%, ready-mix concrete approximately 25% and our aggregates and other businesses approximately 60% of net sales of our operations in the United Kingdom before intra-sector eliminations within the segment and before eliminations from consolidation, as applicable.

As a result of the increases in domestic cement and ready-mix concrete sales volumes and average sales prices, net sales from our operations in the United Kingdom, in Pound terms, increased approximately 7% in 2011 compared to 2010.

*Germany*

Our domestic cement sales volumes from our operations in Germany increased approximately 14% in 2011 compared to 2010, and ready-mix concrete sales volumes increased approximately 13% during the same period. The increases in domestic cement and ready-mix concrete sales volumes resulted primarily from the positive momentum of the residential sector, resulting from historically low mortgage rates, stable construction prices, shrinking unemployment and higher wages. Performance from the industrial and commercial sector benefited from the strength in the manufacturing sector, as well as high capacity utilization. Construction activity from the infrastructure sector decreased slightly due to cuts in the national budget. Our net sales from our operations in Germany represented approximately 8% of our total net sales for the year ended December 31, 2011, in Peso terms, before eliminations resulting from consolidation. Our average domestic sales price of cement from our operations in Germany decreased approximately 1%, in Euro terms, in 2011 compared to 2010, and the average price of ready-mix concrete remained flat, in Euro terms, over the same period. For the year ended December 31, 2011, cement represented approximately 26%, ready-mix concrete approximately 35% and our aggregates and other businesses represented approximately 39% of net sales of our operations in Germany before intra-sector eliminations within the segment and before eliminations from consolidation, as applicable.

As a result of the increases in domestic cement and ready-mix concrete sales volumes, partially offset by the decrease in domestic cement average sales prices, net sales in Germany, in Euro terms, increased approximately 12% in 2011 compared to 2010.

*France*

Our ready-mix concrete sales volumes from our operations in France increased approximately 12% in 2011 compared to 2010. The increase in ready-mix concrete volumes resulted primarily from the residential sector, which benefited from economic stimulus plan measures, such as social housing, tax incentives and zero rate loans, as well as favorable credit conditions. The increase in the number of new project starts and permits, especially from offices and warehouses, positively affected the performance of the industrial and commercial sector. Construction activity from the infrastructure sector remained stable, driven mainly by private investments, which offset the drop in public investments. Our net sales from our operations in France represented approximately 7% of our total net sales for the year ended December 31, 2011, in Peso terms, before eliminations

resulting from consolidation. Our average sales price of ready-mix concrete from our operations in France increased approximately 1%, in Euro terms, in 2011 compared to 2010. For the year ended December 31, 2011, ready-mix concrete represented approximately 73% and our aggregates and other businesses represented approximately 27% of our net sales for our operations in France before intra-sector eliminations within the segment and before eliminations from consolidation, as applicable.

As a result of the increases in ready-mix concrete sales volumes and average sales prices, net sales in France, in Euro terms, increased approximately 12% in 2011 compared to 2010.

*Rest of Northern Europe*

In 2011, our operations in our Rest of Northern Europe segment consisted primarily of our operations in Ireland, the Czech Republic, Austria, Poland, Hungary and Latvia, as well as trading activities in Scandinavia and Finland. Our domestic cement sales volumes of our operations in our Rest of Northern Europe segment increased approximately 16% in 2011 compared to 2010, and ready-mix concrete sales volumes increased approximately 15% during the same period. The increases in domestic cement and ready-mix concrete sales volumes resulted primarily from better weather conditions compared to last year and increased demand from infrastructure projects. Our net sales from our operations in our Rest of Northern Europe segment represented approximately 7% of our total net sales for the year ended December 31, 2011, in Peso terms, before eliminations resulting from consolidation. Our average domestic sales price of cement from our operations in our Rest of Northern Europe segment increased approximately 2%, in Euro, terms in 2011 compared to 2010, and the average price of ready-mix concrete increased approximately 4%, in Euro terms, over the same period. For the year ended December 31, 2011, cement represented approximately 37%, ready-mix concrete approximately 42% and our aggregates and other businesses approximately 21% of net sales from our operations in our Rest of Northern Europe segment before intra-sector eliminations within the segment and before eliminations resulting from consolidation, as applicable.

As a result of the increases in domestic cement and ready-mix concrete sales volumes and average sales prices, net sales in our Rest of Northern Europe segment, in Euro terms, increased approximately 7% in 2011 compared to 2010.

***The Mediterranean***

In 2011, our operations in the Mediterranean region consisted of our operations in Spain and Egypt, which represent the most significant operations in this region, in addition to our Rest of the Mediterranean segment, which includes mainly our operations in Croatia, the UAE and Israel. Our net sales from our operations in the Mediterranean region represented approximately 11% of our total net sales for the year ended December 31, 2011, in Peso terms, before eliminations resulting from consolidation. As of December 31, 2011, our operations in the Mediterranean region represented approximately 12% of our total assets. Set forth below is a quantitative and qualitative analysis of the effects of the various factors affecting our net sales for our main operations in the Mediterranean region.

*Spain*

Our domestic cement sales volumes from our operations in Spain decreased approximately 19% in 2011 compared to 2010, while ready-mix concrete sales volumes decreased approximately 21% during the same period. The decreases in domestic cement and ready-mix concrete sales volumes were the result of lower construction activity across all regions and demand sectors. The residential sector was negatively affected by high inventory levels and lack of financing, with housing permits at all-time lows. Large budget cuts and lack of economic resources negatively affected the infrastructure sector activity. Furthermore, activity from the industrial and commercial sector declined, given the lack of visibility, high risk premium, unfavorable macroeconomic conditions and tighter credit. Our net sales from our operations in Spain represented

approximately 4% of our total net sales for the year ended December 31, 2011, in Peso terms, before eliminations resulting from consolidation. Our cement export volumes of our operations in Spain, which represented approximately 29% of our cement sales volumes in Spain for the year ended December 31, 2011, increased by approximately 6% in 2011 compared to 2010, primarily as a result of higher export volumes to Europe, partially offset by lower export volumes to Africa. Of such total cement export volumes, 31% was shipped to Europe and the Middle East, and 69% to Africa. Our average domestic sales price of cement of our operations in Spain remained flat, in Euro terms, in 2011 compared to 2010, and the average price of ready-mix concrete decreased approximately 1%, in Euro terms, over the same period. For the year ended December 31, 2011, cement represented approximately 67%, ready-mix concrete approximately 20% and our aggregates and other businesses approximately 13% of net sales for our operations in Spain before intra-sector eliminations within the segment and before eliminations from consolidation, as applicable.

As a result of the decreases in domestic cement and ready-mix concrete sales volumes, partially offset by the increase in the cement export volumes, our net sales in Spain, in Euro terms, decreased approximately 14% in 2011 compared to 2010.

*Egypt*

Our domestic cement sales volumes from our operations in Egypt decreased approximately 3% in 2011 compared to 2010, while ready-mix concrete sales volumes decreased approximately 17% during the same period. The domestic cement and ready-mix concrete sales volumes were negatively affected by the country's political and social unrest, which slowed Egypt's economy and affected the overall business environment. In the infrastructure sector, most projects were on hold due to a reduction in government expenditures. In addition, spending on other demand segments was stagnant, as a result of heightened uncertainty given the difficult political situation. Our net sales from our operations in Egypt represented approximately 3% of our total net sales for the year ended December 31, 2011, in Peso terms, before eliminations resulting from consolidation. Our average domestic sales price of cement of our operations in Egypt decreased by approximately 7%, in Egyptian pound terms, in 2011 compared to 2010, and the average price of ready-mix concrete decreased approximately 9%, in Egyptian pound terms, over the same period. For the year ended December 31, 2011, cement represented approximately 89%, ready-mix concrete approximately 7% and our aggregates and other businesses approximately 4% of net sales for our operations in Egypt before intra-sector eliminations within the segment and before eliminations from consolidation, as applicable.

As a result of the decreases in domestic cement and ready-mix concrete sales volumes and average domestic sales prices, our net sales in Egypt, in Egyptian pound terms, decreased approximately 11% in 2011 compared to 2010.

*Rest of the Mediterranean*

In 2011, our operations in our Rest of the Mediterranean segment consisted mainly of our operations in Croatia, the UAE and Israel. Our domestic cement sales volumes of our operations in our Rest of the Mediterranean segment decreased approximately 6% in 2011 compared to 2010, and ready-mix concrete sales volumes increased approximately 13% during the same period. The decrease in domestic cement sales volumes resulted primarily from a slowdown in construction activity in our operations in Croatia and the UAE, and the increase in ready-mix concrete sales volumes resulted primarily from an upturn in the housing sector and more infrastructure projects in our operations in Israel. Our net sales from our operations in our Rest of the Mediterranean segment represented approximately 4% of our total net sales for the year ended December 31, 2011, in Peso terms, before eliminations resulting from consolidation. Our average domestic sales price of cement from our operations in our Rest of the Mediterranean increased approximately 2%, in U.S. Dollar terms, in 2011 compared to 2010, and the average price of ready-mix concrete increased approximately 5%, in U.S. Dollar terms, over the same period. For the year ended December 31, 2011, cement represented approximately 25%, ready-mix concrete approximately 58% and our aggregates and other businesses

approximately 17% of our net sales from our operations in our Rest of the Mediterranean segment before intra-sector eliminations within the segment and before eliminations resulting from consolidation, as applicable.

As a result of the increases in ready-mix concrete sales volumes and domestic cement and ready-mix concrete average sales prices, partially offset by the decrease in domestic cement sales volumes, net sales in our Rest of the Mediterranean segment, in U.S. Dollar terms, increased approximately 8% in 2011 compared to 2010.

***South America and the Caribbean***

In 2011, our operations in the South America and the Caribbean region consisted of our operations in Colombia, which represents the most significant operation in this region, in addition to our Rest of South America and the Caribbean segment, which includes our operations in Costa Rica, Guatemala, Panama, Nicaragua, Puerto Rico, the Dominican Republic, Jamaica and other countries in the Caribbean, and small ready-mix concrete operations in Argentina. Most of these trading operations consist of the resale in the Caribbean region of cement produced by our operations in Mexico. Our net sales from our operations in the South America and the Caribbean region represented approximately 12% of our total net sales for the year ended December 31, 2011, in Peso terms, before eliminations resulting from consolidation. As of December 31, 2011, our operations in the South America and the Caribbean region represented approximately 7% of our total assets. Set forth below is a quantitative and qualitative analysis of the effects of the various factors affecting our net sales for our main operations in the South America and the Caribbean region.

*Colombia*

Our domestic cement volumes from our operations in Colombia increased approximately 5% in 2011 compared to 2010, and ready-mix concrete sales volumes increased approximately 29% during the same period. Construction activity for the year was driven by the residential sector, particularly middle and high income housing development, which benefited from stable interest rates, controlled inflation, low unemployment and favorable macroeconomic conditions. Construction spending in the industrial and commercial sector, primarily on warehouses and commercial buildings, had a positive effect on volumes for the year. In addition, construction spending on infrastructure projects, primarily on road construction and maintenance, contributed to the performance of the sector. Our net sales from our operations in Colombia represented approximately 4% of our total net sales for the year ended December 31, 2011, in Peso terms, before eliminations resulting from consolidation. Our average domestic sales price of cement from our operations in Colombia increased approximately 10%, in Colombian Peso terms, in 2011 compared to 2010, while the average price of ready-mix concrete increased approximately 6%, in Colombian Peso terms, over the same period. For the year ended December 31, 2011, cement represented approximately 62%, ready-mix concrete approximately 26% and our aggregates and other businesses approximately 12% of our net sales for our operations in Colombia before intra-sector eliminations within the segment and before eliminations from consolidation, as applicable.

As a result of the increases in domestic cement and ready-mix concrete sales volumes and average sales prices, net sales of our operations in Colombia, in Colombian Peso terms, increased approximately 21% in 2011 compared to 2010.

*Rest of South America and the Caribbean*

In 2011, our operations in our Rest of South America and the Caribbean segment included our operations in Costa Rica, Guatemala, Panama, Nicaragua, Puerto Rico, the Dominican Republic, Jamaica and other countries in the Caribbean, and small ready-mix concrete operations in Argentina. Our domestic cement volumes from our operations in our Rest of South America and the Caribbean segment increased approximately 4% in 2011 compared to 2010, and ready-mix concrete sales volumes increased approximately 5% during the same period. Our net sales from our operations in our Rest of South America and the Caribbean segment represented approximately 8% of our total net sales for the year ended December 31, 2011, in Peso terms, before eliminations

resulting from consolidation. Our average domestic sales price of cement for our operations in our Rest of South America and the Caribbean segment increased approximately 5%, in U.S. Dollar terms, in 2011 compared to 2010, and the average sales price of ready-mix concrete increased approximately 7%, in U.S. Dollar terms, over the same period. For the year ended December 31, 2011, cement represented approximately 72%, ready-mix concrete approximately 20% and our other businesses approximately 8% of net for our operations in our Rest of South America and the Caribbean segment before intra-sector eliminations within the segment and before eliminations from consolidation, as applicable.

As a result of the increases in domestic cement and ready-mix concrete sales volumes and average sales prices, net sales of our operations in our Rest of South America and the Caribbean segment, in U.S. Dollar terms, increased approximately 21% in 2011 compared to 2010.

***Asia***

In 2011, our operations in the Asia region consisted of our operations in the Philippines, which represents the most significant operation in this region, in addition to our Rest of Asia segment, which includes our operations in Thailand, Bangladesh, China and Malaysia. Our net sales from our operations in the Asia region represented approximately 3% of our total net sales for the year ended December 31, 2011, in Peso terms, before eliminations resulting from consolidation. As of December 31, 2011, our operations in the Asia region represented approximately 2% of our total assets. Set forth below is a quantitative and qualitative analysis of the effects of the various factors affecting our net sales for our main operations in the Asia region.

*The Philippines*

Our domestic cement volumes from our operations in the Philippines decreased approximately 5% in 2011 compared to 2010 primarily as a result of the lower demand for building materials due to the government's suspension of key infrastructure projects in its effort to implement a more rigorous process relating to the bidding and disbursement of funds, as well as by the delay in the implementation of public-private partnership projects. In addition, unfavorable weather conditions in many regions of the country hampered construction activity during the year. Our net sales from our operations in the Philippines represented approximately 2% of our total net sales for the year ended December 31, 2011, in Peso terms, before eliminations resulting from consolidation. Our average domestic sales price of cement from our operations in the Philippines decreased approximately 8%, in Philippine Peso terms, in 2011 compared to 2010. For the year ended December 31, 2011, cement represented approximately 100% of our net sales for our operations in the Philippines before intra-sector eliminations within the segment and before eliminations from consolidation, as applicable.

As a result of the decreases in domestic cement sales volumes and average sales prices, net sales of our operations in the Philippines, in Philippine Peso terms, decreased approximately 10% in 2011 compared to 2010.

*Rest of Asia*

In 2011, our operations in our Rest of Asia segment included our operations in Thailand, Bangladesh, China and Malaysia. Our domestic cement volumes from our operations in our Rest of Asia segment increased approximately 8% in 2011 compared to 2010, and ready-mix concrete sales volumes decreased approximately 8% during the same period. Our net sales from our operations in our Rest of Asia segment represented approximately 1% of our total net sales for the year ended December 31, 2011, in Peso terms, before eliminations resulting from consolidation. Our average domestic sales price of cement for our operations in our Rest of Asia segment increased approximately 2%, in U.S. Dollar terms, in 2011 compared to 2010, and the average sales price of ready-mix concrete increased approximately 12%, in U.S. Dollar terms, over the same period. For the year ended December 31, 2011, cement represented approximately 31%, ready-mix concrete approximately 57% and our other businesses approximately 12% of net sales for our operations in our Rest of Asia segment before intra-sector eliminations within the segment and before eliminations from consolidation, as applicable.

As a result of the increases in domestic cement sales volumes and domestic cement and ready-mix concrete average sales prices, partially offset by the decrease in ready-mix concrete sales volumes, net sales of our operations in our Rest of Asia segment, in U.S. Dollar terms, decreased approximately 2% in 2011 compared to 2010.

*Others*

Our Others segment includes our cement, trade maritime operations, our information technology solutions business and other minor subsidiaries with different lines of business. Net sales of our Others segment increased approximately 26% before eliminations resulting from consolidation in 2011 compared to 2010, in U.S. Dollar terms, primarily as a result of an increase of approximately 48% in our worldwide cement, clinker and slag trading operations. For the year ended December 31, 2011, our trading operations' net sales represented approximately 62%, and our information technology solutions company 21%, of our Others segment's net sales.

*Cost of Sales*. Our cost of sales, including depreciation, amortization and depletion of assets involved in production, increased approximately 7%, from Ps128 billion in 2010 to Ps136 billion in 2011, primarily due to higher sales volumes. As a percentage of net sales, cost of sales decreased from 72% in 2010 to 71.7% in 2011, mainly as a result of higher prices in our most important markets, as well as the results of our cost reduction initiatives, which more than offset the increase in fuel and raw materials costs. Our cost of sales includes freight expenses of raw materials used in our producing plants, storage costs in producing plants as well as delivery expenses of our ready-mix concrete business. However, our costs of sales excludes (i) expenses related to personnel and equipment comprising our selling network and those expenses related to warehousing at the points of sale, which were included as part of our administrative and selling expenses line item in the amount of approximately Ps7.9 billion in 2010 and Ps8.1 billion in 2011; and (ii) freight expenses of finished products from our producing plants to our points of sale and from our points of sale to our customers' locations, which were included as part of our distribution expenses line item, and which, for the years ended December 31, 2010 and 2011, represented Ps13.2 billion and Ps16.2 billion, respectively.

*Gross Profit*. For the reasons explained above, our gross profit increased approximately 8%, from approximately Ps49.7 billion in 2010 to approximately Ps53.7 billion in 2011. As a percentage of net sales, gross profit increased from approximately 28% in 2010 to 28.3% in 2011. In addition, our gross profit may not be directly comparable to those of other entities that include all their freight expenses in cost of sales. As described above, we include freight expenses of finished products from our producing plants to our points of sale and from our points of sale to our customers' locations within distribution expenses, which in aggregate represented costs of approximately Ps13.2 billion in 2010 and approximately Ps16.2 billion in 2011.

*Administrative, selling and distribution expenses* . Our administrative, selling and distribution expenses increased approximately 6%, from approximately Ps39.1 billion in 2010 to approximately Ps41.7 billion in 2011, primarily as a result of higher distribution expenses, which were partially offset by savings from our cost-reduction initiatives. As a percentage of net sales, our administrative, selling and distribution expenses represented approximately 22% in 2010 and 2011. See note 2R to our 2012 audited consolidated financial statements included elsewhere in this annual report.

*Operating Earnings Before Other Expenses, Net*. For the reasons mentioned above, our operating earnings before other expenses, net increased approximately 11%, from approximately Ps10.7 billion in 2010 to approximately Ps12.0 billion in 2011. As a percentage of net sales, operating earnings before other expenses, net represented approximately 6% in each of 2010 and 2011. Additionally, set forth below is a quantitative and qualitative analysis of the effects of the various factors affecting our operating earnings before other expenses, net on a geographic segment basis.

***Mexico***

Our operating earnings before other expenses, net from our operations in Mexico increased approximately 10%, from approximately Ps11.9 billion in 2010 to approximately Ps13.1 billion in 2011, in Peso terms. The increase in operating earnings before other expenses, net was primarily attributable to the increases in domestic cement and ready-mix concrete sales volumes and average sales prices.

***United States***

Our operating loss before other expenses, net from our operations in the U.S. improved approximately 6%, from an operating loss before other expenses, net of approximately Ps8.4 billion in 2010 to an operating loss before other expenses, net of approximately Ps7.9 billion in 2011, in Peso terms. As mentioned above, the improvement in operating loss before other expenses, net resulted primarily from the consolidation of the Ready Mix USA joint venture and increases in ready-mix concrete sales volumes and average sales prices.

***Northern Europe***

*United Kingdom*

Our operating loss before other expenses, net from our operations in the United Kingdom improved approximately 80%, from an operating loss before other expenses, net of approximately Ps723 million in 2010 to an operating loss before other expenses, net of approximately Ps147 million in 2011, in Peso terms. The increase in the operating earnings before other expenses, net of our operations in the United Kingdom during 2011 compared to 2010 resulted primarily from higher domestic cement and ready-mix concrete sales volumes and average sales prices.

*Germany*

Our operating earnings before other expenses, net from our operations in Germany increased significantly, from an operating loss before other expenses, net of Ps270 million in 2010 to an operating earnings before other expenses, net of Ps174 million in 2011, in Peso terms. The increase resulted primarily from higher domestic cement and ready-mix concrete sales volumes as a result of the positive momentum of the residential sector.

*France*

Our operating earnings before other expenses, net from our operations in France improved significantly, from approximately Ps516 million in 2010 to approximately Ps1.1 billion in 2011, in Peso terms. The increase resulted primarily from higher ready-mix concrete and aggregates sales volumes and average sales prices driven by the residential sector.

*Rest of Northern Europe*

Our operating earnings before other expenses, net from our operations in our Rest of Northern Europe segment increased significantly, from an operating loss before other expenses, net of approximately Ps112 million in 2010 to an operating earnings before other expenses, net of approximately Ps648 million in 2011, in Peso terms. The increase in our operating earnings before other expenses, net from our operations in our Rest of Northern Europe segment resulted from higher domestic cement and ready-mix concrete sales volumes and average sales prices.

***The Mediterranean***

*Spain*

Our operating earnings before other expenses, net from our operations in Spain decreased approximately 15%, from approximately Ps1 billion in 2010 to Ps894 million in 2011, in Peso terms. The decrease in operating earnings before other expenses, net resulted primarily from decreases in domestic cement and ready-mix concrete sales volumes and ready-mix concrete average sales prices as the result of lower construction activity across all regions and demand sectors.

*Egypt*

Our operating earnings before other expenses, net from our operations in Egypt decreased approximately 35%, from approximately Ps3.7 billion in 2010 to Ps2.4 billion in 2011, in Peso terms. The decrease in operating earnings before other expenses, net resulted primarily from decreases in domestic cement and ready-mix concrete sales volumes and average sales prices given the country's political and social unrest, which slowed Egypt's economy and affected the overall business environment.

*Rest of the Mediterranean*

Our operating earnings before other expenses, net from our operations in our Rest of the Mediterranean segment increased approximately 45%, from approximately Ps471 million in 2010 to Ps682 million in 2011, in Peso terms. The increase in operating earnings before other expenses, net resulted primarily from increases in ready-mix concrete sales volumes and average sales prices.

***South America and the Caribbean***

*Colombia*

Our operating earnings before other expenses, net from our operations in Colombia increased approximately 18%, from approximately Ps2.2 billion in 2010 to approximately Ps2.6 billion in 2011, in Peso terms. The increase resulted primarily from higher domestic cement and ready-mix concrete sales volumes, which benefited from higher construction spending in the industrial and commercial sector, primarily on warehouses and commercial buildings.

*Rest of South America and the Caribbean*

Our operating earnings before other expenses, net from our operations in our Rest of South America and the Caribbean segment increased approximately 20%, from approximately Ps2.5 billion in 2010 to Ps2.9 billion in 2011, in Peso terms. The increase in operating earnings before other expenses, net resulted primarily from increases in domestic cement and ready-mix concrete sales volumes and average sales prices in our markets.

***Asia***

*The Philippines*

Our operating earnings before other expenses, net from our operations in the Philippines decreased approximately 64%, from approximately Ps996 million in 2010 to approximately Ps358 million in 2011, in Peso terms. The decrease in operating earnings before other expenses, net resulted primarily from a decrease in domestic cement sales volumes and average sales prices.

*Rest of Asia*

Our operating earnings before other expenses, net from our operations in our Rest of Asia segment decreased approximately 47%, from approximately Ps96 million in 2010 to approximately Ps51 million in 2011, in Peso terms.

*Others*

Our operating loss before other expenses, net from our Others segment increased approximately 52%, from an operating loss before other expenses, net of approximately Ps3.2 billion in 2010 to an operating loss before other expenses, net of approximately Ps4.8 billion, in 2011 in Peso terms. The increase in operating loss before other expenses, net resulted primarily from a substantial increase in our worldwide cement, clinker and slag trading operations.

*Other Expenses, Net*. Our other expenses, net, decreased approximately 14%, from approximately Ps6.3 billion in 2010 to approximately Ps5.4 billion in 2011, primarily due to results from sales of assets and the net effect of the compensation for the nationalization of our operations in Venezuela, partially offset by the increase in our restructuring cost due to our transformation process.

The most significant items included under this caption in 2010 and 2011 are as follows:

| | 2010 | 2011 |
|---|---|---|
| | (in millions of Mexican Pesos) | |
| Restructuring costs | Ps (897) | Ps(1,959) |
| Impairment losses | (1,904) | (1,751) |
| Charitable contributions | (385) | (140) |
| Results from sales of assets and others, net | (3,149) | (1,599) |
| | Ps (6,335) | Ps (5,449) |

**Financial Items**

Pursuant to IFRS, financial items include:

- financial or interest expense on borrowed funds;
- financial income on cash and temporary investments;
- changes in the fair value resulting from the valuation of financial instruments, including derivative instruments and marketable securities;
- foreign exchange gains or losses associated with monetary assets and liabilities denominated in foreign currencies; and
- accretion result from assets and liabilities and others.

| | Year Ended December 31, | |
|---|---|---|
| | 2010 | 2011 |
| | (in millions of Mexican Pesos) | |
| **Financial items:** | | |
| Financial expense | Ps (14,753) | Ps (16,627) |
| Other financial (expense) income, net: | | |
| Financial income | 483 | 489 |
| Results from financial instruments | (1,103) | (76) |
| Foreign exchange result | 895 | (1,919) |
| Effects of net present value on assets and liabilities and others, net | (798) | (708) |
| | Ps(15,276) | Ps (18,841) |

Our aggregate financial items in 2011, which comprises interest expense and other financial income (expense), net, as reported in our statements of operations, was a loss of approximately Ps18.8 billion, an increase from the loss of approximately Ps15.3 billion in 2010. The components of the change are shown above.

Our financial expense increased approximately 13%, from approximately Ps14.7 billion in 2010 to approximately Ps16.6 billion in 2011. The increase was primarily attributable to the issuance of fixed rate instruments to prepay debt under the 2009 Financing Agreement, improve our liquidity and for general corporate purposes.

Other financial (expense) income, net comprises our financial income which increased 1%, from Ps483 million in 2010 to Ps489 million in 2011. Our loss from our financial instruments decreased substantially, from a loss of approximately Ps1.0 billion in 2010 to a loss of approximately Ps76 million in 2011. This loss resulted

primarily from negative valuations of equity derivatives related to shares of CEMEX, S.A.B. de C.V. and Axtel, S.A.B. de C.V., or Axtel. Our foreign exchange result decreased, from a gain of approximately Ps895 million in 2010 to a loss of approximately Ps1.9 billion in 2011, mainly due to the depreciation of the Mexican Peso against the U.S. Dollar during 2011. The accretion expense or income, which represents the effects on our net assets and liabilities recognized at amortized cost due to the passage of time, decreased from an expense of approximately Ps798 million in 2010 to an expense of Ps708 million in 2011.

*Derivative Financial Instruments*. For the years ended December 31, 2010 and 2011, our derivative financial instruments that had a potential impact on our other financial income (expense) consisted of equity forward contracts, a forward instrument over the Total Return Index of the Mexican Stock Exchange, interest rate derivatives related to energy projects and conversion options embedded in our convertible notes, as discussed in note 16D to our 2012 audited consolidated financial statements included elsewhere in this annual report.

For the year ended December 31, 2011, our "Results from financial instruments" improved to a net loss of approximately Ps76 million under the item compared to a net loss of approximately Ps1,103 million in 2010. This improvement in 2011 was mainly attributable to positive changes in the fair value of the conversion options embedded in our convertible notes, which partially offset losses generated from the changes in fair value of our other derivative instruments related to shares of CEMEX, S.A.B. de C.V. and Axtel. See "—Liquidity and Capital Resources—Our Equity Forward Arrangements."

*Income Taxes.* Our income tax effect in the statement of operations, which is primarily comprised of current income taxes plus deferred income taxes, increased from an expense of approximately Ps2 billion in 2010 to an expense of Ps12.2 billion in 2011. This increase is mainly attributable to our current income tax expense, which increased from an expense of approximately Ps4.7 billion in 2010 to an expense of approximately Ps14.3 billion in 2011. This increase of approximately Ps9.6 billion in the current income tax expense was mainly a result of: a) an income tax benefit related to the expiration of the statute of limitations of uncertain tax positions for approximately Ps4.2 billion in 2010 as compared to approximately Ps120 million in 2011; b) the income tax expense recognized during the period associated to changes in the expected outcome in several of our uncertain tax positions, primarily in connection with uncertain tax positions in Mexico, which led to a net increase in our unrecognized tax benefits provision and consequently a net expense for approximately Ps3.5 billion in 2011 as compared to a net expense of approximately Ps2.2 billion in 2010, including in both periods interest and penalties; c) the reclassification to equity of current income tax benefit in both periods associated with foreign exchange losses that were recorded directly in equity for approximately Ps4.8 billion in 2010 as compared to approximately Ps6.0 billion in 2011; and d) an income tax benefit of approximately Ps2.9 billion in 2010 related to the changes in the tax consolidation regime in Mexico.

Our deferred tax benefit decreased from a benefit of approximately Ps2.6 billion in 2010 to a benefit of approximately Ps2.1 billion in 2011. The decrease in our deferred tax benefit was primarily attributable to the increase in valuation allowances relating to tax loss carryforwards in certain countries. See notes 19 and 19D to our 2012 consolidated financial statements included elsewhere in this annual report. For each of the years ended December 31, 2010 and 2011, our approximate statutory income tax rate was 30%.

Our effective tax rate in 2010 resulted in a negative tax rate of 18.2%, considering a loss before income tax of approximately Ps11.4 billion, while our effective tax rate in 2011 resulted in a negative tax rate of 97.2%, considering a loss before income tax of approximately Ps12.6 billion. See "Item 3—Key Information—Risk Factors—The Mexican tax consolidation regime may have an adverse effect on cash flow, financial condition and net income."

*Consolidated Net Loss.* For the reasons described above, our consolidated net loss (before deducting the portion allocable to non-controlling interest) for 2011 increased 84%, from a consolidated net loss of approximately Ps13.4 billion in 2010 to a consolidated net loss of approximately Ps24.8 billion in 2011.

*Non-controlling Interest Net Loss.* Changes in non-controlling interest net income (loss) in any period reflect changes in the percentage of the stock of our subsidiaries held by non-associated third parties as of the end of each month during the relevant period and the consolidated net income (loss) attributable to those subsidiaries. Non-controlling interest net income increased approximately 54%, from a gain of Ps21 million in 2010 to a gain of Ps46 million in 2011, mainly as a result of an increase in the net income of the consolidated entities in which others have a non-controlling interest.

*Controlling Interest Net Loss.* Controlling interest net loss represents the difference between our consolidated net loss and non-controlling interest net income (loss), which is the portion of our consolidated net income (loss) attributable to those of our subsidiaries in which non-associated third parties hold interests. Controlling interest net loss increased 84%, from a net loss of approximately Ps13.5 billion in 2010 to a controlling interest net loss of approximately Ps24.8 billion in 2011.

**Liquidity and Capital Resources**

***Operating Activities***

We have satisfied our operating liquidity needs primarily through operations of our subsidiaries and expect to continue to do so for both the short and long-term. Although cash flow from our operations has historically met our overall liquidity needs for operations, servicing debt and funding capital expenditures and acquisitions, our subsidiaries are exposed to risks from changes in foreign currency exchange rates, price and currency controls, interest rates, inflation, governmental spending, social instability and other political, economic and/or social developments in the countries in which they operate, any one of which may materially reduce our net income and cash from operations. Consequently, in order to meet our liquidity needs, we also rely on cost-cutting and operating improvements to optimize capacity utilization and maximize profitability, as well as borrowing under credit facilities, proceeds of debt and equity offerings, and proceeds from asset sales. Our consolidated net cash flows provided by operating activities before financial expenses, Perpetual Debenture coupons and income taxes paid in cash were approximately Ps26.0 billion in 2010, Ps23.6 billion in 2011 and Ps29.9 billion in 2012. See our statement of cash flows included elsewhere in this annual report. Our management is of the opinion that working capital is sufficient for our present requirements.

***Sources and Uses of Cash***

Our review of sources and uses of resources below refers to nominal amounts included in our statement of cash flows for 2010, 2011 and 2012.

Our primary sources and uses of cash during the years ended December 31, 2010, 2011 and 2012 were as follows:

| | For the Year Ended December 31, | | |
|---|---|---|---|
| | 2010 | 2011 | 2012 |
| | (in millions of Mexican Pesos) | | |
| **Operating activities** | | | |
| Consolidated net loss | (13,436) | (24,767) | (11,219) |
| Non-cash items | 40,011 | 49,110 | 43,164 |
| Changes in working capital, excluding income taxes | (623) | (727) | (2,048) |
| Net cash flows provided by operations before interest and income taxes | 25,952 | 23,616 | 29,897 |
| Financial expense, Perpetual Debenture coupons and income taxes paid in cash | (19,278) | (17,130) | (24,273) |
| Net cash flows provided by operating activities | 6,674 | 6,486 | 5,624 |
| **Investing activities** | | | |
| Property, machinery and equipment, net | (4,726) | (3,198) | (5,597) |
| Disposal (acquisition) of subsidiaries and associates, net | 1,172 | 1,232 | (895) |
| Other long term assets and others, net | 1,682 | 474 | 4,258 |
| Net cash flows used in investing activities | (1,872) | (1,492) | (2,234) |
| **Financing activities** | | | |
| Issuance of common stock | 5 | 11 | — |
| Issuance of common stock by subsidiaries | — | — | 12,442 |
| Derivative financial instruments | 69 | (5,464) | 1,633 |
| Issuance (repayment) of debt, net | (9,615) | 5,702 | (17,239) |
| Securitization of trade receivables | 121 | 2,890 | (193) |
| Non-current liabilities and others, net | 140 | 1,430 | (1,679) |
| Net cash flows (used in) provided by financing activities | (9,280) | 4,569 | (5,036) |
| Increase (decrease) in cash and cash equivalents | (4,478) | 9,563 | (1,646) |
| Conversion effects | (1,272) | (1,789) | (2,004) |
| Cash and cash equivalents at beginning of period | 14,104 | 8,354 | 16,128 |
| Cash and cash equivalents at end of period | Ps 8,354 | Ps 16,128 | Ps 12,478 |

*2012*. During 2012, including the negative foreign currency effect of our initial balances of cash and cash equivalents generated during the period of approximately Ps2.0 billion, there was a decrease in cash and cash equivalents of approximately Ps3.7 billion. This decrease was generated by our net cash flows used in financing activities of approximately Ps5.0 billion and our net cash flows used in investing activities of approximately Ps2.2 billion, partially offset by our net cash flows generated by operating activities, which, after financial expense, Perpetual Debenture coupons and income taxes paid in cash of approximately Ps24.3 billion, amounted to approximately Ps5.6 billion.

For the year ended December 31, 2012, our net cash flows provided by operating activities included cash flows applied in working capital of approximately Ps2.0 billion, which was primarily comprised of cash flows applied to other accounts payable and accrued expenses, other accounts receivable and other assets and trade accounts payable, for an aggregate amount of approximately Ps6.4 billion, partially offset by cash flows originated by trade accounts receivable and inventories for an aggregate amount of approximately Ps4.4 billion.

During 2012, our net cash flows provided by operating activities after financial expense, Perpetual Debenture coupons and income taxes paid in cash of approximately Ps5.6 billion, our net resources applied in financing activities of approximately Ps5.0 billion, which include payments to our debt, net for an aggregate

amount of approximately Ps17.2 billion, partially offset by our cash flows provided by the issuance of common stock by subsidiaries for an aggregate amount of approximately Ps12.4 billion, related mainly in connection with Cemex Latam outstanding common shares.

*2011*. During 2011, including the negative foreign currency effect of our initial balances of cash and cash equivalents generated during the period of approximately Ps1.8 billion, there was an increase in cash and cash equivalents of approximately Ps7.8 billion. This increase was generated by our net cash flows provided by operating activities, which after financial expense, Perpetual Debenture coupons and income taxes paid in cash of approximately Ps17.1 billion amounted to approximately Ps6.5 billion, and net cash flows provided by financing activities of approximately Ps4.6 billion, partially offset by net cash flows used in investing activities of approximately Ps1.5 billion.

For the year ended December 31, 2011, our net cash flows provided by operating activities included cash flows applied in working capital of approximately Ps727 million, which was primarily composed by cash flows applied to trade accounts receivable, inventories and trade accounts payable for an aggregate amount of approximately Ps3.2 billion, partially offset by cash flows originated by other accounts receivable and other assets and other accounts payable and accrued expenses for an aggregate amount of approximately Ps2.5 billion.

During 2011, our net cash flows provided by operating activities after financial expense, Perpetual Debentures coupons and income taxes paid in cash of approximately Ps6.5 billion, our net resources provided by financing activities of approximately Ps4.6 billion, which include payments to our financial derivative instruments for an aggregate amount of approximately Ps5.5 billion related primarily to the purchase of a capped call and the settlement of options based on the price of our ADSs, and cash flows provided by the disposal of subsidiaries and associates and other long-term assets for an aggregate amount of approximately Ps1.7 billion, were disbursed mainly in connection with capital expenditures of approximately Ps3.2 billion.

*2010*. During 2010, including the negative foreign currency effect of our initial balances of cash and investments generated during the period of approximately Ps1.3 billion, there was a decrease in cash and investments of approximately Ps5.8 billion. This decrease was generated by net cash flows used in financing activities of approximately Ps9.3 billion and by net cash flows used in investing activities of approximately Ps1.9 billion, partially offset by our net cash flows provided by operating activities, which after financial expenses, Perpetual Debenture coupons and income taxes paid in cash of approximately Ps19.3 billion, amounted to approximately Ps6.7 billion.

For the year ended December 31, 2010, our net cash flows provided by operating activities included cash flows applied in working capital of approximately Ps623 million, which was primarily composed by cash flows applied in other accounts receivable and inventories for an aggregate amount of approximately Ps2.6 billion, partially offset by cash flows originated by trade accounts receivable, trade accounts payable and other accounts payable and accrued expenses for an aggregate amount of approximately Ps1.9 billion.

During 2010, our cash flows were disbursed mainly in connection with our net cash flows used in financing activities of approximately Ps9.3 billion, which include net payments of debt of approximately Ps9.6 billion, and with capital expenditures of approximately Ps4.7 billion.

As of December 31, 2012, we had the following uncommitted lines of credit, at annual interest rates ranging between approximately 2.14% and 10.0%, depending on the negotiated currency:

| | Lines of Credit | Available |
|---|---|---|
| | (in millions of Mexican Pesos) | |
| Other lines of credit in foreign subsidiaries | 6,491 | 4,243 |
| Other lines of credit from banks | 456 | — |

***Capital Expenditures***

Our capital expenditures incurred for the years ended December 31, 2011 and 2012, and our expected capital expenditures during 2013, which include an allocation to 2013 of a portion of our total future committed amount, are as follows:

| | Actual For the Year Ended December 31, | | Estimated in 2013 |
|---|---|---|---|
| | 2011 | 2012 | |
| | (in millions of U.S. Dollars) | | |
| **Mexico** | 87 | 98 | 90 |
| **United States** | 66 | 149 | 131 |
| **Northern Europe** | | | |
| United Kingdom | 47 | 43 | 32 |
| Germany | 26 | 35 | 31 |
| France | 22 | 21 | 19 |
| Rest of Northern Europe(1) | 39 | 48 | 45 |
| **The Mediterranean** | | | |
| Egypt | 13 | 21 | 21 |
| Spain | 39 | 26 | 12 |
| Rest of Mediterranean(2) | 22 | 24 | 23 |
| **South America and the Caribbean** | | | |
| Colombia | 20 | 81 | 75 |
| Rest of South America and the Caribbean(3) | 43 | 38 | 40 |
| **Asia** | | | |
| Philippines | 36 | 19 | 15 |
| Rest of Asia(4) | 5 | 5 | 7 |
| **Others** | 3 | 1 | 159 |
| Total consolidated | 468 | 609 | 700 |
| **Of which** | | | |
| Expansion capital expenditures | 136 | 178 | 200 |
| Base capital expenditures | 332 | 431 | 500 |

(1) Refers mainly to our operations in Ireland, the Czech Republic, Austria, Poland, Hungary and Latvia as well as trading activities in Scandinavia and Finland.

(2) Includes our operations in Croatia, the UAE and Israel.

(3) Includes our operations in Costa Rica, Panama, Puerto Rico, the Dominican Republic, Nicaragua, Peru, Jamaica and other countries in the Caribbean, Guatemala and small ready-mix concrete operations in Argentina.

(4) Includes our operations in Thailand, Bangladesh, China and Malaysia.

For the years ended December 31, 2011 and 2012, we recognized U.S.$468 million and U.S.$609 million in capital expenditures, respectively. As of December 31, 2012, in connection with our significant projects, we had contractually committed capital expenditures of approximately U.S.$700 million, including our capital expenditures estimated to be incurred during 2013. This amount is expected to be incurred during 2013, based on the evolution of the related projects. Pursuant to the Facilities Agreement, we are prohibited from making aggregate annual capital expenditures in excess of U.S.$800 million (excluding certain capital expenditures, joint venture investments and acquisitions by CEMEX Latam and its subsidiaries, which capital expenditures, joint venture investments and acquisitions at any time then incurred are in the aggregate not to exceed U.S.$350.0 million (or its equivalent)).

***Our Indebtedness***

As of December 31, 2012, we had approximately Ps218,026 million (U.S.$16,967 million) (principal amount Ps226,957 million (U.S.$17,662 million)) of total debt plus other financial obligations, which does not include approximately Ps6,078 million (U.S.$473 million) of Perpetual Debentures. See notes 16A, 16B and 20D to our 2012 audited consolidated financial statements included elsewhere in this annual report. Of our total debt plus other financial obligations, approximately 3.5% were short-term (including current maturities of long-term debt) and 96.5% were long-term. As of December 31, 2012, approximately 81% of our total debt plus other financial obligations was Dollar-denominated, approximately 14% was Euro-denominated, approximately 5% was Peso-denominated and immaterial amounts were denominated in other currencies.

On August 14, 2009, we entered into the 2009 Financing Agreement, which extended the final maturities of approximately U.S.$15 billion in syndicated and bilateral bank facilities and private placement notes to February 14, 2014. On July 5, 2012, we launched an exchange offer and consent request (the "Exchange Offer and Consent Request"), to eligible creditors under the 2009 Financing Agreement, pursuant to which eligible creditors were requested to consent to certain amendments to the 2009 Financing Agreement, including the deletion of all mandatory prepayment provisions, the release of the collateral securing the 2009 Financing Agreement and other obligations secured by such collateral, and the deletion of certain representations, information undertakings, financial covenants, general undertakings and events of default thereunder (together, the "Amendment Consents"). In addition, we offered to exchange the indebtedness owed to such creditors under the 2009 Financing Agreement that were eligible to participate in the Exchange Offer and Consent Request (the "Participating Creditors") for (i) new loans (or, in the case of the private placement notes, new private placement notes) or (ii) up to U.S.$500 million of our September 2012 Notes, in each case, in transactions exempt from registration under the Securities Act.

On September 17, 2012, we successfully completed the refinancing transactions contemplated by the Exchange Offer and Consent Request (collectively, the "Refinancing Transaction"), and we and certain of our subsidiaries entered into (a) an amendment and restatement agreement, dated September 17, 2012 (the "Amendment and Restatement Agreement"), pursuant to which the Amendment Consents with respect to the 2009 Financing Agreement were given effect, and (b) a facilities agreement, dated September 17, 2012 (the "Facilities Agreement"), pursuant to which we were deemed to borrow loans from those Participating Creditors participating in the Exchange Offer and Consent Request in principal amounts equal to the principal amounts of indebtedness subject to the 2009 Financing Agreement that was extinguished by such Participating Creditors. As a result of the Refinancing Transaction, participating creditors received (i) approximately U.S.$6.155 billion in aggregate principal amount of new loans and new private placement notes and (ii) U.S.$500 million aggregate principal amount of the September 2012 Notes. In addition, approximately U.S.$525 million aggregate principal amount of loans and private placement notes remained outstanding under the 2009 Financing Agreement as of September 17, 2012. The aggregate principal amount of loans and private placement notes outstanding under the 2009 Financing Agreement was subsequently repaid in full, as a result of prepayments made in accordance with the Facilities Agreement.

As part of the Facilities Agreement, we pledged under pledge agreements or transferred to a trustee under a security trust, as collateral, the Collateral, and all proceeds of the Collateral, to secure our payment obligations under the Facilities Agreement and under several other financing arrangements. These subsidiaries whose shares were pledged or transferred as part of the Collateral collectively own, directly or indirectly, substantially all our operations worldwide. See "Item 3—Key Information—Risk Factors—We pledged the capital stock of subsidiaries that represent substantially all of our business as collateral to secure our payment obligations under the Facilities Agreement, the Senior Secured Notes and other financing arrangements." Upon completion of the Refinancing Transaction, the collateral securing the 2009 Financing Agreement and other obligations secured by such collateral was released.

As of December 31, 2012, we had an aggregate principal amount of outstanding debt under the 2009 Financing Agreement of approximately Ps605 million (U.S.$47 million) (principal amount Ps703 million (U.S.$55 million)) maturing on February 14, 2014. In connection with the issuance of the March 2013 Notes, we

used a portion of the proceeds from the offering for the repayment in full of the remaining indebtedness under the 2009 Financing Agreement. See "Item 5—Operating and Financial Review and Prospects—Recent Developments."

As of December 31, 2012, we had an aggregate principal amount of outstanding debt under the Facilities Agreement of approximately Ps52,406 million (U.S.$4,078 million) (principal amount Ps53,798 million (U.S.$4,187 million)), all of which matures in 2017. However, if we are unable to comply with the milestones for addressing the maturities of certain indebtedness pursuant to the Facilities Agreement, the maturity date of our indebtedness under the Facilities Agreement will spring-back to earlier dates. See "Item 3—Key Information—Risk Factors—If we are unable to comply with the milestones for addressing the maturities of certain indebtedness pursuant to the Facilities Agreement, the maturity date of our indebtedness under the Facilities Agreement will automatically reset, or "spring-back," to earlier dates."

For a discussion of restrictions and covenants under the Facilities Agreement, see "Item 3—Key Information—Risk Factors—The Facilities Agreement contains several restrictions and covenants. Our failure to comply with such restrictions and covenants could have a material adverse effect on us."

For a description of the Senior Secured Notes, see "—Summary of Material Contractual Obligations and Commercial Commitments—Senior Secured Notes."

Some of our subsidiaries and special purpose vehicles have issued or provided guarantees of certain of our indebtedness, as indicated in the table below.

| | Senior Secured Notes(3) | Facilities Agreement | Perpetual Debentures | Eurobonds | CBs(4) |
|---|---|---|---|---|---|
| **Amount outstanding as of December 31, 2012(1)(2)** | U.S.$9,481 million (Ps121,831 million) (principal amount U.S.$9,548 million (Ps122,694 million)) | U.S.$4,078 million (Ps52,406 million) (principal amount U.S.$4,187 million (Ps53,798 million)) | U.S.$706 million (Ps9,078 million) | U.S.$325 million (Ps4,178 million) (principal amount U.S.$327 million (Ps4,197 million)) | U.S.$44 million (Ps568 million) |
| CEMEX, S.A.B. de C.V. | ✓ | ✓ | ✓ | | ✓ |
| CEMEX España | ✓ | ✓ | | ✓ | |
| CEMEX México | ✓ | ✓ | ✓ | | ✓ |
| New Sunward | ✓ | ✓ | ✓ | | |
| CEMEX Corp. | ✓ | ✓ | | | |
| CEMEX Finance LLC | ✓ | ✓ | | | |
| CEMEX Research Group | ✓ | ✓ | | | |
| CEMEX Shipping | ✓ | ✓ | | | |
| CEMEX Asia | ✓ | ✓ | | | |
| CEMEX France | ✓ | ✓ | | | |
| CEMEX UK | ✓ | ✓ | | | |
| CEMEX Egyptian Investments | ✓ | ✓ | | | |
| CEMEX Concretos | ✓ | ✓ | | | |
| Empresas Tolteca | ✓ | ✓ | | | ✓ |
| C5 Capital (SPV) Ltd. | | | ✓ | | |
| C8 Capital (SPV) Ltd. | | | ✓ | | |
| C10 Capital (SPV) Ltd. | | | ✓ | | |
| C10-EURCapital (SPV) Ltd. | | | ✓ | | |
| CEMEX Finance Europe B.V | | | | ✓ | |

(1) Includes Senior Secured Notes, Perpetual Debentures and Eurobonds held by CEMEX.
(2) As adjusted to give effect to the issuance of the March 2013 Notes, the Eurobond Tender Offer and the prepayment of the 2009 Financing Agreement.

(3) CEMEX Finance LLC is neither the issuer of, nor does it provide a guarantee for, the May 2010 Notes, Additional May 2010 Notes, January 2011 Notes, Additional January 2011 Notes, April 2011 Notes, March 2012 Notes, September 2012 Notes and March 2013 Notes. On March 25, 2013, CEMEX Corp., CEMEX Concretos and Empresas Tolteca became guarantors of the May 2010 Notes, Additional May 2010 Notes, January 2011 Notes, Additional January 2011 Notes, April 2011 Notes, March 2012 Notes and March 2013 Notes.

(4) Includes long-term secured CBs.

Most of our outstanding indebtedness has been incurred to finance our acquisitions and to finance our capital expenditure programs. Historically, we have addressed our liquidity needs (including funds required to make scheduled principal and interest payments, refinance debt, and fund working capital and planned capital expenditures) with operating cash flow, securitizations, borrowings under credit facilities, proceeds of debt and equity offerings and proceeds from asset sales.

The continued weakness of the global economic environment and its adverse effects on our operating results may negatively affect our credit rating and the market value of our common stock, our CPOs and our ADSs. If current economic pressures continue or worsen, we may be dependent on the issuance of equity as a source to repay our existing indebtedness, including indebtedness under the Facilities Agreement. Although we have been able to raise debt, equity and equity-linked capital in the recent past, previous conditions in the capital markets in 2008 and 2009 were such that traditional sources of capital were not available to us on reasonable terms or at all. As a result, we cannot assure you that we will be able to successfully raise additional debt or equity capital on terms that are favorable to us or at all.

If the global economic environment deteriorates and our operating results worsen significantly, if we were unable to complete debt or equity offerings or if the proceeds of any divestitures and/or our cash flow or capital resources prove inadequate, we could face liquidity problems and may not be able to comply with our upcoming principal payments under our indebtedness or refinance our indebtedness. If we are unable to comply with our upcoming principal maturities under our indebtedness, or refinance or extend maturities of our indebtedness, our debt could be accelerated. Acceleration of our debt would have a material adverse effect on our business and financial condition.

We and our subsidiaries have sought and obtained waivers and amendments to several of our debt instruments relating to a number of financial ratios in the past. Our ability to comply with these ratios may be affected by current global economic conditions and volatility in foreign exchange rates and the financial and capital markets. We may need to seek waivers or amendments in the future. However, we cannot assure you that any future waivers or amendments, if requested, will be obtained. If we or our subsidiaries are unable to comply with the provisions of our debt instruments, and are unable to obtain a waiver or amendment, the indebtedness outstanding under such debt instruments could be accelerated. Acceleration of these debt instruments would have a material adverse effect on our financial condition.

***Relevant Transactions Related to Our Indebtedness During 2012***

As of December 31, 2012, as adjusted to give effect to the issuance of the March 2013 Notes, the Eurobond Tender Offer and the prepayment of the 2009 Financing Agreement, we had approximately Ps221,971 million (U.S.$17,274 million) (principal amount Ps230,863 million (U.S.$17,966 million)) of total debt plus other financial obligations, which does not include approximately Ps6,078 million (U.S.$473 million) of Perpetual Debentures. Our financing activities through December 31, 2011 are described in the 2011 20-F. The following is a description of our most relevant transactions related to our indebtedness in 2012:

- On March 28, 2012, CEMEX España, acting through its Luxembourg branch, issued U.S.$704 million aggregate principal amount and €179 million aggregate principal amount of the March 2012 Notes in exchange for Perpetual Debentures and the Eurobonds, pursuant to separate private placement exchange offers directed to the holders of Perpetual Debentures and Eurobonds, in transactions exempt from registration pursuant to Section 4(2) of the Securities Act.

- On September 17, 2012, we successfully completed the Refinancing Transaction, and we and certain of our subsidiaries entered into (a) the Amendment and Restatement Agreement pursuant to which the Amendment Consents were given effect, and (b) the Facilities Agreement, pursuant to which we were deemed to borrow loans from those Participating Creditors participating in the Exchange Offer and Consent Request in principal amounts equal to the principal amounts of indebtedness subject to the 2009 Financing Agreement that was extinguished by such Participating Creditors. In addition, on September 17, 2012, CEMEX, S.A.B. de C.V. issued U.S.$500 million aggregate principal amount of the September 2012 Notes to such participating creditors that elected to receive the September 2012 Notes in place of all or a portion of their indebtedness subject to the 2009 Financing Agreement. See "—Liquidity and Capital Resources—Our Indebtedness."
- On October 12, 2012, CEMEX Finance LLC issued U.S.$1.5 billion aggregate principal amount of the October 2012 Notes in transactions exempt from registration pursuant to Rule 144A and Regulation S under the Securities Act.

We used a substantial portion of the proceeds from these transactions to repay and refinance indebtedness, to improve our liquidity position and for general corporate purposes. Through these and prior repayments, including from the proceeds of the CEMEX Latam Offering, taken together with the repayment in full of the remaining indebtedness under the 2009 Financing Agreement in connection with the issuance of the March 2013 Notes (see "—Recent Developments"), we have addressed all maturities under the 2009 Financing Agreement and have addressed all maturities under the Facilities Agreement until February 14, 2017.

***Our Other Financial Obligations***

Other financial obligations in the consolidated balance sheet as of December 31, 2011 and 2012 are detailed as follows:

| | December 31, 2011 | | | December 31, 2012 | | |
|---|---|---|---|---|---|---|
| | Short-term | Long-term | Total | Short-term | Long-term | Total |
| I. Convertible subordinated notes due 2018 | Ps — | 7,451 | 7,451 | Ps — | 7,100 | 7,100 |
| I. Convertible subordinated notes due 2016 | — | 11,236 | 11,236 | — | 10,786 | 10,768 |
| II. Convertible subordinated notes due 2015 | — | 8,829 | 8,829 | — | 8,397 | 8,397 |
| III. Convertible securities due 2019 | 131 | 1,703 | 1,834 | 152 | 1,561 | 1,713 |
| IV. Liabilities secured with accounts receivable | 7,052 | 2,500 | 9,552 | 6,013 | 2,500 | 8,513 |
| V. Capital leases | 528 | 1,471 | 1,999 | 813 | 2,587 | 3,400 |
| | Ps 7,711 | 33,190 | 40,901 | Ps 6,978 | 32,913 | 39,891 |

As mentioned in note 2L to our 2012 audited consolidated financial statements included elsewhere in this annual report, financial instruments convertible into our CPOs and/or ADSs contain components of both liability and equity, which are recognized differently depending if the instrument is mandatorily convertible, or is optionally convertible by election of the note holders.

***2011 Optional Convertible Subordinated Notes***

On March 15, 2011, CEMEX, S.A.B. de C.V. closed the offering of U.S.$978 million (Ps11,632 million) aggregate principal amount of 3.25% Convertible Subordinated Notes due 2016 and U.S.$690 million (Ps8,211 million) aggregate principal amount of 3.75% Convertible Subordinated Notes due 2018. The aggregate principal amounts reflect the full exercise of the U.S.$177.5 million and U.S.$90 million over-allotment option granted to the relevant initial purchasers of the 3.25% Convertible Subordinated Notes due 2016 and the 3.75% Convertible Subordinated Notes due 2018, respectively. The 2011 Optional Convertible Subordinated Notes are subordinated to all of CEMEX's liabilities and commitments. The initial conversion price was equivalent to an approximate 30% premium to the closing price of our ADSs on March 9, 2011, and the notes are convertible into our ADSs, at any time after June 30, 2011. A portion of the net proceeds from this transaction were used to fund the purchase

of capped call transactions. During 2012 and 2011, changes in the fair value of these capped call transactions generated a gain of approximately U.S.$155 million (Ps1,973 million) and a loss of approximately U.S.$153 million (Ps1,906 million), respectively, which were recognized within "Other financial income (expense), net" in the statements of operations (see note 16D to our 2012 audited consolidated financial statements included elsewhere in this annual report), which are generally expected to reduce the potential dilution cost to CEMEX, S.A.B. de C.V. upon future conversion of the 2011 Optional Convertible Subordinated Notes. As a result of the issuance, substantially all the new shares approved at CEMEX, S.A.B. de C.V.'s extraordinary shareholders' meeting on February 24, 2011 (see note 20 to our 2012 audited consolidated financial statements included elsewhere in this annual report) were reserved by CEMEX, S.A.B. de C.V. to satisfy conversion of these notes. After antidilution adjustments, the conversion rate as of December 31, 2012 was 95.8525 ADSs per U.S.$1,000 principal amount of such notes and as of March 21, 2013, has been further adjusted to 99.6866 ADS per U.S.$1,000 principal amount of such notes, reflecting the issuance of CPOs in connection with the recapitalization of earnings approved by shareholders at the 2012 annual general ordinary shareholders' meeting held on March 21, 2013. In addition, considering that the currency in which the notes are denominated and the functional currency of the issuer differ, under IFRS, we separated the conversion options embedded in these notes and recognized them as a freestanding derivative at fair value through the statements of operations. Changes in fair value of such conversion options generated a loss in 2012 for approximately U.S.$243 million (Ps3,078 million) and a gain in 2011 for approximately U.S.$279 million (Ps3,482 million) (see note 16D to our 2012 audited consolidated financial statements included elsewhere in this annual report).

***2010 Optional Convertible Subordinated Notes***

On March 30, 2010, CEMEX, S.A.B. de C.V. issued U.S.$715 million (Ps8,837 million) aggregate principal amount of 4.875% Optional Convertible Subordinated Notes due 2015, including the full exercise of the U.S.$65 million over-allotment option granted to the initial purchasers of the notes. The 2010 Optional Convertible Subordinated Notes are subordinated to all of CEMEX's liabilities and commitments. The holders of the 2010 Optional Convertible Subordinated Notes have the option to convert their notes for our ADSs at a conversion price per ADS 30% higher than the ADS price at the pricing of the transaction. In connection with the offering, CEMEX, S.A.B. de C.V. entered into a capped call transaction expected to generally reduce the potential dilution cost to CEMEX, S.A.B. de C.V. upon future conversion of the 2015 Notes. During 2012 and 2011, changes in the fair value of this capped call transaction generated a gain of approximately U.S.$47 million (Ps594 million) and a loss of approximately U.S.$79 million (Ps984 million), respectively, which were recognized within "Other financial income (expense), net" in the statements of operations (see note 16D to our 2012 audited consolidated financial statements included elsewhere in this annual report). After antidilution adjustments, the conversion rate as of December 31, 2012 was 82.7227 ADSs per U.S.$1,000 principal amount of such notes and as of March 21, 2013, has been further adjusted to 86.0316 ADS per U.S.$1,000 principal amount of such notes, reflecting the issuance of CPOs in connection with the recapitalization of earnings approved by shareholders at the 2012 annual general ordinary shareholders' meeting held on March 21, 2013. In addition, considering that the currency in which the notes are denominated and the functional currency of the issuer differ, under IFRS, we separated the conversion option embedded in these notes and recognized it as a freestanding derivative at fair value through the statements of operations. Changes in fair value of the conversion option generated a loss in 2012 for approximately U.S.$56 million (Ps708 million) and a gain in 2011 for approximately U.S.$97 million (Ps1,211 million) (see note 16D to our 2012 audited consolidated financial statements included elsewhere in this annual report).

***Mandatory Convertible Notes***

In December 2009, CEMEX, S.A.B. de C.V. completed its offer to exchange CBs issued in Mexico with maturities between 2010 and 2012, into Mandatorily Convertible Notes for approximately Ps4,126 million (U.S.$315 million). Reflecting antidilution adjustments, at their scheduled conversion in ten years or earlier if the price of the CPO reaches approximately $30.68, the securities will be mandatorily convertible into approximately 202 million CPOs at a conversion price of approximately $20.4510 per CPO. During their tenure, the securities yield a 10% interest payable quarterly. Holders have an option to voluntarily convert their securities, after the

first anniversary of their issuance, on any interest payment date into CPOs. The equity component for Ps1,971 million was recognized within "Other equity reserves." See note 16B to our 2012 audited consolidated financial statements included elsewhere in this annual report.

***Our Receivables Financing Arrangements***

Our subsidiaries in the United States, Mexico and France (which incorporated the sale of trade receivables in the United Kingdom) are parties to sales of trade accounts receivable programs with financial institutions, referred to as securitization programs. As of December 31, 2011 and 2012, trade accounts receivable include receivables of Ps12,733 million (U.S.$912 million) and Ps10,792 million (U.S.$840 million), respectively. In October 2012, CEMEX terminated its program in Spain. Under these programs, our subsidiaries effectively surrender control associated with the trade accounts receivable sold and there is no guarantee or obligation to reacquire the assets. However, we retain certain residual interest in the programs and/or maintain continuing involvement with the accounts receivable; therefore, the amounts received are recognized within "Other financial obligations." Trade accounts receivable qualifying for sale exclude amounts over certain days past due or concentrations over certain limits to any one customer, according to the terms of the programs. The portion of the accounts receivable sold maintained as reserves amounted to Ps3,181 million and Ps2,280 million as of December 31, 2011 and 2012, respectively. Therefore, the funded amount to CEMEX was Ps$8,512 million (U.S.$662 million) in 2012 and Ps$9,552 million (U.S.$684 million) in 2011. The discount granted to the acquirers of the trade accounts receivable is recorded as financial expense and amounted to approximately Ps390 million (U.S.$31 million) and Ps368 million (U.S.$29 million) in 2011 and 2012, respectively. Our securitization programs are negotiated for specific periods and should be renewed at their maturity. The securitization programs outstanding as of December 31, 2012 in Mexico and the United States were initiated or renewed during 2012 and mature in October 2015 and May 2013, respectively. The securitization programs in France and the United Kingdom were renewed in 2013 and currently mature in March 2014.

***Capital leases***

As of December 31, 2011 and 2012, we held several operating assets, mainly mobile equipment, under capital lease contracts for a total of approximately U.S.$143 million (Ps1,999 million) and U.S.$265 million (Ps3,400 million), respectively. Future payments associated with these contracts are presented in note 23E to our 2012 audited consolidated financial statements included elsewhere in this annual report.

***Our Equity Forward Arrangements***

In connection with the sale of CPOs of Axtel (note 16D to our 2012 audited consolidated financial statements included elsewhere in this annual report) and in order to maintain exposure to changes in the price of such entity, in March 2008, we entered into a forward contract to be settled in cash over the price of 119 million CPOs of Axtel (59.5 million CPOs with each counterparty), which was originally set to mature in April 2011. During 2009, in order to reset the exercise price included in the contract, we instructed the counterparties to definitively dispose of the deposits in margin accounts for approximately Ps207 million, and each of the counterparties exercised an option to maintain the contract over their respective 59.5 million CPOs of Axtel until October 2011. During 2010, one of the counterparties further extended the maturity of 50% of the notional amount of this forward contract to April 2012. In addition, during 2011, the other counterparty further extended the maturity of its contract also until April 2012. During 2012, one of the contracts was further extended until October 2013, while other contracts reached its scheduled maturity in April 2012. In March 2012, CEMEX renewed the forward contract to be settled in cash over the price of 59.5 CPOs of Axtel, which is extended until October 2013. Changes in the fair value of this instrument generated losses of approximately U.S.$35 million (Ps437 million) in 2011, and approximately U.S.$7 million (Ps100 million) in 2012.

***Perpetual Debentures***

As of December 31, 2011 and 2012, non-controlling interest stockholders' equity included approximately U.S.$938 million (Ps13,089 million) and U.S.$473 million (Ps6,078 million), respectively, representing the

principal amount of the Perpetual Debentures. The Perpetual Debentures have no fixed maturity date and do not represent a contractual payment obligation for us. Based on their characteristics, the Perpetual Debentures, issued through special purpose vehicles, or SPVs, qualify as equity instruments under IFRS and are classified within non-controlling interest as they were issued by consolidated entities, considering that there is no contractual obligation to deliver cash or any other financial asset, the Perpetual Debentures do not have any maturity date, meaning that they were issued to perpetuity, and, if the conditions to interest deferred are satisfied, we have the unilateral right to defer indefinitely the payment of interest due on the Perpetual Debentures. Issuance costs, as well as the interest expense, which is accrued based on the principal amount of the Perpetual Debentures, are included within "Other equity reserves" and represented expenses of approximately Ps1,010 million and Ps453 million in 2011 and 2012, respectively. The different SPVs were established solely for purposes of issuing the Perpetual Debentures and are included in our 2012 audited consolidated financial statements included elsewhere in this annual report. As of December 31, 2012, the Perpetual Debentures were as follows:

| Issuer | Issuance Date | Nominal Amount at Issuance Date (in millions) | Nominal Amount Outstanding as of December 31, 2012 (in millions)(2) | Repurchase Option | Interest Rate |
|---|---|---|---|---|---|
| C5 Capital (SPV) Ltd(1). | December 2006 | U.S.$350 | U.S.$ 69 | Fifth anniversary and at every coupon payment date thereafter | LIBOR + 4.277% |
| C8 Capital (SPV) Ltd. | February 2007 | U.S.$750 | U.S.$137 | Eighth anniversary | 6.640% |
| C10 Capital (SPV) Ltd. | December 2006 | U.S.$900 | U.S.$183 | Tenth anniversary | 6.722% |
| C10-EUR Capital (SPV) Ltd. | May 2007 | € 730 | € 64 | Tenth anniversary | 6.277% |

(1) Because we did not exercise our repurchase option by December 31, 2011, the annual interest rate of this series changed to 3-month LIBOR plus 4.277%, which will be reset quarterly. Interest payments on this series will be made quarterly instead of semi-annually. We are not permitted to call these Perpetual Debentures under the Facilities Agreement. As of December 31, 2012, 3-month LIBOR was approximately 0.306%.

(2) Excludes the notional amount of Perpetual Debentures held by subsidiaries, acquired in December 2011 through a series of asset swaps. See notes 16A and 20D to our 2012 audited consolidated financial statements included elsewhere in this annual report.

***Stock Repurchase Program***

Under Mexican law, our shareholders may authorize a stock repurchase program at our annual general ordinary shareholders' meeting. Unless otherwise instructed by our shareholders, we are not required to purchase any minimum number of shares pursuant to such program.

In connection with CEMEX, S.A.B. de C.V.'s 2010, 2011 and 2012 annual general ordinary shareholders' meetings held on February 24, 2011, February 23, 2012 and March 21, 2013, respectively, no stock repurchase program has been proposed between February 2011 and the date of this annual report. Subject to certain exceptions, we are not permitted to repurchase shares of our capital stock under the Facilities Agreement and the indentures governing the Senior Secured Notes.

**Research and Development, Patents and Licenses, etc.**

Our research and development, or R&D, efforts help us in achieving our goal of increasing market share in the markets in which we operate. The department of the Vice President of Technology and Safety is responsible for developing new products for our cement, ready-mix concrete, aggregate and admixture businesses that respond to our clients' needs, as well as introduce new or improved processing and equipment technology for all our core businesses. The department of the Vice President of Energy and Sustainability has the responsibility to

optimize operational efficiencies and reduce our costs and environmental impact through the usage of alternative or biomass fuels, and energy management systems. For example, we have developed processes and products that allow us to reduce heat consumption in our kilns, which in turn reduces energy costs. Products have also been developed that provide our customers with solutions with better performance and overall lower environment footprint in the whole value chain. We believe this has helped us to keep or increase our market share in many of the markets in which we operate.

We have nine laboratories dedicated to our R&D efforts. Eight of these laboratories are strategically located in close proximity to our plants to assist our operating subsidiaries with troubleshooting, optimization techniques and quality assurance methods. One of our laboratories is located in Switzerland, where we are continually improving and consolidating our research and development efforts in the areas of cement, concrete, aggregates, admixtures, mortar and asphalt technology, as well as in business processes, information technology and energy management. We have actively registering patents and pending applications in many of the countries in which we operate. These patent registrations and applications relate primarily to different solutions, materials, additives used in the construction industry and the production processes related to them, as well as processes to decrease the use of scarce resources and improve our use of alternative fuels and raw materials.

Our Information Technology divisions have developed information management systems and software relating to cement and ready-mix concrete operational practices, automation and maintenance. These systems have helped us to better serve our clients with respect to purchasing, delivery and payment.

R&D activities comprise part of the daily routine of the departments and divisions mentioned above; therefore, the costs associated with such activities are expensed as incurred. However, the costs incurred in the development of software for internal use are capitalized and amortized in operating results over the estimated useful life of the software, which is approximately five years.

In 2010, 2011 and 2012, the combined total expense of the departments of the Vice President of Energy, Vice President of Technology, which includes R&D activities, amounted to approximately Ps519 million (U.S.$41 million), Ps487 million (U.S.$39 million) and Ps514 million (U.S.$40 million), respectively.

**Trend Information**

Other than as disclosed elsewhere in this annual report, we are not aware of any trends, uncertainties, demands, commitments or events for the year ended December 31, 2012 that are reasonably likely to have a material and adverse effect on our net sales, income, profitability, liquidity or capital resources, or that would cause the disclosed financial information to be not necessarily indicative of future results of operations or financial conditions.

**Summary of Material Contractual Obligations and Commercial Commitments**

***The 2009 Financing Agreement***

On August 14, 2009, we entered into the 2009 Financing Agreement. The 2009 Financing Agreement extended the final maturities of approximately U.S.$15 billion in syndicated and bilateral bank facilities and private placement notes to February 14, 2014, providing for a semi-annual amortization schedule, and, prior to giving effect to the Refinancing Transaction, we had reduced indebtedness under the 2009 Financing Agreement by approximately U.S.$7.7 billion. Upon completion of the Refinancing Transaction, the collateral securing the 2009 Financing Agreement and other obligations secured by such collateral was released. As of December 31, 2012, we had an aggregate principal amount of outstanding debt under the 2009 Financing Agreement of approximately Ps605 million (U.S.$47 million) (principal amount Ps703 million (U.S.$55 million)) maturing on February 14, 2014. In connection with the issuance of the March 2013 Notes, we used a portion of the proceeds from the offering for the repayment in full of the remaining indebtedness under the 2009 Financing Agreement. See "—Recent Developments."

***The Facilities Agreement***

As a result of the Refinancing Transaction, on September 17, 2012, we entered into the Facilities Agreement. See "—Liquidity and Capital Resources —Our Indebtedness." As of December 31, 2012, we had an aggregate principal amount of outstanding debt under the Facilities Agreement of approximately Ps52,406 million (U.S.$4,078 million) (principal amount Ps53,798 million (U.S.$4,187 million)), all of which matures in 2017. Additionally, if we are unable to comply with the milestones for addressing the maturities of certain indebtedness pursuant to the Facilities Agreement, the maturity date of our indebtedness under the Facilities Agreement will spring-back to earlier dates. See "Item 3—Key Information—Risk Factors—If we are unable to comply with the milestones for addressing the maturities of certain indebtedness pursuant to the Facilities Agreement, the maturity date of our indebtedness under the Facilities Agreement will automatically reset, or "spring-back," to earlier dates."

The Facilities Agreement is secured by a first-priority security interest over the Collateral and all proceeds of such Collateral.

For a discussion of restrictions and covenants under the Facilities Agreement, see "Item 3—Key Information—Risk Factors—The Facilities Agreement contains several restrictions and covenants. Our failure to comply with such restrictions and covenants could have a material adverse effect on us."

***Senior Secured Notes***

The indentures governing the Senior Secured Notes impose significant operating and financial restrictions on us. These restrictions will limit our ability, among other things, to: (i) incur debt; (ii) pay dividends on stock; (iii) redeem stock or redeem subordinated debt; (iv) make investments; (v) sell assets, including capital stock of subsidiaries; (vi) guarantee indebtedness; (vii) enter into agreements that restrict dividends or other distributions from restricted subsidiaries; (viii) enter into transactions with affiliates; (ix) create or assume liens; (x) engage in mergers or consolidations; and (xi) enter into a sale of all or substantially all of our assets.

*December 2009 Notes.* On December 14, 2009, our subsidiary, CEMEX Finance LLC, issued U.S.$1,250 million aggregate principal amount of its 9.50% Dollar-Denominated Notes and €350,000,000 aggregate principal amount of its 9.625% Euro-Denominated Notes, or together, the December 2009 Notes, in transactions exempt from registration pursuant to Rule 144A and Regulation S under the Securities Act. On January 19, 2010, CEMEX Finance LLC issued an additional U.S.$500,000,000 aggregate principal amount of its 9.50% Dollar-Denominated Notes. CEMEX, S.A.B. de C.V., CEMEX México, CEMEX España, New Sunward, Cemex Asia B.V. ("CEMEX Asia"), CEMEX Concretos, S.A. de C.V. ("CEMEX Concretos"), CEMEX Corp., Cemex Egyptian Investments B.V. ("CEMEX Egyptian Investments"), CEMEX France Gestion (S.A.S.) ("CEMEX France"), Cemex Research Group AG ("CEMEX Research Group"), Cemex Shipping B.V. ("CEMEX Shipping"), CEMEX UK and Empresas Tolteca de México, S.A. de C.V. ("Empresas Tolteca") have fully and unconditionally guaranteed the performance of all obligations of CEMEX Finance LLC under the December 2009 Notes on a senior basis. The payment of principal, interest and premium, if any, on such notes is secured by a first-priority security interest over the Collateral and all proceeds of such Collateral.

*May 2010 Notes*. On May 12, 2010, CEMEX España, acting through its Luxembourg branch, issued U.S.$1,067,665,000 aggregate principal amount of its 9.25% Dollar-Denominated Notes and €115,346,000 aggregate principal amount of its 8.875% Euro-Denominated Notes, or together, the May 2010 Notes, in exchange for a majority in principal amount of the then outstanding Perpetual Debentures pursuant to exchange offers, in private transactions exempt from registration pursuant to Section 4(2) of the Securities Act and Regulation S under the Securities Act. In addition, on March 4, 2011, CEMEX España, acting through its Luxembourg branch, issued an additional U.S.$125,331,000 aggregate principal amount of the Additional May 2010 Notes, in exchange for €119,350,000 aggregate principal amount of the 6.277% Debentures, pursuant to an exchange offer, in a private transaction exempt from registration pursuant to Regulation S under the Securities Act. CEMEX, S.A.B. de C.V., CEMEX México, New Sunward, CEMEX Asia, CEMEX Concretos, CEMEX Corp., CEMEX Egyptian Investments, CEMEX France, CEMEX Research Group, CEMEX Shipping, CEMEX

UK and Empresas Tolteca have fully and unconditionally guaranteed the performance of all obligations of CEMEX España under the May 2010 Notes, including the Additional May 2010 Notes, on a senior basis. The payment of principal, interest and premium, if any, on such notes is secured by a first-priority security interest over the Collateral and all proceeds of such Collateral.

*January 2011 Notes*. On January 11, 2011, CEMEX, S.A.B. de C.V. issued U.S.$1,000,000,000 aggregate principal amount of its 9.000% Senior Secured Notes due 2018, or the January 2011 Notes, in transactions exempt from registration pursuant to Rule 144A and Regulation S under the Securities Act. On July 11, 2011, CEMEX, S.A.B. de C.V. issued an additional U.S.$650,000,000 aggregate principal amount of the Additional January 2011 Notes. CEMEX México, CEMEX España, New Sunward, CEMEX Asia, CEMEX Concretos, CEMEX Corp., CEMEX Egyptian Investments, CEMEX France, CEMEX Research Group, CEMEX Shipping, CEMEX UK and Empresas Tolteca have fully and unconditionally guaranteed the performance of all obligations of CEMEX, S.A.B. de C.V. under the January 2011 Notes and the Additional January 2011 Notes on a senior basis. The payment of principal, interest and premium, if any, on such notes is secured by a first-priority security interest over the Collateral and all proceeds of such Collateral.

*April 2011 Notes*. On April 5, 2011, CEMEX, S.A.B. de C.V. issued U.S.$800,000,000 aggregate principal amount of its Floating Rate Senior Secured Notes due 2015, or the April 2011 Notes, in transactions exempt from registration pursuant to Rule 144A and Regulation S under the Securities Act. CEMEX México, CEMEX España, New Sunward, CEMEX Asia, CEMEX Concretos, CEMEX Corp., CEMEX Egyptian Investments, CEMEX France, CEMEX Research Group, CEMEX Shipping, CEMEX UK and Empresas Tolteca have fully and unconditionally guaranteed the performance of all obligations of CEMEX, S.A.B. de C.V. under the April 2011 Notes on a senior basis. The payment of principal, interest and premium, if any, on such notes is secured by a first-priority security interest over the Collateral and all proceeds of such Collateral.

*March 2012 Notes*. On March 28, 2012, CEMEX España, acting through its Luxembourg branch, issued U.S.$703,861,000 aggregate principal amount of its 9.875% U.S. Dollar-Denominated Senior Secured Notes Due 2019 and €179,219,000 aggregate principal amount of its 9.875% U.S. Dollar-Denominated Senior Secured Notes Due 2019, or together, the March 2012 Notes, in exchange for Perpetual Debentures and Eurobonds pursuant to separate private placement exchange offers directed to the holders of Perpetual Debentures and Eurobonds, in transactions exempt from registration pursuant to Section 4(2) of the Securities Act. Such exchange offers were made within the United States only to "qualified institutional buyers" (as defined in Rule 144A under the Securities Act), and outside the United States to persons that are not "U.S. persons," as such term is defined in Rule 902(k) of Regulation S under the Securities Act and who participated in the transactions in accordance with Regulation S. CEMEX, S.A.B. de C.V., CEMEX México, New Sunward, CEMEX Asia, CEMEX Concretos, CEMEX Corp., CEMEX Egyptian Investments, CEMEX France, CEMEX Research Group, CEMEX Shipping, CEMEX UK and Empresas Tolteca have fully and unconditionally guaranteed the performance of all obligations of CEMEX España under the March 2012 Notes on a senior basis. The payment of principal, interest and premium, if any, on such notes is secured by a first-priority security interest over the Collateral and all proceeds of such Collateral.

*September 2012 Notes*. In connection with the Refinancing Transaction, on September 17, 2012, CEMEX, S.A.B. de C.V. issued U.S.$500,000,000 aggregate principal amount of its 9.50% Senior Secured Notes due 2018, or the September 2012 Notes, to participating creditors that elected to receive the September 2012 Notes in place of all or a portion of their indebtedness subject to the 2009 Financing Agreement. CEMEX México, CEMEX España, New Sunward, CEMEX Asia, CEMEX Concretos, CEMEX Corp., CEMEX Egyptian Investments, CEMEX France, CEMEX Research Group, CEMEX Shipping, CEMEX UK and Empresas Tolteca have fully and unconditionally guaranteed the performance of all obligations of CEMEX, S.A.B. de C.V. under the September 2012 Notes on a senior basis. The payment of principal, interest and premium, if any, on such notes is secured by a first-priority security interest over the Collateral and all proceeds of such Collateral.

*October 2012 Notes*. On October 12, 2012, our subsidiary, CEMEX Finance LLC, issued U.S.$1.5 billion aggregate principal amount of its 9.375% Senior Secured Notes due 2022, or the October 2012 Notes, in transactions exempt from registration pursuant to Rule 144A and Regulation S under the Securities Act.

CEMEX, S.A.B. de C.V., CEMEX México, CEMEX España, New Sunward, CEMEX Asia, CEMEX Concretos, CEMEX Corp., CEMEX Egyptian Investments, CEMEX France, CEMEX Research Group, CEMEX Shipping, CEMEX UK and Empresas Tolteca have fully and unconditionally guaranteed the performance of all obligations of CEMEX Finance LLC under the October 2012 Notes on a senior basis. The payment of principal, interest and premium, if any, on such notes is secured by a first-priority security interest over the Collateral and all proceeds of such Collateral.

*March 2013 Notes*. On March 25, 2013, CEMEX, S.A.B. de C.V. issued U.S.$600,000,000 aggregate principal amount of its 5.875% Senior Secured Notes due 2019, or the March 2013 Notes, in transactions exempt from registration pursuant to Rule 144A and Regulation S under the Securities Act. CEMEX México, CEMEX España, New Sunward, CEMEX Asia, CEMEX Concretos, CEMEX Corp., CEMEX Egyptian Investments, CEMEX France, CEMEX Research Group, CEMEX Shipping, CEMEX UK and Empresas Tolteca have fully and unconditionally guaranteed the performance of all obligations of CEMEX, S.A.B. de C.V. under the March 2013 Notes. The payment of principal, interest and premium, if any, on such notes is secured by a first-priority security interest over the Collateral and all proceeds of such Collateral.

***Mandatory Convertible Notes***

On December 10, 2009, CEMEX, S.A.B. de C.V. issued approximately Ps4.1 billion (approximately U.S.$315 million) in Mandatory Convertible Notes, in exchange for CBs maturing on or before December 31, 2012, pursuant to an exchange offer conducted in Mexico, in transactions exempt from registration pursuant to Regulation S under the Securities Act. The Mandatory Convertible Notes are mandatorily convertible into newly issued CPOs at a conversion price per CPO (calculated as the volume-weighted average price of the CPO for the ten trading days prior to the closing of the exchange offer multiplied by a conversion premium of approximately 1.65), accrue interest, payable in cash, at 10% per annum, provide for the payment of a cash penalty fee, equal to approximately one year of interest, upon the occurrence of certain anticipated conversion events, and mature on November 28, 2019. After antidilution adjustments, the conversion rate as of December 31, 2012 was 418.4494 CPOs per each obligation, equivalent to a conversion price of approximately Ps21.27 per CPO and as of March 21, 2013, has been further adjusted to 435.1874 CPOs per each obligation, equivalent to a conversion price of approximately Ps20.4510 per CPO, reflecting the issuance of CPOs in connection with the recapitalization of earnings approved by shareholders at the 2012 annual general ordinary shareholders' meeting held on March 21, 2013.

***Convertible Subordinated Notes***

*2010 Optional Convertible Subordinated Notes*. On March 30, 2010, CEMEX, S.A.B. de C.V. issued U.S.$715,000,000 aggregate principal amount of its 4.875% Convertible Subordinated Notes due 2015, or the 2010 Optional Convertible Subordinated Notes, including the initial purchasers' exercise in full of their over-allotment option, in transactions exempt from registration pursuant to Rule 144A under the Securities Act. The conversion rate at issuance was 73.5402 ADSs per U.S.$1,000 principal amount of 2010 Optional Convertible Subordinated Notes. After antidilution adjustments, the conversion rate as of December 31, 2012 was 82.7227 ADSs per U.S.$1,000 principal amount of such notes and as of March 21, 2013, has been further adjusted to 86.0316 ADS per U.S.$1,000 principal amount of such notes, reflecting the issuance of CPOs in connection with the recapitalization of earnings approved by shareholders at the 2012 annual general ordinary shareholders' meeting held on March 21, 2013. We used a portion of the net proceeds from the offering of the 2010 Optional Convertible Subordinated Notes to fund the purchase of a capped call transaction, which are expected generally to reduce the potential cost to CEMEX upon future conversion of the 2010 Optional Convertible Subordinated Notes.

*2011 Optional Convertible Subordinated Notes*. On March 15, 2011, CEMEX, S.A.B. de C.V. issued U.S.$977.5 million aggregate principal amount of its 3.25% Convertible Subordinated Notes due 2016 and U.S.$690 million aggregate principal amount of its 3.75% Convertible Subordinated Notes due 2018, or together,

the 2011 Optional Convertible Subordinated Notes, including the initial purchasers' exercise in full of their over-allotment options, in transactions exempt from registration pursuant to Rule 144A and Regulation S under the Securities Act. The 2011 Optional Convertible Subordinated Notes are convertible into ADSs, at any time after June 30, 2011. The initial conversion price for the 2011 Optional Convertible Subordinated Notes was equivalent to approximately U.S.$11.28 per ADS, a 30% premium to the closing price of ADSs on March 9, 2011. After antidilution adjustments, the conversion rate as of December 31, 2012 was 95.8525 ADSs per U.S.$1,000 principal amount of such notes and as of March 21, 2013, has been further adjusted to 99.6866 ADS per U.S.$1,000 principal amount of such notes, reflecting the issuance of CPOs in connection with the recapitalization of earnings approved by shareholders at the 2012 annual general ordinary shareholders' meeting held on March 21, 2013. We used a portion of the net proceeds from the offering of the 2011 Optional Convertible Subordinated Notes to fund the purchase of capped call transactions, which are expected generally to reduce the potential cost to CEMEX upon future conversion of the 2011 Optional Convertible Subordinated Notes.

***Commercial Commitments***

As of December 31, 2011 and 2012, we had commitments for the purchase of raw materials for an approximate amount of U.S.$184 million and U.S.$127 million, respectively.

On July 27, 2012, we entered into a Master Professional Services Agreement with IBM. This agreement provides the framework for our contracting for IBM to provide us with the following services: information technology, application development and maintenance, finance and accounting outsourcing, human resources administration and contact center services. The agreement provides for these services to be provided to us from July 27, 2012 until August 31, 2022, unless earlier terminated. Our minimum required payments to IBM under the agreement are approximately U.S.$50 million per year. We will have the right to adjust the cost and quality of the services every two years if it is determined that they do not meet certain benchmarks. We may terminate the agreement (or a portion of it) at our discretion and without cause at any time by providing at least six-months' notice to IBM and paying termination charges consisting of IBM's unrecovered investment and breakage and wind-down costs. In addition, we may terminate the agreement (or a portion of it) for cause without paying termination charges. Other termination rights may be available to us for a termination charge that will vary with the reason for termination. IBM may terminate the agreement if we (i) fail to make payments when due or (ii) become bankrupt and do not pay in advance for the services.

In 2006, in order to take advantage of the high wind potential in the "Tehuantepec Isthmus," CEMEX and ACCIONA formed an alliance to develop a wind farm project for the generation of 250 megawatts in the Mexican state of Oaxaca. We acted as promoter of the project, which was named EURUS. ACCIONA provided the required financing, constructed the facility and currently owns and operates the wind farm. The operation of the 167 wind turbines on the farm commenced on November 15, 2009. The agreements between CEMEX and ACCIONA established that CEMEX's plants in Mexico will acquire a portion of the energy generated by the wind farm for a period of at least 20 years, which began in February 2010, when EURUS reached the committed limit capacity. For the years ended December 31, 2011 and 2012, EURUS supplied approximately 23.7% and 29.1%, respectively, of CEMEX's overall electricity needs in Mexico during such years.

In 1999, CEMEX entered into an agreement with an international partnership, which built and operated an electrical energy generating plant in Mexico called "Termoeléctrica del Golfo," or TEG. In 2007, another international company replaced the original operator. The agreement established that CEMEX would purchase the energy generated for a term of not less than 20 years, which started in April 2004. In addition, CEMEX committed to supply TEG all fuel necessary for its operations, a commitment that has been hedged through a 20-year agreement entered with PEMEX, which terminates in 2024. With the change of the operator in 2007, CEMEX extended the term of its agreement with TEG until 2027. Consequently, for the last 3 years of the agreement, CEMEX intends to purchase the required fuel in the market. For the years ended December 31, 2011 and 2012, the power plant has supplied approximately 69% and 68%, respectively, of CEMEX's overall electricity needs during such years for its cement plants in Mexico.

In March 1998, we entered into a 20-year contract with PEMEX providing that PEMEX's refinery in Cadereyta would supply us with 0.9 million tons of petcoke per year, commencing in 2003. In July 1999, we entered into a second 20-year contract with PEMEX providing that PEMEX's refinery in Madero would supply us with 0.85 million tons of petcoke per year, commencing in 2002. We expect the PEMEX petcoke contracts to reduce the volatility of our fuel costs and provide us with a consistent source of petcoke throughout their 20-year terms (which expire in July 2023 for the Cadereyta refinery contract and October 2022 for the Madero refinery contract).

***Contractual Obligations***

As of December 31, 2011 and 2012, we had material contractual obligations as set forth in the table below. For purposes of this table, we have presented the U.S.$1 billion prepayment required to satisfy the March 31, 2013 milestone under the Facilities Agreement as a required payment.

| | As of December 31, 2011 | As of December 31, 2012 | | | | |
|---|---|---|---|---|---|---|
| Obligations | Total | Less than 1 year | 1-3 Years | 3-5 Years | More than 5 Years | Total |
| | | (in millions of U.S. Dollars) | | | | |
| Long-term debt | U.S.$ 14,924 | 42 | 1,333 | 6,600 | 5,882 | 13,857 |
| Capital lease obligation(1) | 182 | 83 | 112 | 51 | 115 | 361 |
| Convertible notes(2) | 2,102 | 12 | 683 | 878 | 604 | 2,177 |
| Total debt and other financial obligations(3) | 17,208 | 137 | 2,128 | 7,529 | 6,601 | 16,395 |
| Operating leases(4) | 565 | 129 | 155 | 76 | 53 | 413 |
| Interest payments on debt(5) | 4,111 | 747 | 1,437 | 1,066 | 463 | 3,713 |
| Pension plans and other benefits(6) | 1,845 | 154 | 301 | 314 | 884 | 1,653 |
| Purchases of raw materials(7) | 184 | 102 | 25 | — | — | 127 |
| Purchases of fuel and energy(8) | 3,794 | 201 | 413 | 430 | 2,495 | 3,539 |
| Total contractual obligations | U.S.$ 27,707 | 1,470 | 4,459 | 9,415 | 10,496 | 25,840 |
| Total contractual obligations (Mexican Pesos) | Ps 386,791 | 18,889 | 57,298 | 120,983 | 134,874 | 332,044 |

(1) The amounts of payments under capital leases have been determined on the basis of nominal cash flows. As of December 31, 2012, the net present value of future payments under such leases is approximately U.S.$265 million (Ps3,400 million), of which, approximately U.S.$90 million (Ps1,163 million) refers to cash flows from 1 to 3 years, approximately U.S.$32 million (Ps413 million) refers to cash flows from 3 to 5 years and approximately U.S.$79 million (Ps1,011 million) refers to cash flows of more than 5 years.

(2) Refers to the Mandatory Convertible Notes described herein and assumes repayment at maturity and no conversion of the notes.

(3) The schedule of debt payments, which includes current maturities, does not consider the effect of any refinancing of debt that may occur during the following years. In the past, CEMEX has replaced its long-term obligations for others of a similar nature. For purposes of this table, other financial obligations do not include liabilities secured with accounts receivable, as these receivables are sold on a non-recourse basis.

(4) The amounts for operating leases have been determined on the basis of nominal cash flows. CEMEX has operating leases, primarily for operating facilities, cement storage and distribution facilities and certain transportation and other equipment, under which annual rental payments are required plus the payment of certain administrative, selling and distribution expenses. Rental expense was U.S.$256 million (Ps3,195 million) in 2011 and U.S.$156 million (Ps2,003 million) in 2012.

(5) For the determination of the future estimated interest payments on floating rate denominated debt, CEMEX used the floating interest rates in effect as of December 31, 2011 and 2012.

(6) Represents estimated annual payments under these benefits for the next 10 years (see note 18 to our 2012 audited consolidated financial statements included elsewhere in this annual report). Future payments include the estimate of new retirees during such future years.
(7) Future payments for the purchase of raw materials are presented on the basis of contractual nominal cash flows.
(8) Future nominal payments of energy have been estimated for all contractual commitments on the basis of aggregate average expected consumption of approximately 3,171.4 GWh per year using the future prices of energy established in the contracts for each period. Future payments also include our commitments for the purchase of fuel.

**Off-Balance Sheet Arrangements**

We do not have any off-balance sheet arrangements that are reasonably likely to have a material effect on our financial condition, operating results, liquidity or capital resources.

**CEMEX Venezuela**

On August 18, 2008, the Government of Venezuela expropriated all business, assets and shares of CEMEX in Venezuela and took control of its facilities. CEMEX controlled and operated CEMEX Venezuela until August 17, 2008. In October 2008, CEMEX submitted a request to ICSID, seeking international arbitration claiming that the nationalization and seizure of the facilities located in Venezuela and owned by CEMEX Venezuela did not comply with the terms of the treaty for the protection of investments signed by the Government of Venezuela and the Netherlands and with international law because CEMEX had not received any compensation and no public purpose was proven. On November 30, 2011, following negotiations with the Government of Venezuela and its public entity Corporación Socialista de Cemento, S.A., a settlement agreement was reached between CEMEX and the Government of Venezuela that closed on December 13, 2011. Under this settlement agreement, CEMEX received compensation for the expropriation of CEMEX Venezuela and administrative services provided after the expropriation in the form of: (i) a cash payment of U.S.$240 million; and (ii) notes issued by PDVSA, with nominal value and interest income to maturity totaling approximately U.S.$360 million. Additionally, as part of the settlement, claims among all parties and their affiliates were released and all intercompany payments due from or to CEMEX Venezuela to and from CEMEX were cancelled, resulting in the cancellation for CEMEX of accounts payable, net of approximately U.S.$154 million. Pursuant to this settlement agreement, CEMEX and the government of Venezuela agreed to withdraw the ICSID arbitration. As a result of this settlement, CEMEX cancelled the book value of its net assets in Venezuela of approximately U.S.$503 million and recognized a settlement gain in the statement of operations of approximately U.S.$25 million, which includes the write-off of the currency translation effects accrued in equity. In 2012, upon disposal of the PDVSA notes, CEMEX recognized a net gain of approximately Ps169 million as part of other financial (expense) income, net, including the effects recognized within other comprehensive income in prior years. See note 13B to our 2012 audited consolidated financial statements included elsewhere in this annual report.

See “Item 4—Information on the Company—Regulatory Matters and Legal Proceedings—Expropriation of CEMEX Venezuela and ICSID Arbitration.”

**Qualitative and Quantitative Market Disclosure**

***Our Derivative Financial Instruments***

For the year ended December 31, 2011, we had a net gain related to the recognition of changes in fair values of derivative financial instruments of approximately Ps329 million (U.S.$26 million). For the year ended December 31, 2012, we had a net loss related to the recognition of changes in fair values of derivative financial instruments of approximately Ps98 million (U.S.$8 million).

Since the beginning of 2009, with the exception of our capped call transaction entered into in March 2010 and March 2011, we have been reducing the aggregate notional amount of our derivatives, thereby reducing the risk of cash margin calls. This initiative has included closing substantially all notional amounts of derivative instruments related to our debt (currency and interest rate derivatives) and the settlement of our inactive

derivative financial instruments (see note 16D to our 2012 audited consolidated financial statements included elsewhere in this annual report), which we finalized during April 2009. The Facilities Agreement significantly restricts our ability to enter into derivative transactions.

We use derivative financial instruments in order to change the risk profile associated with changes in interest rates and foreign exchange rates of debt agreements, as a vehicle to reduce financing costs, as an alternative source of financing, and as hedges of: (i) highly probable forecasted transactions, (ii) our net assets in foreign subsidiaries and (iii) future exercises of options under our executive stock option programs. Before entering into any transaction, we evaluate, by reviewing credit ratings and our business relationship according to our policies, the creditworthiness of the financial institutions and corporations that are prospective counterparties to our derivative financial instruments. We select our counterparties to the extent we believe that they have the financial capacity to meet their obligations in relation to these instruments. Under current financial conditions and volatility, we cannot assure that risk of non-compliance with the obligations agreed to with such counterparties is minimal.

The fair value of derivative financial instruments is based on estimated settlement costs or quoted market prices and supported by confirmations of these values received from the counterparties to these financial instruments. The notional amounts of derivative financial instrument agreements are used to measure interest to be paid or received and do not represent the amount of exposure to credit loss.

| | At December 31, 2011 | | At December 31, 2012 | | |
|---|---|---|---|---|---|
| | Notional amount | Estimated fair value | Notional amount | Estimated fair value | Maturity Date |
| | (in millions of U.S. Dollars) | | | | |
| Interest Rate Swaps | 189 | 46 | 181 | 49 | September 2022 |
| Equity forwards on third-party shares | 46 | 1 | 27 | — | October 2013 |
| Forward instruments over indexes | 5 | — | 5 | — | July 2013 |
| Options on our own shares | 2,743 | 11 | 2,743 | (138) | March 2015 – March 2018 |

*Our Interest Rate Swaps.* As of December 31, 2011 and 2012, we had an interest rate swap maturing in September 2022 with notional amounts of U.S.$189 million and U.S.$181 million, respectively, negotiated to exchange floating for fixed rates in connection with agreements we entered into for the acquisition of electric energy in Mexico. For more information, see note 23C to our 2012 audited consolidated financial statements included elsewhere in this annual report. As of December 31, 2011 and 2012, the fair value of the swap represented assets of approximately U.S.$46 million and U.S.$49 million, respectively. Pursuant to this instrument, during the tenure of the swap and based on its notional amount, we will receive a fixed rate of 5.4% and will pay a LIBOR, which is the international reference for debt denominated in U.S. Dollars. As of December 31, 2011 and 2012, LIBOR was 0.7705% and 0.513%, respectively. Changes in the fair value of interest rate swaps, including those settled in April 2009, generated gains of approximately U.S.$12 million (Ps150 million) in 2011 and U.S.$2 million (Ps35 million) in 2012, which were recognized in the statement of operations for each year.

*Our Equity Forwards on Third-Party Shares*. As of December 31, 2011 and 2012, we had forward contracts to be settled in cash over the price of 119 million CPOs and 59.5 million CPOs, respectively, of Axtel with an aggregate notional amount of U.S.$46 million and U.S.$27 million, respectively. One of the contracts matured in April 2012 and the remaining contract matures in October 2013. Changes in the fair value of this instrument generated a loss of approximately U.S.$35 million (Ps437 million) in 2011 and U.S.$7 million (Ps100 million) in 2012, which were recognized in the statement of operations for each year. See "—Liquidity and Capital Resources—Our Equity Forward Arrangements."

*Our Forward Instruments Over Indexes*. As of December 31, 2011 and 2012, we held forward derivative instruments over the TRI (Total Return Index) of the Mexican Stock Exchange, which were set to mature in October 2012 and were extended until April 2013 and July 2013. Through these instruments, we maintained

exposure to increases or decreases of such index. TRI expresses the market return on stocks based on market capitalization of the issuers comprising the index. Changes in the fair value of these instruments generated a loss of approximately U.S.$1 million (Ps13 million) in 2011 and a gain of approximately U.S.$1 million (Ps13 million) in 2012, which were recognized in the statement of operations for each year.

*Our Options on Our Own Shares*. On March 15, 2011, in connection with the offering of the 2011 Optional Convertible Subordinated Notes and to effectively increase the conversion price for our CPOs under such notes, CEMEX, S.A.B. de C.V. entered into capped call transactions over approximately 160 million ADSs (94 million ADSs maturing in March 2016 and 66 million ADSs maturing in March 2018), by means of which, for the 3.25% Convertible Subordinated Notes due 2016, at maturity of the notes in March 2016, if the price per ADS is above U.S.$10.4327, we will receive in cash the difference between the market price of the ADS and U.S.$10.4327, with a maximum appreciation per ADS of U.S.$4.8151. Likewise, for the 3.75% Convertible Subordinated Notes due 2018, at maturity of the notes in March 2018, if the price per ADS is above U.S.$10.4327, we will receive in cash the difference between the market price of the ADS and U.S.$10.4327, with a maximum appreciation per ADS of U.S.$6.4201. We paid a total premium of approximately U.S.$222 million. As of December 31, 2011 and 2012, the fair value of such options represented an asset of approximately U.S.$71 million (Ps984 million) and U.S.$226 million (Ps2,899 million), respectively. During 2011 and 2012, changes in the fair value of this contract generated a loss of approximately U.S.$153 million (Ps1,906 million) and a gain U.S.$155 million (Ps1,973 million), respectively, which were recognized in the statements of operations for each year. As previously mentioned, for accounting purposes under IFRS, we separated the conversion options embedded in these notes and recognized them at fair value, which as of December 31, 2011 and 2012, resulted in liabilities of approximately U.S.$58 million (Ps806 million) and U.S.$301 million (Ps3,862 million), respectively. Changes in fair value of the conversion options generated a gain in 2011 for approximately U.S.$279 million (Ps3,842 million) and a loss in 2012 for approximately U.S.$243 million (Ps3,078 million), which were recognized in the statement of operations for each year. In addition, even though the changes in fair value of CEMEX's embedded conversion options in these notes affect the statements of operations, they do not imply any risk or variability in cash flows, considering that through the exercise of such embedded conversion options, we may settle a fixed amount of debt with a fixed amount of shares.

On March 30, 2010, in connection with the offering of the 2010 Optional Convertible Subordinated Notes and to effectively increase the conversion price for our CPOs under such notes, CEMEX, S.A.B. de C.V. entered into a capped call transaction over approximately 59.1 million ADSs maturing in March 2015, by means of which, at maturity of the notes, if the price per ADS is above U.S.$12.0886, we will receive in cash the difference between the market price of the ADS and U.S.$12.0886, with a maximum appreciation per ADS of U.S.$4.6494. We paid a premium of approximately U.S.$105 million. As of December 31, 2011 and 2012, the fair value of such options represented an asset of approximately U.S.$11 million (Ps157 million) and U.S.$58 million (Ps751 million), respectively. During 2011 and 2012, changes in the fair value of this contract generated a loss of approximately U.S.$79 million (Ps984 million) and gains of U.S.$47 million (Ps594 million), respectively, which were recognized in the statements of operations for each year. As previously mentioned, for accounting purposes under IFRS, we separated the conversion option embedded in these notes and recognized it at fair value, which as of December 31, 2011 and 2012, resulted in liabilities of approximately U.S.$8 million (Ps120 million) and U.S.$64 million (Ps828 million), respectively. Changes in fair value of the conversion options generated a gain in 2011 for approximately U.S.$97 million (Ps1,211 million) and a loss in 2012 for approximately U.S.$56 million (Ps708 million), which were recognized in the statement of operations for each year. In addition, even though the changes in fair value of CEMEX's embedded conversion option in these notes affect the statements of operations, they do not imply any risk or variability in cash flows, considering that through the exercise of such embedded conversion option, we may settle a fixed amount of debt with a fixed amount of shares.

As of December 31, 2012, we had granted a guarantee for a notional amount of approximately U.S.$360 million in connection with put option transactions on our CPOs entered into by Citibank with a Mexican trust that we established on behalf of our Mexican pension fund and certain of our directors and current and former

employees in April 2008, as described in notes 16D and 23C to our 2012 audited consolidated financial statements included elsewhere in this annual report. The fair value of such guarantee, net of deposits in margin accounts, represented liabilities of approximately U.S.$4 million (Ps58 million) in 2011 and U.S.$58 million (Ps740 million) in 2012. As of December 31, 2011 and 2012, cash deposits in margin accounts were approximately U.S.$225 million (Ps3,141 million) and U.S.$76 million (Ps975 million), respectively. As of April 17, 2013, the notional amount of the guarantee was completely closed as a result of the unwinding of 100% of the original underlying amount of put options over CPOs of CEMEX, S.A.B. de C.V. Cash and cash deposits in margin accounts, after deducting the proceeds from the sale of securities that track the performance of the Mexican Stock Exchange and CEMEX's CPOs held by the Mexican trust in an aggregate amount of approximately U.S.$112 million, were used to settle the unwinding of these put options.

***Interest Rate Risk, Foreign Currency Risk and Equity Risk***

*Interest Rate Risk*. The table below presents tabular information of our fixed and floating rate long-term foreign currency-denominated debt as of December 31, 2012. Average floating interest rates are calculated based on forward rates in the yield curve as of December 31, 2012. Future cash flows represent contractual principal payments. The fair value of our floating rate long-term debt is determined by discounting future cash flows using borrowing rates available to us as of December 31, 2012 and is summarized as follows:

| | Expected maturity dates as of December 31, 2012 | | | | | | |
|---|---|---|---|---|---|---|---|
| Long-Term Debt(1) | 2013 | 2014 | 2015 | 2016 | After 2017 | Total | Fair Value |
| | (in millions of U.S. Dollars, except percentages) | | | | | | |
| Variable rate | U.S.$ 6 | 18 | 756 | 4 | 4,097 | U.S.$ 4,882 | U.S.$ 4,804 |
| Average interest rate | 4.89% | 5.02% | 5.27% | 5.66% | 6.28% | | |
| Fixed rate | U.S.$ 36 | 552 | 6 | 1,739 | 6,643 | U.S.$8,975 | U.S.$9,877 |
| Average interest rate | 9.01% | 9.03% | 9.31% | 9.31% | 9.37% | | |

(1) The information above includes the current maturities of the long-term debt. Total long-term debt as of December 31, 2012 does not include our other financial obligations and the Perpetual Debentures for an aggregate amount of U.S.3,578 million (Ps45,969 million) issued by consolidated entities. See notes 16B and 20D to our 2012 audited consolidated financial statements included elsewhere in this annual report.

As of December 31, 2012, we were subject to the volatility of floating interest rates, which, if such rates were to increase, may adversely affect our financing cost and our net income. As of December 31, 2012, 35% of our foreign currency-denominated long-term debt bears floating rates at a weighted average interest rate of LIBOR plus 456 basis points. See note 16 to our 2012 audited consolidated financial statements included elsewhere in this annual report.

*Foreign Currency Risk*. Due to our geographic diversification, our revenues are generated in various countries and settled in different currencies. However, some of our production costs, including fuel and energy, and some of our cement prices, are periodically adjusted to take into account fluctuations in the U.S. Dollar/Peso exchange rate. For the year ended December 31, 2012, approximately 21% of our net sales, before eliminations resulting from consolidation, were generated in Mexico, 19% in the United States, 7% in the United Kingdom, 7% in Germany, 6% in France, 6% in our Rest of Northern Europe geographic segment, 2% in Spain, 3% in Egypt, 4% in our Rest of the Mediterranean segment, 6% in Colombia, 8% in our Rest of South America and the Caribbean segment, 3% in Asia and 8% from our Other operations.

As of December 31, 2012, approximately 81% of our total debt plus other financial obligations was U.S. Dollar-denominated, approximately 14% was Euro-denominated, approximately 5% was Peso-denominated and immaterial amounts were denominated in other currencies, which does not include approximately Ps6,078 million (U.S.$473 million) of Perpetual Debentures; therefore, we had a foreign currency exposure arising from

the debt plus other financial obligations denominated in U.S. Dollars, and the debt and other financial obligations denominated in Euros, versus the currencies in which our revenues are settled in most countries in which we operate. We cannot guarantee that we will generate sufficient revenues in Euros from our operations in Spain, Germany, France and the Rest of Northern Europe to service these obligations. As of December 31, 2011 and 2012, all cross-currency swaps had been settled.

*Equity Risk*. As described above, we have entered into equity forward contracts on Axtel CPOs. Upon liquidation, the equity forward contracts provide for cash settlement and the effects are recognized in the statement of operations. At maturity, if these forward contracts are not settled or replaced, or if we default on these agreements, our counterparties may sell the shares of the underlying contracts. Under these equity forward contracts, there is a direct relationship in the change in the fair value of the derivative with the change in value of the underlying asset.

As of December 31, 2012, the potential change in the fair value of these contracts that would result from a hypothetical, instantaneous decrease of 10% in the market price of Axtel CPOs would be a loss of approximately U.S.$1 million (Ps17 million).

In addition, we have entered into forward contracts on the TRI of the Mexican Stock Exchange through which we maintained exposure to changes of such index, until maturity in April 2013 and July 2013. Upon liquidation, these forward contracts provide for cash settlement of the estimated fair value and the effects are recognized in the statement of operations. Under these equity forward contracts, there is a direct relationship in the change in the fair value of the derivative with the change in value of the TRI of the Mexican Stock Exchange. See "—Qualitative and Quantitative Market Disclosure—Our Derivative Financial Instruments—Our Forward Instruments Over Indexes."

As of December 31, 2012, the potential change in the fair value of these contracts that would result from a hypothetical, instantaneous decrease of 10% in the aforementioned index would be a loss of approximately U.S.$1 million (Ps17 million).

In connection with the offering of the 2010 Optional Convertible Subordinated Notes and the 2011 Optional Convertible Subordinated Notes issued in March 2010 and March 2011, respectively, we entered into capped call transactions with the financial institutions involved on those transactions or their affiliates. See "—Qualitative and Quantitative Market Disclosure—Our Derivative Financial Instruments—Our Options on Our Own Shares."

**Investments, Acquisitions and Divestitures**

The transactions described below represent our principal investments, acquisitions and divestitures completed during 2010, 2011 and 2012.

***Investments and Acquisitions***

In October 2012, Corporación Cementera Latinoamericana, S.L., an indirect subsidiary of CEMEX España, completed the acquisition of the 49% non-controlling interest in Global Cement, S.A., a CEMEX subsidiary in Guatemala, in a private transaction for approximately U.S.$54 million (approximately Ps694 million), recognizing within "Other equity reserves" a loss of approximately U.S.$32 million (approximately Ps411 million).

On May 17, 2012, through a public tender offer commenced on March 12, 2012, and after compliance with applicable regulations in Ireland, Readymix Investments, an indirect subsidiary of CEMEX España, acquired the 38.8% interest in Readymix plc, our main subsidiary in Ireland, that had not been owned by us for approximately €11 million (U.S.$15 million or Ps187 million), for €0.25 per share in cash. The listing and trading of Readymix plc's shares on the Irish Stock Exchange was cancelled beginning on May 18, 2012.

On July 1, 2005, we and Ready Mix USA, a privately owned ready-mix concrete producer with operations in the southeastern United States, established two jointly-owned limited liability companies, CEMEX Southeast, LLC, a cement company, and Ready Mix USA LLC, a ready-mix concrete company, to serve the construction materials market in the southeast region of the United States.

Pursuant to the terms of the limited liability company agreements, Ready Mix USA had a put option right, which, upon exercise, required us to acquire Ready Mix USA's interest in CEMEX Southeast, LLC and Ready Mix USA LLC. As a result of Ready Mix USA's exercise of its put option (see note 15B to our 2012 audited consolidated financial statements included elsewhere in this annual report), and after performance of the obligations by both parties under the put option agreement, effective as of August 1, 2011, through the payment of approximately U.S.$352 million (approximately Ps4,914 million), we acquired our former joint venture partner's interests in CEMEX Southeast, LLC and Ready Mix USA, LLC, including a non-compete and a transition services agreement. In accordance with the joint venture agreements, from the date on which Ready Mix USA exercised its put option until the date we acquired Ready Mix USA's interest, Ready Mix USA continued to control and manage Ready Mix USA, LLC. Nonetheless, based on IAS 27, considering the existence of a settlement price that could have been paid any time until September 30, 2011 at our election, Ready Mix USA LLC's balance sheet was consolidated as of March 31, 2011 and its operating results beginning April 1, 2011. Upon consolidation, the purchase price was assigned to each joint venture in proportion to our relative contribution interest in CEMEX Southeast, LLC and Ready Mix USA, LLC considering the original fair values as of the dates of the agreements in 2005. We fully consolidated the acquisition of the minority interest in CEMEX Southeast, LLC, as of the acquisition date, and Ready Mix USA, LLC generated an aggregate gain of approximately U.S.$24 million (approximately Ps316 million), which was recognized within "Other expenses, net." During 2012, after the completion of the purchase price allocation, there were changes in the values of certain assets and liabilities, none of which were individually significant, which decreased the aggregate gain on purchase by approximately U.S.$1 million (approximately Ps13 million). Our 2011 audited consolidated financial statements included in the 2011 20-F include the balance sheet of Ready Mix USA, LLC as of December 31, 2011, based on the best estimate of its net asset's fair value as of the acquisition date of approximately Ps4,487 million, including cash and cash equivalents for approximately Ps912 million and debt for approximately Ps1,352 million, and its results of operations for the nine-month period ended December 31, 2011.

Ready Mix USA, LLC's net assets as of December 31, 2012, CEMEX consolidated net assets of approximately Ps3,792 million, including cash and cash equivalents for approximately Ps3 million and debt for approximately Ps1,977 million.

Our total additions in property, machinery and equipment, as reflected in our 2012 audited consolidated financial statements (see note 14 to our 2012 audited consolidated financial statements included elsewhere in this annual report), excluding acquisitions of equity interests in subsidiaries and associates and including capital leases, was approximately U.S.$555 million in 2010, U.S.$468 million in 2011 and U.S.$609 million in 2012. This capital expenditure in property, machinery and equipment has been applied to the construction and upgrade of plants and equipment and the maintenance of plants and equipment, including environmental controls and technology updates. As of the date of this annual report, we have allocated approximately U.S.$500 million of our $750 million 2013 budget to continue with this effort.

***Divestitures***

During 2012 we sold assets for approximately U.S.$227 million comprised in part by real estate, non-core businesses and equipment.

In November 2012, CEMEX Latam, a then wholly-owned subsidiary of CEMEX España, completed the sale of newly issued common shares in the CEMEX Latam Offering, representing approximately 26.65% of CEMEX Latam's outstanding common shares. CEMEX Latam's common shares are listed on the Colombian

Stock Exchange (*Bolsa de Valores de Colombia S.A.*). The net proceeds to CEMEX Latam from the offering were approximately U.S.$960 million, after deducting underwriting discounts, commissions and offering expenses. CEMEX Latam used the net proceeds to repay a portion of the indebtedness owed to us, which we used for general corporate purposes, including the repayment of indebtedness. CEMEX Latam is the holding company for CEMEX's operations in Brazil, Colombia, Costa Rica, Guatemala, Nicaragua, Panama and El Salvador. As of December 31, 2012, CEMEX España owned approximately 73.35% of CEMEX Latam's outstanding common shares, excluding shares held in treasury.

During 2011 we sold assets for approximately U.S.$225 million comprised in part by real estate, non-core businesses and equipment.

On August 27, 2010, we completed the sale of seven aggregates quarries, three resale aggregate distribution centers and one concrete block manufacturing facility in Kentucky to Bluegrass Materials Company, LLC for U.S.$88 million in proceeds.

**Recent Developments**

***Offering of 5.875% Senior Secured Notes due 2019***

On March 25, 2013, CEMEX, S.A.B. de C.V. issued U.S.$600,000,000 aggregate principal amount of its 5.875% Senior Secured Notes due 2019, or the March 2013 Notes, in transactions exempt from registration pursuant to Rule 144A and Regulation S under the Securities Act. The payment of principal, interest and premium, if any, on the March 2013 Notes is fully and unconditionally guaranteed by CEMEX México, CEMEX España, New Sunward, CEMEX Asia, CEMEX Concretos, CEMEX Corp., CEMEX Egyptian Investments, CEMEX France, CEMEX Research Group, CEMEX Shipping, CEMEX UK and Empresas Tolteca. The March 2013 Notes are secured by a first-priority security interest over the Collateral and all proceeds of such Collateral. The March 2013 Notes were issued at par. The net proceeds from the offering of approximately U.S.$595 million were used for the repayment in full of the remaining indebtedness under the 2009 Financing Agreement of approximately U.S.$55 million and the remainder for general corporate purposes, including the purchase of Eurobonds in the Eurobond Tender Offer.

***Eurobond Tender Offer***

On March 28, 2013, we completed our purchase of €182,939,000 aggregate principal amount of Eurobonds through a cash tender offer using a portion of the proceeds from the issuance of the March 2013 Notes.

***Change in the Parent Company's functional currency***

Considering the guidance under IFRS set forth by International Accounting Standard 21, *The Effects of Changes in Foreign Exchange Rates* ("IAS 21"), and based on changing circumstances on the net monetary position in foreign currencies of CEMEX, S.A.B. de C.V. (on a parent company only basis) resulting mainly from: a) a significant decrease in tax liabilities denominated in Mexican Pesos; b) a significant increase in its U.S. Dollar-denominated debt and other financial obligations; and c) the expected increase in U.S. Dollar-denominated intra-group administrative expenses associated with the externalization of major back office activities with IBM; effective as of January 1, 2013, CEMEX, S.A.B. de C.V., for purposes of its parent company only financial statements, was required to prospectively change its functional currency from the Mexican Peso to the U.S. Dollar, as the U.S. Dollar was determined to be the currency of CEMEX, S.A.B. de C.V.'s primary economic environment. The aforementioned change has no effect on the functional currencies of CEMEX, S.A.B. de C.V.'s subsidiaries, which continue to be the currency in the primary economic environment in which each subsidiary operates. Moreover, the reporting currency for the consolidated financial statements of CEMEX, S.A.B. de C.V. and its subsidiaries and the parent company only financial statements of CEMEX, S.A.B. de C.V. continues to be the Mexican Peso.

The main effects in CEMEX, S.A.B. de C.V.'s parent company only financial statements beginning on January 1, 2013, associated with the change in functional currency, as compared to prior years are: a) all transactions, revenues and expenses in any currency are recognized in U.S. Dollars at the exchange rates prevailing at their execution dates; b) monetary balances of CEMEX, S.A.B. de C.V. denominated in U.S. Dollars will not generate foreign currency fluctuations, while monetary balances in Mexican Pesos and other non-U.S. Dollar-denominated balances will now generate foreign currency fluctuations through CEMEX, S.A.B. de C.V.'s statement of operations; and c) the conversion option embedded in CEMEX, S.A.B. de C.V.'s Mandatory Convertible Notes denominated in Mexican Pesos will now be treated as a stand-alone derivative instrument through CEMEX, S.A.B. de C.V.'s statement of operations, while the options embedded in CEMEX, S.A.B. de C.V.'s U.S. Dollar-Denominated 2010 Optional Convertible Subordinated Notes and 2011 Optional Convertible Subordinated Notes will cease to be treated as stand-alone derivatives through CEMEX, S.A.B. de C.V.'s statement of operations. Prior period financial statements are not required to be restated.

## Item 6 Senior Management and Employees —Directors,

### Senior Management and Directors

#### *Senior Management*

Set forth below is the name and position of each member of our senior management team as of the date of this annual report. The terms of office of the senior managers are indefinite.

| Name, Position (Age) | Experience |
|---|---|
| Lorenzo H. Zambrano Treviño, Chief Executive Officer (69) | Joined CEMEX in 1968. During his career with CEMEX, Mr. Zambrano has been involved in all operational aspects of our business. He held several positions in CEMEX prior to his appointment as Director of Operations in 1981. In 1985, Mr. Zambrano was appointed chief executive officer, and in 1995 he was elected chairman of the board of directors. Mr. Zambrano is a graduate of Instituto Tecnológico y de Estudios Superiores de Monterrey, A.C., or ITESM, with a degree in mechanical engineering and administration and has an M.B.A. from Stanford University.<br><br>Mr. Zambrano has been a member of our board of directors since 1979 and chairman of our board of directors since 1995. He is a member of the board of directors of Cementos Chihuahua, IBM, Enseñanza e Investigación Superior, A.C. and Museo de Arte Contemporáneo de Monterrey A.C. (MARCO). Mr. Zambrano participated in the chairman's Council of Daimler Chrysler AG until July 2005, was a member of the Stanford University's Graduate School of Business Advisory Council until 2006, of the board of directors of Vitro, S.A.B. de C.V. until 2007, of the board of directors of Alfa, S.A.B. de C.V. until 2008, of the board of directors of Grupo Televisa, S.A.B. and Banamex until April 2009 and of the board of directors of Fomento Económico Mexicano S.A.B. de C.V., or FEMSA and the international advisory board of Citigroup until 2011 and served as chairman of the board of directors of Enseñanza e Investigación Superior, A.C., which manages ITESM, until February 2012.<br><br>In recognition of his business and philanthropic record, Mr. Zambrano has received several awards and recognitions, including the Woodrow Wilson Center's Woodrow Wilson Award for Corporate Citizenship, |

| Name, Position (Age) | Experience |
|---|---|
| | the America's Society Gold Medal Distinguished Service Award, and Stanford University's Graduate School of Business Alumni Association's Ernest C. Arbuckle Award.<br><br>Mr. Zambrano is a first cousin of Rogelio Zambrano Lozano, a member of our board of directors, he is also a second cousin of Roberto Luis Zambrano Villarreal and second uncle of Tomás Milmo Santos, both members of our board of directors. |
| Juan Romero Torres,<br>President CEMEX Mexico (56) | Joined CEMEX in 1989 and has occupied several senior management positions, including president of CEMEX Colombia, president of our operations in Mexico, president of the South America and the Caribbean region and president of our former Europe, Middle East, Africa and Asia region. He is currently president of our operations in Mexico and is also in charge of our global technology area. Mr. Romero graduated from Universidad de Comillas in Spain, where he studied law and economic and enterprise sciences.<br><br>Mr. Romero was appointed vice-president and representative of the board of directors of Cement National Chamber (*Cámara Nacional del Cemento*) in June 2011 and member of the board of directors of Cementos Chihuahua in April 2011. |
| Jaime Gerardo Elizondo Chapa,<br>President CEMEX South America and the Caribbean (49) | Joined CEMEX in 1985 and since then he has headed several operations, including Panama, Colombia, Venezuela, and, more recently, Mexico. He is the current president of CEMEX South America (including Central America) and the Caribbean, and is also in charge of the company's global procurement area. Mr. Elizondo has served as a member of the board of directors of Cementos Chihuahua, president and vice-president of the Cement National Chamber ( *Cámara Nacional del Cemento*) and president of the Transformation Industry of Nuevo León Chamber (*Cámara de la Industria de la Transformación de Nuevo León* ). He graduated with a BS and an M.B.A. from ITESM. |
| Ignacio Madridejos Fernández<br>President CEMEX Northern Europe (47) | Joined CEMEX in 1996 and, after holding management positions in the strategic planning area, he headed CEMEX's operations in Egypt, Spain, and Western Europe. He is currently president of CEMEX Northern Europe, and is also responsible for our global energy and sustainability area. He has served as a member of the board of directors of COMAC ( *Comercial de Mateiales de Construcción S.L.* ), member of the board and president of OFICEMEN (Agrupación de Fabricantes de Cemento de España), chairman and member of the board of IECA ( *Instituto Español del Cemento y sus Aplicaciones* ), president of CEMA, and patron of the Junior Achievement Foundation. In June 2010, he was appointed vice-president and, in June 2011, chairman of CEMBUREAU (European Cement Association). He graduated with a degree in civil engineering from the Polytechnic University of Madrid and holds an M.B.A. from Stanford University. |
| Jaime Muguiro Domínguez,<br>President CEMEX Mediterranean (44) | Joined CEMEX in 1996, and held several executive positions in the areas of strategic planning, business development, ready-mix concrete, aggregates, and human resources. More recently, he headed CEMEX's operations in Egypt. He is currently president of |

| Name, Position (Age) | Experience |
|---|---|
| | CEMEX Mediterranean, which includes operations in Spain, Egypt, Croatia and the Middle East. He graduated with a management degree from San Pablo CEU University, and holds a law degree from the Complutense University of Madrid and an M.B.A. from the Massachusetts Institute of Technology. |
| Karl H. Watson Jr.,<br>President CEMEX USA (48) | Joined CEMEX in 2007, after a successful career of more than 19 years in the building materials industry. Since then, he has held several senior positions in our operations in Florida and the Eastern region of the United States. Before joining CEMEX, he headed the ready-mix concrete and concrete products divisions of Rinker in the United States and Australia. He is currently president of CEMEX USA. Mr. Watson served as chairman of the Florida Concrete and Products Association from 2008 to 2009 and was appointed chairman of the NRMCA from 2010 to 2011 and member of the executive committee of the Portland Cement Association from 2011 to 2013. He holds a B.S. from the Palm Beach Atlantic University and an M.B.A. from the University of Nova Southeastern, both in Florida. |
| Joaquín Miguel Estrada Suarez,<br>President CEMEX Asia (49) | Joined CEMEX in 1992 and has held several executive positions, including head of operations in Egypt and Spain, as well as head of trading for Europe, the Middle East and Asia. He is currently president of CEMEX Asia and is also responsible for our global trading activities. From 2008 to 2011, he served as a member of the board of directors of COMAC (Comercial de Materiales de la Construcción S.L.), president and member of the board of OFICEMEN *(Agrupación de Fabricantes de Cemento de España)* , and member of the board of IECA (Instituto Español del Cemento y sus Aplicaciones), he was also the president of CEMA *(Fundación Laboral del Cemento y el Medioambiente)* from 2010 to 2011. He graduated with a degree in economics from the University of Zaragoza and holds an M.B.A. from the Instituto de Empresa. |
| Fernando A. González Olivieri,<br>Executive Vice President of Finance and Administration and Chief Financial Officer (58) | Joined CEMEX in 1989, and has served as corporate vice-president of strategic planning from 1994 to 1998, president of CEMEX Venezuela from 1998 to 2000, president of CEMEX Asia from 2000 to May 2003, and president of the South American and the Caribbean region from May 2003 to February 2005. In March 2005, he was appointed president of the expanded European Region, in February 2007, president of our former Europe, Middle East, Africa, Asia and Australia Region, and, in May 2009, executive vice president of planning and development. In February 2010, Mr. Gonzalez was appointed executive vice president of planning and finance and in 2011 he was appointed chief financial officer. He is a member of the board of directors of Cementos Chihuahua. Mr. González earned his B.A. and M.B.A. degrees from ITESM. |
| Juan Pablo San Agustín Rubio,<br>Executive Vice President of Strategic Planning and New Business Development (44) | Joined CEMEX in 1994 and has held executive positions in the strategic planning, continuous improvement, e-business, and marketing areas. He is currently executive vice president of strategic planning and new business development. He graduated with a B.S. from the Universidad Metropolitana and holds an International M.B.A. from the Instituto de Empresa. |

| Name, Position (Age) | Experience |
|---|---|
| Luis Hernández Echávez,<br>Executive Vice President of Organization and Human Resources (49) | Joined CEMEX in 1996, and has held senior management positions in the strategic planning and human resources areas. He is currently executive vice president of organization and human resources. He graduated with a degree in civil engineering from ITESM, and holds a master's degree in civil engineering and an M.B.A. from the University of Texas at Austin. Mr. Hernández is also an alternate director of Cementos Chihuahua. |
| Francisco Garza,<br>Vice Chairman of the Board of CEMEX Mexico, Chairman of CEMEX Latin America Advisory Board and Advisor to the CEO on Institutional Relations (57) | Joined CEMEX in 1988 and has served as director of trading from 1988 to 1992, president of CEMEX USA from 1992 to 1994, president of CEMEX Venezuela from 1994 to 1996 and Cemento Bayano from 1995 to 1996, president of CEMEX Mexico and CEMEX USA from 1996 to 1998, president of the our former North American region and trading from 1998 to 2009 and, in 2009, he was appointed president of our former Americas region. In 2011, he was appointed vice chairman of the board of CEMEX Mexico, chairman of CEMEX Latin America Advisory Board and advisor to the CEO on Institutional Relations.<br><br>He is a member of the board of directors of Universidad Regiomontana, A.C. and Cementos Chihuahua. He is a graduate in business administration from ITESM and has an M.B.A. from the Johnson School of Management at Cornell University in 1982. |
| Víctor M. Romo,<br>Executive Advisor to the Chairman and CEO (55) | Joined CEMEX in 1985 and has served as director of administration of CEMEX España from 1992 to 1994, general director of administration and finance of CEMEX España from 1994 to 1996, president of CEMEX Venezuela from 1996 to 1998, president of our former South American and the Caribbean region from 1998 to May 2003, and executive vice president of administration from May 2003 to April 2011. In April 2011, he was appointed executive advisor to the chairman and chief executive officer. He is a member of the board of directors of Cementos Chihuahua. Mr. Romo is a certified public accountant and received a master's degree in administration and finance from ITESM. Previously, he worked for Grupo Industrial Alfa, S.A. de C.V. from 1979 to 1985. |
| Rafael Garza Lozano,<br>Chief Accounting Officer (49) | Joined CEMEX in 1985 and has served as chief accounting officer since 1999. Mr. Garza is a certified public accountant and received a master's degree in administration and finance from ITESM. He also attended executive programs at ITAM, IPADE and Harvard University. He is currently a member of the board of directors of Consejo Mexicano para la Investigación y Desarrollo de Normas de Información Financiera, or CINIF, and an alternate director of Cementos Chihuahua. |
| Ramiro G. Villarreal Morales,<br>General Counsel and Secretary (65) | Joined CEMEX in 1987 and has served as general counsel since then, and also has served as secretary of our board of directors since 1995. He is a graduate of the Universidad Autónoma de Nuevo León with a degree in law. He also received a master of science degree in finance from the University of Wisconsin. Prior to joining CEMEX, he served as assistant general director of Grupo Financiero Banpais from 1985 to 1987. |

| Name, Position (Age) | Experience |
|---|---|
| | Mr. Villarreal is a member of the board of directors of VINTE Viviendas Integrales, S.A., both real estate development companies, and an alternate member of the boards of directors of Cementos Chihuahua and Axtel. Until February 2012, Mr. Villarreal was the secretary of the board of directors of Ensenanza e Investigación Superior, A.C., that administered ITESM. |

***Board of Directors***

As of December 31, 2012, Bernardo Quintana Isaac was a member of CEMEX, S.A.B. de C.V.'s board of drectors. Mr. Quintana Isaac was not elected as a director at CEMEX, S.A.B. de C.V.'s 2012 annual general ordinary shareholders' meeting held on March 21, 2013 and no longer serves on the board of directors. Set forth below are the names of the current members of CEMEX, S.A.B. de C.V.'s board of directors, elected at CEMEX, S.A.B. de C.V.'s 2012 annual general ordinary shareholders' meeting held on March 21, 2013. At this shareholders' meeting, no alternate directors were elected. Members of CEMEX, S.A.B. de C.V.'s board of directors serve for one-year terms.

| Name (Age) | Experience |
|---|---|
| Lorenzo H. Zambrano Treviño, Chairman (69) | See "—Senior Management." |
| Armando J. García Segovia (61) | Mr. García has been a member of CEMEX, S.A.B. de C.V.'s board of directors since 1983. He initially joined CEMEX in 1975 and rejoined CEMEX in 1985. He served as director of operational and strategic planning from 1985 to 1988, director of operations from 1988 to 1991, director of corporate services and affiliate companies from 1991 to 1994, director of development from 1994 to 1996, general director of development from 1996 to 2000, executive vice president of development from 2000 to May 2009, and executive vice president for technology, energy and sustainability from May 2009 to March 2010, the year in which he retired from CEMEX. He is a graduate of ITESM with a degree in mechanical engineering and administration and received an M.B.A. from the University of Texas. He was employed at Cydsa, S.A. from 1979 to 1981 and at Conek, S.A. de C.V. from 1981 to 1985.<br><br>He also serves as a member of the board of directors of Cementos Chihuahua and GCC Cemento, S.A. de C.V. He was also vice president of COPARMEX, member of the board and former chairman of the Private Sector Center for Sustainable Development Studies ( *Centro de Estudios del Sector Privado para el Desarrollo Sustentable* ), former chairman of Centro Patronal de Nuevo León (now COPARMEX NL), he was chairman and member of the board of Gas Industrial de Monterrey, S.A. de C.V. and member of the board of the World Environmental Center. Presently, he is a member of the board of directors of Hoteles City Express, S.A.P.I. de C.V. and Grupo Chapa, S.A. de C.V., and the chairman of the board of the Engineering School of the Instituto Tecnológico de Estudios Superiores de Monterrey. He is also a member of the board of Universidad Regiomontana, A.C., Universidad de Monterrey, A.C., Unidos para la Conservación, Pronatura Noreste, A.C., Consejo Consultivo de Flora y Fauna del Estado de N.L., and Parques y Vida |

| Name (Age) | Experience |
|---|---|
| | Silvestre de N.L. He is also founder and chairman of the board of Comenzar de Nuevo, A.C. He is a first cousin of Rodolfo García Muriel, a member of our board of directors. |
| Rodolfo García Muriel (67) | Has been a member of CEMEX, S.A.B. de C.V.'s board of directors since 1985 and member of CEMEX, S.A.B. de C.V.'s finance committee since 2009. He is the chief executive officer of Compañía Industrial de Parras, S.A. de C.V. He is a member of the board of directors of Inmobiliaria Romacarel, S.A.P.I. de C.V., Comfort Jet, S.A. de C.V., and member of the regional board of Banamex. Mr. García Muriel is also vice president of the Textile Industry National Chamber (*Cámara Nacional de la Industria Textil*). Mr. García Muriel holds a degree in electric mechanical engineering from the Universidad Iberoamericana. He is a first cousin of Armando J. García Segovia, a member of CEMEX, S.A.B. de C.V.'s board of directors. |
| Rogelio Zambrano Lozano (56) | Has been a member of CEMEX, S.A.B. de C.V.'s board of directors since 1987 and president of CEMEX, S.A.B. de C.V.'s finance committee since 2009. He is also a member of the advisory board of Banamex, Zona Norte, and member of the boards of directors of Carza, S.A. de C.V., Plaza Sesamo, S.A. de C.V., Hospital San José, and ITESM. He is a graduate in industrial engineering from ITESM and holds an M.B.A. from the Wharton Business School of Pennsylvania University. He is a first cousin of Lorenzo H. Zambrano, chairman of CEMEX, S.A.B. de C.V.'s board of directors and our chief executive officer and uncle of Tomás Milmo Santos, a member of CEMEX, S.A.B. de C.V.'s board of directors. |
| Roberto Luis Zambrano Villarreal (67) | Has been a member of CEMEX, S.A.B. de C.V.'s board of directors since 1987. He was president of CEMEX, S.A.B. de C.V.'s audit committee from 2002 to 2006, president of CEMEX, S.A.B. de C.V.'s corporate practices and audit committee from 2006 to 2009, and president of CEMEX, S.A.B. de C.V.'s new audit committee since 2009. He is also a member of the board of directors of CEMEX Mexico. He is chairman of the board of directors of Desarrollo Integrado, S.A. de C.V., Administración Ficap, S.A. de C.V., Aero Zano, S.A. de C.V., Ciudad Villamonte, S.A. de C.V., Focos, S.A. de C.V., C & I Capital, S.A. de C.V., Industrias Diza, S.A. de C.V., Inmobiliaria Sanni, S.A. de C.V., Inmuebles Trevisa, S.A. de C.V., Servicios Técnicos Hidráulicos, S.A. de C.V., Mantenimiento Integrado, S.A. de C.V., Pilatus PC-12 Center de México, S.A. de C.V., and Pronatura, A.C. He is a member of the board of directors of S.L.I. de México, S.A. de C.V., and Compañía de Vidrio Industrial, S.A. de C.V. Mr. Zambrano Villarreal is a graduate in mechanical engineering and administration from the ITESM. He is the second cousin of Lorenzo H. Zambrano, chief executive officer and chairman of CEMEX, S.A.B. de C.V.'s board of directors. |
| Dionisio Garza Medina (59) | Has been a member of CEMEX, S.A.B. de C.V.'s board of directors since 1995 and president of CEMEX, S.A.B. de C.V.'s corporate practices committee since 2009. He is honorary chairman and |

| Name (Age) | Experience |
|---|---|
| | member of the board of Alfa, S.A.B. de C.V. where he was chairman and chief executive officer until March 2010. Mr. Garza Medina is a member of the advisory board of the Mexican Ministry of Economy, the advisory committee of the David Rockefeller Center for Latin American Studies at Harvard. He is chairman of the Harvard Business School Latin American advisory board, the Advisory Council of Stanford's Engineering School and the Trilateral Commission.<br><br>Additionally, Mr. Garza Medina was the chairman of the board of the Universidad de Monterrey, A.C. until April 2012. Mr. Garza Medina holds an industrial engineering degree and a master degree in industrial engineering from Stanford University and an M.B.A. from Harvard University. |
| Tomás Milmo Santos (48) | Has been a member of CEMEX, S.A.B. de C.V.'s board of directors since 2006 and member of CEMEX, S.A.B. de C.V.'s finance committee since 2009. Mr. Milmo Santos served as an alternate member of CEMEX, S.A.B. de C.V.'s board of directors from 2001 to 2006. He is chief executive officer and chairman of the board of directors of Axtel, a telecommunications company that operates in the local, long distance and data transfer market. He is also a member of the board of directors of CEMEX Mexico, Promotora Ambiental, S.A., ITESM and chairman of the board of directors of Tec Salud and Alianza Educativa por Nuevo León. He graduated with a degree in economics from Stanford University. Mr. Milmo Santos is the second nephew of Lorenzo H. Zambrano, chief executive officer and chairman of CEMEX, S.A.B. de C.V.'s board of directors. |
| José Manuel Rincón Gallardo Purón (70) | Has been a member of CEMEX, S.A.B. de C.V.'s board of directors since 2003. He is also a member of CEMEX, S.A.B. de C.V.'s audit committee, where he qualifies as a "financial expert" for purposes of the Sarbanes-Oxley Act of 2002. He is president of the board of directors of Sonoco de México S.A. de C.V., member of the board of directors and audit committees of Banamex, Grupo Herdez, S.A. de C.V., General de Seguros, S.A.B., Kansas City Southern and Grupo Aeroportuario del Pacífico, S.A. de C.V., and member of the board of directors of Laboratorios Sanfer-Hormona. Mr. Rincón Gallardo is a member of the Instituto Mexicano de Contadores Públicos, A.C., he was managing partner of KPMG Mexico, and was member of the board of directors of KPMG United States and KPMG International. He is also a member of the corporate practices committee of Consejo Coordinador Empresarial and is a member of the audit committee of Banco Nacional de México, S.A.B., Sonoco de México, S.A.B., Grupo Herdez, S.A.B., among other companies. He is a certified public accountant from the Universidad Nacional Autonoma de México. |
| Francisco Javier Fernández Carbajal (58) | Has been a member of CEMEX, S.A.B. de C.V.'s board of directors, a member of CEMEX, S.A.B. de C.V.'s finance committee since February 2012 and a member of CEMEX, S.A.B. de C.V.'s corporate practices committee since March 2013. Mr. Fernández is currently the chairman of the board of directors of |

| Name (Age) | Experience |
|---|---|
| | Primero Finanzas, S.A. de C.V. and of Primero Seguros, S.A. de C.V., He is also chief executive officer of Servicios Administrativos Contry, S.A. de C.V. and a proprietary investing advisor and consultant in investment banking operations since January 2002. He has served as chief executive officer of Corporate Development at Grupo Financiero BBVA Bancomer, S.A. de C.V., after holding several positions in BBVA Bancomer since 1991. Furthermore, Mr. Fernández is a member of the board of directors of Femsa, S.A.B. de C.V., Visa, Inc., Fresnillo PLC and Alfa, S.A.B. de C.V. He graduated with a degree in electric mechanical engineering from ITESM and also holds an M.B.A. from Harvard Business School. |
| Rafael Rangel Sostmann (71) | Has been a member of CEMEX, S.A.B. de C.V.'s board of directors and member of CEMEX, S.A.B. de C.V.'s corporate practices committee since 2009 and member of CEMEX, S.A.B. de C.V.'s audit committee since 2010. Mr. Rangel Sostmann was president of ITESM from 1985 to 2011. He is also a member of the board of directors of Fundación Santos y de la Garza Evia, I.B.P., which owns Hospital San José de Monterrey. Mr. Sostmann is also a member of the following boards: UNIVERSIA (Consorcio de Universidades Iberoamericanas) SACS (Southern Association of Colleges and Schools) and Thunderbird Board of Fellows. He also served as president and chief executive officer of the Monterrey Tech Foundation from October 2011 to March 2012. He graduated with a degree in electric mechanical engineering from ITESM and also holds a master's degree in mechanical engineering from University of Wisconsin. |

**Board Practices**

In compliance with the Mexican securities market law, which was enacted on December 28, 2005 and became effective on June 28, 2006, CEMEX, S.A.B. de C.V.'s shareholders approved, at a general extraordinary meeting of shareholders held on April 27, 2006, a proposal to amend various articles of CEMEX, S.A.B. de C.V.'s by-laws, or *estatutos sociales*, in order to improve our standards of corporate governance and transparency, among other matters. The amendments include outlining the fiduciary duties of the members of CEMEX, S.A.B. de C.V.'s board of directors, who are now required:

- to perform their duties in a value-creating manner for the benefit of CEMEX without favoring a specific shareholder or group of shareholders;
- to act diligently and in good faith by adopting informed decisions; and
- to comply with their duty of care and loyalty, abstaining from engaging in illicit acts or activities.

The Mexican securities market law also eliminated the position of statutory examiner, whose duties of surveillance are now the responsibility of the board of directors, fulfilled through the corporate practices and the audit committees, as well as through the external auditor who audits the entity's financial statements, each within its professional role. With its surveillance duties, CEMEX, S.A.B. de C.V.'s board of directors is no longer in charge of managing CEMEX; instead, this is the responsibility of CEMEX, S.A.B. de C.V.'s chief executive officer.

Pursuant to the Mexican securities market law and CEMEX, S.A.B. de C.V.'s by-laws, at least 25% of its directors must qualify as independent directors.

CEMEX, S.A.B. de C.V. has not entered into any service contracts with its directors that provide for benefits upon termination of employment.

***The Audit Committee, the Corporate Practices Committee and the Finance Committee***

The Mexican securities market law required CEMEX, S.A.B. de C.V. to create a corporate practices committee comprised entirely of independent directors, in addition to its then existing audit committee. In compliance with such requirement, in 2006 CEMEX, S.A.B. de C.V. increased the responsibilities of its audit committee and changed its name to "corporate practices and audit committee." To further enhance the effectiveness of its corporate governance, at CEMEX, S.A.B. de C.V.'s annual shareholders meeting of April 23, 2009, CEMEX, S.A.B. de C.V.'s shareholders approved the division of this committee into two committees with different members and responsibilities, the audit committee and the corporate practices committee. In addition, at an annual general ordinary shareholders' meeting held on April 29, 2010, CEMEX, S.A.B. de C.V.'s shareholders approved the creation of the finance committee.

CEMEX, S.A.B. de C.V.'s audit committee is responsible for:

- evaluating our internal controls and procedures, and identifying deficiencies;
- following up with corrective and preventive measures in response to any non-compliance with our operation and accounting guidelines and policies;
- evaluating the performance of our external auditors;
- describing and valuing non-audit services performed by our external auditor;
- reviewing CEMEX, S.A.B. de C.V.'s financial statements;
- assessing the effects of any modifications to the accounting policies approved during any fiscal year;
- overseeing measures adopted as a result of any observations made by CEMEX, S.A.B. de C.V.'s shareholders, directors, executive officers, employees or any third parties with respect to accounting, internal controls and internal and external audit, as well as any complaints regarding management irregularities, including anonymous and confidential methods for addressing concerns raised by employees; and
- analyzing the risks identified by CEMEX, S.A.B. de C.V.'s independent auditors, accounting, internal control and process assessment areas.

CEMEX, S.A.B. de C.V.'s corporate practices committee is responsible for:

- evaluating the hiring, firing and compensation of CEMEX, S.A.B. de C.V.'s chief executive officer;
- reviewing the hiring and compensation policies for CEMEX, S.A.B. de C.V.'s executive officers;
- reviewing related party transactions;
- reviewing policies regarding use of corporate assets;
- reviewing unusual or material transactions;
- evaluating waivers granted to our directors or executive officers regarding seizure of corporate opportunities; and
- identifying, evaluating and following up on the operating risks affecting the company and its subsidiaries.

CEMEX, S.A.B. de C.V.'s finance committee is responsible for:

- evaluating the company's financial plans; and
- reviewing the company's financial strategy and its implementation.

Under CEMEX, S.A.B. de C.V.'s bylaws and the Mexican securities market law, all members of the corporate practices committee and the audit committee, including their presidents, are required to be independent directors. The president of the audit committee, the corporate practices committee and the finance committee shall be appointed and removed from his or her position only by the general shareholders meeting, and the rest of the members may only be removed by a resolution of the general shareholders meeting or of the board of directors.

Set forth below are the names of the members of CEMEX, S.A.B. de C.V.'s current audit committee, corporate practices committee and finance committee. The terms of the members of the committees are indefinite. José Manuel Rincón Gallardo qualifies as an "audit committee financial expert" for purposes of the Sarbanes Oxley Act of 2002. See "Item 16A—Audit Committee Financial Expert."

*Audit Committee:*

| | |
|---|---|
| Roberto Zambrano Villarreal, President | See "—Board of Directors." |
| José Manuel Rincón Gallardo | See "—Board of Directors." |
| Rafael Rangel Sostmann | See "—Board of Directors." |

*Corporate Practices Committee:*

| | |
|---|---|
| Dionisio Garza Medina, President | See "—Board of Directors." |
| Francisco Javier Fernández Carbajal | See "—Board of Directors." |
| Rafael Rangel Sostmann | See "—Board of Directors." |

*Finance Committee:*

| | |
|---|---|
| Rogelio Zambrano Lozano, President | See "—Board of Directors." |
| Rodolfo García Muriel | See "—Board of Directors." |
| Francisco Javier Fernández Carbajal | See "—Board of Directors." |
| Tomás Milmo Santos | See "—Board of Directors." |

**Compensation of CEMEX, S.A.B. de C.V.'s Directors and Members of Our Senior Management**

For the year ended December 31, 2012, the aggregate amount of compensation we paid, or our subsidiaries paid, to all members of our board of directors, alternate members of our board of directors and senior managers, as a group, was approximately U.S.$37.2 million. Approximately U.S.$26.1 million of this amount was paid as base compensation, including approximately U.S.$9.5 million of a bonus pool to key executives base on our operating performance and U.S.$3.1 million to provide pension, retirement or similar benefits. In addition, approximately U.S.$11.1 million of the aggregate amount corresponds to stock-based compensation, including approximately U.S.$2.4 million related to the bonus pool to key executives based on our operating performance and approximately U.S.$3 million of compensation earned under the program that is linked to the fulfillment of certain performance conditions and that is payable through March 2015 to then still active members of CEMEX, S.A.B. de C.V.´s board of directors and top management executives. During 2012, we issued 9.8 million of CPOs to this group pursuant to the Restricted Stock Incentive Plan, or RSIP, described below under "—Restricted Stock Incentive Plan (RSIP)."

***CEMEX, Inc. ESOP***

As a result of the acquisition of CEMEX, Inc. (formerly Southdown, Inc.) in November 2000, we established a stock option program for CEMEX, Inc.'s executives to purchase our ADSs. The options granted under the program have a fixed exercise price in U.S. Dollars equivalent to the average market price of one ADS during a six-month period before the grant date and have a 10-year term. Twenty-five percent of the options vested annually during the first four years after their grant date. The options are covered using shares currently

owned by our subsidiaries, thus potentially increasing stockholders' equity and the number of shares outstanding. As of December 31, 2012, options to acquire 1,014,894 ADSs remained outstanding under this program. These options have a weighted average exercise price of approximately U.S.$1.40 per CPO, or U.S.$13.98 per ADS. As of December 31, 2012, the outstanding options under this program had a remaining tenure of approximately 1.4 years.

***The November 2001 Voluntary Exchange Program***

In November 2001, we implemented a voluntary exchange program to offer participants in our then existing stock option program new options in exchange for their existing options. The new options have an escalating strike price in U.S. Dollars increasing at a 7% annual rate. As of December 31, 2012, options to acquire 1,451,249 CPOs remained outstanding under this program, with a weighted average exercise price of approximately U.S.$1.42 per CPO. As of December 31, 2012, the outstanding options under this program had a remaining tenure of approximately 0.6 years. Exercise prices and the number of underlying CPOs are technically adjusted for the dilutive effect of stock dividends and recapitalization of retained earnings.

***The 2004 Voluntary Early Exercise Program***

In December 2004, we offered participants in our then existing stock options programs new options, conditioned on the participants exercising and receiving the intrinsic value of their existing options. As a result of this program, we granted a total of 139,151,236 new options. The new options had an initial strike price of U.S.$7.4661 per CPO, which was U.S.$0.50 above the closing CPO market price on the date on which the old options were exercised, and which increased at a rate of 5.5% per annum. All gains from the exercise of these new options would be paid in restricted CPOs. The restrictions would be removed gradually within a period of between two and four years, depending on the exercise date.

Of the 139,151,236 new options, 120,827,370 would be automatically exercised if the closing CPO market price reached U.S.$8.50, while the remaining 18,323,866 options did not have an automatic exercise threshold. Holders of these options were entitled to receive an annual payment of U.S.$0.10 net of taxes per option outstanding as of the payment date until exercise or maturity of the options or until the closing CPO market price reached U.S.$8.50, which payment was scheduled to grow annually at a 10% rate.

On June 17, 2005, the closing CPO market price reached U.S.$8.50, and, as a result, all outstanding options subject to automatic exercise were automatically exercised and the annual payment to which holders of the remaining options were entitled was terminated. As of December 31, 2012, options to acquire 15,022,272 CPOs under this program were non-vested.

For accounting purposes under IFRS, as of December 31, 2012, we accounted for the options granted under the February 2004 voluntary exchange program by means of the fair value method through earnings. See notes 2S and 21 to our 2012 audited consolidated financial statements included elsewhere in this annual report.

***Consolidated Employee Stock Option Information***

Stock options activity during 2011 and 2012, the balance of options outstanding as of December 31, 2011 and 2012 and other general information regarding our stock option programs, is presented in note 21 to our 2012 audited consolidated financial statements included elsewhere in this annual report.

As of December 31, 2012, the following employee stock options to purchase our securities were outstanding:

| Title of security underlying options | Number of CPOs or CPO equivalents underlying options | Expiration Date | Range of exercise prices per CPO or CPO equivalent |
|---|---|---|---|
| CPOs (U.S. Dollars) (may be instantly cash-settled) | 1,451,249 | 2013 | U.S.$ 1.4-1.6 |
| CEMEX, Inc. ESOP | 10,148,940 | 2013-2015 | U.S.$ 1.0-1.9 |

***Restricted Stock Incentive Plan (RSIP)***

Since January 2005, we have been changing our long-term variable compensation programs from stock option grants to restricted stock awards under a RSIP. Under the terms of the RSIP, eligible employees are allocated a specific number of restricted CPOs as variable compensation to be vested over a four-year period. Before 2006, we distributed annually to a trust an amount in cash sufficient to purchase in the market, on behalf of each eligible employee, 25% of such employee's allocated number of CPOs. During 2006, in order to reduce the volatility of our RSIP, we began to distribute annually an amount in cash sufficient to purchase 100% of the allocated CPOs for each eligible employee. Although the vesting period of the restricted CPOs and other features of the RSIP did not change as a result of this new policy, the nominal amount of annual compensation received by eligible employees increased in proportion to the additional number of CPOs received as a result of the new policy. The CPOs purchased by the trust was held in a restricted account by the trust on behalf of each employee for four years. At the end of each year during such four-year period, the restrictions lapsed with respect to 25% of the allocated CPOs and such CPOs became freely transferable and subject to withdrawal from the trust.

Starting in 2009, we made additional changes to the mechanism for granting the RSIP, but the benefits remained the same as in previous years. First, CPOs are no longer purchased in the open market, but instead CEMEX issues new CPOs to cover the RSIP. Second, CEMEX now issues the RSIP in four blocks of 25% per year. The total number of CEMEX CPOs granted during 2012 was approximately 72.5 million, of which approximately 37.9 million were related to senior management and the board of directors. In 2012, approximately 46.4 million CPOs were issued, representing the first 25% of the 2012 program, representing the second 25% of the 2011 program, the third 25% of the 2010 program and the final 25% of the 2009 program. Of these 46.4 million CPOs, approximately 17.7 million corresponded to senior management and the board of directors. See note 25 to our consolidated financial statements included elsewhere in this annual report.

**Employees**

As of December 31, 2012, we had approximately 43,905 employees worldwide, which represented a decrease of approximately 0.45% from December 31, 2011. We reduced our headcount by approximately 28% as a result of the implementation of our global cost-reduction program since 2007, as part of our ongoing efforts to align our company with new market conditions, lower costs and increase our efficiency.

The following table sets forth the number of our full-time employees and a breakdown of their geographic location as of December 31, 2010, December 31, 2011 and December 31, 2012:

| Location | 2010 | 2011 | 2012 |
|---|---|---|---|
| Mexico | 13,082 | 12,036 | 11,108 |
| United States | 8,910 | 8,391 | 9,846 |
| Northern Europe | | | |
| United Kingdom | 3,580 | 3,259 | 3,072 |
| Germany | 3,149 | 3,010 | 2,907 |
| France | 1,963 | 1,933 | 1,915 |
| Rest of Northern Europe | 3,605 | 3,510 | 3,299 |
| The Mediterranean | | | |
| Spain | 2,595 | 2,228 | 1,798 |
| Egypt | 658 | 644 | 637 |
| Rest of the Mediterranean | 2,223 | 2,093 | 2,056 |
| South America and the Caribbean | | | |
| Colombia | 1,544 | 1,875 | 2,157 |
| Rest of South America and the Caribbean | 3,774 | 3,806 | 3,911 |
| Asia | | | |
| Philippines | 575 | 549 | 555 |
| Rest of Asia | 875 | 770 | 644 |

Employees in Mexico have collective bargaining agreements on a plant-by-plant basis, which are renewable on an annual basis with respect to salaries and on a biannual basis with respect to benefits. During 2012, more than 100 contracts with different labor unions were renewed.

Approximately 27% of our employees in the United States are represented by unions, with the largest number being members of the International Brotherhood of Teamsters, the Laborers' Union of North America, the International Brotherhood of Boilermakers and the International Union of Operating Engineers. Collective bargaining agreements are in effect or are being negotiated at many of our U.S. plants and have various expiration dates through December 31, 2017.

Our Spanish union employees have company collective bargaining agreements that are renewable every two to three years on a legal entity and business basis. Some employees in the ready-mix concrete, mortar, aggregates and transport sectors have industry collective bargaining agreements. Executive compensation in Spain is subject to our institutional policies and influenced by the local labor market.

In the United Kingdom, our cement manufacturing and cement logistics operations have collective bargaining agreements with the Unite union. The rest of our operations in the United Kingdom are not part of collective bargaining agreements; however, there are local agreements for consultation and employee representation with Unite union, and the GMB union.

In Germany, most of our employees work under collective bargaining agreements with the Industriegewerkschaft Bauen Agrar Umwelt—IG B.A.U. union. In addition to the collective bargaining agreements, there are internal company agreements, negotiated between the workers council and the company itself.

In France, less than 5% of our employees are members of one of the five main unions. At least one representative from one of five main unions is represented in our French subsidiaries, mainly in the following legal entities: Cemex Granulats, Cemex Bétons Ile de France, Cemex Bétons Rhône Alpes Auvergne, Cemex Bétons Sud Est and Cemex Granulats Rhône Méditrreanéee. All agreements are negotiated with unions and non-union representatives elected in the local workers council (*Comité d'Entreprise*) for periods of four years. The last elections took place in April 2010.

In Colombia, a single union represents our employees at the Bucaramanga and Cúcuta cement plants. There are also collective agreements with non-union workers at the Caracolito/Ibagué and Santa Rosa cement plants, all ready-mix concrete and aggregates plants and all logistics operations in Colombia. Overall, we consider our relationships with labor unions representing our employees to be satisfactory.

**Share Ownership**

As of March 31, 2013, our senior management and directors and their immediate families owned, collectively, approximately 2.25% of CEMEX, S.A.B. de C.V.'s outstanding shares, including shares underlying stock options and restricted CPOs under our ESOPs. This percentage does not include shares held by the extended families of members of our senior management and directors, since, to the best of our knowledge, no voting arrangements or other agreements exist with respect to those shares. As of March 31, 2013, no individual director or member of our senior management beneficially owned one percent or more of any class of CEMEX, S.A.B. de C.V.'s outstanding capital stock and each such individual's share ownership has not been previously disclosed to shareholders or otherwise made public.

## Item 7—Major Shareholders and Related Party Transactions

### Major Shareholders

Based upon information contained in a statement on Schedule 13G filed with the SEC on January 30, 2013, as of December 31, 2012, BlackRock Inc. beneficially owned 821,682,526 CPOs, which represent approximately 7.2% of CEMEX, S.A.B. de C.V.'s outstanding capital stock as of March 31, 2013. BlackRock Inc. does not have voting rights different from our other non-Mexican holders of CPOs. As required by CEMEX, S.A.B. de C.V.'s by-laws, CEMEX, S.A.B. de C.V.'s board of directors is required to approve Blackrock Inc.'s beneficial ownership of CEMEX, S.A.B. de C.V.'s outstanding capital stock. We expect the corresponding request for approval will be submitted to the board of directors during the second quarter of 2013.

Based upon information contained in a statement on Schedule 13G filed with the SEC on April 10, 2013, as of March 31, 2013, Southeastern Asset Management, Inc., an investment adviser registered under the U.S. Investment Advisers Act of 1940, as amended, beneficially owned 51,732,448 ADSs and 40,571,360 CPOs, which represent a total of 557,895,840 CPOs or approximately 4.9% of CEMEX, S.A.B. de C.V.'s outstanding capital stock as of March 31, 2013. According to SEC filings, Southeastern Asset Management, Inc. increased its shareholding from 13.7% of CEMEX, S.A.B. de C.V.'s then outstanding capital stock as of December 31, 2010 to 18.4% of CEMEX, S.A.B. de C.V.'s then outstanding capital stock as of December 31, 2011. Southeastern Asset Management, Inc. subsequently decreased its shareholding to 4.9% of CEMEX, S.A.B. de C.V.'s then outstanding capital stock as of March 31, 2013. Southeastern Asset Management, Inc. does not have voting rights different from our other non-Mexican holders of CPOs.

As of March 31, 2013, CEMEX, S.A.B. de C.V.'s outstanding capital stock consisted of 22,747,925,696 Series A shares and 11,373,962,848 Series B shares, in each case including shares held by our subsidiaries.

As of March 31, 2013, a total of 21,705,670,506 Series A shares and 10,852,835,253 Series B shares outstanding were held by the CPO trust. Each CPO represents two Series A shares and one Series B share. A portion of the CPOs is represented by ADSs. Under the terms of the CPO trust agreement, non-Mexican holders of CPOs and ADSs have no voting rights with respect to the A shares underlying those CPOs and ADSs. All ADSs are deemed to be held by non-Mexican nationals. At every shareholders' meeting, the A shares held in the CPO trust are voted as expressed by the shareholders representing the majority of the capital stock entitled to vote.

Other than BlackRock Inc., Southeastern Asset Management, Inc. and the CPO trust, we are not aware of any person that is the beneficial owner of five percent or more of any class of CEMEX, S.A.B. de C.V.'s voting securities.

As of March 31, 2013, through CEMEX, S.A.B. de C.V.'s subsidiaries, we owned approximately 18.2 million CPOs, representing approximately 0.2% of CEMEX, S.A.B. de C.V.'s outstanding CPOs and approximately 0.2% of CEMEX, S.A.B. de C.V.'s outstanding voting stock. These CPOs are voted at the direction of our management. CEMEX, S.A.B. de C.V.'s voting rights over those CPOs are the same as those of any other CPO holder. As of the same date, we did not hold any CPOs in derivative instruments hedging expected cash flows of stock options exercises.

CEMEX, S.A.B. de C.V.'s provide that its board of directors must authorize in advance any transfer of voting shares of its capital stock that would result in any person's, or group's acting in concert, becoming a holder of 2% or more of CEMEX, S.A.B. de C.V.'s voting shares.

Mexican securities regulations provide that our majority-owned subsidiaries may neither directly or indirectly invest in CEMEX, S.A.B. de C.V.'s CPOs nor other securities representing CEMEX, S.A.B. de C.V.'s capital stock. The Mexican securities authority could require any disposition of the CPOs or of other securities representing our capital stock so owned and/or impose fines on us if it were to determine that the ownership of our CPOs or of other

securities representing CEMEX, S.A.B. de C.V.'s capital stock by CEMEX, S.A.B. de C.V.'s subsidiaries, in most cases, negatively affects the interests of CEMEX, S.A.B. de C.V.'s shareholders. Notwithstanding the foregoing, the exercise of all rights pertaining to our CPOs or to other securities representing our capital stock in accordance with the instructions of CEMEX, S.A.B. de C.V.'s subsidiaries does not violate any provisions of CEMEX, S.A.B. de C.V.'s bylaws or the bylaws of its subsidiaries. The holders of these CPOs or of other securities representing CEMEX, S.A.B. de C.V.'s capital stock are entitled to exercise the same rights relating to their CPOs or their other securities representing CEMEX, S.A.B. de C.V.'s capital stock, including all voting rights, as any other holder of the same series.

As of March 31, 2013, we had 738 ADS holders of record, representing 5,295,010,310 CPOs, or approximately 46.6% of CEMEX, S.A.B. de C.V.'s outstanding capital stock as of such date.

On April 27, 2006, CEMEX, S.A.B. de C.V.'s shareholders approved a stock split, which occurred on July 17, 2006. In connection with the stock split, each of CEMEX, S.A.B. de C.V. existing series A shares was surrendered in exchange for two new series A shares, and each of CEMEX, S.A.B. de C.V.'s existing series B shares was surrendered in exchange for two new series B shares. Concurrent with this stock split, we authorized the amendment of the CPO trust agreement pursuant to which our CPOs are issued to provide for the substitution of two new CPOs for each of CEMEX, S.A.B. de C.V.'s existing CPOs, with each new CPO representing two new series A shares and one new series B share. In connection with the stock split and at our request, Citibank, N.A., as depositary for the ADSs, distributed one additional ADS for each ADS outstanding as of the record date for the stock split. The ratio of CPOs to ADSs did not change as a result of the stock split; each ADS represents ten new CPOs following the stock split and the CPO trust amendment. The proportional equity interest participation of existing shareholders did not change as a result of the stock split. The financial data set forth in this annual report have been adjusted to give effect to the stock split.

### Related Party Transactions

Francisco Javier Fernández Carbajal, a member of CEMEX, S.A.B. de C.V.'s board of directors, is also a member of the board of directors of FEMSA, a large multinational beverage company. In addition, José Antonio Fernández Carbajal, the brother of Francisco Javier Fernández Carbajal, is the president and chief executive officer of FEMSA. In the ordinary course of business, we pay and receive various amounts to and from FEMSA for products and services for varying amounts on market terms.

On April 12, 2011, Juan Pablo San Agustín Rubio was appointed to the role of executive vice president for strategic planning and business development, which is part of our senior management. In 2007, in compliance with our then applicable policies, we extended a loan to Mr. San Agustín Rubio for the construction of a house. As of the date of this annual report the loan has been repaid in full. The loan bore interest at an annual rate of 1.2% and the largest amount outstanding from January 1, 2011 until it was repaid was approximately €275,000.

Except as disclosed in the preceding paragraph, from January 1, 2010 through the date of this annual report, we did not have any other outstanding loans to any of our directors or members of senior management.

## Item 8—Financial Information

### Consolidated Financial Statements and Other Financial Information

See "Item 18—Financial Statements" and "Index to Consolidated Financial Statements."

### Legal Proceedings

See "Item 4—Information on the Company—Regulatory Matters and Legal Proceedings."

**Dividends**

A declaration of any dividend is made by CEMEX, S.A.B. de C.V.'s shareholders at a general ordinary meeting. Any dividend declaration is usually based upon the recommendation of CEMEX, S.A.B. de C.V.'s board of directors. However, CEMEX, S.A.B. de C.V.'s shareholders are not obligated to approve the board's recommendation. CEMEX, S.A.B. de C.V. may only pay dividends from retained earnings included in financial statements that have been approved by CEMEX, S.A.B. de C.V.'s shareholders and after all losses have been paid for, a legal reserve equal to 5% of its paid-in capital has been created and CEMEX, S.A.B. de C.V.'s shareholders have approved the relevant dividend payment. According to Mexican tax laws, all shareholders, excluding Mexican corporations, that receive a dividend in cash or in any other form are subject to a withholding tax. See "Item 10—Additional Information—Taxation—Mexican Tax Considerations." Since CEMEX, S.A.B. de C.V. conducts its operations through its subsidiaries, it has no significant assets of its own except for its investments in those subsidiaries. Consequently, CEMEX, S.A.B. de C.V.'s ability to pay dividends to its shareholders is dependent upon its ability to receive funds from its subsidiaries in the form of dividends, management fees, or otherwise. The Facilities Agreement and the indentures governing the Senior Secured Notes effectively prohibit CEMEX, S.A.B. de C.V. from declaring and paying cash dividends or making other cash distributions to its shareholders. See "Item 3—Key Information—Risk Factors—CEMEX, S.A.B. de C.V.'s ability to repay debt and pay dividends depends on our subsidiaries' ability to transfer income and dividends to us."

The recommendation of CEMEX, S.A.B. de C.V.'s board of directors as to whether to pay and the amount of any annual dividends has been and will continue to be, in absence of contractual restrictions to pay or declare dividends, based upon, among other things, earnings, cash flow, capital requirements, contractual restrictions, and our financial condition and other relevant factors.

Owners of ADSs on the applicable record date will be entitled to receive any dividends payable in respect of the A shares and the B shares underlying the CPOs represented by those ADSs; however, as permitted by the deposit agreement pursuant to which CEMEX, S.A.B. de C.V.'s ADSs are issued, CEMEX, S.A.B. de C.V. may instruct the ADS depositary not to extend the option to elect to receive cash in lieu of the stock dividend to the holders of ADSs. The ADS depositary will fix a record date for the holders of ADSs in respect of each dividend distribution. Unless otherwise stated, the ADS depositary has agreed to convert cash dividends received by it in respect of the A shares and the B shares underlying the CPOs represented by ADSs from Mexican Pesos into U.S. Dollars and, after deduction or after payment of expenses of the ADS depositary, to pay those dividends to holders of ADSs in U.S. Dollars. CEMEX, S.A.B. de C.V. cannot assure holders of its ADSs that the ADS depositary will be able to convert dividends received in Mexican Pesos into U.S. Dollars.

CEMEX, S.A.B. de C.V. did not declare a dividend for fiscal years 2010, 2011 and 2012.

**Significant Changes**

Except as described herein, no significant change has occurred since the date of our consolidated financial statements included elsewhere in this annual report.

**Item 9—Offer and Listing**

**Market Price Information**

CEMEX, S.A.B. de C.V.'s CPOs are listed on the Mexican Stock Exchange and trade under the symbol "CEMEX.CPO." CEMEX, S.A.B. de C.V.'s ADSs, each of which currently represents ten CPOs, are listed on the New York Stock Exchange ("NYSE") and trade under the symbol "CX." The following table sets forth, for the periods indicated, the reported highest and lowest market quotations in nominal Mexican Pesos for CPOs on the Mexican Stock Exchange and the high and low sales prices in U.S. Dollars for ADSs on the NYSE.

| | CPOs(1) | | ADSs | |
|---|---|---|---|---|
| Calendar Period | High | Low | High | Low |
| **Yearly** | | | | |
| 2008 | 33.80 | 5.55 | 32.61 | 4.01 |
| 2009 | 19.19 | 6.16 | 14.58 | 3.94 |
| 2010 | 16.16 | 9.59 | 12.60 | 7.46 |
| 2011 | 13.60 | 3.25 | 11.15 | 2.27 |
| 2012 | 12.93 | 7.00 | 10.14 | 4.94 |
| **Quarterly** | | | | |
| 2011 | | | | |
| First quarter | 13.60 | 10.13 | 11.15 | 8.35 |
| Second quarter | 10.96 | 8.99 | 9.28 | 7.55 |
| Third quarter | 10.14 | 4.36 | 8.70 | 3.33 |
| Fourth quarter | 7.70 | 3.25 | 5.61 | 2.27 |
| 2012 | | | | |
| First quarter | 11.05 | 7.25 | 8.67 | 5.30 |
| Second quarter | 9.99 | 7.00 | 7.88 | 4.94 |
| Third quarter | 11.18 | 8.45 | 8.74 | 6.28 |
| Fourth quarter | 12.93 | 10.71 | 10.14 | 8.07 |
| 2013 | | | | |
| First quarter | 15.55 | 12.59 | 12.47 | 9.83 |
| **Monthly** | | | | |
| 2012-2013 | | | | |
| October | 12.14 | 10.71 | 9.48 | 8.07 |
| November | 12.30 | 11.02 | 9.48 | 8.27 |
| December | 12.93 | 11.52 | 10.14 | 8.85 |
| January | 14.31 | 12.93 | 11.20 | 10.17 |
| February | 14.05 | 12.59 | 11.07 | 9.83 |
| March | 15.55 | 13.58 | 12.47 | 10.57 |
| April(2) | 15.41 | 13.61 | 12.71 | 11.03 |

Source: Based on data of the Mexican Stock Exchange and the NYSE.

(1) As of December 31, 2012, approximately 99.2% of CEMEX, S.A.B. de C.V.'s outstanding share capital was represented by CPOs.

(2) CPO and ADS prices are through April 19, 2013.

On April 19, 2013, the last reported closing price for CPOs on the Mexican Stock Exchange was Ps13.96 per CPO, and the last reported closing price for ADSs on the NYSE was U.S.$11.34 per ADS.

## Item 10—Additional Information

### Articles of Association and By-laws

#### *General*

Pursuant to the requirements of Mexican corporations law, CEMEX, S.A.B. de C.V.'s articles of association and by-laws ( *estatutos sociales)*, have been registered with the Mercantile Section of the Public Registry of Property and Commerce in Monterrey, N.L., Mexico, under entry number 21, since June 11, 1920.

CEMEX, S.A.B. de C.V. is a holding company engaged, through its operating subsidiaries, primarily in the production, distribution, marketing and sale of cement, ready-mix concrete and clinker. CEMEX, S.A.B. de C.V.'s objectives and purposes can be found in article 2 of CEMEX, S.A.B. de C.V.'s by-laws.

CEMEX, S.A.B. de C.V. has two series of common stock, the Series A common stock, with no par value, or A shares, which can only be owned by Mexican nationals, and the Series B common stock, with no par value, or B shares, which can be owned by both Mexican and non-Mexican nationals. CEMEX, S.A.B. de C.V.'s by-laws state that the A shares may not be held by non-Mexican individuals, corporations, groups, units, trusts, associations or governments that are foreign or have participation by foreign governments or their agencies. CEMEX, S.A.B. de C.V.'s by-laws also state that the A shares shall at all times account for a minimum of 64% of CEMEX, S.A.B. de C.V.'s total outstanding voting stock and that the B shares shall at all times account for a minimum of 36% of CEMEX, S.A.B. de C.V.'s total outstanding voting stock. Other than as described herein, holders of the A shares and the B shares have the same rights and obligations.

In 1994, CEMEX, S.A.B. de C.V. changed from a fixed capital corporation to a variable capital corporation in accordance with Mexican corporation law. As a result, CEMEX, S.A.B. de C.V. established a fixed capital account and a variable capital account and issued one share of variable capital stock of the same series for each eight shares of fixed capital stock held by any shareholder. Each of our fixed and variable capital accounts is comprised of A shares and B shares. Under the Mexican securities market law and CEMEX, S.A.B. de C.V.'s by-laws, holders of shares representing variable capital are not entitled to withdraw those shares.

Shareholder authorization is required to increase or decrease either the fixed capital account or the variable capital account. Shareholder authorization to increase or decrease the fixed capital account must be obtained at an extraordinary meeting of shareholders. Shareholder authorization to increase or decrease the variable capital account must be obtained at an ordinary general meeting of shareholders.

On September 15, 1999, CEMEX, S.A.B. de C.V.'s shareholders approved a stock split, and for every one of CEMEX, S.A.B. de C.V.'s shares of any series CEMEX, S.A.B. de C.V. issued two Series A shares and one Series B share. Concurrently with this stock split, CEMEX, S.A.B. de C.V. also consummated an exchange offer to exchange new CPOs and new ADSs representing the new CPOs for CEMEX, S.A.B. de C.V.'s then existing A shares, B shares and ADSs, and converted CEMEX, S.A.B. de C.V.'s then existing CPOs into the new CPOs.

On June 1, 2001, the Mexican securities market law was amended, among other, to increase the protection granted to minority shareholders of Mexican listed companies and to commence bringing corporate governance procedures of Mexican listed companies in line with international standards.

On February 6, 2002, the Mexican securities authority ( *Comisión Nacional Bancaria y de Valore*s) issued an official communication authorizing the amendment of CEMEX, S.A.B. de C.V.'s by-laws to incorporate additional provisions to comply with the then new provisions of the Mexican securities market law. Following approval from CEMEX, S.A.B. de C.V.'s shareholders at the 2002 annual general ordinary shareholders' meeting, CEMEX, S.A.B. de C.V. amended and restated its by-laws to incorporate these additional provisions, which consist of, among other things, protective measures to prevent share acquisitions, hostile takeovers, and direct or indirect changes of control. As a result of the amendment and restatement of CEMEX, S.A.B. de C.V.'s by-laws, the expiration of CEMEX, S.A.B. de C.V.'s corporate term of existence was extended from 2019 to 2100.

On March 19, 2003, the Mexican securities authority issued new regulations designed to (i) further implement minority rights granted to shareholders by the Mexican securities market law and (ii) simplify and consolidate in a single document provisions relating to securities offerings and periodic reports by Mexican-listed companies.

On April 24, 2003, CEMEX, S.A.B. de C.V.'s shareholders approved changes to its by-laws, incorporating additional provisions and removing some restrictions. The changes that are still in force are as follows:

- The limitation on CEMEX, S.A.B. de C.V.'s variable capital was removed. Formerly, CEMEX, S.A.B. de C.V.'s variable capital was limited to ten times CEMEX, S.A.B. de C.V.'s minimum fixed capital.
- Increases and decreases in CEMEX, S.A.B. de C.V.'s variable capital now require the notarization of the minutes of the annual general ordinary shareholders' meeting that authorize such increase or decrease, as well as the filing of these minutes with the Mexican National Securities Registry (*Registro Nacional de Valores*), except when such increase or decrease results from (i) shareholders exercising their redemption rights or (ii) stock repurchases.
- The cancellation of registration of our shares in the Securities Section of the Mexican National Securities Registry now involves an amended procedure, which is described below under "—Repurchase Obligation." In addition, any amendments to the article containing these provisions no longer require the consent of the Mexican securities authority and 95% approval by shareholders entitled to vote.

On December 30, 2005, a Mexican securities market law was published to continue bringing corporate governance requirements of Mexican listed companies in line with international standards. This new law includes provisions increasing disclosure information requirements, improving minority shareholder rights, and strengthening corporate governance standards including the introduction of new requirements and fiduciary duties (duties of care and loyalty), applicable to each director, officer, external auditor and major shareholder of publicly traded companies. The law also provides that each member of the audit committee must be an independent director, and requires the creation of corporate governance committees integrated by independent directors as well. In addition, the law clarifies directors' duties, specifies safe harbors for directors' actions, clarifies what is deemed as a conflict of interest and clarifies what are the confidentiality obligations for directors.

Under the new Mexican securities market law, CEMEX, S.A.B. de C.V. was required to adopt specific amendments to its by-laws within 180 days of the effective date of the new law. Following approval from CEMEX, S.A.B. de C.V.'s shareholders at its 2005 annual general ordinary shareholders' meeting held on April 27, 2006, CEMEX, S.A.B. de C.V. amended and restated its by-laws to incorporate these amendments. The amendments to CEMEX, S.A.B. de C.V.'s by-laws became effective on July 3, 2006. The most significant of these amendments were as follows:

- The change of its corporate name from CEMEX, S.A. de C.V. to CEMEX, S.A.B. de C.V., which means that it is now called a publicly traded company (*Sociedad Anónima Bursátil* or S.A.B.).
- The creation of a corporate practices committee, which is a new committee of CEMEX, S.A.B. de C.V.'s board of directors and which is comprised exclusively of independent directors.
- The elimination of the position of statutory examiner (comisario) and the assumption of its responsibilities by the board of directors through the audit committee and the new corporate practices committee, as well as through the external auditor who audits CEMEX, S.A.B. de C.V.'s financial statements, each within its professional role.
- The express attribution of certain duties (such as the duty of loyalty and the duty of care) and liabilities on members of the board of directors as well as on certain senior executive officers.
- The implementation of a mechanism for claims of a breach of a director's or officer's duties, to be brought by us or by holders of 5% or more of CEMEX, S.A.B. de C.V.'s shares.

- The chief executive officer is now the person in charge of managing the company; previously, this was the duty of the board of directors. The board of directors now supervises the chief executive officer.
- Shareholders are given the right to enter into certain agreements with other shareholders.

At a general extraordinary meeting of shareholders held on April 28, 2005, CEMEX, S.A.B. de C.V.'s shareholders approved a two-for-one stock split, which became effective on July 1, 2005. In connection with this stock split, each of CEMEX, S.A.B. de C.V.'s existing Series A shares was surrendered in exchange for two new Series A shares, and each of CEMEX, S.A.B. de C.V.'s existing Series B shares was surrendered in exchange for two new Series B shares. Concurrent with this stock split, we authorized the amendment of the CPO trust agreement pursuant to which CEMEX, S.A.B. de C.V.'s CPOs are issued to provide for the substitution of two new CPOs for each of CEMEX, S.A.B. de C.V.'s existing CPOs, with each new CPO representing two new Series A shares and one new Series B share. The number of CEMEX, S.A.B. de C.V.'s existing ADSs did not change as a result of the stock split. Instead, the ratio of CPOs to ADSs was modified so that each existing ADS represented ten new CPOs following the stock split and the CPO trust amendment.

At the 2005 annual general ordinary shareholders' meeting held on April 27, 2006, CEMEX, S.A.B. de C.V.'s shareholders approved a new stock split, which became effective on July 17, 2006. In connection with this new two-for-one stock split, each of its existing Series A shares was surrendered in exchange for two new Series A shares, and each of its existing Series B shares was surrendered in exchange for two new Series B shares. Concurrent with this stock split, we authorized the amendment of the CPO trust agreement pursuant to which CEMEX, S.A.B. de C.V.'s CPOs are issued to provide for the substitution of two new CPOs for each of its existing CPOs, with each new CPO representing two new Series A shares and one new Series B share. In connection with the stock split and at our request, Citibank, N.A., as depositary for the ADSs, distributed one additional ADS for each ADS outstanding as of the record date for the stock split. The ratio of CPOs to ADSs did not change as a result of the stock split; each ADS continued to represent ten CPOs following the stock split and the CPO trust amendment. The proportional equity interest participation of existing shareholders did not change as a result of this stock split.

On September 4, 2009, CEMEX, S.A.B. de C.V. held an extraordinary shareholders' meeting in which its shareholders approved an increase in the variable portion of its capital stock of up to 4.8 billion shares (equivalent to 1.6 billion CPOs or 160 million ADSs). Pursuant to the resolution approved by CEMEX, S.A.B. de C.V.'s shareholders, the subscription and payment of the new shares represented by CPOs may occur through a public offer of CPOs and/or issuance of convertible bonds within a period of 24 months. On September 28, 2009, CEMEX, S.A.B. de C.V. sold a total of 1,495,000,000 CPOs, directly or in the form of ADSs, in a global offering for approximately U.S.$1,782 billion in net proceeds. On November 11, 2009, CEMEX, S.A.B. de C.V. launched an exchange offer in México, in transactions exempt from registration pursuant to Regulation S under the Securities Act, directed to holders of CBs, in order to exchange such CBs for the Mandatory Convertible Notes. Pursuant to the exchange offer, on December 10, 2009, CEMEX, S.A.B. de C.V. issued approximately Ps4.1 billion (approximately U.S.$334 million at the Peso/U.S. Dollar CEMEX accounting rate on December 31, 2010) in Mandatory Convertible Notes in exchange for CBs. On March 30, 2010, CEMEX, S.A.B. de C.V.'s closed the offering of U.S.$715 million aggregate principal amount of its 2010 Optional Convertible Subordinated Notes.

On February 24, 2011, CEMEX, S.A.B. de C.V. held an extraordinary shareholders' meeting in which its shareholders approved an increase in the variable portion of its capital stock of up to 6 billion shares (equivalent to 2 billion CPOs or 200 million ADSs). Pursuant to the resolution approved by CEMEX, S.A.B. de C.V.'s shareholders, the subscription and payment of the new shares represented by CPOs may occur through a public offer of CPOs and/or issuance of convertible bonds and, until then, these shares will be kept in our treasury. In addition, on February 24, 2011, CEMEX, S.A.B. de C.V. held its annual general ordinary shareholders' meeting in which its shareholders approved an increase in the variable portion of its capital stock of up to 60 million shares (equivalent to 20 million CPOs or 2 million ADSs). These shares will be kept in CEMEX, S.A.B. de

C.V.'s treasury and will be used to preserve the rights of note holders pursuant to the issuance of convertible notes. On March 15, 2011, CEMEX, S.A.B. de C.V.'s closed the offering of U.S.$1,667,500,000 aggregate principal amount of its 2011 Optional Convertible Subordinated Notes.

As of December 31, 2012, CEMEX, S.A.B. de C.V.'s common stock was represented as follows:

| | 2012 | |
|---|---|---|
| Shares(1) | Series A(2) | Series B(3) |
| Subscribed and paid shares | 21,872,295,096 | 10,936,147,548 |
| Unissued shares authorized for stock compensation programs | 1,155,804,458 | 577,902,229 |
| Shares that guarantee the issuance of convertible securities(4) | 6,162,438,520 | 3,081,219,260 |
| Shares authorized for the issuance of stock or convertible securities(5) | 4,146,404 | 2,073,202 |
| | 29,194,684,478 | 14,597,342,239 |

(1) As of December 31, 2012, 13,068,000,000 shares correspond to the fixed portion, and 30,724,026,717 shares correspond to the variable portion.
(2) Series "A" or Mexican shares must represent at least 64% of CEMEX's capital stock.
(3) Series "B" or free subscription shares must represent at most 36% of CEMEX's capital stock.
(4) Shares that guarantee the conversion of the Mandatory Convertible Notes and the 2010 Optional Convertible Subordinated Notes and 2011 Optional Convertible Subordinated Notes.
(5) Shares authorized for the issuance of stock through a public offer or through the issuance of convertible securities.

On March 21, 2013, CEMEX, S.A.B. de C.V. held its 2012 annual general ordinary shareholders' meeting in which its shareholders approved, among other items, (i) an increase in the variable portion of CEMEX, S.A.B. de C.V.'s capital stock of up to 1,312,380,330 shares (equivalent to approximately 437.5 million CPOs or 43,746,011 ADSs) paid with a charge to retained earnings and (ii) an increase in the variable portion of CEMEX, S.A.B. de C.V.'s capital stock through the issuance of up to 369,000,000 shares (equivalent to 123 million CPOs or 12,300,000 ADSs), such shares to be kept in CEMEX, S.A.B. de C.V.'s treasury and to be used to preserve the rights of note holders pursuant to the outstanding Mandatory Convertible Notes and the 2010 and 2011 Optional Convertible Subordinated Notes.

In addition, on March 21, 2013, CEMEX, S.A.B. de C.V. held an extraordinary shareholder's meeting at which its shareholders approved, among other items, the proposal by the board of directors to (i) issue new notes convertible into shares and to place them (A) among public investors and use the proceeds to pay and cancel a corresponding amount of 2010 Optional Convertible Subordinated Notes and 2011 Optional Convertible Subordinated Notes and/or (B) through an exchange offer for the 2010 Optional Convertible Subordinated Notes and 2011 Optional Convertible Subordinated Notes, and (ii) apply the shares held in treasury to satisfy the conversion rights of any such cancelled or exchanged 2010 Optional Convertible Subordinated Notes or 2011 Optional Convertible Subordinated Notes to satisfy the conversion rights of any such new notes convertible into shares.

CEMEX, S.A.B. de C.V. did not declare a dividend for fiscal years 2010, 2011 and 2012. See "Item 8—Financial Information—Dividends" for a description of CEMEX, S.A.B. de C.V.'s policy on dividend distributions and dividend restrictions.

At each of CEMEX, S.A.B. de C.V.'s 2010, 2011 and 2012 annual general ordinary shareholders' meetings, held on February 24, 2011, February 23, 2012 and March 21, 2013, respectively, CEMEX, S.A.B. de C.V.'s shareholders approved a recapitalization of retained earnings. New CPOs issued pursuant to each such recapitalization were allocated to shareholders on a pro-rata basis. As a result, shares equivalent to approximately 401 million CPOs, approximately 418.7 million CPOs and approximately 437.5 million CPOs were allocated to shareholders on a pro-rata basis in connection with the 2010, 2011 and 2012 recapitalizations, respectively. In each case, CPO holders received one new CPO for each 25 CPOs held and ADS holders received one new ADS for each 25 ADSs held. There was no cash distribution and no entitlement to fractional shares.

***Changes in Capital Stock and Preemptive Rights***

Subject to certain exceptions referred below, CEMEX, S.A.B. de C.V.'s by-laws allow for a decrease or increase in its capital stock if it is approved by its shareholders at a shareholders' meeting. Additional shares of CEMEX, S.A.B. de C.V.'s capital stock, having no voting rights or limited voting rights, are authorized by its by-laws and may be issued upon the approval of its shareholders at a shareholders' meeting, with the prior approval of the Mexican securities authority.

CEMEX, S.A.B. de C.V.'s by-laws provide that, subject to certain exceptions, shareholders have preemptive rights with respect to the class and in proportion to the number of shares of our capital stock they hold, in connection with any capital increase in the number of outstanding A shares, B shares, or any other existing series of shares, as the case may be. Subject to certain requirements: (i) under article 53 of the Mexican securities market law, this preemptive right to subscribe is not applicable to increases of CEMEX, S.A.B. de C.V.'s capital through public offers; and (ii) under article 210 bis of the General Law of Negotiable Instruments and Credit Operations ( *Ley General de Titulos y Operaciones de Credito* ), this preemptive right to subscribe is not applicable when issuing shares under convertible notes. Preemptive rights give shareholders the right, upon any issuance of shares by us, to purchase a sufficient number of shares to maintain their existing ownership percentages. Preemptive rights must be exercised within the period and under the conditions established for that purpose by the shareholders, and CEMEX, S.A.B. de C.V.'s by-laws and applicable law provide that this period must be 15 days following the publication of the notice of the capital increase in the Official Gazette of the State of Nuevo León ( *Periódico Oficial del Estado de Nuevo León* ) or any major newspaper published and distributed in the City of Monterrey, Nuevo León, México.

Holders of ADSs that are U.S. persons or are located in the United States may be restricted in their ability to participate in the exercise of such pre-emptive rights. See "Item 3—Key Information—Risk Factors—Preemptive rights may be unavailable to ADS holders."

Pursuant to the CEMEX, S.A.B. de C.V. by-laws, significant acquisitions of shares of CEMEX, S.A.B. de C.V.'s capital stock and changes of control of CEMEX, S.A.B. de C.V. require prior approval from CEMEX, S.A.B. de C.V.'s board of directors. CEMEX, S.A.B. de C.V.'s board of directors must authorize in advance any transfer of, or creation of any encumbrance or lien on, voting shares of CEMEX, S.A.B. de C.V.'s capital stock that would result in any person or group becoming a holder of 2% of more of CEMEX, S.A.B. de C.V.'s shares. The CEMEX, S.A.B. de C.V. board of directors shall consider the following when determining whether to authorize such transfer of voting shares: a) the type of investors involved; b) whether the acquisition would result in the potential acquirer exercising a significant influence or being able to obtain control; c) whether all applicable rules and CEMEX, S.A.B. de C.V.'s by-laws have been observed by the potential acquirer; d) whether the potential acquirers are our competitors and whether there is a risk of affecting market competition, or the potential acquirers could have access to confidential and privileged information; e) the morality and economic solvency of the potential acquirers; f) the protection of minority rights and the rights of our employees; and g) whether an adequate base of investors would be maintained. If the CEMEX, S.A.B. de C.V. board of directors denies the authorization, or the requirements established in CEMEX, S.A.B. de C.V.'s by-laws are not complied with, the persons involved in the transfer shall not be entitled to exercise the voting rights corresponding to the transferred shares, and such shares shall not be taken into account for the determination of the quorums of attendance and voting at shareholders' meetings, nor shall the transfers be recorded in our share registry and the registry undertaken by S.D. Indeval, Institucion para el Deposito de Valores, S.A. de C.V., or Indeval, the Mexican securities depositary, shall not have any effect.

Any acquisition of shares of CEMEX, S.A.B. de C.V.'s capital stock representing 30% or more of its capital stock by a person or group of persons requires prior approval from CEMEX, S.A.B. de C.V.'s board of directors and, in the event approval is granted, the acquirer has an obligation to make a public offer to purchase all of the outstanding shares of CEMEX, S.A.B. de C.V.'s capital stock. In the event the requirements for significant acquisitions of shares of CEMEX, S.A.B. de C.V.'s capital stock are not met, the persons acquiring such shares

will not be entitled to any corporate rights with respect to such shares, such shares will not be taken into account for purposes of determining a quorum for shareholders' meetings, CEMEX, S.A.B. de C.V. will not record such persons as holders of such shares in its share registry, and the registry undertaken by the Indeval shall not have any effect.

CEMEX, S.A.B. de C.V.'s by-laws require the stock certificates representing shares of its capital stock to make reference to the provisions in its by-laws relating to the prior approval of the CEMEX, S.A.B. de C.V. board of directors for significant share transfers and the requirements for recording share transfers in its share registry. In addition, shareholders are responsible for informing CEMEX, S.A.B. de C.V. within five business days whenever their shareholdings exceed 5%, 10%, 15%, 20%, 25% and 30% of CEMEX, S.A.B. de C.V.'s capital stock. If a person acquires beneficial ownership (within the meaning of Rule 13d-3 promulgated by the SEC under the Securities Exchange Act of 1934) of 20% or more in voting power of the outstanding voting stock of CEMEX, S.A.B. de C.V., a change of control will be deemed to have occurred under the Facilities Agreement and other debt agreements of CEMEX; provided that the acquisition of beneficial ownership of capital stock of CEMEX, S.A.B. de C.V. by Lorenzo H. Zambrano or any member of his immediate family shall not constitute a change of control as described herein.

CEMEX, S.A.B. de C.V. is required to maintain a share registry that records the names, nationalities and domiciles of all significant shareholders, and any shareholder that meets or exceeds these thresholds must be recorded in this registry if such shareholder is to be recognized or represented at any shareholders' meeting. If a shareholder fails to inform CEMEX, S.A.B. de C.V. of its shareholdings reaching a threshold as described above, we will not record the transactions that cause such threshold to be met or exceeded in CEMEX, S.A.B. de C.V.'s share registry, and such transaction will have no legal effect and will not be binding on us.

CEMEX, S.A.B. de C.V.'s by-laws also require that its shareholders comply with legal provisions regarding acquisitions of securities and certain shareholders' agreements that require disclosure to the public.

***Repurchase Obligation***

In accordance with Mexican securities regulations, CEMEX, S.A.B. de C.V. is obligated to make a public offer for the purchase of stock to its shareholders if CEMEX, S.A.B. de C.V.'s registration with the Mexican securities registry is canceled, either by resolution of its shareholders or by an order of the Mexican securities authority. The minimum price at which we must purchase the stock is the higher of:

- the weighted average price per share based on the weighted average trading price of CEMEX, S.A.B. de C.V.'s CPOs on the Mexican Stock Exchange during the latest period of 30 trading days preceding the date of the offer, for a period not to exceed six months; or
- the book value per share, as reflected in the last quarterly report filed with the Mexican securities authority and the Mexican Stock Exchange before the date of the offer.

CEMEX, S.A.B. de C.V.'s board of directors shall prepare and disclose to the public through the Mexican Stock Exchange, within ten business days after the day the public offer begins, and after consulting the corporate practices committee, its opinion regarding the price of the offer and any conflicts of interests that each of its members may have regarding such offer. This opinion may be accompanied by an additional opinion issued by an independent expert that we may hire.

Following the cancellation of CEMEX, S.A.B. de C.V.'s registration with the Mexican securities registry, it must place in a trust set up for that purpose for a six-month period an amount equal to that required to purchase the remaining shares held by investors who did not participate in the offer.

***Shareholders' Meetings and Voting Rights***

Shareholders' meetings may be called by:

- CEMEX, S.A.B. de C.V.'s board of directors or the corporate practices committee or the audit committee;
- shareholders representing at least 10% of outstanding and fully paid shares, by requesting that it to the chairman of CEMEX, S.A.B. de C.V.'s board of directors or CEMEX, S.A.B. de C.V.'s corporate practices committee and audit committee;
- any shareholder (i) if no meeting has been held for two consecutive years or when the matters referred to in Article 181 of the Mexican corporations law have not been dealt with, or (ii) when, for any reason, the required quorum for valid sessions of the corporate practices committee and audit committee was not reached and the board of directors failed to make the appropriate provisional appointments; or
- a Mexican court of competent jurisdiction, in the event CEMEX, S.A.B. de C.V.'s board of directors or the corporate practices committee and audit committee do not comply with the valid shareholders' request described above.

Notice of shareholders' meetings must be published in the Official Gazette of the State of Nuevo León ( *Periódico Oficial del Estado de Nuevo León* ), Mexico or any major newspaper published and distributed in the City of Monterrey, Nuevo León, Mexico. The notice must be published at least 15 days prior to the date of any shareholders' meeting. Consistent with Mexican law, CEMEX, S.A.B. de C.V.'s by-laws further require that all information and documents relating to the shareholders' meeting be available to shareholders from the date the notice of the meeting is published.

General shareholders' meetings can be ordinary or extraordinary. At every general shareholders' meeting, each qualified holder of A shares and B shares is entitled to one vote per share. Shareholders may vote by proxy duly appointed in writing. Under the CPO trust agreement, holders of CPOs who are not Mexican nationals cannot exercise voting rights corresponding to the A shares represented by their CPOs, in which case, the CPO trustee will vote the underlying A shares in the same manner as the holders of the majority of the voting shares.

An annual general ordinary shareholders' meeting must be held during the first four months after the end of each of CEMEX, S.A.B. de C.V.'s fiscal year to consider the approval of a report of its board of directors regarding CEMEX, S.A.B. de C.V.'s performance and its financial statements for the preceding fiscal year and to determine the allocation of profits from the preceding year. In addition, CEMEX, S.A.B. de C.V.'s annual general ordinary shareholders' meeting must:

- review the annual reports of CEMEX, S.A.B. de C.V.' corporate practices committee and audit committee, its chief executive officer, and its board of directors;
- elect, remove, or substitute the members of CEMEX, S.A.B. de C.V.'s board of directors;
- determine the level of independence of the members of CEMEX, S.A.B. de C.V.'s board of directors;
- elect or remove the chairman of CEMEX, S.A.B. de C.V.'s audit and corporate practices committees;
- approve any transaction that represents 20% or more of CEMEX, S.A.B. de C.V. consolidated assets; and
- resolve any issues not reserved for extraordinary shareholders' meetings.

A general extraordinary shareholders' meeting may be called at any time to deal with any of the matters specified by Article 182 of the Mexican corporations law, which include, among other things:

- extending CEMEX, S.A.B. de C.V.'s corporate existence;

- CEMEX, S.A.B. de C.V.'s voluntary dissolution;
- increasing or reducing CEMEX, S.A.B. de C.V.'s fixed capital stock;
- changing CEMEX, S.A.B. de C.V.'s corporate purpose;
- changing CEMEX, S.A.B. de C.V.'s country of incorporation;
- changing CEMEX, S.A.B. de C.V.'s form of organization;
- a proposed merger;
- issuing preferred shares;
- redeeming CEMEX, S.A.B. de C.V.'s own shares;
- any amendment to CEMEX, S.A.B. de C.V.'s by-laws; and
- any other matter for which a special quorum is required by law or by CEMEX, S.A.B. de C.V.'s by-laws.

In order to vote at a meeting of shareholders, shareholders must (i) appear on the list that Indeval and the Indeval participants holding shares on behalf of the shareholders prepare prior to the meeting or must deposit prior to that meeting, or (ii) prior to the meeting, deposit the certificates representing their shares at CEMEX, S.A.B. de C.V.'s offices or in a Mexican credit institution or brokerage house that operates in accordance with applicable laws in Mexico. The certificate of deposit with respect to the share certificates must be presented to CEMEX, S.A.B. de C.V.'s company secretary at least 48 hours before a meeting of shareholders. CEMEX, S.A.B. de C.V.'s company secretary verifies that the person in whose favor any certificate of deposit was issued is named in CEMEX, S.A.B. de C.V.'s share registry and issues an admission pass authorizing that person's attendance at the meeting of shareholders.

CEMEX, S.A.B. de C.V.'s by-laws provide that a shareholder may only be represented by proxy in a shareholders' meeting with a duly completed form provided by CEMEX, S.A.B. de C.V. authorizing the proxy's presence. In addition, CEMEX, S.A.B. de C.V.'s by-laws require that the secretary acting at the shareholders' meeting publicly affirm the compliance by all proxies with this requirement. A shareholders' resolution is required to take action on any matter presented at a shareholders' meeting.

At an ordinary meeting of shareholders, the affirmative vote of the holders of a majority of the shares present at the meeting is required to adopt a shareholders' resolution. At an extraordinary meeting of shareholders, the affirmative vote of at least 50% of the capital stock is required to adopt a shareholders' resolution, except that when amending Article 7 (with respect to measures limiting shareholding ownership), Article 10 (relating to the register of shares and significant participations) or Article 22 (specifying the impediments to being appointed a member of CEMEX, S.A.B. de C.V.'s board of directors) of CEMEX, S.A.B. de C.V.'s by-laws, the affirmative vote of at least 75% of the voting stock is needed.

The attendance quorum for a general ordinary meeting of shareholders upon the first call, is 50% of CEMEX, S.A.B. de C.V.'s outstanding and fully paid shares, and for the second call is any number of CEMEX, S.A.B. de C.V.'s outstanding and fully paid shares. If the quorum is not met upon the first call, a subsequent meeting may be called and the quorum for the second ordinary meeting is any number of CEMEX, S.A.B. de C.V.'s outstanding and fully paid shares represented at the meeting. The attendance quorum for the extraordinary shareholders' meeting upon the first call, is 75% of CEMEX, S.A.B. de C.V.'s outstanding and fully paid shares, upon the second and subsequent calls is 50% of CEMEX, S.A.B. de C.V.'s outstanding and fully paid shares.

***Rights of Minority Shareholders***

At CEMEX, S.A.B. de C.V.'s annual general ordinary shareholders' meeting, any shareholder or group of shareholders representing 10% or more of its voting stock has the right to appoint or remove one member of

CEMEX, S.A.B. de C.V.'s board of directors, in addition to the directors appointed by the majority. Such appointment may only be revoked by other shareholders when the appointment of all other directors is also revoked.

CEMEX, S.A.B. de C.V.'s by-laws provide that holders of at least 10% of its capital stock are entitled to demand the postponement of the voting on any resolution of which they deem they have not been sufficiently informed.

Under Mexican law, holders of at least 20% of CEMEX, S.A.B. de C.V.'s outstanding capital stock entitled to vote on a particular matter may oppose any resolution at a shareholders' meeting, by filing a petition for a court order to suspend the resolution temporarily with a court of law within 15 days after the adjournment of the meeting at which that action was taken and showing that the challenged action violates Mexican law or CEMEX, S.A.B. de C.V.'s by-laws and provided the opposing shareholders deliver a bond to the court to secure payment of any damages that we suffer as a result of suspending the resolution in the event that the court ultimately rules against the opposing shareholders. Relief under these provisions is only available to holders who were entitled to vote on, or whose rights as shareholders were adversely affected by, the challenged shareholder action and whose shares were not represented when the action was taken or, if represented, voted against it.

Under Mexican law, an action for civil liabilities against directors may be initiated by a shareholders' resolution for violation of their duty of loyalty to shareholders. In the event shareholders decide to bring an action of this type, the persons against whom that action is brought will immediately cease to be directors. Additionally, shareholders representing not less than 33% of the outstanding shares may directly exercise that action against the directors; provided that:

- those shareholders shall not have voted against exercising such action at the relevant shareholders' meeting; and
- the claim covers all of the damage alleged to have been caused to us and not merely the damage suffered by the plaintiffs.

Under CEMEX, S.A.B. de C.V.'s by-laws, shareholders representing 5% or more of its outstanding capital stock may initiate actions exclusively on behalf of CEMEX, S.A.B. de C.V. against members of its board of directors, its corporate practices committee and audit committee, its chief executive officer, or any relevant executives, for breach of their duty of care or duty of loyalty to shareholders or for committing illicit acts or activities. The only requirement is that the claim covers all of the damage alleged to have been caused to us or any entities on which we have a significant influence and not merely the damage suffered by the plaintiffs. Actions initiated on these grounds have a five-year statute of limitations from the day of the act or action that caused the damage.

Any recovery of damages with respect to these actions will be for CEMEX, S.A.B. de C.V.'s benefit and not that of the shareholders bringing the action.

***Registration and Transfer***

CEMEX, S.A.B. de C.V.'s common stock is evidenced by share certificates in registered form with registered dividend coupons attached. Shareholders who have not deposited their shares into the CPO trust may hold their shares in the form of physical certificates or through institutions that have accounts with Indeval. Accounts may be maintained at Indeval by brokers, banks and other entities approved by the Mexican securities authority. CEMEX, S.A.B. de C.V. maintains a stock registry, and, in accordance with Mexican law, only those holders listed in CEMEX, S.A.B. de C.V.'s stock registry and those holding certificates issued by Indeval and by Indeval participants indicating ownership are recognized as CEMEX, S.A.B. de C.V. shareholders.

Pursuant to Mexican law, any transfer of shares must be registered in CEMEX, S.A.B. de C.V.'s stock registry, if effected physically, or through book entries that may be tracked back from CEMEX, S.A.B. de C.V.'s stock registry to the records of Indeval.

***Redemption***

CEMEX, S.A.B. de C.V.'s capital stock is subject to redemption upon approval of our shareholders at an extraordinary shareholders' meeting.

***Share Repurchases***

If approved by CEMEX, S.A.B. de C.V.'s shareholders at a general shareholders' meeting, we may purchase CEMEX, S.A.B. de C.V.'s outstanding shares. The economic and voting rights corresponding to repurchased shares cannot be exercised during the period the shares are owned by us and the shares will be deemed outstanding for purposes of calculating any quorum or vote at any shareholders' meeting. We may also repurchase our equity securities on the Mexican Stock Exchange at the then prevailing market prices in accordance with Mexican securities law. If we intend to repurchase shares representing more than 1% of CEMEX, S.A.B. de C.V.'s outstanding shares at a single trading session, we must inform the public of such intention at least ten minutes before submitting our bid. If we intend to repurchase shares representing 3% or more of CEMEX, S.A.B. de C.V.'s outstanding shares during a period of 20 trading days, we are required to conduct a public tender offer for such shares. We must conduct share repurchases through the person or persons approved by CEMEX, S.A.B. de C.V.'s board of directors, through a single broker dealer during the relevant trading session, and without submitting bids during the first and the last 30 minutes of each trading session. We must inform the Mexican Stock Exchange of the results of any share repurchase no later than the business day following any such share repurchase.

***Directors' and Shareholders' Conflict of Interest***

Under Mexican law, any shareholder who has a conflict of interest with CEMEX, S.A.B. de C.V. with respect to any transaction is obligated to disclose such conflict and is prohibited from voting on that transaction. A shareholder who violates this prohibition may be liable for damages if the relevant transaction would not have been approved without that shareholder's vote.

Under Mexican law, any director who has a conflict of interest with CEMEX, S.A.B. de C.V. in any transaction must disclose that fact to the other directors and is prohibited from participating and being present during the deliberations and voting on that transaction. A director who violates this prohibition will be liable for damages and lost profits. Additionally, CEMEX, S.A.B. de C.V.'s directors may not represent shareholders in our shareholders' meetings.

***Withdrawal Rights***

Whenever CEMEX, S.A.B. de C.V.'s shareholders approve a change of corporate purpose, change of nationality or transformation from one form of corporate organization to another, Mexican law provides that any shareholder entitled to vote on that change who has voted against it may withdraw from CEMEX, S.A.B. de C.V. and receive an amount equal to the book value (in accordance with the latest balance sheet approved by the annual general ordinary shareholders' meeting) attributable to such shareholder's shares, provided that such shareholder exercises that right within 15 days following the meeting at which the change was approved.

***Dividends***

At the annual general ordinary shareholders' meeting, CEMEX, S.A.B. de C.V.'s board of directors submits, for approval by its shareholders, its financial statements together with a report on them prepared by its board of directors and the statutory auditors. CEMEX, S.A.B. de C.V.'s shareholders, once they have approved the financial statements, determine the allocation of our net income, after provision for income taxes, legal reserve and statutory employee profit sharing payments, for the preceding year. All shares of CEMEX, S.A.B. de C.V.'s capital stock outstanding at the time a dividend or other distribution is declared are entitled to share equally in that dividend or other distribution.

***Liquidation Rights***

In the event CEMEX, S.A.B. de C.V. is liquidated, the surplus assets remaining after payment of all its creditors will be divided among CEMEX, S.A.B. de C.V.'s shareholders in proportion to the respective shares held by them. The liquidator may, with the approval of CEMEX, S.A.B. de C.V.'s shareholders, distribute the surplus assets in kind among CEMEX, S.A.B. de C.V.'s shareholders, sell the surplus assets and divide the proceeds among CEMEX, S.A.B. de C.V.'s shareholders or put the surplus assets to any other uses agreed to by a majority of CEMEX, S.A.B. de C.V.'s shareholders voting at an extraordinary shareholders' meeting.

***Differences Between Our Corporate Governance Practices and NYSE Standards for Domestic Companies***

For a description of significant ways in which CEMEX, S.A.B. de C.V.'s corporate governance practices differ from those required of domestic companies under NYSE standards, see "Item 16G—Corporate Governance."

**Material Contracts**

On March 14, 2006, CEMEX, S.A.B. de C.V. registered a Ps5 billion revolving promissory note program ( *programa dual revolvente de certificados bursátiles*) with the Mexican securities authority. CEMEX, S.A.B. de C.V. has subsequently increased the authorized amount under this program. On March 31, 2010, we received authorization from the Mexican securities authority for a Ps10 billion revolving promissory note program, which authorization is valid until March 31, 2015.

On December 18, 2006, CEMEX, through two special purpose vehicles, issued two tranches of fixed-to-floating rate callable Perpetual Debentures. C5 Capital (SPV) Limited issued U.S.$350 million original principal amount of Perpetual Debentures under the first tranche, with the issuer having the option to redeem such Perpetual Debentures on December 31, 2011 and on each interest payment date thereafter, of which U.S.$69 million principal amount were outstanding as of December 31, 2012 (excluding Perpetual Debentures held by us). C10 Capital (SPV) Limited issued U.S.$900 million original principal amount of Perpetual Debentures under the second tranche, with the issuer having the option to redeem such Perpetual Debentures on December 31, 2016 and on each interest payment date thereafter, of which U.S.$183 million principal amount were outstanding as of December 31, 2012 (excluding Perpetual Debentures held by us). Both tranches pay coupons denominated in U.S. Dollars at a fixed rate until the call date and at a floating rate thereafter. On February 12, 2007, CEMEX, through a special purpose vehicle, issued a third tranche of fixed-to-floating rate callable Debentures. C8 Capital (SPV) Limited issued U.S.$750 million original principal amount of Perpetual Debentures under this third tranche, with the issuer having the option to redeem such Perpetual Debentures on December 31, 2014 and on each interest payment date thereafter, of which U.S.$137 million principal amount were outstanding as of December 31, 2012 (excluding Perpetual Debentures held by us). This third tranche also pays coupons denominated in U.S. Dollars at a fixed rate until the call date and at a floating rate thereafter. On May 9, 2007, CEMEX, through a special purpose vehicle, issued a fourth tranche of fixed-to-floating rate callable Perpetual Debentures. C10-EUR Capital (SPV) Limited issued €730 million original principal amount of Perpetual Debentures under this fourth tranche, with the issuer having the option to redeem such Perpetual Debentures on June 30, 2017 and on each interest payment date thereafter, of which €64 million principal amount were outstanding as of December 31, 2012 (excluding Perpetual Debentures held by us). This fourth tranche pays coupons denominated in Euros at a fixed rate until the call date and at a floating rate thereafter. Due to their perpetual nature and optional deferral of coupons, these transactions, in accordance with IFRS, qualify as equity.

On March 5, 2007, CEMEX Finance Europe B.V., issued €900 million in Eurobonds paying a fixed coupon of 4.75% and maturing in 2014. The Eurobonds have been listed for trading on the London Stock Exchange's Professional Securities Market. The notes are guaranteed by CEMEX España. As of December 31, 2012, as adjusted to give effect to the Eurobond Tender Offer, we had approximately Ps4,178 million (U.S.$325 million) (principal amount Ps4,197 million (U.S.$327 million)) of Eurobonds outstanding.

For a description of the material terms relating to the Mandatory Convertible Notes, see "Item 5—Operating and Financial Review and Prospects —Summary of Material Contractual Obligations and Commercial Commitments—Mandatory Convertible Notes."

For a description of the material terms relating to the 2010 Optional Convertible Subordinated Notes and 2011 Optional Convertible Subordinated Notes, see "Item 5—Operating and Financial Review and Prospects—Summary of Material Contractual Obligations and Commercial Commitments—Convertible Subordinated Notes."

For a description of the material terms relating to the Facilities Agreement, see "Item 5—Operating and Financial Review and Prospects—Liquidity and Capital Resources—Our Indebtedness." In connection with our entry into the Facilities Agreement, we also entered into the related Ancillary Agreement, dated as of September 17, 2012, Irrevocable Administration Trust Agreement, dated as of September 17, 2012, USPP Note Purchase Agreement, dated as of September 17, 2012 and USPP Note Guarantee, dated as of September 17, 2012, as well as the Intercreditor Agreement, dated as of September 17, 2012, Dutch law Share Pledge, dated as of September 17, 2012, Swiss law Share Pledge, dated as of September 17, 2012, Spanish law Share Pledge, dated as of November 8, 2012, and Mexican law Security Trust Agreement, dated as of September 17, 2012, relating to the Collateral.

For a description of the material terms relating to the Senior Secured Notes, see "Item 5—Operating and Financial Review and Prospects—Summary of Material Contractual Obligations and Commercial Commitments—Senior Secured Notes."

**Exchange Controls**

See "Item 3—Key Information—Mexican Peso Exchange Rates."

**Taxation**

***Mexican Tax Considerations***

*General*

The following is a summary of certain Mexican federal income tax considerations relating to the ownership and disposition of our CPOs or ADSs.

This summary is based on Mexican income tax law that is in effect on the date of this annual report, which is subject to change. This summary is limited to non-residents of Mexico, as defined below, who own our CPOs or ADSs. This summary does not address all aspects of Mexican income tax law. Holders are urged to consult their tax counsel as to the tax consequences that the purchase, ownership and disposition of our CPOs or ADSs, may have.

For purposes of Mexican taxation, an individual is a resident of Mexico if he or she has established his or her home in Mexico. If the individual also has a home in another country, he or she will be considered a resident of Mexico if his or her center of vital interests is in Mexico. Under Mexican law, an individual's center of vital interests is in Mexico if, among other things:

- more than 50% of the individual's total income in the relevant year comes from Mexican sources; or
- the individual's main center of professional activities is in Mexico.

Mexican nationals that are employed by the Mexican government are deemed residents of Mexico, even if his or her center of vital interests is located outside of Mexico. Unless otherwise proven, Mexican nationals are deemed residents of Mexico for tax purposes.

A legal entity is a resident of Mexico if it is organized under the laws of Mexico or if it maintains the principal administration of its business or the effective location of its management in Mexico.

A Mexican citizen is presumed to be a resident of Mexico for tax purposes unless such person or entity can demonstrate otherwise. If a legal entity or an individual is deemed to have a permanent establishment in Mexico for tax purposes, all income attributable to such permanent establishment will be subject to Mexican taxes, in accordance with relevant tax provisions.

Individuals or legal entities that cease to be residents of Mexico must notify the tax authorities within 15 business days before their change of residency.

A non-resident of Mexico is a legal entity or individual that does not satisfy the requirements to be considered a resident of Mexico for Mexican federal income tax purposes.

*Taxation of Dividends*

Dividends, either in cash or in any other form, paid to non-residents of Mexico with respect to A shares or B shares represented by the CPOs (or in the case of holders who hold CPOs represented by ADSs), will not be subject to withholding tax in Mexico.

*Disposition of CPOs or ADSs*

Gains on the sale or disposition of ADSs by a holder who is a non-resident of Mexico will not be subject to Mexican tax.

Gains on the sale or disposition of CPOs by a holder who is a non-resident of Mexico will not be subject to any Mexican tax if the sale is carried out through the Mexican Stock Exchange or other recognized securities market, as determined by Mexican tax authorities. Gains realized on sales or other dispositions of CPOs by non-residents of Mexico made in other circumstances would be subject to Mexican income tax.

Under the terms of the Convention Between the United States and Mexico for Avoidance of Double Taxation and Prevention of Fiscal Evasion with Respect to Income Taxes, and a Protocol thereto, the Tax Treaty, gains obtained by a U.S. Shareholder eligible for benefits under the Tax Treaty on the disposition of CPOs will not generally be subject to Mexican tax, provided that such gains are not attributable to a permanent establishment of such U.S. Shareholder in Mexico and that the eligible U.S. Shareholder did not own, directly or indirectly, 25% or more of our outstanding stock during the 12-month period preceding the disposition. In the case of non-residents of Mexico eligible for the benefits of a tax treaty, gains derived from the disposition of ADSs or CPOs may also be exempt, in whole or in part, from Mexican taxation under a treaty to which Mexico is a party.

Deposits and withdrawals of ADSs will not give rise to any Mexican tax or transfer duties.

The term U.S. Shareholder shall have the same meaning ascribed below under the section "—U.S. Federal Income Tax Considerations."

*Estate and Gift Taxes*

There are no Mexican inheritance or succession taxes applicable to the ownership, transfer or disposition of ADSs or CPOs by holders that are non-residents of Mexico, although gratuitous transfers of CPOs may, in some circumstances, cause a Mexican federal tax to be imposed upon a recipient. There are no Mexican stamp, issue, registration or similar taxes or duties payable by holders of ADSs or CPOs.

***U.S. Federal Income Tax Considerations***

*General*

The following is a summary of the material U.S. federal income tax consequences relating to the ownership and disposition of our CPOs and ADSs.

This summary is based on provisions of the U.S. Internal Revenue Code, or the Code, of 1986, as amended, U.S. Treasury regulations promulgated under the Code, and administrative rulings, and judicial interpretations of the Code, all as in effect on the date of this annual report and all of which are subject to change, possibly retroactively. This summary is limited to U.S. Shareholders (as defined below) who hold our ADSs or CPOs, as the case may be, as capital assets. This summary does not discuss all aspects of U.S. federal income taxation which may be important to an investor in light of its individual circumstances, for example, an investor subject to special tax rules (e.g., banks, thrifts, real estate investment trusts, regulated investment companies, insurance companies, dealers in securities or currencies, expatriates, tax-exempt investors, persons who own 10% or more of our voting stock, or holders whose functional currency is not the U.S. Dollar or U.S. Shareholders who hold a CPO or an ADS as a position in a "straddle," as part of a "synthetic security" or "hedge," as part of a "conversion transaction" or other integrated investment, or as other than a capital asset). In addition, this summary does not address any aspect of state, local or foreign taxation.

For purposes of this summary, a "U.S. Shareholder" means a beneficial owner of CPOs or ADSs, who is for U.S. federal income tax purposes:

- an individual who is a citizen or resident of the United States;
- a corporation or other entity taxable as a corporation that is created or organized in the United States or under the laws of the United States or any political subdivision thereof;
- an estate the income of which is subject to U.S. federal income tax regardless of its source; or
- a trust that (i) is subject to the primary supervision of a court within the United States and with respect to which one or more U.S. persons are authorized to control all substantial decisions or (ii) has a valid election in effect under applicable U.S. Treasury regulations to be treated as a United States person.

If a partnership (including any entity treated as a partnership for U.S. federal income tax purposes) is the beneficial owner of CPOs or ADSs, the U.S. federal income tax treatment of a partner in such partnership will generally depend upon the status of the partner and the activities of the partnership. A partner in a partnership that is the beneficial owner of CPOs or ADSs is urged to consult its own tax advisor regarding the associated tax consequences.

U.S. Shareholders should consult their own tax advisors as to the particular tax consequences to them under United States federal, state and local, and foreign laws relating to the ownership and disposition of our CPOs and ADSs.

*Ownership of CPOs or ADSs in general*

In general, for U.S. federal income tax purposes, U.S. Shareholders who own ADSs will be treated as the beneficial owners of the CPOs represented by those ADSs, and each CPO will represent a beneficial interest in two A shares and one B share.

*Taxation of distributions with respect to CPOs and ADSs*

A distribution of cash or property with respect to the A shares or B shares represented by CPOs, including CPOs represented by ADSs, generally will be treated as a dividend to the extent paid out of our current or accumulated earnings and profits, as determined under U.S. federal income tax principles, and will be includible in the gross income of a U.S. Shareholder as foreign source "passive" income on the date the distribution is received by the CPO trustee or successor thereof. Any such dividend will not be eligible for the dividends-received deduction allowed to corporate U.S. Shareholders. To the extent, if any, that the amount of any distribution by us exceeds our current and accumulated earnings and profits as determined under U.S. federal income tax principles, it will be treated first as a tax-free return of the U.S. Shareholder's adjusted tax basis in the CPOs or ADSs, as applicable, and thereafter as capital gain.

The gross amount of any dividends paid in Mexican Pesos will be includible in the income of a U.S. Shareholder in a U.S. Dollar amount calculated by reference to the exchange rate in effect the day the Mexican Pesos are received by the CPO trustee or successor thereof whether or not the Mexican Pesos are converted into U.S. Dollars on that day. Generally, any gain or loss resulting from currency exchange fluctuations during the period from the date the dividend payment is includible in income to the date such payment is converted into U.S. Dollars will be treated as ordinary income or loss. Such gain or loss will generally be income from sources within the United States for foreign tax credit limitation purposes.

Dividend income is generally taxed as ordinary income. However, a maximum United States federal income tax rate of 20 percent (15 percent if taxable income is below certain thresholds) will apply to "qualified dividend income" received by U.S. Shareholders that are individuals (as well as certain trusts and estates) in taxable years beginning after December 31, 2012, provided that certain holding period requirements are met. "Qualified dividend income" includes dividends paid on shares of "qualified foreign corporations" if, among other things: (i) the shares of the foreign corporation are readily tradable on an established securities market in the United States, or (ii) the foreign corporation is eligible with respect to substantially all of its income for the benefits of a comprehensive income tax treaty with the United States which contains an exchange of information program.

We believe that we are a "qualified foreign corporation" because (i) the ADSs trade on the New York Stock Exchange and (ii) we are eligible for the benefits of the comprehensive income tax treaty between Mexico and the United States which includes an exchange of information program. Accordingly, we believe that any dividends we pay should constitute "qualified dividend income" for United States federal income tax purposes. We cannot assure you, however, that we will continue to be considered a "qualified foreign corporation" and that our dividends will continue to be "qualified dividend income."

*Taxation of capital gains on disposition of CPOs or ADSs*

The sale, exchange, redemption, or other disposition of CPOs or ADSs will result in the recognition of gain or loss by a U.S. Shareholder for U.S. federal income tax purposes in an amount equal to the difference between the amount realized on the disposition and the U.S. Shareholder's tax basis in the CPOs or ADSs, as applicable. Such gain or loss will be long-term capital gain or loss if the U.S. Shareholder's holding period for the CPOs or ADSs exceeds one year at the time of disposition. Long-term capital gain recognized by a U.S. Shareholder that is an individual (as well as certain trusts and estates) upon the sale or exchange of CPOs or ADSs in a taxable year which begins after December 31, 2012 generally will be subject to a maximum United States federal income tax rate of 20 percent (15 percent if taxable income is below certain thresholds). The deduction of capital losses

is subject to limitations. Gain from the disposition of CPOs or ADSs generally will be treated as a U.S. source for foreign tax credit purposes; losses generally will be allocated against U.S. source income. Deposits and withdrawals of CPOs by U.S. Shareholders in exchange for ADSs will not result in the realization of gain or loss for U.S. federal income tax purposes.

*United States backup withholding and information reporting*

A U.S. Shareholder may, under certain circumstances, be subject to information reporting with respect to some payments to that U.S. Shareholder such as dividends or the proceeds of a sale or other disposition of the CPOs or ADSs. Backup withholding at a rate of 28 percent also may apply to amounts paid to such holder unless such holder (i) is a corporation or comes within certain exempt categories and demonstrates this fact when so required, or (ii) provides a correct taxpayer identification number and otherwise complies with applicable requirements of the backup withholding rules. Backup withholding is not an additional tax. Amounts withheld as backup withholding may be creditable against the U.S. Shareholder's federal income tax liability, and the U.S. Shareholder may obtain a refund of any excess amounts withheld under the backup withholding rules by filing the appropriate claim for refund with the Internal Revenue Service ("IRS") and timely furnishing any required information. Pursuant to the Hiring Incentives to Restore Employment Act enacted on March 18, 2010, an individual U.S. Shareholder may be required to submit to the IRS certain information with respect to his or her beneficial ownership of CPOs or ADSs, unless such CPOs or ADSs are held on his or her behalf by a U.S. financial institution. The new law also imposes penalties if an individual U.S. Shareholder is required to submit such information to the IRS and fails to do so. U.S. Shareholders should consult their tax advisors regarding the application of the new law in their particular circumstances.

**Documents on Display**

We are subject to the informational requirements of the Securities Exchange Act of 1934 and, in accordance with these requirements, file reports and information statements and other information with the SEC. These reports and information statements and other information filed by us with the SEC can be inspected and copied at the public reference room of the SEC at 100 F Street, N.E., Washington, D.C. 20549.

In reviewing the agreements included as exhibits to this annual report, please remember they are included to provide you with information regarding their terms and are not intended to provide any other factual or disclosure information about us or the other parties to the agreements.

The agreements may contain representations and warranties by each of the parties to the applicable agreement. These representations and warranties have been made solely for the benefit of the other parties to the applicable agreement and:

- should not in all instances be treated as categorical statements of fact, but rather as a way of allocating the risk to one of the parties if those statements prove to be inaccurate;
- have been qualified by disclosures that were made to the other party in connection with the negotiation of the applicable agreement, which disclosures are not necessarily reflected in the agreement;
- may apply standards of materiality in a way that is different from what may be viewed as material to you or other investors; and
- were made only as of the date of the applicable agreement or such other date or dates as may be specified in the agreement and are subject to more recent developments.

Accordingly, these representations and warranties may not describe the actual state of affairs as of the date they were made or at any other time.

## Item 11—Qualitative and Quantitative Disclosures About Market Risk

See "Item 5—Operating and Financial Review and Prospects—Qualitative and Quantitative Market Disclosure—Our Derivative Financial Instruments."

## Item 12—Description of Securities Other than Equity Securities

## Item 12A—Debt Securities

Not applicable.

## Item 12B—Warrants and Rights

Not applicable.

## Item 12C—Other Securities

Not applicable.

## Item 12D—American Depositary Shares

### Depositary Fees and Charges

Under the terms of the Deposit Agreement for CEMEX, S.A.B. de C.V.'s ADSs, an ADS holder may have to pay the following service fees to the depositary:

| Services | Fees |
|---|---|
| Issuance of ADSs upon deposit of eligible securities | Up to 5¢ per ADS issued. |
| Surrender of ADSs for cancellation and withdrawal of deposited securities | Up to 5¢ per ADS surrendered. |
| Exercise of rights to purchase additional ADSs | Up to 5¢ per ADS issued. |
| Distribution of cash (i.e., upon sale of rights and other entitlements) | Up to 2¢ per ADS held. |

An ADS holder also is responsible to pay fees and expenses incurred by the ADS depositary and taxes and governmental charges including, but not limited to:

- transfer and registration fees charged by the registrar and transfer agent for eligible and deposited securities, such as upon deposit of eligible securities and withdrawal of deposited securities;
- expenses incurred for converting foreign currency into U.S. Dollars;
- expenses for cable, telex and fax transmissions and for delivery of securities;
- expenses incurred in connection with compliance with exchange control regulations and other applicable regulatory requirements;
- fees and expenses incurred in connection with the delivery of deposited securities; and
- taxes and duties upon the transfer of securities, such as when eligible securities are deposited or withdrawn from deposit.

We have agreed to pay some of the other charges and expenses of the ADS depositary. Note that the fees and charges that a holder of ADSs is required to pay may vary over time and may be changed by us and by the ADS depositary. ADS holders will receive notice of the changes. The fees described above may be amended from time to time.

### Depositary Payments for the Year Ended December 31, 2012

In 2012, we received approximately U.S.$2,110,779.08 (after applicable U.S. taxes) from our Depositary Bank, Citibank, N.A., to reimburse us for contributions towards our investor relations activities (including but not limited to investor meetings, conferences, and fees to investor relations service vendors), and other miscellaneous expenses related to the listing of our ADSs on the NYSE.

## PART II

### Item 13—Defaults, Dividend Arrearages and Delinquencies

None.

### Item 14—Material Modifications to the Rights of Security Holders and Use of Proceeds

None.

### Item 15—Controls and Procedures

**Disclosure Controls and Procedures**

Our management has evaluated, with the participation of our Chief Executive Officer and Executive Vice President of Finance and Administration, the effectiveness of our disclosure controls and procedures (as defined in Rule 13a-15(e) under the Securities Exchange Act of 1934) as of the end of the period covered by this report, and has concluded that our disclosure controls and procedures were effective as of December 31, 2012.

**Management's Annual Report on Internal Control Over Financial Reporting**

Our management is responsible for establishing and maintaining adequate internal control over financial reporting, (as defined in Rule 13a-15(f) under the Securities Exchange Act of 1934). Under the supervision and with the participation of our management, including our Chief Executive Officer and principal financial and accounting officers, we conducted an evaluation of the effectiveness of our internal control over financial reporting based on the framework in "Internal Control—Integrated Framework" issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on this evaluation, our management has concluded that internal control over financial reporting was effective as of December 31, 2012.

KPMG Cárdenas Dosal, S.C., the registered public accounting firm that audited our financial statements included elsewhere in this annual report, has issued an attestation report on our internal control over financial reporting, which is included in page F-3 of this report.

**Attestation Report of the Registered Public Accounting Firm**

KPMG Cárdenas Dosal, S.C.'s report on our internal control over financial reporting appears on page F-3 of this report, and is incorporated herein by reference.

**Changes in Internal Control Over Financial Reporting**

During 2012, we continued with the implementation of our Enterprise Resource Planning ("ERP") system in our operations, in order to support our business model. We plan to continue with the implementation of this platform over the course of 2013 for a small number of our operations for which the ERP was not implemented during 2012. Our management believes this business model improves the efficiency of our operations and financial information process.

On July 27, 2012, we reached a strategic agreement with IBM, expected to improve some of our business processes. This agreement implies the transfer of internal controls for some of our transactional processes. During 2012, we started evaluating these transfers of certain internal controls, and we observed no material change. Accordingly, during 2013, we will continue monitoring the effects that this change may have in all our internal controls related to the processes included in the agreement.

We have not identified other changes in our internal control over financial reporting during 2012 that could have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

### Item 16 —[RESERVED]

### Item 16A—Audit Committee Financial Expert

Our board of directors has determined that it has at least one "audit committee financial expert" (as defined in Item 16A of Form 20-F) serving on its audit committee. Mr. José Manuel Rincón Gallardo meets the requisite qualifications and is independent for purposes of the rules of the NYSE.

**Item 16B—Code of Ethics**

We have adopted a written code of ethics that applies to all our senior executives, including our principal executive officer, principal financial officer and principal accounting officer.

You may view our code of ethics in the corporate governance section of our website (www.cemex.com), or you may request a copy of our code of ethics, at no cost, by writing to or telephoning us as follows:

CEMEX, S.A.B. de C.V.
Avenida Ricardo Margáin Zozaya #325
Colonia Valle del Campestre
Garza García, Nuevo León, México 66265.
Attn: Luis Hernández
Telephone: (+ 5281) 8888-8888

**Item 16C—Principal Accountant Fees and Services**

*Audit Fees*: KPMG Cárdenas Dosal, S.C. in Mexico and KPMG firms worldwide charged us approximately Ps185 million in fiscal year 2012 in connection with the professional services rendered for the audit of our annual financial statements and services normally provided by them relating to statutory and regulatory filings or engagements. In fiscal year 2011, KPMG Cárdenas Dosal, S.C. in Mexico and KPMG firms worldwide billed us approximately Ps177 million for these services.

*Audit-Related Fees:* KPMG Cárdenas Dosal, S.C. in Mexico and KPMG firms worldwide billed us approximately Ps14 million in fiscal year 2012 for assurance and related services reasonably related to the performance of our audit. In fiscal year 2011, KPMG Cárdenas Dosal, S.C. in Mexico and KPMG firms worldwide charged us approximately Ps15 million for audit-related services.

*Tax Fees*: KPMG Cárdenas Dosal, S.C. in Mexico and KPMG firms worldwide charged us approximately Ps12 million in fiscal year 2012 for tax compliance, tax advice and tax planning. In fiscal year 2011, KPMG Cárdenas Dosal, S.C. in Mexico and KPMG firms worldwide billed us approximately Ps13 million for tax-related services.

*All Other Fees*: KPMG Cárdenas Dosal, S.C. in Mexico and KPMG firms worldwide billed us Ps20 million in fiscal year 2012 for products and services other than those comprising audit fees, audit-related fees and tax fees. In fiscal year 2011, KPMG Cárdenas Dosal, S.C. in Mexico and KPMG firms worldwide charged us approximately Ps15 million for products and services in this category. These fees relate mainly to services provided by KPMG to us with respect to our due diligence activities around the world.

**Audit Committee Pre-Approval Policies and Procedures**

Our audit committee is responsible, among other things, for the appointment, compensation and oversight of our external auditors. To assure the independence of our independent auditors, our audit committee pre-approves annually a catalog of specific audit and non-audit services in the categories Audit Services, Audit-Related Services, Tax-Related Services, and Other Services that may be performed by our auditors, as well as the budgeted fee levels for each of these categories. All other permitted services must receive a specific approval from our audit committee. Our external auditor periodically provides a report to our audit committee in order for our audit committee to review the services that our external auditor is providing, as well as the status and cost of those services.

During 2012, there were no services provided to us by our external auditors that were performed pursuant to the *de minimis* exception.

**Item 16D—Exemptions from the Listing Standards for Audit Committees**

Not applicable.

**Item 16E—Purchases of Equity Securities by the Issuer and Affiliated Purchasers**

Not applicable.

**Item 16F—Change in Registrant's Certifying Accountant**

Not applicable.

**Item 16G—Corporate Governance**

Section 303A.11 of the NYSE Listed Company Manual ("LCM"), requires that listed foreign private issuers, such as CEMEX, disclose any significant ways in which their corporate governance practices differ from those followed by U.S. companies under NYSE listing standards.

CEMEX's corporate governance practices are governed by its bylaws, by the corporate governance provisions set forth in the *Ley del Mercado de Valores* (the "Mexican Securities Market Law"), the *Circular de Emisoras* (the "Mexican Regulation for Issuers") issued by the *Comisión Nacional Bancaria y de Valores* (the "Mexican Banking and Securities Commission") and the *Reglamento Interior de la Bolsa Mexicana de Valores* (the "Mexican Stock Exchange Rules") (the Mexican Securities Market Law, the Mexican Regulation for Issuers and the Mexican Stock Exchange Rules, collectively the "Mexican Laws and Regulations"), and by applicable U.S. securities laws. CEMEX is also subject to the rules of the NYSE to the extent they apply to foreign private issuers. Except for those specific rules, foreign private issuers are permitted to follow home country practice in lieu of the provisions of Section 303A of the LCM.

CEMEX, on a voluntary basis, also complies with the *Código de Mejores Prácticas Corporativas* (the "Mexican Code of Best Corporate Practices") as indicated below, which was promulgated by a committee established by the *Consejo Coordinador Empresarial* ("Mexican Corporate Coordination Board"). The Mexican Corporate Coordination Board provides recommendations for better corporate governance practices for listed companies in Mexico, and the Mexican Code of Best Corporate Practices has been endorsed by the Mexican Banking and Securities Commission.

The following is a summary of significant ways in which our corporate governance practices differ from those required to be followed by U.S. domestic companies under the NYSE's listing standards.

| NYSE LISTING STANDARDS | CEMEX CORPORATE GOVERNANCE PRACTICE |
|---|---|
| **303A.01** | |
| Listed companies must have a majority of independent directors. | Pursuant to the Mexican securities market law, CEMEX, S.A.B. de C.V. is required to have a board of directors with a maximum of 21 members, 25% of whom must be independent. Determination as to the independence of CEMEX, S.A.B. de C.V.'s directors is made upon their election by CEMEX, S.A.B. de C.V.'s shareholders at the corresponding meeting. Currently, CEMEX, S.A.B. de C.V.'s Board of Directors has 10 members, of which more than 25% are independent under the Mexican Securities Market Law. |

| NYSE LISTING STANDARDS | CEMEX CORPORATE GOVERNANCE PRACTICE |
|---|---|
| | The Mexican Securities Market Law sets forth, in article 26, the definition of "independence," which differs from the one set forth in Section 303A.02 of the LCM. Generally, under the Mexican Securities Market Law, a director is not independent if such director is an employee or officer of the company or its subsidiaries; an individual that has significant influence over the company or its subsidiaries; a shareholder that is part of a group that controls the company; or, if there exist certain relationships between a company and a director, entities with which the director is associated or family members of the director. |
| **303A.03** | |
| Non-management directors must meet at regularly executive sessions without management. | Under CEMEX, S.A.B. de C.V.'s bylaws and the Mexican Laws and Regulations, our non-management and independent directors are not required to meet in executive sessions. Our Board of Directors must meet at least once every three months. |
| **303A.04** | |
| Listed companies must have a nominating/corporate governance committee composed of independent directors. | Under CEMEX, S.A.B. de C.V.'s bylaws and the Mexican Laws and Regulations, we are not required to have a nominating committee. We do not have such a committee.<br><br>Our Corporate Practices Committee operates pursuant to the provisions of the Mexican securities market law and CEMEX, S.A.B. de C.V.'s bylaws. Our Corporate Practices Committee is composed of 3 independent directors.<br><br>Our Corporate Practices Committee is responsible for evaluating the performance of our executive officers; reviewing related party transactions; reviewing the compensation paid to executive officers; evaluating any waivers granted to directors or executive officers for their taking of corporate opportunities; and carrying out the activities described under Mexican law.<br><br>Our Corporate Practices Committee meets as required by CEMEX, S.A.B. de C.V.'s bylaws and by the Mexican Laws and Regulations. |
| **303A.05** | |
| Listed companies must have a compensation committee composed of independent directors. Compensation committee members must satisfy additional independence requirements specific to compensation committee membership. | Under CEMEX, S.A.B. de C.V.'s bylaws and the Mexican Laws and Regulations, we are not required to have a compensation committee. We do not have such committee. |

| NYSE LISTING STANDARDS | CEMEX CORPORATE GOVERNANCE PRACTICE |
|---|---|
| **303A.06** | |
| Listed companies must have an audit committee that satisfies the requirements of Rule 10A-3 under the Exchange Act. | CEMEX, S.A.B. de C.V.'s Audit Committee operates pursuant to the provisions of the Mexican Securities Market Law and CEMEX, S.A.B. de C.V.'s bylaws.<br><br>CEMEX, S.A.B. de C.V.'s Audit Committee is composed of 3 members. According to CEMEX, S.A.B. de C.V.'s by-laws, all of the members must be independent.<br><br>CEMEX, S.A.B. de C.V.'s Audit Committee is responsible for evaluating the company's internal controls and procedures, identifying any material deficiencies it finds; following up with any corrective or preventive measures adopted with respect to the non-compliance with the operation and accounting guidelines and policies; evaluating the performance of the external auditors; describing and valuating those non-audit services rendered by the external auditor; reviewing the company's financial statements; assessing the effects of any modifications to the accounting policies approved during a fiscal year; overseeing measures adopted as result of any observations made by shareholders, directors, executive officers, employees or any third parties with respect to accounting, internal controls and internal and external audit, as well as any complaints regarding irregularities on management, including anonymous and confidential methods for addressing concerns raised by employees; assuring the execution of resolutions adopted at shareholders' or board of directors' meetings.<br><br>CEMEX, S.A.B. de C.V.'s Board of Directors has determined that it has an "audit committee financial expert," for purposes of the Sarbanes-Oxley Act of 2002, serving on its Audit Committee.<br><br>CEMEX, S.A.B. de C.V.'s Audit Committee meets as required by CEMEX, S.A.B. de C.V.'s bylaws and by the Mexican Laws and Regulations. |
| **303A.09** | |
| Listed companies must adopt and disclose corporate governance guidelines. | Under CEMEX, S.A.B. de C.V.'s bylaws and the Mexican Laws and Regulations, we are not required to adopt corporate governance guidelines, but, on an annual basis, we file a report with the Mexican Stock Exchange regarding our compliance with the Mexican Code of Best Corporate Practices. |

| NYSE LISTING STANDARDS | CEMEX CORPORATE GOVERNANCE PRACTICE |
|---|---|
| **303A.10** | |
| Listed companies must adopt and disclose a code of business conduct and ethics for directors, officers and employees, and promptly disclose any waivers of the code for directors or executive officers. | CEMEX, S.A.B. de C.V. has adopted a written code of ethics that applies to all of our employees, including our principal executive officer, principal financial officer and principal accounting officer. |
| **Equity compensation plans** | |
| Equity compensation plans require shareholder approval, subject to limited exemptions. | Shareholder approval is not expressly required under CEMEX, S.A.B. de C.V.'s bylaws for the adoption and amendment of an equity compensation plan. No equity compensation plans have been submitted for approval by our shareholders. |

**Item 16H Safety Disclosure —Mine**

The information concerning mine safety violations and other regulatory matters required by Section 1503(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act is included in Exhibit 15.1 to this annual report on Form 20-F.

## PART III

### Item 17—Financial Statements

Not applicable.

### Item 18—Financial Statements

See pages F-1 through F-108, incorporated herein by reference.

### Item 19—Exhibits

| | |
|---|---|
| 1.1 | Amended and Restated By-laws of CEMEX, S.A.B. de C.V.(a) |
| 2.1 | Form of Trust Agreement between CEMEX, S.A.B. de C.V., as founder of the trust, and Banco Nacional de México, S.A. regarding the CPOs.(b) |
| 2.2 | Amendment Agreement to the Trust Agreement dated November 21, 2002, between CEMEX, S.A.B. de C.V., as founder of the trust, and Banco Nacional de México, S.A. regarding the CPOs.(c) |
| 2.3 | Form of CPO Certificate.(b) |
| 2.4 | Form of Second Amended and Restated Deposit Agreement (A and B share CPOs), dated August 10, 1999, among CEMEX, S.A.B. de C.V., Citibank, N.A. and holders and beneficial owners of American Depositary Shares.(b) |
| 2.4.1 | Amendment No. 1 to the Second Amended and Restated Deposit Agreement, dated as of July 1, 2005, by and among CEMEX, S.A.B. de C.V., Citibank, N.A., as Depositary, and all holders and beneficial owners from time to time of American Depositary Shares evidenced by American Depositary Receipts issued thereunder, including the form of ADR attached thereto.(e) |
| 2.4.2 | Letter Agreement, dated October 12, 2007, by and between CEMEX, S.A.B. de C.V. and Citibank, N.A., as Depositary, supplementing the Second Amended and Restated Deposit Agreement, as amended, to enable the Depositary to establish a direct registration system for the ADSs.(e) |
| 2.4.3 | Letter Agreement, dated March 30, 2010 by and between CEMEX, S.A.B. de C.V. and Citibank, N.A., as Depositary, supplementing the Second Amended and Restated Deposit Agreement, as amended, to set forth the terms upon which CEMEX, S.A.B. de C.V. is to deposit CPOs upon conversion of the 4.875% Subordinated Convertible Notes due 2015, and the Depositary is to issue ADSs upon deposit of such CPOs.(h) |
| 2.4.4 | Letter Agreement, dated March 30, 2010 by and between CEMEX, S.A.B. de C.V. and Citibank, N.A., as Depositary, supplementing the Second Amended and Restated Deposit Agreement, as amended, to set forth the terms upon which CEMEX, S.A.B. de C.V. is to establish a restricted ADS series.(h) |
| 2.4.5 | Letter Agreement, dated March 15, 2011 by and between CEMEX, S.A.B. de C.V. and Citibank, N.A., as Depositary, supplementing the Second Amended and Restated Deposit Agreement, as amended, to set forth the terms upon which CEMEX, S.A.B. de C.V. is to deposit CPOs upon conversion of the 3.25% Subordinated Convertible Notes due 2016 and 3.75% Subordinated Convertible Notes due 2018, and the Depositary is to issue ADSs upon deposit of such CPOs.(h) |
| 2.4.6 | Letter Agreement, dated March 15, 2011 by and between CEMEX, S.A.B. de C.V. and Citibank, N.A., as Depositary, supplementing the Second Amended and Restated Deposit Agreement, as amended, to set forth the terms upon which CEMEX, S.A.B. de C.V. is to establish a restricted ADS series.(h) |
| 2.5 | Form of American Depositary Receipt (included in Exhibit 2.3) evidencing American Depositary Shares.(b) |
| 2.6 | Form of Certificate for shares of Series A Common Stock of CEMEX, S.A.B. de C.V.(b) |
| 2.7 | Form of Certificate for shares of Series B Common Stock of CEMEX, S.A.B. de C.V.(b) |

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| 4.1 | Note Indenture, Dated as of December 18, 2006, by and among New Sunward Holding Financial Ventures B.V., as issuer, and CEMEX, S.A.B. de C.V., CEMEX Mexico, S.A. de C.V., and New Sunward Holding B.V., as guarantors and the Bank of New York, as trustee, relating to New Sunward Holding Financial Ventures B.V.'s U.S. $350,000,000 Callable Perpetual Dual-Currency Notes.(e) |
| 4.1.1 | First Supplemental Note Indenture, dated as of August 10, 2009, by and among New Sunward Holding Financial Ventures B.V., as issuer, and CEMEX, S.A.B. de C.V., CEMEX Mexico, S.A. de C.V., and New Sunward Holding B.V., as guarantors and the Bank of New York, as trustee, supplementing the Note Indenture, dated as of December 18, 2006, among New Sunward Holding Financial Ventures B.V., as issuer, CEMEX, S.A.B. de C.V., CEMEX Mexico, S.A. de C.V. and New Sunward Holding B.V., as guarantors, and The Bank of New York Mellon, as trustee, relating to New Sunward Holding Financial Ventures B.V.'s U.S.$350,000,000 Callable Perpetual Dual-Currency Notes.(e) |
| 4.1.2 | Second Supplemental Note Indenture, dated as of May 12, 2010, by and among New Sunward Holding Financial Ventures B.V., as issuer, CEMEX, S.A.B. de C.V., CEMEX Mexico, S.A. de C.V. and New Sunward Holding B.V., as guarantors, The Bank of New York Mellon, as trustee, Swap 5 Capital (SPV) Limited and C5 Capital (SPV) Limited., supplementing the Note Indenture, dated as of December 18, 2006, among New Sunward Holding Financial Ventures B.V., as issuer, CEMEX, S.A.B. de C.V., CEMEX Mexico, S.A. de C.V. and New Sunward Holding B.V., as guarantors, and The Bank of New York Mellon, as trustee, relating to New Sunward Holding Financial Ventures B.V.'s U.S. $350,000,000 Callable Perpetual Dual-Currency Notes.(e) |
| 4.2 | Note Indenture, dated as of December 18, 2006, by and among New Sunward Holding Financial Ventures B.V., as issuer, and CEMEX, S.A.B. de C.V., CEMEX Mexico, S.A. de C.V., and New Sunward Holding B.V., as guarantors and the Bank of New York, as trustee, relating to New Sunward Holding Financial Ventures B.V.'s U.S.$900,000,000 Callable Perpetual Dual-Currency Notes.(e) |
| 4.2.1 | First Supplemental Note Indenture, dated as of August 10, 2009, by and among New Sunward Holding Financial Ventures B.V., as issuer, and CEMEX, S.A.B. de C.V., CEMEX Mexico, S.A. de C.V., and New Sunward Holding B.V., as guarantors and the Bank of New York, as trustee, supplementing the Note Indenture, dated as of December 18, 2006, among New Sunward Holding Financial Ventures B.V., as issuer, CEMEX, S.A.B. de C.V., CEMEX Mexico, S.A. de C.V. and New Sunward Holding B.V., as guarantors, and The Bank of New York Mellon, as trustee, relating to New Sunward Holding Financial Ventures B.V.'s U.S. $900,000,000 Callable Perpetual Dual-Currency Notes.(e) |
| 4.2.2 | Second Supplemental Note Indenture, dated as of May 12, 2010, by and among New Sunward Holding Financial Ventures B.V., as issuer, CEMEX, S.A.B. de C.V., CEMEX Mexico, S.A. de C.V. and New Sunward Holding B.V., as guarantors, The Bank of New York Mellon, as trustee, Swap 10 Capital (SPV) Limited and C10 Capital (SPV) Limited., supplementing the Note Indenture, dated as of December 18, 2006, among New Sunward Holding Financial Ventures B.V., as issuer, CEMEX, S.A.B. de C.V., CEMEX Mexico, S.A. de C.V. and New Sunward Holding B.V., as guarantors, and The Bank of New York Mellon, as trustee, relating to New Sunward Holding Financial Ventures B.V.'s U.S.$900,000,000 Callable Perpetual Dual-Currency Notes.(e) |
| 4.3 | Note Indenture, dated as of February 12, 2007, by and among New Sunward Holding Financial Ventures B.V., as issuer, and CEMEX, S.A.B. de C.V., CEMEX Mexico, S.A. de C.V., and New Sunward Holding B.V., as guarantors and the Bank of New York, as trustee, relating to New Sunward Holding Financial Ventures B.V.'s U.S.$750,000,000 Callable Perpetual Dual-Currency Notes.(e) |
| 4.3.1 | First Supplemental Note Indenture, dated as of August 10, 2009, by and among New Sunward Holding Financial Ventures B.V., as issuer, and CEMEX, S.A.B. de C.V., CEMEX Mexico, S.A. de C.V., and New Sunward Holding B.V., as guarantors and the Bank of New York, as trustee, supplementing the Note Indenture, dated as of February 12, 2007, among New Sunward Holding Financial Ventures B.V., as issuer, CEMEX, S.A.B. de C.V., CEMEX Mexico, S.A. de C.V. and New Sunward Holding B.V., as guarantors, and The Bank of New York Mellon, as trustee, relating to New Sunward Holding Financial Ventures B.V.'s U.S. $750,000,000 Callable Perpetual Dual-Currency Notes.(e) |

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| 4.3.2 | Second Supplemental Note Indenture, dated as of May 12, 2010, by and among New Sunward Holding Financial Ventures B.V., as issuer, CEMEX, S.A.B. de C.V., CEMEX Mexico, S.A. de C.V. and New Sunward Holding B.V., as guarantors, The Bank of New York Mellon, as trustee, Swap 8 Capital (SPV) Limited and 8 Capital (SPV) Limited., supplementing the Note Indenture, dated as of February 12, 2007, among New Sunward Holding Financial Ventures B.V., as issuer, CEMEX, S.A.B. de C.V., CEMEX Mexico, S.A. de C.V. and New Sunward Holding B.V., as guarantors, and The Bank of New York Mellon, as trustee, relating to New Sunward Holding Financial Ventures B.V.'s U.S.$750,000,000 Callable Perpetual Dual-Currency Notes.(e) |
| 4.4 | Trust Deed, dated February 28, 2007, among CEMEX Finance Europe B.V., as issuer, and several initial purchasers, relating to the issuance by CEMEX Finance Europe B.V. of €900,000,000 aggregate principal amount of 4.75% Notes due 2014.(d) |
| 4.5 | Note Indenture, dated as of May 9, 2007, by and among New Sunward Holding Financial Ventures B.V., as issuer, and CEMEX, S.A.B. de C.V., CEMEX Mexico, S.A. de C.V., and New Sunward Holding B.V., as guarantors and the Bank of New York, as trustee, relating to New Sunward Holding Financial Ventures B.V.'s U.S. €730,000,000 Callable Perpetual Dual-Currency Notes.(e) |
| 4.5.1 | First Supplemental Note Indenture, dated as of August 10, 2009, by and among New Sunward Holding Financial Ventures B.V., as issuer, and CEMEX, S.A.B. de C.V., CEMEX Mexico, S.A. de C.V., and New Sunward Holding B.V., as guarantors and the Bank of New York, as trustee, supplementing the Note Indenture, dated as of May 9, 2007, among New Sunward Holding Financial Ventures B.V., as issuer, CEMEX, S.A.B. de C.V., CEMEX Mexico, S.A. de C.V. and New Sunward Holding B.V., as guarantors, and The Bank of New York Mellon, as trustee, relating to New Sunward Holding Financial Ventures B.V.'s U.S. €730,000,000 Callable Perpetual Dual-Currency Notes.(e) |
| 4.5.2 | Second Supplemental Note Indenture, dated as of May 12, 2010, by and among New Sunward Holding Financial Ventures B.V., as issuer, CEMEX, S.A.B. de C.V., CEMEX Mexico, S.A. de C.V. and New Sunward Holding B.V., as guarantors, The Bank of New York Mellon, as trustee, Swap C10-EUR Capital (SPV) Limited and C10-EUR Capital (SPV) Limited., supplementing the Note Indenture, dated as of February 12, 2007, among New Sunward Holding Financial Ventures B.V., as issuer, CEMEX, S.A.B. de C.V., CEMEX Mexico, S.A. de C.V. and New Sunward Holding B.V., as guarantors, and The Bank of New York Mellon, as trustee, relating to New Sunward Holding Financial Ventures B.V.'s U.S. €730,000,000 Callable Perpetual Dual-Currency Notes.(e) |
| 4.6 | Indenture, dated December 10, 2009, by and among CEMEX, S.A.B. de C.V., as issuer, Banco Mercantil de Norte Sociedad Anonima, Institución de Banca Múltiple, Grupo Financiero Banorte, as common representative and calculation agent, in connection with the issuance of Mandatory Convertible Bonds.(e) |
| 4.7 | Indenture, dated December 14, 2009, among CEMEX Finance LLC, as issuer, the Note Guarantors party thereto and The Bank of New York Mellon, as trustee, in connection with the issuance of €350,000,000 9.625% Senior Secured Notes Due 2017.(e) |
| 4.7.1 | Supplemental Indenture No. 1, dated September 17, 2012, among CEMEX Finance LLC, as issuer, the Note Guarantors party thereto and The Bank of New York Mellon, as trustee, relating to its 9.625% Senior Secured Notes Due 2017.(i) |
| 4.8 | Indenture, dated December 14, 2009, among CEMEX Finance LLC, as issuer, the Note Guarantors party thereto and The Bank of New York Mellon, as trustee, in connection with the issuance of U.S.$1,250,000,000 9.50% Senior Secured Notes due 2016.(e) |
| 4.8.1 | Supplemental Indenture No. 1, dated January 19, 2010, among CEMEX Finance LLC, as issuer, the Note Guarantors party thereto and The Bank of New York Mellon, as trustee, in connection with the issuance of U.S.$500,000,000 9.50% Senior Secured Notes due 2016.(e) |

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| 4.8.2 | Supplemental Indenture No. 2, dated September 17, 2012, among CEMEX Finance LLC, as issuer, the Note Guarantors party thereto and The Bank of New York Mellon, as trustee, relating to its 9.50% Senior Secured Notes due 2016.(i) |
| 4.9 | Master Terms and Conditions Agreement, dated March 24, 2010, by and between Citibank, N.A. and CEMEX, S.A.B. de C.V., relating to the capped call transaction entered into in connection with issuance by CEMEX, S.A.B. de C.V. of U.S.$715,000,000 aggregate principal amount of 4.875% Convertible Subordinated Notes due 2015.(e) |
| 4.10 | Security Agreement, dated March 30, 2010, by and between Citibank, N.A. and CEMEX, S.A.B. de C.V. relating to the capped call transaction entered into in connection with issuance by CEMEX, S.A.B. de C.V. of U.S.$715,000,000 aggregate principal amount of 4.875% Convertible Subordinated Notes due 2015.(e) |
| 4.11 | Collateral Agreement, dated March 30, 2010, among Citibank, N.A., CEMEX, S.A.B. de C.V. and Banco Nacional de México, S.A., Integrante del Grupo Financiero Banamex, División Fiduciaria relating to the capped call transaction entered into in connection with issuance by CEMEX, S.A.B. de C.V. of U.S.$715,000,000 aggregate principal amount of 4.875% Convertible Subordinated Notes due 2015.(e) |
| 4.12 | Amended and Restated Dealer Manager Agreement, dated May 6, 2010, among CEMEX, S.A.B. de C.V., CEMEX Mexico, New Sunward, New Sunward Holding Financial Ventures, B.V., CEMEX España, acting through its Luxembourg branch, J.P. Morgan Securities Inc., J.P. Morgan Securities Ltd., Citigroup Global Markets Inc, Citigroup Global Markets Ltd., C5 Capital (SPV) Limited, C8 Capital (SPV) Limited, C10 Capital (SPV) Limited, and C-10 Capital (SPV) Limited, in connection with the offers to exchange Debentures for 9.25% U.S. Dollar-Denominated Senior Secured Notes due 2020 and 8.875% Euro-Denominated Senior Secured Notes due 2017, as applicable.(e) |
| 4.13 | Indenture, dated May 12, 2010, among CEMEX España, acting through its Luxembourg branch, as issuer, the Note Guarantors party thereto and The Bank of New York Mellon, as trustee, in connection with the issuance of U.S.$1,067,665,000 aggregate principal amount of 9.25% U.S. Dollar-Denominated Senior Secured Notes Due 2020 and €115,346,000 aggregate principal amount of the 8.875% Euro-Denominated Senior Secured Notes Due 2017.(e) |
| 4.13.1 | Supplemental Indenture No. 1, dated September 17, 2012, among CEMEX España, acting through its Luxembourg branch, as issuer, as issuer, the Note Guarantors party thereto and The Bank of New York Mellon, as trustee, relating to its 9.25% U.S. Dollar-Denominated Senior Secured Notes Due 2020 and 8.875% Euro-Denominated Senior Secured Notes Due 2017.(i) |
| 4.13.2 | Supplemental Indenture No. 2, dated March 25, 2013, among CEMEX España, acting through its Luxembourg branch, as issuer, as issuer, the Note Guarantors party thereto and The Bank of New York Mellon, as trustee, relating to its 9.25% U.S. Dollar-Denominated Senior Secured Notes Due 2020 and 8.875% Euro-Denominated Senior Secured Notes Due 2017.(i) |
| 4.14 | Purchase Agreement, dated January 4, 2011, among CEMEX, S.A.B de C.V., as issuer, the Note Guarantors party thereto and several initial purchasers named therein, in connection with the issuance of U.S.$1,000,000,000 9.000% Senior Secured Notes due 2018.(f) |
| 4.15 | Indenture, dated January 11, 2011, among CEMEX, S.A.B. de C.V., as issuer, the Note Guarantors party thereto and The Bank of New York Mellon, as trustee, in connection with the issuance of U.S.$1,000,000,000 9.000% Senior Secured Notes due 2018.(f) |
| 4.15.1 | Supplemental Indenture No. 1, dated July 11, 2011, among CEMEX, S.A.B de C.V., as issuer, the Note Guarantors party thereto and The Bank of New York Mellon, as trustee, in connection with the issuance of U.S.$650,000,000 9.000% Senior Secured Notes due 2018.(g) |
| 4.15.2 | Supplemental Indenture No. 2, dated September 17, 2012, among CEMEX, S.A.B de C.V., as issuer, the Note Guarantors party thereto and The Bank of New York Mellon, as trustee, relating to its 9.000% Senior Secured Notes due 2018.(i) |

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| 4.15.3 | Supplemental Indenture No. 3, dated March 25, 2013, among CEMEX, S.A.B de C.V., as issuer, the Note Guarantors party thereto and The Bank of New York Mellon, as trustee, relating to its 9.000% Senior Secured Notes due 2018.(i) |
| 4.16 | Purchase Agreement, dated March 9, 2011, among CEMEX, S.A.B. de C.V. as issuer, and several initial purchasers named therein, in connection with the issuance of U.S.$800,000,000 3.25% Convertible Subordinated Notes due 2016.(f) |
| 4.17 | Purchase Agreement, dated March 9, 2011, among CEMEX, S.A.B. de C.V. as issuer, and several initial purchasers named therein, in connection with the issuance of U.S.$600,000,000 3.75% Convertible Subordinated Notes due 2018.(f) |
| 4.18 | Master Terms and Conditions Agreement, dated March 9, 2011, by and between Citibank, N.A. and CEMEX, S.A.B. de C.V., relating to the capped call transaction entered into in connection with issuance by CEMEX, S.A.B. de C.V. of U.S.$800,000,000 3.25% Convertible Subordinated Notes due 2016.(f) |
| 4.19 | Master Terms and Conditions Agreement, dated March 9, 2011, by and between JPMorgan Chase Bank, National Association, London Branch and CEMEX, S.A.B. de C.V., relating to the capped call transaction entered into in connection with issuance by CEMEX, S.A.B. de C.V. of U.S.$800,000,000 3.25% Convertible Subordinated Notes due 2016.(f) |
| 4.20 | Master Terms and Conditions Agreement, dated March 9, 2011, by and between BNP Paribas and CEMEX, S.A.B. de C.V., relating to the capped call transaction entered into in connection with issuance by CEMEX, S.A.B. de C.V. of U.S.$600,000,000 3.75% Convertible Subordinated Notes due 2018.(f) |
| 4.21 | Master Terms and Conditions Agreement, dated March 9, 2011, by and between Bank of America, N.A. and CEMEX, S.A.B. de C.V., relating to the capped call transaction entered into in connection with issuance by CEMEX, S.A.B. de C.V. of U.S.$800,000,000 3.25% Convertible Subordinated Notes due 2016 and U.S.$600,000,000 3.75% Convertible Subordinated Notes due 2018.(f) |
| 4.22 | Master Terms and Conditions Agreement, dated March 9, 2011, by and between The Royal Bank of Scotland plc and CEMEX, S.A.B. de C.V., relating to the capped call transaction entered into in connection with issuance by CEMEX, S.A.B. de C.V. of U.S.$800,000,000 3.25% Convertible Subordinated Notes due 2016.(f) |
| 4.23 | Master Terms and Conditions Agreement, dated March 9, 2011, by and between HSBC Bank USA, National Association and CEMEX, S.A.B. de C.V., relating to the capped call transaction entered into in connection with issuance by CEMEX, S.A.B. de C.V. of U.S.$800,000,000 3.25% Convertible Subordinated Notes due 2016.(f) |
| 4.24 | Master Terms and Conditions Agreement, dated March 9, 2011, by and between Banco Santander, S.A. and CEMEX, S.A.B. de C.V., relating to the capped call transaction entered into in connection with issuance by CEMEX, S.A.B. de C.V. of U.S.$800,000,000 3.25% Convertible Subordinated Notes due 2016 and U.S.$600,000,000 3.75% Convertible Subordinated Notes due 2018.(f) |
| 4.25 | Purchase Agreement, dated March 29, 2011, among CEMEX, S.A.B de C.V., as issuer, the Note Guarantors party thereto and several initial purchasers named therein, in connection with the issuance of U.S.$800,000,000 Floating Rate Senior Secured Notes due 2015.(f) |
| 4.26 | Indenture, dated April 5, 2011, among CEMEX, S.A.B. de C.V., as issuer, the Note Guarantors party thereto and The Bank of New York Mellon, as trustee, in connection with the issuance of U.S.$800,000,000 Floating Rate Senior Secured Notes due 2015.(f) |
| 4.26.1 | Supplemental Indenture No. 1, dated September 17, 2012, among CEMEX, S.A.B de C.V., as issuer, the Note Guarantors party thereto and The Bank of New York Mellon, as trustee, relating to its Floating Rate Senior Secured Notes due 2015.(i) |

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| 4.26.2 | Supplemental Indenture No. 2, dated March 25, 2013, among CEMEX, S.A.B de C.V., as issuer, the Note Guarantors party thereto and The Bank of New York Mellon, as trustee, relating to its Floating Rate Senior Secured Notes due 2015.(i) |
| 4.27 | Purchase Agreement, dated July 6, 2011, among CEMEX, S.A.B de C.V., as issuer, the Note Guarantors party thereto and several initial purchasers named therein, in connection with the issuance of U.S.$650,000,000 9.000% Senior Secured Notes due 2018.(g) |
| 4.28 | Dealer Manager Agreement, dated February 27, 2012, among CEMEX, S.A.B. de C.V., CEMEX Mexico, New Sunward, New Sunward Holding Financial Ventures, B.V., CEMEX España, acting through its Luxembourg branch, J.P. Morgan Securities LLC, J.P. Morgan Securities Ltd., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Merrill Lynch International, C5 Capital (SPV) Limited, C8 Capital (SPV) Limited, C10 Capital (SPV) Limited, and C-10 Capital (SPV) Limited, in connection with the offers to exchange Debentures and Eurobonds for 9.875% U.S. Dollar-Denominated Senior Secured Notes due 2019 and 9.875% Euro-Denominated Senior Secured Notes due 2019, as applicable.(g) |
| 4.29 | Amendment to the Dealer Manager Agreement, dated March 12, 2012, among CEMEX, S.A.B. de C.V., CEMEX Mexico, New Sunward, New Sunward Holding Financial Ventures, B.V., CEMEX España, acting through its Luxembourg branch, J.P. Morgan Securities LLC, J.P. Morgan Securities Ltd., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Merrill Lynch International, C5 Capital (SPV) Limited, C8 Capital (SPV) Limited, C10 Capital (SPV) Limited, and C-10 Capital (SPV) Limited.(g) |
| 4.30 | Indenture, dated March 28, 2012, among CEMEX España, acting through its Luxembourg branch, as issuer, the Note Guarantors party thereto and The Bank of New York Mellon, as trustee, in connection with the issuance of U.S.$703,861,000 aggregate principal amount of 9.875% U.S. Dollar-Denominated Senior Secured Notes due 2019 and €179,219,000 aggregate principal amount of 9.875% Euro-Denominated Senior Secured Notes due 2019.(g) |
| 4.30.1 | Supplemental Indenture No. 1, dated September 17, 2012, among CEMEX España, acting through its Luxembourg branch, as issuer, the Note Guarantors party thereto and The Bank of New York Mellon, as trustee, relating to its 9.875% U.S. Dollar-Denominated Senior Secured Notes due 2019 and 9.875% Euro-Denominated Senior Secured Notes due 2019.(i) |
| 4.30.2 | Supplemental Indenture No. 2, dated March 25, 2013, among CEMEX España, acting through its Luxembourg branch, as issuer, the Note Guarantors party thereto and The Bank of New York Mellon, as trustee, relating to its 9.875% U.S. Dollar-Denominated Senior Secured Notes due 2019 and 9.875% Euro-Denominated Senior Secured Notes due 2019.(i) |
| 4.31 | Facilities Agreement for CEMEX, S.A.B. de C.V. and certain of its subsidiaries, dated September 17, 2012, with the financial institutions, noteholders and other entities named therein as Original Creditors and Citibank International plc acting as Agent and Wilmington Trust (London) Limited acting as Security Agent.(i) |
| 4.32 | Intercreditor Agreement, dated September 17, 2012, by and among Citibank International plc, as Facilities Agent, The Facilities Agreement Creditors (as named therein), CEMEX, S.A.B. de C.V. and certain of its subsidiaries, as Original Borrowers, Original Guarantors and Original Security Providers and Intra-Group Lenders, Wilmington Trust (London) Limited, acting as Security Agent, and others.(i) |
| 4.33 | Dutch law Share Pledge over the registered shares in New Sunward Holding B.V., dated September 17, 2012, between Corporación Gouda S.A. de C.V., Mexcement Holdings, S.A. de C.V., CEMEX International Finance Company and CEMEX TRADEMARKS HOLDING Ltd. (as Pledgors) and Wilmington Trust (London) Limited (as Pledgee).(i) |

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| 4.34 | Swiss law Share Pledge over 1,938,958,014 shares in CEMEX TRADEMARKS HOLDING Ltd., dated September 17, 2012, between CEMEX, S.A.B de C.V., CEMEX México, S.A. de C.V., Interamerican Investments Inc. and Empresas Tolteca de México, S.A. de C.V. (as Pledgors) and Wilmington Trust (London) Limited (as Pledgee).(i) |
| 4.35 | Spanish law Share Pledge over the shares in CEMEX España, dated November 8, 2012, between New Sunward Holding B.V., CEMEX, S.A.B de C.V., CEMEX España, S.A. and Wilmington Trust (London) Limited (as Security Agent).(i) |
| 4.36 | English translation of Mexican law Security Trust Agreement, dated September 17, 2012, entered into by CEMEX, S.A.B de C.V., Empresas Tolteca de Mexico, S.A. de C.V., Impra Café S.A. de C.V., Interamerican Investments Inc., Centro Distribuidor de Cemento, S.A. de C.V. and CEMEX México, regarding the shares of each of them owns in: CEMEX México; Centro Distribuidor de Cemento S.A. de C.V.; Corporación Gouda S.A. de C.V.; and Mexcement Holdings, S.A. de C.V.(i) |
| 4.37 | Ancillary Agreement, dated as of September 17, 2012, among CEMEX, S.A.B. de C.V., certain subsidiaries of CEMEX, S.A.B. de C.V., certain creditors party to the Financing Agreement, dated August 14, 2009 (as amended), Citibank International PLC, as administrative agent, and Citibank International PLC, as exchange agent.(i) |
| 4.38 | English translation of Irrevocable Administration Trust Agreement with Reversion Rights No. 111523-3, dated as of September 17, 2012, among CEMEX, S.AB. de C.V. and certain of its subsidiaries, as the settlors and second beneficiaries, Banco Nacional de México, S.A., as trustee, and Wilmington Trust Company (London) Limited, as first beneficiary, and CEMEX, S.A.B. de C.V. and certain other of its subsidiaries, as counterparties.(i) |
| 4.39 | USPP Note Purchase Agreement, dated as of September 17, 2012, among CEMEX Finance LLC and each of the purchasers thereunder, for $106,586,333.79 9.66% senior notes due 2017.(i) |
| 4.40 | USPP Note Guarantee, dated as of September 17, 2012, by CEMEX España, S.A. in favor of the holders of notes under the Note Purchase Agreement, dated as of September 17, 2012.(i) |
| 4.41 | Indenture, dated September 17, 2012, among CEMEX, S.A.B. de C.V., as issuer, the Note Guarantors party thereto and Computershare Trust Company, N.A., as trustee, in connection with the issuance of U.S.$500,000,000 9.50 Senior Secured Notes due 2018.(i) |
| 4.42 | Purchase Agreement, dated October 4, 2012, among CEMEX Finance LLC, as issuer, the Note Guarantors party thereto and several initial purchasers named therein, in connection with the issuance of U.S.$1,500,000,000 9.375% Senior Secured Notes due 2022.(i) |
| 4.43 | Indenture, dated October 12, 2012, among CEMEX Finance LLC, as issuer, the Note Guarantors party thereto and The Bank of New York Mellon, N.A., as trustee, in connection with the issuance of U.S.$1,500,000,000 9.375% Senior Secured Notes due 2022.(i) |
| 4.44 | Purchase Agreement, dated November 6, 2012, among CEMEX Latam Holdings, S.A., as issuer, CEMEX, S.A.B. de C.V. and several initial purchasers named therein, in connection with the issuance of 147,634,465 shares of common stock.(i) |
| 4.45 | Dealer Manager Purchase Agreement, dated March 14, 2013, among CEMEX, S.A.B. de C.V., and Merrill Lynch International, Citigroup Global Markets Limited, HSBC Bank plc and Banco Santander Central Hispano, S.A., in connection with a Eurobond Tender Offer for certain of the outstanding 4.75% Notes due 2014 issued by CEMEX Finance Europe B.V., a subsidiary of the CEMEX, S.A.B. de C.V.(i) |
| 4.46 | Purchase Agreement, dated March 14, 2013, among CEMEX, S.A.B. de C.V., as issuer, the Note Guarantors party thereto and several initial purchasers named therein, in connection with the issuance of U.S.$600,000,000 5.875% Senior Secured Notes due 2019.(i) |
| 4.47 | Indenture, dated March 25, 2013, among CEMEX, S.A.B. de C.V., as issuer, the Note Guarantors party thereto and The Bank of New York Mellon, N.A., as trustee, in connection with the issuance of U.S.$600,000,000 5.875% Senior Secured Notes due 2019.(i) |

| | |
|---|---|
| 4.48 | English translation of Accession Deed, dated March 25, 2013, issued by The Bank of New York Mellon, as Trustee, and CEMEX España, S.A., concerning the shares of CEMEX España, S.A. relating to the issuance by CEMEX, S.A.B. de C.V. of U.S.$600,000,000 5.875% Senior Secured Notes due 2019.(i) |
| 8.1 | List of subsidiaries of CEMEX, S.A.B. de C.V.(i) |
| 12.1 | Certification of the Principal Executive Officer of CEMEX, S.A.B. de C.V. pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.(i) |
| 12.2 | Certification of the Principal Financial Officer of CEMEX, S.A.B. de C.V. pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.(i) |
| 13.1 | Certification of the Principal Executive and Financial Officers of CEMEX, S.A.B. de C.V. pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.(i) |
| 14.1 | Consent of KPMG Cárdenas Dosal, S.C. to the incorporation by reference into the effective registration statements of CEMEX, S.A.B. de C.V. under the Securities Act of their report with respect to the consolidated financial statements of CEMEX, S.A.B. de C.V., which appears in this Annual Report on Form 20-F.(i) |
| 15.1 | Mine safety and health administration safety data.(i) |

(a) Incorporated by reference to Form 6-K of CEMEX, S.A.B. de C.V., filed with the SEC on March 8, 2011.
(b) Incorporated by reference to the Registration Statement on Form F-4 of CEMEX, S.A.B. de C.V. (Registration No. 333-10682), filed with the SEC on August 10, 1999.
(c) Incorporated by reference to the 2002 annual report on Form 20-F of CEMEX, S.A.B. de C.V. filed with the SEC on April 8, 2003.
(d) Incorporated by reference to the 2006 annual report on Form 20-F of CEMEX, S.A.B. de C.V. filed with the SEC on June 27, 2007.
(e) Incorporated by reference to the 2009 annual report on Form 20-F of CEMEX, S.A.B. de C.V. filed with the SEC on June 30, 2010.
(f) Incorporated by reference to the 2010 annual report on Form 20-F of CEMEX, S.A.B. de C.V. filed with the SEC on June 16, 2011.
(g) Incorporated by reference to the 2011 annual report on Form 20-F of CEMEX, S.A.B. de C.V. filed with the SEC on April 30, 2012.
(h) Incorporated by reference to the Registration Statement on Form F-6 of CEMEX, S.A.B. de C.V. (Registration No. 333-174743), filed with the SEC on June 6, 2011.
(i) Filed herewith.

In reviewing the agreements included as exhibits to this annual report, please remember they are included to provide you with information regarding their terms and are not intended to provide any other factual or disclosure information about us or the other parties to the agreements.

The agreements may contain representations and warranties by each of the parties to the applicable agreement. These representations and warranties have been made solely for the benefit of the other parties to the applicable agreement and:

- should not in all instances be treated as categorical statements of fact, but rather as a way of allocating the risk to one of the parties if those statements prove to be inaccurate;
- have been qualified by disclosures that were made to the other party in connection with the negotiation of the applicable agreement, which disclosures are not necessarily reflected in the agreement;

- may apply standards of materiality in a way that is different from what may be viewed as material to you or other investors; and
- were made only as of the date of the applicable agreement or such other date or dates as may be specified in the agreement and are subject to more recent developments.

Accordingly, these representations and warranties may not describe the actual state of affairs as of the date they were made or at any other time.

Table of Contents

## SIGNATURES

CEMEX, S.A.B. de C.V. hereby certifies that it meets all of the requirements for filing on Form 20-F and that it has duly caused and authorized the undersigned to sign this annual report on its behalf.

CEMEX, S.A.B. de C.V.

By: /s/ Lorenzo H. Zambrano
Name: Lorenzo H. Zambrano
Title: Chief Executive Officer

Date: April 23, 2013

## INDEX TO AUDITED CONSOLIDATED FINANCIAL STATEMENTS

**CEMEX, S.A.B. de C.V. and subsidiaries:**

## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Board of Directors and Stockholders
CEMEX, S.A.B. de C.V.:

We have audited the accompanying consolidated balance sheets of CEMEX, S.A.B. de C.V. and subsidiaries (the Company) as of December 31, 2012 and 2011, and the related consolidated statements of operations, comprehensive loss, changes in stockholders' equity , and cash flows for each of the years in the three-year period ended December 31, 2012. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of CEMEX, S.A.B. de C.V. and subsidiaries as of December 31, 2012 and 2011, and the results of their operations and their cash flows for each of the years in the three-year period ended December 31, 2012, in conformity with International Financial Reporting Standards as issued by the International Accounting Standards Board.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), CEMEX, S.A.B. de C.V. and subsidiaries' internal control over financial reporting as of December 31, 2012, based on criteria established in Internal Control – Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO), and our report dated April 23, 2013 expressed an unqualified opinion on the effectiveness of the Company's internal control over financial reporting.

KPMG Cárdenas Dosal, S.C.

/s/ Celin Zorrilla Rizo

Monterrey, N.L., Mexico
April 23, 2013

## INTERNAL CONTROL REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Board of Directors and Stockholders
CEMEX, S.A.B. de C.V.:

We have audited CEMEX, S.A.B. de C.V. and subsidiaries' (the Company) internal control over financial reporting as of December 31, 2012, based on criteria established in Internal Control – Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). CEMEX, S.A.B. de C.V. and subsidiaries' management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Management's Annual Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audit also included performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, CEMEX, S.A.B. de C.V. and subsidiaries maintained, in all material respects, effective internal control over financial reporting as of December 31, 2012, based on criteria established in Internal Control – Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheets of CEMEX, S.A.B. de C.V. and subsidiaries as of December 31, 2012 and 2011, and the related consolidated statements of operations, comprehensive loss, changes in stockholders' equity, and cash flows for each of the years in the three-year period ended December 31, 2012, and our report dated April 23, 2013 expressed an unqualified opinion on those consolidated financial statements.

KPMG Cárdenas Dosal, S.C.
/s/ Celin Zorrilla Rizo

Monterrey, N.L. Mexico
April 23, 2013

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Consolidated Statements of Operations**
**(Millions of Mexican pesos, except for loss per share)**

| | Note | | Years ended December 31, 2012 | 2011 | 2010 |
|---|---|---|---|---|---|
| Net sales | 3 | Ps | 197,036 | 189,887 | 177,641 |
| Cost of sales | 2R | | (138,711) | (136,167) | (127,845) |
| **Gross profit** | | | **58,325** | **53,720** | **49,796** |
| Administrative and selling expenses | | | (23,545) | (25,486) | (25,818) |
| Distribution expenses | | | (17,580) | (16,170) | (13,242) |
| | 2R | | (41,125) | (41,656) | (39,060) |
| **Operating earnings before other expenses, net 1** | | | **17,200** | **12,064** | **10,736** |
| Other expenses, net | 6 | | (5,692) | (5,449) | (6,335) |
| **Operating earnings 2** | | | **11,508** | **6,615** | **4,401** |
| Financial expense | 16 | | (18,335) | (16,627) | (14,753) |
| Other financial (expense) income, net | 7 | | 977 | (2,214) | (523) |
| Equity in gain (loss) of associates | 13A | | 728 | (334) | (487) |
| **Loss before income tax** | | | **(5,122)** | **(12,560)** | **(11,362)** |
| Income tax | 19 | | (6,097) | (12,207) | (2,074) |
| **CONSOLIDATED NET LOSS** | | | **(11,219)** | **(24,767)** | **(13,436)** |
| Non-controlling interest net income | | | 662 | 21 | 46 |
| **CONTROLLING INTEREST NET LOSS** | | Ps | **(11,881)** | **(24,788)** | **(13,482)** |
| **BASIC LOSS PER SHARE** | 22 | Ps | **(0.34)** | **(0.71)** | **(0.39)** |
| **DILUTED LOSS PER SHARE** | 22 | Ps | **(0.34)** | **(0.71)** | **(0.39)** |

**1** The line item "Operating earnings before other expenses, net" was titled by CEMEX in prior years as "Operating income" (note 2A).
**2** The line item "Operating earnings" was titled by CEMEX in prior years as "Operating income after other expenses, net" (note 2A).

The accompanying notes are part of these consolidated financial statements.

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Consolidated Statements of Comprehensive Loss**
**(Millions of Mexican pesos)**

| | Notes | | Years ended December 31, 2012 | 2011 | 2010 |
|---|---|---|---|---|---|
| **CONSOLIDATED NET LOSS** | | Ps | **(11,219)** | **(24,767)** | **(13,436)** |
| **Items that will not be reclassified subsequently to profit or loss** | | | | | |
| Actuarial losses | **18** | | (940) | (1,042) | (1,192) |
| Income tax recognized directly in other comprehensive income | **19** | | 318 | 343 | 392 |
| | | | (622) | (699) | (800) |
| **Items that will be reclassified subsequently to profit or loss when specific conditions are met** | | | | | |
| Effects from available-for-sale investments | **13B** | | (44) | (93) | — |
| Currency translation of foreign subsidiaries | **20B** | | (7,336) | 11,360 | (7,029) |
| Income tax recognized directly in other comprehensive income | **19** | | (3,639) | 4,631 | 5,958 |
| | | | (11,019) | 15,898 | (1,071) |
| Other comprehensive income (loss) for the period | | | (11,641) | 15,199 | (1,871) |
| **TOTAL COMPREHENSIVE LOSS FOR THE PERIOD** | | | **(22,860)** | **(9,568)** | **(15,307)** |
| Non-controlling interest comprehensive income for the period | | | 662 | 21 | 46 |
| **CONTROLLING INTEREST COMPREHENSIVE LOSS FOR THE PERIOD** | | Ps | **(23,522)** | **(9,589)** | **(15,353)** |

The accompanying notes are part of these consolidated financial statements.

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Consolidated Balance Sheets**
**(Millions of Mexican pesos)**

| | Notes | | December 31, 2012 | December 31, 2011 |
|---|---|---|---|---|
| **ASSETS** | | | | |
| **CURRENT ASSETS** | | | | |
| Cash and cash equivalents | **8** | Ps | 12,478 | 16,128 |
| Trade receivables less allowance for doubtful accounts | **9** | | 23,698 | 26,205 |
| Other accounts receivable | **10** | | 6,239 | 5,258 |
| Inventories, net | **11** | | 16,485 | 17,654 |
| Other current assets | **12** | | 4,421 | 3,953 |
| Total current assets | | | 63,321 | 69,198 |
| **NON-CURRENT ASSETS** | | | | |
| Investments in associates | **13A** | | 7,979 | 8,533 |
| Other investments and non-current accounts receivable | **13B** | | 8,600 | 10,595 |
| Property, machinery and equipment, net | **14** | | 212,301 | 233,709 |
| Goodwill and intangible assets, net | **15** | | 173,522 | 189,062 |
| Deferred income taxes | **19B** | | 13,047 | 30,555 |
| Total non-current assets | | | 415,449 | 472,454 |
| **TOTAL ASSETS** | | Ps | **478,770** | **541,652** |
| **LIABILITIES AND STOCKHOLDERS' EQUITY** | | | | |
| **CURRENT LIABILITIES** | | | | |
| Short-term debt including current maturities of long-term debt | **16A** | Ps | 596 | 4,673 |
| Other financial obligations | **16B** | | 6,978 | 7,711 |
| Trade payables | | | 20,516 | 20,169 |
| Income tax payable | | | 6,736 | 11,301 |
| Other accounts payable and accrued expenses | **17** | | 18,967 | 20,680 |
| Total current liabilities | | | 53,793 | 64,534 |
| **NON-CURRENT LIABILITIES** | | | | |
| Long-term debt | **16A** | | 177,539 | 203,798 |
| Other financial obligations | **16B** | | 32,913 | 33,190 |
| Employee benefits | **18** | | 13,460 | 15,325 |
| Deferred income taxes | **19B** | | 12,861 | 17,560 |
| Other non-current liabilities | **17** | | 32,604 | 35,542 |
| Total non-current liabilities | | | 269,377 | 305,415 |
| **TOTAL LIABILITIES** | | | **323,170** | **369,949** |
| **STOCKHOLDERS' EQUITY** | | | | |
| Controlling interest: | | | | |
| Common stock and additional paid-in capital | **20A** | | 118,068 | 113,444 |
| Other equity reserves | **20B** | | 12,203 | 14,797 |
| Retained earnings | **20C** | | 22,722 | 51,648 |
| Net loss | | | (11,881) | (24,788) |
| Total controlling interest | | | 141,112 | 155,101 |
| Non-controlling interest and perpetual debentures | **20D** | | 14,488 | 16,602 |
| **TOTAL STOCKHOLDERS' EQUITY** | | | **155,600** | **171,703** |
| **TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY** | | Ps | **478,770** | **541,652** |

The accompanying notes are part of these consolidated financial statements.

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Consolidated Statements of Cash Flows**
**(Millions of Mexican pesos)**

| | Notes | | 2012 | 2011 | 2010 |
|---|---|---|---|---|---|
| **OPERATING ACTIVITIES** | | | | | |
| **Consolidated net loss** | | Ps | **(11,219)** | **(24,767)** | **(13,436)** |
| Non-cash items: | | | | | |
| Depreciation and amortization of assets | **5** | | 17,184 | 17,536 | 19,108 |
| Impairment losses | **6** | | 1,661 | 1,751 | 1,904 |
| Equity in loss of associates | **13A** | | (728) | 334 | 487 |
| Other expenses (income), net | | | 1,592 | (1,559) | 1,162 |
| Comprehensive financing result | | | 17,358 | 18,841 | 15,276 |
| Income taxes | **19** | | 6,097 | 12,207 | 2,074 |
| Changes in working capital, excluding income taxes | | | (2,048) | (727) | (623) |
| **Net cash flow provided by operating activities before interest and income taxes** | | | **29,897** | **23,616** | **25,952** |
| Financial expense paid in cash including coupons on perpetual debentures | **20D** | | (19,564) | (13,352) | (14,968) |
| Income taxes paid in cash | | | (4,709) | (3,778) | (4,310) |
| **Net cash flows provided by operating activities** | | | **5,624** | **6,486** | **6,674** |
| **INVESTING ACTIVITIES** | | | | | |
| Property, machinery and equipment, net | **14** | | (5,597) | (3,198) | (4,726) |
| Disposal (acquisition) of subsidiaries and associates, net | **13, 15** | | (895) | 1,232 | 1,172 |
| Intangible assets and other deferred charges | **15** | | (438) | (932) | 117 |
| Long term assets and others, net | | | 4,696 | 1,406 | 1,565 |
| **Net cash flows used in investing activities** | | | **(2,234)** | **(1,492)** | **(1,872)** |
| **FINANCING ACTIVITIES** | | | | | |
| Issuance of common stock | **20A** | | — | 11 | 5 |
| Issuance of common stock by subsidiaries | **20D** | | 12,442 | — | — |
| Derivative instruments | | | 1,633 | (5,464) | 69 |
| Issuance (repayment) of debt, net | **16A** | | (17,239) | 5,702 | (9,615) |
| Securitization of trade receivables | | | (193) | 2,890 | 121 |
| Non-current liabilities, net | | | (1,679) | 1,430 | 140 |
| **Net cash flows (used in) provided by financing activities** | | | **(5,036)** | **4,569** | **(9,280)** |
| Increase (decrease) in cash and cash equivalents | | | (1,646) | 9,563 | (4,478) |
| Cash conversion effect, net | | | (2,004) | (1,789) | (1,272) |
| Cash and cash equivalents at beginning of year | | | 16,128 | 8,354 | 14,104 |
| **CASH AND CASH EQUIVALENTS AT END OF YEAR** | **8** | Ps | **12,478** | **16,128** | **8,354** |
| **Changes in working capital, excluding income taxes:** | | | | | |
| Trade receivables, net | | Ps | 2,956 | (2,211) | 133 |
| Other accounts receivable and other assets | | | (2,010) | 1,306 | (2,484) |
| Inventories | | | 1,412 | (575) | (146) |
| Trade payables | | | (424) | (454) | 1,599 |
| Other accounts payable and accrued expenses | | | (3,982) | 1,207 | 275 |
| **Changes in working capital, excluding income taxes** | | Ps | **(2,048)** | **(727)** | **(623)** |

The accompanying notes are part of these consolidated financial statements.

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Statements of Changes in Stockholders' Equity**
**(Millions of Mexican pesos)**

| | Note | | Common stock | Additional paid-in capital | Other equity reserves | Retained earnings | Total controlling interest | Non-controlling interest | Total stockholders' equity |
|---|---|---|---|---|---|---|---|---|---|
| **Balance at January 1, 2010** | | Ps | **4,127** | **98,797** | **(2,748)** | **74,827** | **175,003** | **43,601** | **218,604** |
| Net loss for the period | | | — | — | — | (13,482) | (13,482) | 46 | (13,436) |
| Total other items of comprehensive loss for the period | | | — | — | (1,871) | — | (1,871) | — | (1,871) |
| Capitalization of retained earnings | **20A** | | 5 | 5,476 | — | (5,481) | — | — | — |
| Stock-based compensation | **20A, 21** | | — | 317 | — | — | 317 | — | 317 |
| Effects of perpetual debentures | **20D** | | — | — | 3,777 | — | 3,777 | (23,549) | (19,772) |
| Changes in non-controlling interest | **20D** | | — | — | — | — | — | (655) | (655) |
| **Balance at December 31, 2010** | | | **4,132** | **104,590** | **(842)** | **55,864** | **163,744** | **19,443** | **183,187** |
| Net loss for the period | | | — | — | — | (24,788) | (24,788) | 21 | (24,767) |
| Total other items of comprehensive income for the period | | | — | — | 15,199 | — | 15,199 | — | 15,199 |
| Capitalization of retained earnings | **20A** | | 3 | 4,213 | — | (4,216) | — | — | — |
| Stock-based compensation | **20A, 21** | | — | 506 | — | — | 506 | — | 506 |
| Effects of perpetual debentures | **20D** | | — | — | 827 | — | 827 | (3,221) | (2,394) |
| Changes in non-controlling interest | **20D** | | — | — | (387) | — | (387) | 359 | (28) |
| **Balance at December 31, 2011** | | | **4,135** | **109,309** | **14,797** | **26,860** | **155,101** | **16,602** | **171,703** |
| Net loss for the period | | | — | — | — | (11,881) | (11,881) | 662 | (11,219) |
| Total other items of comprehensive loss for the period | | | — | — | (11,641) | — | (11,641) | — | (11,641) |
| Capitalization of retained earnings | **20A** | | 4 | 4,134 | — | (4,138) | — | — | — |
| Stock-based compensation | **20A, 21** | | — | 486 | 136 | — | 622 | — | 622 |
| Effects of perpetual debentures | **20D** | | — | — | 1,227 | — | 1,227 | (7,004) | (5,777) |
| Changes in non-controlling interest | **20D** | | — | — | 7,684 | — | 7,684 | 4,228 | 11,912 |
| **Balance at December 31, 2012** | | Ps | **4,139** | **113,929** | **12,203** | **10,841** | **141,112** | **14,488** | **155,600** |

The accompanying notes are part of these consolidated financial statements.

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Notes to the Consolidated Financial Statements**
**As of December 31, 2012, 2011 and 2010**
**(Millions of Mexican pesos)**

## 1) DESCRIPTION OF BUSINESS

CEMEX, S.A.B. de C.V., a public stock corporation with variable capital (S.A.B. de C.V.) organized under the laws of the United Mexican States, or Mexico, is a holding company (parent) of entities whose main activities are oriented to the construction industry, through the production, marketing, distribution and sale of cement, ready-mix concrete, aggregates and other construction materials.

CEMEX, S.A.B. de C.V. was founded in 1906 and was registered with the Mercantile Section of the Public Register of Property and Commerce in Monterrey, N.L., Mexico in 1920 for a period of 99 years. In 2002, this period was extended to the year 2100. The shares of CEMEX, S.A.B. de C.V. are listed on the Mexican Stock Exchange ("MSE") as Ordinary Participation Certificates ("CPOs"). Each CPO represents two series "A" shares and one series "B" share of common stock of CEMEX, S.A.B. de C.V. In addition, CEMEX, S.A.B. de C.V.'s shares are listed on the New York Stock Exchange ("NYSE") as American Depositary Shares ("ADSs") under the symbol "CX." Each ADS represents ten CPOs.

The terms "CEMEX, S.A.B. de C.V." and/or the "Parent Company" used in these accompanying notes to the financial statements refer to CEMEX, S.A.B. de C.V. without its consolidated subsidiaries. The terms the "Company" or "CEMEX" refer to CEMEX, S.A.B. de C.V. together with its consolidated subsidiaries. The issuance of these consolidated financial statements was authorized by the management of CEMEX, S.A.B. de C.V. on January 31, 2013. These consolidated financial statements were authorized by the Stockholders' Meeting of CEMEX, S.A.B. de C.V. on March 21, 2013.

## 2) SIGNIFICANT ACCOUNTING POLICIES

### 2A) BASIS OF PRESENTATION AND DISCLOSURE

In November 2008, the CNBV issued regulations requiring registrants whose shares are listed on the MSE, to begin preparing their consolidated financial statements using International Financial Reporting Standards ("IFRS"), as issued by the International Accounting Standards Board ("IASB"), no later than January 1, 2012 and to stop using Mexican Financial Reporting Standards ("MFRS"). In connection with this requirement, CEMEX's consolidated financial statements as of December 31, 2012 and 2011 and for the years ended December 31, 2012, 2011 and 2010, were prepared in accordance with IFRS as issued by the IASB.

On January 26, 2012, CEMEX issued its last consolidated financial statements under MFRS, which were as of December 31, 2011 and 2010 and for the years ended December 31, 2011, 2010 and 2009. These financial statements were used to comply with CEMEX's financial information requirements before April 2012 issuance of its 2011 annual report with the Mexican National Banking and Exchange Commission (" *Comisión Nacional Bancaria y de Valores*" or "CNBV") and its 2011 annual report on Form 20-F with the U.S. Securities and Exchange Commission ("SEC"). In addition, for purposes of preparing its 2011 annual reports with the CNBV and the SEC, on April 27, 2012, CEMEX issued its first financial statements under IFRS, which were as of December 31, 2011 and 2010 and as of January 1, 2010 and for the years ended December 31, 2011 and 2010 (not included in this report), in which CEMEX described the options it made in the migration to IFRS and the effects that such migration had on (i) CEMEX's opening balance sheet as of January 1, 2010, according to IFRS 1, *First time adoption* ("IFRS 1"), (ii) CEMEX's balance sheets as of December 31, 2011 and 2010, and (iii) CEMEX's statements of operations, statements of comprehensive loss and statements of cash flows for the years ended December 31, 2011 and 2010, in each case, as compared to CEMEX's previously reported amounts under MFRS.

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Notes to the Consolidated Financial Statements**
**As of December 31, 2012, 2011 and 2010**
**(Millions of Mexican pesos)**

**Definition of terms**

When reference is made to pesos or "Ps," it means Mexican pesos. The amounts in the financial statements and the accompanying notes are stated in millions, except when references are made to loss per share and/or prices per share. When reference is made to "US$" or dollars, it means millions of dollars of the United States of America ("United States"). When reference is made to "£" or pounds, it means millions of British pounds sterling. When reference is made to "€" or Euros, it means millions of the currency in circulation in a significant number of European Union ("EU") countries. When it is deemed relevant, certain amounts presented in the notes to the financial statements include between parentheses a convenience translation into dollars, into pesos, or both, as applicable. These translations should not be construed as representations that the amounts in pesos or dollars, as applicable, actually represent those peso or dollar amounts or could be converted into pesos or dollars at the rate indicated. As of December 31, 2012 and 2011, translations of pesos into dollars and dollars into pesos, were determined for balance sheet amounts using the closing exchange rates of Ps12.85 and Ps13.96 pesos per dollar, respectively, and for statements of operations amounts, using the average exchange rates of Ps13.15, Ps12.48 and Ps12.67 pesos per dollar for 2012, 2011 and 2010, respectively. When the amounts between parentheses are the peso and the dollar, the amounts were determined by translating the foreign currency amount into dollars using the closing exchange rates at year-end, and then translating the dollars into pesos as previously described.

**Statements of operations**

In CEMEX's statements of operations for the years ended December 31, 2012, 2011 and 2010, the line item currently titled "Operating earnings before other expenses, net" was previously titled "Operating income," and the line item currently titled "Operating earnings" was previously titled "Operating income after other expenses, net." CEMEX made these changes to comply with industry practice when filing financial statements under IFRS with the SEC based on the guidance set forth in paragraph 56 of the Basis for Conclusions of IAS 1, *Presentation of Financial Statements* ("IAS 1"). However, such changes in line-item titles do not represent any change in CEMEX's accounting practices, policies or methodologies under IFRS as compared to prior years. Consequently, the line item "Operating earnings before other expenses, net" is directly comparable with the line item "Operating income" presented in prior years and the line item "Operating earnings" is directly comparable with the line item "Operating income after other expenses, net" presented in prior years.

The line item "Other expenses, net" in the statements of operations consists primarily of revenues and expenses not directly related to CEMEX's main activities, or which are of an unusual and/or non-recurring nature, including impairment losses of long-lived assets, results on disposal of assets and restructuring costs, among others (note 6).

**Statements of other comprehensive income (loss)**

For the years ended December 31, 2012, 2011 and 2010, CEMEX adopted amendments to IAS 1, which, among other things, require entities to present line items for amounts of other comprehensive income (loss) in the period grouped into those that, in accordance with other IFRSs: a) will not be reclassified subsequently to profit or loss; and b) will be reclassified subsequently to profit or loss when specific conditions are met.

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Notes to the Consolidated Financial Statements**
**As of December 31, 2012, 2011 and 2010**
**(Millions of Mexican pesos)**

**Statements of cash flows**

The statements of cash flows present cash inflows and outflows, excluding unrealized foreign exchange effects, as well as the following transactions that did not represent sources or uses of cash:

- In 2012, the exchange of approximately US$452 (48%) of CEMEX's then outstanding perpetual debentures and of approximately €470 (53%) of CEMEX's then outstanding Euro-denominated 4.75% notes due 2014, for new Euro-denominated notes for €179 and new Dollar-denominated notes for US$704. In 2011, the exchange of a portion of CEMEX's perpetual debentures for new notes for US$125, and in 2010, the exchange of a portion of CEMEX's perpetual debentures for new notes for US$1,067 and new notes for €115 (note 16A). These exchanges represented net increases in debt of Ps4,111 in 2012, Ps1,486 in 2011 and Ps15,361 in 2010, reductions in equity's non controlling interest of Ps5,808 in 2012, Ps1,937 in 2011 and Ps20,838 in 2010 and increases in equity's controlling interest of Ps1,680 in 2012, Ps446 in 2011 and Ps5,401 in 2010;
- In 2012 and 2011, the increases in property, plant and equipment for approximately Ps2,025 and Ps1,519, respectively, and in debt for approximately Ps1,401 and Ps1,558, respectively, associated with the negotiation of capital leases during the year (note 16B);
- In 2011, the increase in debt for Ps1,352 related mainly to the acquisition of Ready Mix USA LLC (note 15B);
- In 2011, the decrease in debt and in perpetual debentures within non-controlling interest for approximately Ps239 and Ps1,391, respectively, in connection with the gains resulting from the difference between the notional amount and the fair value of CEMEX's debt and perpetual instruments held by subsidiaries (note 16A); and
- In 2012, 2011 and 2010, the increases in common stock and additional paid-in capital associated with: (i) the capitalization of retained earnings for Ps4,138, Ps4,216 and Ps5,481, respectively (note 20A); and (ii) CPOs issued as part of the executive stock-based compensation for Ps486, Ps495 and Ps312, respectively (note 20A).

**2B) PRINCIPLES OF CONSOLIDATION**

According to IAS 27, *Consolidated and separate financial statements* ("IAS 27"), the consolidated financial statements include those of CEMEX, S.A.B. de C.V. and the entities in which the Parent Company holds, directly or through subsidiaries, more than 50% of their common stock and/or has control. Control exists when CEMEX, S.A.B. de C.V. has the power, directly or indirectly, to govern the administrative, financial and operating policies of an entity in order to obtain benefits from its activities. The financial statements of Special Purpose Entities ("SPEs") are consolidated if, based on an evaluation of the substance of the agreements and the SPE's risks and rewards, CEMEX concludes that it controls the SPE. Balances and operations between related parties are eliminated in consolidation.

Pursuant to IAS 28, *Investments in associates and joint ventures* ("IAS 28"), investments in associates are accounted for by the equity method when CEMEX has significant influence, which is generally presumed with a minimum equity interest of 20%, unless it is proven in unusual cases that CEMEX has significant influence with a lower percentage. The equity method reflects in the financial statements the investment's original cost and the proportional interest of the holding company in the associate's equity and earnings after acquisition, considering, if applicable, the effects of inflation. The financial statements of joint ventures, which are those entities in which CEMEX and other third-party investors have agreed to exercise joint control, are also recognized under the

**Principles of consolidation - continued**



equity method. The equity method is discontinued when the carrying amount of the investment, including any long-term interest in the associate or joint venture, reaches zero, unless CEMEX has incurred or guaranteed additional obligations of the associate or joint venture.

Other investments of a permanent nature where CEMEX holds equity interests of less than 20% and/or there is no significant influence are carried at their historical cost.

### 2C) USE OF ESTIMATES AND CRITICAL ASSUMPTIONS

The preparation of financial statements in accordance with IFRS principles requires management to make estimates and assumptions that affect reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements, as well as the reported amounts of revenues and expenses during the period. These assumptions are reviewed on an ongoing basis using available information. Actual results could differ from these estimates.

The main items subject to estimates and assumptions by management include, among others, impairment tests of long-lived assets, allowances for doubtful accounts and inventories, recognition of deferred income tax assets, as well as the measurement of financial instruments at fair value, and the assets and liabilities related to employee benefits. Significant judgment by management is required to appropriately assess the amounts of these assets and liabilities.

### 2D) FOREIGN CURRENCY TRANSACTIONS AND TRANSLATION OF FOREIGN CURRENCY FINANCIAL STATEMENTS

According to IAS 21, *The effects of changes in foreign exchange rates* ("IAS 21"), transactions denominated in foreign currencies are recorded in the functional currency at the exchange rates prevailing on the dates of their execution. Monetary assets and liabilities denominated in foreign currencies are translated into the functional currency at the exchange rates prevailing at the balance sheet date, and the resulting foreign exchange fluctuations are recognized in earnings, except for exchange fluctuations arising from: 1) foreign currency indebtedness directly related to the acquisition of foreign entities; and 2) fluctuations associated with related parties' balances denominated in foreign currency, which settlement is neither planned nor likely to occur in the foreseeable future and as a result, such balances are of a permanent investment nature. These fluctuations are recorded against "Other equity reserves", as part of the foreign currency translation adjustment (note 20B) until the disposal of the foreign net investment, at which time, the accumulated amount is recycled through the statement of operations as part of the gain or loss on disposal.

The financial statements of foreign subsidiaries, as determined using their respective functional currency, are translated to pesos at the closing exchange rate for balance sheet accounts and at the closing exchange rates of each month within the period for income statements accounts. The corresponding translation adjustment is included within "Other equity reserves" as part of the foreign currency translation adjustment (note 20B) until the disposal of the net investment in the foreign subsidiary. As permitted by IFRS 1, in its opening balance sheet under IFRS as of January 1, 2010, CEMEX elected to reset to zero all cumulative foreign currency translation adjustments determined under MFRS. Consequently, upon disposal of the foreign operations, those effects determined before the migration to IFRS will not be considered in the determination of disposal gains or losses.

**Foreign currency transactions and translation of foreign currency financial statements - continued**

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Notes to the Consolidated Financial Statements**
**As of December 31, 2012, 2011 and 2010**
**(Millions of Mexican pesos)**

During the reported periods, there were no subsidiaries whose functional currency was the currency of a hyperinflationary economy, which is generally considered to exist when the cumulative inflation rate over the last three years is approaching, or exceeds, 100%. In a hyperinflationary economy, the accounts of the subsidiary's statements of operations should be restated to constant amounts as of the reporting date, in which case, both the balance sheet accounts and the statements of operations accounts would be translated to pesos at the closing exchange rates of the year.

The most significant closing exchange rates and the approximate average exchange rates for balance sheet accounts and income statement accounts, respectively, as of December 31 2012, 2011 and 2010, were as follows:

| | 2012 | | 2011 | | 2010 | |
|---|---|---|---|---|---|---|
| Currency | Closing | Average | Closing | Average | Closing | Average |
| Dollar | 12.8500 | 13.1500 | 13.9600 | 12.4800 | 12.3600 | 12.6700 |
| Euro | 16.9615 | 16.9688 | 18.1017 | 17.4204 | 16.4822 | 16.7106 |
| British Pound Sterling | 20.8841 | 20.9373 | 21.6939 | 20.0321 | 19.2854 | 19.5404 |
| Colombian Peso | 0.0073 | 0.0073 | 0.0072 | 0.0067 | 0.0065 | 0.0067 |
| Egyptian Pound | 2.0233 | 2.1590 | 2.3151 | 2.0952 | 2.1285 | 2.2410 |
| Philippine Peso | 0.3130 | 0.3125 | 0.3184 | 0.2886 | 0.2819 | 0.2813 |

The financial statements of foreign subsidiaries are translated from their functional currencies into dollars and subsequently into pesos. The foreign exchange rates presented in the table above represent the exchange rates inferred from this methodology. The peso to U.S. dollar exchange rate used by CEMEX is an average of free market rates available to settle its foreign currency transactions. No significant differences exist, in any case, between the foreign exchange rates used by CEMEX and those published by the Mexican Central Bank.

**2E) CASH AND CASH EQUIVALENTS (note 8)**

The balance in this caption is comprised of available amounts of cash and cash equivalents, mainly represented by highly-liquid short-term investments, which are easily convertible into cash, and which are not subject to significant risks of changes in their values, including overnight investments which yield fixed returns and have maturities of less than three months from the investment date. These fixed-income investments are recorded at cost plus accrued interest. Other investments which are easily convertible into cash are recorded at their market value. Gains or losses resulting from changes in market values and accrued interest are included in the statements of operations as part of other financial income (expense), net.

The amount of cash and cash equivalents in the balance sheet includes restricted cash and cash equivalents, comprised of deposits in margin accounts that guarantee several of CEMEX's obligations, to the extent that the restriction will be lifted in less than three months from the balance sheet date. When the restriction period is greater than three months, such restricted cash and cash equivalents are not considered cash equivalents and are included within short-term or long-term "Other accounts receivable," as appropriate. When contracts contain provisions for net settlement, these restricted amounts of cash and cash equivalents are offset against the liabilities that CEMEX has with its counterparties.

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Notes to the Consolidated Financial Statements**
**As of December 31, 2012, 2011 and 2010**
**(Millions of Mexican pesos)**

**2F) TRADE ACCOUNTS RECEIVABLE AND OTHER CURRENT ACCOUNTS RECEIVABLE (notes 9, 10)**

According to IAS 39, *Financial instruments: recognition and measurement* ("IAS 39"), items under this caption are classified as "loans and receivables", which are recorded at their amortized cost, which is represented by the net present value of the consideration receivable or payable as of the transaction date. Due to their short-term nature, CEMEX initially recognizes these receivables at the original invoiced amount less an estimate of doubtful accounts. Allowances for doubtful accounts as well as impairment of other current accounts receivable are recognized against administrative and selling expenses.

Trade receivables sold under securitization programs, in which CEMEX maintains a residual interest in the trade accounts receivable sold in case of recovery failure, as well as continued involvement in such assets, do not qualify for derecognition and are maintained on the balance sheet.

**2G) INVENTORIES (note 11)**

Inventories are valued using the lower of cost and net realizable value. The cost of inventories includes expenditures incurred in acquiring the inventories, production or conversion costs and other costs incurred in bringing them to their existing location and condition. CEMEX analyzes its inventory balances to determine if, as a result of internal events, such as physical damage, or external events, such as technological changes or market conditions, certain portions of such balances have become obsolete or impaired. When an impairment situation arises, the inventory balance is adjusted to its net realizable value, whereas, if an obsolescence situation occurs, the inventory obsolescence reserve is increased. In both cases, these adjustments are recognized against the results for the period. Advances to suppliers of inventory are presented as part of other short-term accounts receivable.

**2H) OTHER INVESTMENTS AND NON-CURRENT RECEIVABLES (note 13B)**

As part of the category of "loans and receivables" under IAS 39, non-current accounts receivable, as well as investments classified as held to maturity are initially recognized at their amortized cost. Subsequent changes in net present value are recognized in the statements of operations as part of other financial income (expenses), net.

Investments in financial instruments held for trading, as well as those investments available for sale, classified under IAS 39, are recognized at their estimated fair value, in the first case through the statements of operations as part of other financial income (expenses), net, and in the second case, changes in valuation are recognized as part of other comprehensive income (loss) of the period within other equity reserves until their time of disposition, when all valuation effects accrued in equity are reclassified to other financial income (expenses), net, in the statements of operations. These investments are tested for impairment upon the occurrence of a significant adverse change or at least once a year during the last quarter.

**2I) PROPERTY, MACHINERY AND EQUIPMENT (note 14)**

Property, machinery and equipment are recognized at their acquisition or construction cost, as applicable, less accumulated depreciation and accumulated impairment losses. In its opening balance sheet under IFRS as of January 1, 2010, CEMEX elected to determine the deemed cost of several items of its property, machinery and equipment at their estimated fair value at the date of transition, including land, mineral reserves and major equipment. In general, CEMEX maintained the same carrying amount that vehicles, office equipment and other minor assets had under MFRS at the date of transition to IFRS.

**Property, machinery and equipment - continued**

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Notes to the Consolidated Financial Statements**
**As of December 31, 2012, 2011 and 2010**
**(Millions of Mexican pesos)**

Depreciation of fixed assets is recognized as part of cost and operating expenses (note 5), and is calculated using the straight-line method over the estimated useful lives of the assets, except for mineral reserves, which are depleted using the units-of-production method. As of December 31, 2012, the maximum average useful lives by category of fixed assets were as follows:

| | Years |
|---|---|
| Administrative buildings | 36 |
| Industrial buildings | 34 |
| Machinery and equipment in plant | 19 |
| Ready-mix trucks and motor vehicles | 8 |
| Office equipment and other assets | 6 |

CEMEX capitalizes, as part of the historical cost of fixed assets, interest expense arising from existing debt during the construction or installation period of significant fixed assets, considering CEMEX's corporate average interest rate and the average balance of investments in process for the period. Initial stripping costs incurred to gain access to the mineral reserves of a determined quarry are capitalized and amortized during the useful life of the quarry based on the estimated tons of material to be extracted. Ongoing stripping costs in the same quarry are expensed as incurred.

Costs incurred in respect of operating fixed assets that result in future economic benefits, such as an extension in their useful lives, an increase in their production capacity or in safety, as well as those costs incurred to mitigate or prevent environmental damage, are capitalized as part of the carrying amount of the related assets. The capitalized costs are depreciated over the remaining useful lives of such fixed assets. Other costs, including periodic maintenance on fixed assets, are expensed as incurred. Advances to suppliers of fixed assets are presented as part of other long-term accounts receivable.

**2J) BUSINESS COMBINATIONS, GOODWILL, OTHER INTANGIBLE ASSETS AND DEFERRED CHARGES (note 15)**

Business combinations are recognized using the purchase method, by allocating the consideration transferred to assume control of the entity to all assets acquired and liabilities assumed, based on their estimated fair values as of the acquisition date. Intangible assets acquired are identified and recognized at fair value. Any unallocated portion of the purchase price represents goodwill, which is not amortized and is subject to periodic impairment tests (note 2K). Goodwill can be adjusted for any correction to the preliminary assessment given to the assets acquired and/or liabilities assumed within the twelve-month period after purchase. Costs associated with the acquisition are expensed in the statements of operations as incurred. As permitted by IFRS 1, CEMEX elected not to revisit business combinations incurred before the date of transition to IFRS as of January 1, 2010.

CEMEX capitalizes intangible assets acquired, as well as costs incurred in the development of intangible assets, when future economic benefits associated with the assets are identified and there is evidence of control over such benefits. Intangible assets are presented at their acquisition or development cost. Such assets are classified as having a definite or indefinite life; the latter are not amortized since the period cannot be accurately established in which the benefits associated with such intangibles will terminate. Amortization of intangible assets of definite life is calculated under the straight-line method and recognized as part of costs and operating expenses (note 5). Based on IFRS 13, CEMEX modified the value of certain extraction permits considering that as of the date of transition to IFRS, there were better indicators of fair value as compared to the carrying amount related to such permits under MFRS.

**Business combinations, goodwill, other intangible assets and deferred charges - continued**

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Notes to the Consolidated Financial Statements**
**As of December 31, 2012, 2011 and 2010**
**(Millions of Mexican pesos)**

Startup costs are recognized in the statements of operations as they are incurred. Costs associated with research and development activities ("R&D"), performed by CEMEX to create products and services, as well as to develop processes, equipment and methods to optimize operational efficiency and reduce costs, are recognized in the operating results as incurred. The technology and energy departments in CEMEX undertake all significant R&D activities as part of their daily activities. In 2012, 2011 and 2010, total combined expenses of these departments were approximately Ps514 (US$40), Ps487 (US$39) and Ps519 (US$41), respectively. Development costs are capitalized only if they meet the definition of intangible asset mentioned above.

Direct costs incurred in the development stage of computer software for internal use are capitalized and amortized through the operating results over the useful life of the software, which on average is approximately 5 years.

Costs incurred in exploration activities such as payments for rights to explore, topographical and geological studies, as well as trenching, among other items incurred to assess the technical and commercial feasibility of extracting a mineral resource, which are not significant to CEMEX, are capitalized when future economic benefits associated with such activities are identified. When extraction begins, these costs are amortized during the useful life of the quarry based on the estimated tons of material to be extracted. When future economic benefits are not achieved, any capitalized costs are subject to impairment.

CEMEX's extraction rights have maximum useful lives that range from 30 to 100 years, depending on the sector, and the expected life of the related reserves. As of December 31, 2012, except for extraction rights and/or as otherwise indicated, CEMEX's intangible assets are amortized on a straight line basis over their useful lives that range on average from 3 to 20 years.

**2K) IMPAIRMENT OF LONG LIVED ASSETS (notes 14, 15)**

**Property, machinery and equipment, intangible assets of definite life and other investments**

Property, machinery and equipment, intangible assets of definite life and other investments are tested for impairment upon the occurrence of factors such as the occurrence of a significant adverse event, changes in CEMEX's operating environment, changes in projected use or in technology, as well as expectations of lower operating results for each cash generating unit, in order to determine whether their carrying amounts may not be recovered. In such cases, an impairment loss is recorded in the income statements for the period when such determination is made within "Other expenses, net." The impairment loss of an asset results from the excess of the asset's carrying amount over its recoverable amount, corresponding to the higher of the fair value of the asset, less costs to sell such asset, and the asset's value in use, the latter represented by the net present value of estimated cash flows related to the use and eventual disposal of the asset.

Significant judgment by management is required to appropriately assess the fair values and values in use of these assets. The main assumptions utilized to develop these estimates are a discount rate that reflects the risk of the cash flows associated with the assets evaluated and the estimations of generation of future income. Those assumptions are evaluated for reasonableness by comparing such discount rates to available market information and by comparing to third-party expectations of industry growth, such as governmental agencies or industry chambers of commerce.

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Notes to the Consolidated Financial Statements**
**As of December 31, 2012, 2011 and 2010**
**(Millions of Mexican pesos)**

**Goodwill and intangible assets of indefinite life**

Goodwill and other intangible assets of indefinite life are tested for impairment when required due to significant adverse changes or at least once a year, during the last quarter of such year, by determining the recoverable amount of the group of cash-generating units ("CGUs")to which goodwill balances have been allocated, which consists of the higher of such group of CGUs fair value, less cost to sell and its value in use, represented by the discounted amount of estimated future cash flows to be generated by such CGUs to which goodwill has been allocated. Other intangible assets of indefinite life may be tested at the CGU or group of CGUs level, depending on their allocation. CEMEX determines discounted cash flows generally over periods of 5 years. In specific circumstances, when, according to CEMEX's experience, actual results for a given cash-generating unit do not fairly reflect historical performance and most external economic variables provide the Company with confidence that a reasonably determinable improvement in the mid-term is expected in their operating results, management uses cash flow projections over a period of up to 10 years, to the extent CEMEX has detailed, explicit and reliable financial forecasts and is confident and can demonstrate its ability, based on past experience, to forecast cash flows accurately over that longer period. The number of additional periods above the standard period of 5 years of cash flow projections up to 10 years is determined by the extent to which future expected average performance resembles the historical average performance. If the value in use of a group of CGUs to which goodwill has been allocated is lower than its corresponding carrying amount, CEMEX determines the fair value of such group of CGUs using methodologies generally accepted in the market to determine the value of entities, such as multiples of Operating EBITDA and by reference to other market transactions, among others. An impairment loss is recognized within other expenses, net, if the recoverable amount is lower than the net book value of the group of CGUs to which goodwill has been allocated. Impairment charges recognized on goodwill are not reversed in subsequent periods.

The geographic operating segments reported by CEMEX (note 4), represent CEMEX's groups of CGUs to which goodwill has been allocated for purposes of testing goodwill for impairment. In arriving at this conclusion, CEMEX considered: a) that after the acquisition, goodwill was allocated at the level of the geographic operating segment; b) that the operating components that comprise the reported segment have similar economic characteristics; c) that the reported segments are used by CEMEX to organize and evaluate its activities in its internal information system; d) the homogeneous nature of the items produced and traded in each operative component, which are all used by the construction industry; e) the vertical integration in the value chain of the products comprising each component; f) the type of clients, which are substantially similar in all components; g) the operative integration among components; and h) that the compensation system of a specific country is based on the consolidated results of the geographic segment and not on the particular results of the components. In addition, the country level represents the lowest level within CEMEX at which goodwill is monitored for internal management purposes.

Impairment tests are significantly sensitive to, among other factors, the estimation of future prices of CEMEX's products, the development of operating expenses, local and international economic trends in the construction industry, the long-term growth expectations in the different markets, as well as the discount rates and the growth rates in perpetuity applied. For purposes of estimating future prices, CEMEX uses, to the extent available, historical data plus the expected increase or decrease according to information issued by trusted external sources, such as national construction or cement producer chambers and/or in governmental economic expectations. Operating expenses are normally measured as a constant proportion of revenues, following past experience. However, such operating expenses are also reviewed considering external information sources in respect to inputs that behave according to international prices, such as gas and oil. CEMEX uses specific pre-tax discount rates for each group of CGUs to which goodwill is allocated, which are applied to discount pre-tax cash flows.

**Goodwill and intangible assets of indefinite life - continued**



The amounts of estimated undiscounted cash flows are significantly sensitive to the growth rate in perpetuity applied. Likewise, the amounts of discounted estimated future cash flows are significantly sensitive to the weighted average cost of capital (discount rate) applied. The higher the growth rate in perpetuity applied, the higher the amount of undiscounted future cash flows by group of CGUs obtained. Conversely, the higher the discount rate applied, the lower the amount of discounted estimated future cash flows by group of CGUs obtained.

**2L) FINANCIAL LIABILITIES, DERIVATIVE FINANCIAL INSTRUMENTS AND FAIR VALUE MEASUREMENTS (note 16)**

### Debt

Bank loans and notes payable are recognized at their amortized cost. Interest accrued on financial instruments is recognized in the balance sheet within "Other accounts payable and accrued expenses" against financial expense. During 2012 and 2011, CEMEX did not have financial liabilities voluntarily recognized at fair value or associated to fair value hedge strategies with derivative financial instruments. Direct costs incurred in debt issuances or borrowings are capitalized and amortized as interest expense as part of the effective interest rate of each transaction over its maturity. These costs include commissions and professional fees.

### Capital leases

Capital leases, in which CEMEX has substantially all risks and rewards associated with the ownership of an asset, are recognized as financing liabilities against a corresponding fixed asset for the lesser of the market value of the leased asset and the net present value of future minimum payments, using the contract's implicit interest rate to the extent available, or the incremental borrowing cost. Among other elements, the main factors that determine a capital lease are: a) if ownership title of the asset is transferred to CEMEX at the expiration of the contract; b) if CEMEX has a bargain purchase option to acquire the asset at the end of the lease term; c) if the lease term covers the majority of the useful life of the asset; and/or d) if the net present value of minimum payments represents substantially all the fair value of the related asset at the beginning of the lease.

**Financial instruments with components of both liability and equity**

Based on IAS 32, *Financial instruments: presentation* ("IAS 32") and IAS 39, when a financial instrument contains components of both liability and equity, such as a note that at maturity is convertible into a fixed number of CEMEX's shares and the currency in which the instrument is denominated is the same as the functional currency of the issuer, each component is recognized separately in the balance sheet according to the specific characteristics of each transaction. In the case of instruments mandatorily convertible into shares of the issuer, the liability component represents the net present value of interest payments on the principal amount using a market interest rate, without assuming any early conversion, and is recognized within "Other financial obligations," whereas the equity component represents the difference between the principal amount and the liability component, and is recognized within "Other equity reserves" net of commissions. In the case of instruments that are optionally convertible into a fixed number of shares, the liability component represents the difference between the principal amount and the fair value of the conversion option premium, which reflects the equity component (note 2P). When the transaction is denominated in a currency different than the functional currency of the issuer, the conversion option is accounted for as a derivative financial instrument at fair value in the statements of operations.

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Notes to the Consolidated Financial Statements**
**As of December 31, 2012, 2011 and 2010**
**(Millions of Mexican pesos)**

**Derivative financial instruments**

In compliance with the guidelines established by its Risk Management Committee and the restrictions set forth by its debt agreements, CEMEX uses derivative financial instruments ("derivative instruments") mainly in order to change the risk profile associated with changes in interest rates, the exchange rates of debt, or both; as an alternative source of financing, and as hedges of: (i) highly probable forecasted transactions; (ii) purchases of certain commodities; and (iii) CEMEX's net investments in foreign subsidiaries.

CEMEX recognizes all derivative instruments as assets or liabilities in the balance sheet at their estimated fair values, and the changes in such fair values are recognized in the statements of operations within "Other financial expense, net" for the period in which they occur, except for changes in fair value of derivative instruments associated with cash flow hedges, in which case, such changes in fair value are recognized in stockholders' equity, and are reclassified to earnings as the interest expense of the related debt is accrued, in the case of interest rate swaps, or when the underlying products are consumed in the case of contracts on the price of raw materials and commodities. Likewise, in hedges of the net investment in foreign subsidiaries, changes in fair value are recognized in stockholders' equity as part of the foreign currency translation result (note 2D), which reversal to earnings would take place upon disposal of the foreign investment. For the years ended December 31, 2012 and 2011, CEMEX has not designated any fair value hedges.

Accrued interest generated by interest rate derivative instruments, when applicable, is recognized as financial expense in the relevant period, adjusting the effective interest rate of the related debt.

CEMEX reviews its different contracts to identify the existence of embedded derivatives. Identified embedded derivatives are analyzed to determine if they need to be separated from the host contract and recognized in the balance sheet as assets or liabilities, applying the same valuation rules used for other derivative instruments.

Derivative instruments are negotiated with institutions with significant financial capacity; therefore, CEMEX believes the risk of non-performance of the obligations agreed to by such counterparties to be minimal. According to IFRS 13, the estimated fair value represents the price that would be received for the sale of an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date, considering the counterparties' risk, that is, an exit price. Occasionally, there is a reference market that provides the estimated fair value; in the absence of such market, such value is determined by the net present value of projected cash flows or through mathematical valuation models.

**Put options granted for the purchase of non controlling interests and associates**

Represent agreements by means of which CEMEX commits to acquire, in case the counterparty exercises its right to sell at a future date at a predefined price formula, the shares of a non-controlling interest in a subsidiary of CEMEX or an associate. In respect of a put option granted for the purchase of a non-controlling interest in a CEMEX subsidiary, to the extent the put option is exercisable at the measurement date, CEMEX recognizes a liability for the net present value of the obligation as of the financial statements' date against the controlling interest within stockholders' equity. In respect of a put option granted for the purchase of an associate, CEMEX would recognize a liability against a loss in the statements of operations, to the extent the put option is exercisable at the measurement date, whenever the estimated purchase price exceeds the fair value of the net assets to be acquired by CEMEX, had the counterparty exercised its right to sell.

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Notes to the Consolidated Financial Statements**
**As of December 31, 2012, 2011 and 2010**
**(Millions of Mexican pesos)**

### Fair value measurements

CEMEX applies the guidance of IFRS 13, *Fair value measurements* ("IFRS 13") for its fair value measurements of financial assets and financial liabilities recognized or disclosed at fair value. IFRS 13 does not require fair value measurements in addition to those already required or permitted by other IFRSs and is not intended to establish valuation standards or affect valuation practices outside financial reporting. Under IFRS 13, fair value represents an "Exit Value," which is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date, considering the counterparty's credit risk in the valuation.

The concept of exit value is premised on the existence of a market and market participants for the specific asset or liability. When there is no market and/or market participants willing to make a market, IFRS 13 establishes a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (Level 1 measurements) and the lowest priority to measurements involving significant unobservable inputs (Level 3 measurements). The three levels of the fair value hierarchy are as follows:

- Level 1 inputs are quoted prices (unadjusted) in active markets for identical assets or liabilities that CEMEX has the ability to access at the measurement date.
- Level 2 inputs are inputs other than quoted prices that are observable for the asset or liability, either directly or indirectly.
- Level 3 inputs are unobservable inputs for the asset or liability.

### 2M) PROVISIONS

CEMEX recognizes provisions when it has a legal or constructive obligation resulting from past events, whose resolution would imply cash outflows or the delivery of other resources owned by the Company.

#### Restructuring (note 17)

CEMEX recognizes provisions for restructuring costs only when the restructuring plans have been properly finalized and authorized by management, and have been communicated to the third parties involved and/or affected by the restructuring prior to the balance sheet date. These provisions may include costs not associated with CEMEX's ongoing activities.

#### Asset retirement obligations (note 17)

Unavoidable obligations, legal or constructive, to restore operating sites upon retirement of long-lived assets at the end of their useful lives are measured at the net present value of estimated future cash flows to be incurred in the restoration process, and are initially recognized against the related assets' book value. The increase to the assets' book value is depreciated during its remaining useful life. The increase in the liability related to the passage of time is charged to the line item of "Other financial expenses, net." Adjustments to the liability for changes in estimations are recognized against fixed assets, and depreciation is modified prospectively. These obligations are related mainly to future costs of demolition, cleaning and reforestation, so that quarries, maritime terminals and other production sites are left in acceptable condition at the end of their operation.

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Notes to the Consolidated Financial Statements**
**As of December 31, 2012, 2011 and 2010**
**(Millions of Mexican pesos)**

**Costs related to remediation of the environment (notes 17 and 24)**

Provisions associated with environmental damage represent the estimated future cost of remediation, which are recognized at their nominal value when the time schedule for the disbursement is not clear, or when the economic effect for the passage of time is not significant; otherwise, such provisions are recognized at their discounted values. Reimbursements from insurance companies are recognized as assets only when their recovery is practically certain. In that case, such reimbursement assets are not offset against the provision for remediation costs.

**Contingencies and commitments (notes 23 and 24)**

Obligations or losses related to contingencies are recognized as liabilities in the balance sheet when present obligations exist resulting from past events that are expected to result in an outflow of resources and the amount can be measured reliably. Otherwise, a qualitative disclosure is included in the notes to the financial statements. The effects of long-term commitments established with third parties, such as supply contracts with suppliers or customers, are recognized in the financial statements on an incurred or accrued basis, after taking into consideration the substance of the agreements. Relevant commitments are disclosed in the notes to the financial statements. The Company does not recognize contingent revenues, income or assets.

**2N) PENSIONS AND POSTRETIREMENT EMPLOYEE BENEFITS (note 18)**

**Defined contribution pension plans**

The costs of defined contribution pension plans are recognized in the operating results as they are incurred. Liabilities arising from such plans are settled through cash transfers to the employees' retirement accounts, without generating future obligations.

**Defined benefit pension plans, other postretirement benefits and termination benefits**

Based on IAS 19, *Employee benefits* ("IAS19"), CEMEX recognizes the costs associated with employees' benefits for: a) defined benefit pension plans; and b) other postretirement benefits, basically comprised of health care benefits, life insurance and seniority premiums, granted by CEMEX and/or pursuant to applicable law. These costs are recognized as services are rendered, based on actuarial estimations of the benefits' present value with the advice of external actuaries. The actuarial assumptions consider the use of nominal rates. For certain pension plans, irrevocable trust funds have been created to cover future benefit payments. These assets are valued at their estimated fair value at the balance sheet date. The expected rates of return on plan assets are determined based on the market prices prevailing on that date, applicable to the period over which the obligation is to be settled. Termination benefits, not associated with a restructuring event, which mainly represent severance payments by law, are recognized in the operating results for the period in which they are incurred.

The service cost, corresponding to the increase in the obligation for additional benefits earned by employees during the period, is recognized within operating costs and expenses. The interest cost related to the increase in the liability by the passage of time, as well as the expected return on plan assets for the period, are recognized within "Other financial expenses, net."

The effects from modifications to the pension plans that affect the cost of past services are recognized within operating costs and expenses during the periods in which such modifications become effective with respect to the employees, or without delay if changes are effective immediately. Likewise, the effects from curtailments and/or

**Defined benefit pension plans, other postretirement benefits and termination benefits - continued**



settlements of obligations occurring during the period, associated with events that significantly reduce the cost of future services and/or reduce significantly the population subject to pension benefits, respectively, are recognized within operating costs and expenses.

The actuarial gains and losses, related to differences between the projected and real actuarial assumptions at the end of the period, as well as the difference between the expected and real return on plan assets, are recognized in the period in which they are incurred as part of other comprehensive income or loss for the period within stockholders' equity.

**2O) INCOME TAXES (note 19)**

Based on IAS 12, *Income taxes* ("IAS 12"), the effects reflected in the statements of operations for income taxes include the amounts incurred during the period and the amounts of deferred income taxes, determined according to the income tax law applicable to each subsidiary. Consolidated deferred income taxes represent the addition of the amounts determined in each subsidiary by applying the enacted statutory income tax rate to the total temporary differences resulting from comparing the book and taxable values of assets and liabilities, considering tax loss carryforwards as well as other recoverable taxes and tax credits, to the extent that it is probable that future taxable profits will be available against which they can be utilized. The measurement of deferred income taxes reflects the tax consequences that follow the manner in which CEMEX expects, at the end of the reporting period, to recover or settle the carrying amount of its assets and liabilities. Deferred income taxes for the period represent the difference between balances of deferred income at the beginning and the end of the period. Deferred income tax assets and liabilities relating to different tax jurisdictions are not offset. According to IFRS, all items charged or credited directly in stockholders' equity or as part of other comprehensive income or loss for the period are recognized net of their current and deferred income tax effects. The effect of a change in enacted statutory tax rates is recognized in the period in which the change is officially enacted.

Deferred tax assets are reviewed at each reporting date and are reduced to the extent that it is not considered probable that the related tax benefit will be realized. In conducting such assessment, CEMEX analyzes the aggregate amount of self-determined tax loss carryforwards included in its income tax returns in each country where CEMEX believes, based on available evidence, that the tax authorities would not reject such tax loss carryforwards; and the likelihood of the recoverability of such tax loss carryforwards prior to their expiration through an analysis of estimated future taxable income. If CEMEX believes that it is probable that the tax authorities would reject a self-determined deferred tax asset, it would decrease such asset. Likewise, if CEMEX believes that it would not be able to use a tax loss carryforward before its expiration or any other deferred tax asset, CEMEX would not recognize such deferred tax asset. Both situations would result in additional income tax expense for the period in which such determination is made. In order to determine whether it is probable that deferred tax assets will ultimately be realized, CEMEX takes into consideration all available positive and negative evidence, including factors such as market conditions, industry analysis, expansion plans, projected taxable income, carryforward periods, current tax structure, potential changes or adjustments in tax structure, tax planning strategies, future reversals of existing temporary differences, etc. Likewise, every reporting period, CEMEX analyzes its actual results versus the Company's estimates, and adjusts, as necessary, its tax asset valuations. If actual results vary from CEMEX's estimates, the deferred tax asset and/or valuations may be affected and necessary adjustments will be made based on relevant information. Any adjustments recorded will affect CEMEX's statements of operations in such period.

**Income taxes - continued**



The income tax effects from an uncertain tax position are recognized when it is more-likely-than-not that the position will be sustained based on its technical merits and assuming that the tax authorities will examine each position and have full knowledge of all relevant information, and they are measured using a cumulative probability model. Each position has been considered on its own, regardless of its relation to any other broader tax settlement. The more-likely-than-not threshold represents a positive assertion by management that CEMEX is entitled to the economic benefits of a tax position. If a tax position is not considered more-likely-than-not to be sustained, no benefits of the position are recognized. CEMEX's policy is to recognize interest and penalties related to unrecognized tax benefits as part of the income tax in the consolidated statements of operations.

## 2P) STOCKHOLDERS' EQUITY

### Common stock and additional paid-in capital (note 20A)

These items represent the value of stockholders' contributions, and include increases related to the recapitalization of retained earnings and the recognition of executive compensation programs in CEMEX's CPOs.

### Other equity reserves (note 20B)

This caption groups the cumulative effects of items and transactions that are, temporarily or permanently, recognized directly to stockholders' equity, and includes the elements presented in the statements of comprehensive income (loss). Comprehensive income (loss) for the period includes, in addition to net income (loss), certain changes in stockholders' equity during a period that do not result from investments by owners and distributions to owners. The most significant items within "Other equity reserves" during the reported periods are as follows:

**Items of "Other equity reserves" included within other comprehensive income (loss) for the period:**

- Currency translation effects from the translation of foreign subsidiaries' financial statements, net of: a) exchange results from foreign currency debt directly related to the acquisition of foreign subsidiaries; and b) exchange results from foreign currency related parties balances that are of a long-term investment nature (note 2D);
- The effective portion of the valuation and liquidation effects from derivative instruments under cash flow hedging relationships, which are recorded temporarily in stockholders' equity (note 2L);
- Changes in fair value during the tenure of available-for-sale investments until their disposal (note 2H); and
- Current and deferred income taxes during the period arising from items whose effects are directly recognized in stockholders' equity.

**Items of "Other equity reserves" not included in comprehensive loss for the period:**

- Effects related to controlling stockholders' equity for changes or transactions affecting non-controlling interest stockholders in CEMEX's consolidated subsidiaries;

**Other equity reserves - continued**

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Notes to the Consolidated Financial Statements**
**As of December 31, 2012, 2011 and 2010**
**(Millions of Mexican pesos)**

- Effects attributable to controlling stockholders' equity for financial instruments issued by consolidated subsidiaries that qualify for accounting purposes as equity instruments, such as the interest expense paid on perpetual debentures;
- The equity component of outstanding mandatorily convertible securities, which are convertible into shares of the Parent Company (note 16B). Upon conversion, this amount will be reclassified to common stock and additional paid-in capital; and
- The cancellation of the Parent Company's shares held by consolidated subsidiaries.

**Retained earnings (note 20C)**

Retained earnings represent the cumulative net results of prior accounting periods, net of dividends declared to stockholders, and net of any recapitalizations of retained earnings. In addition, retained earnings also include the effects generated from initial adoption of IFRS as of January 1, 2010 according to IFRS 1.

**Non-controlling interest and perpetual debentures (note 20D)**

This caption includes the share of non-controlling stockholders in the results and equity of consolidated subsidiaries. This caption also includes the amount as of the balance sheet date of financial instruments (perpetual notes) issued by consolidated entities that qualify as equity instruments considering that there is: a) no contractual obligation to deliver cash or another financial asset; b) no predefined maturity date; and c) a unilateral option to defer interest payments or preferred dividends for indeterminate periods.

**2Q) REVENUE RECOGNITION (note 3)**

CEMEX's consolidated net sales represent the value, before tax on sales, of revenues originated by products and services sold by consolidated subsidiaries as a result of their ordinary activities, after the elimination of transactions between related parties, and are quantified at the fair value of the consideration received or receivable, decreased by any trade discounts or volume rebates granted to customers.

Revenue from the sale of goods and services is recognized when goods are delivered or services are rendered to customers, there is no condition or uncertainty implying a reversal thereof, and they have assumed the risk of loss. Revenue from trading activities, in which CEMEX acquires finished goods from a third party and subsequently sells the goods to another third-party, are recognized on a gross basis, considering that CEMEX assumes the total risk on the goods purchased, not acting as agent or broker.

Revenue and costs associated with construction contracts are recognized in the period in which the work is performed by reference to the percentage or stage of completion of the contract at the end of the period, considering that the following have been defined: a) each party's enforceable rights regarding the asset to be constructed; b) the consideration to be exchanged; c) the manner and terms of settlement; d) actual costs incurred and contract costs required to complete the asset are effectively controlled; and e) it is probable that the economic benefits associated with the contract will flow to the entity.

The percentage of completion of construction contracts represents the proportion that contract costs incurred for work performed to date bear to the estimated total contract costs or the surveys of work performed or the

**Revenue recognition - continued**



physical proportion of the contract work completed, whichever better reflects the percentage of completion under the specific circumstances. Progress payments and advances received from customers do not reflect the work performed and are recognized as a short or long term advanced payments, as appropriate.

### 2R) COST OF SALES, ADMINISTRATIVE AND SELLING EXPENSES AND DISTRIBUTION EXPENSES

Cost of sales represents the production cost of inventories at the moment of sale. Such cost of sales includes depreciation, amortization and depletion of assets involved in production and expenses related to storage in production plants. Cost of sales excludes expenses related to personnel, equipment and services involved in sale activities and storage of product at points of sales, which are included as part of the administrative and selling expenses. Cost of sales includes freight expenses of raw material in plants and delivery expenses of CEMEX's ready-mix concrete business, but excludes freight expenses of finished products between plants and points of sale and freight expenses between points of sales and the customers' facilities, which are included as part of the distribution expenses line item. For the years ended December 31, 2012, 2011 and 2010, selling expenses included as part of the selling and administrative expenses line item amounted to Ps7,946, Ps8,079 and Ps7,858, respectively.

### 2S) EXECUTIVE STOCK-BASED COMPENSATION (note 21)

Based on IFRS 2, *Share-based payments* ("IFRS 2"), stock awards based on shares of CEMEX granted to executives are defined as equity instruments when services received from employees are settled by delivering CEMEX's shares; or as liability instruments when CEMEX commits to make cash payments to the executives on the exercise date of the awards based on changes in CEMEX's own stock (intrinsic value). The cost of equity instruments represents their estimated fair value at the date of grant and is recognized in the statements of operations during the period in which the exercise rights of the employees become vested. In respect of liability instruments, these instruments are valued at their estimated fair value at each reporting date, recognizing the changes in fair value through the operating results. CEMEX determines the estimated fair value of options using the binomial financial option-pricing model.

### 2T) EMISSION RIGHTS

In some of the countries where CEMEX operates, such as in countries of the EU, governments have established mechanisms aimed at reducing carbon-dioxide emissions ("CO2") by means of which industries releasing CO2 must submit to the environmental authorities at the end of a compliance period emission rights for a volume equivalent to the tons of CO2 released. Since the mechanism for emissions reduction in the EU has been in operation, a certain number of emission rights based on historical levels have been granted by the relevant environmental authorities to the different industries free of cost. Therefore, companies have to buy additional emission rights to meet deficits between actual CO2 emissions during the compliance period and emission rights actually held, or they can dispose of any surplus of emission rights in the market. In addition, the United Nations Framework Convention on Climate Change ("UNFCCC") grants Certified Emission Reductions ("CERs") to qualified CO2 emission reduction projects. CERs may be used in specified proportions to settle emission rights obligations in the EU. CEMEX actively participates in the development of projects aimed to reduce CO2 emissions. Some of these projects have been awarded with CERs.

**Emission rights - continued**



In the absence of an IFRS that defines an accounting treatment for these schemes, CEMEX accounts for the effects associated with CO2 emission reduction mechanisms as follows:

- Emission rights granted by governments are not recognized in the balance sheet considering that their cost is zero.
- Revenues from the sale of any surplus of emission rights are recognized by decreasing cost of sales; in the case of forward sale transactions, revenues are recognized upon physical delivery of the emission certificates.
- Emission rights and/or CERs acquired to hedge current CO2 emissions are recognized as intangible assets at cost, and are further amortized to cost of sales during the compliance period. In the case of forward purchases, assets are recognized upon physical reception of the emission certificates.
- CEMEX accrues a provision against cost of sales when the estimated annual emissions of CO2 are expected to exceed the number of emission rights, net of any benefit obtained through swap transactions of emission rights for CERs.
- CERs received from the UNFCCC are recognized as intangible assets at their development cost, which are attributable mainly to legal expenses incurred in the process of obtaining such CERs.
- CEMEX does not maintain emission rights, CERs and/or forward transactions with trading purposes.

The combined effect of the use of alternate fuels that help reduce the emission of CO2, and the downturn in produced cement volumes in the EU, generated a surplus of emission rights held over the estimated CO2 emissions. From the consolidated surplus of emission rights, during 2011 and 2010, CEMEX sold an aggregate amount of approximately 13.4 million certificates, receiving revenues of approximately Ps1,518 and Ps1,417, respectively. During 2012, there were no sales of emission rights.

## 2U) CONCENTRATION OF CREDIT

CEMEX sells its products primarily to distributors in the construction industry, with no specific geographic concentration within the countries in which CEMEX operates. As of and for the years ended December 31, 2012, 2011 and 2010, no single customer individually accounted for a significant amount of the reported amounts of sales or in the balances of trade receivables. In addition, there is no significant concentration of a specific supplier relating to the purchase of raw materials.

## 2V) NEWLY ISSUED IFRS NOT YET ADOPTED

There are a number of IFRS issued as of the date of issuance of these financial statements but which have not yet been adopted, which are listed below. Except as otherwise indicated, CEMEX expects to adopt these IFRS when they become effective.

- During 2011 and 2012, the IASB issued IFRS 9, *Financial instruments: classification and measurement* ("IFRS 9"), which as issued, reflects the first part of Phase 1 of the IASB's project to replace IAS 39. In subsequent phases, the IASB will address impairment methodology, derecognition and hedge accounting. IFRS 9 requires an entity to recognize a financial asset or a financial liability in its statement of financial position when, and only when, the entity becomes party to the contractual provisions of the instrument. At

**Newly issued IFRS not yet adopted - continued**



initial recognition, an entity shall measure a financial asset or financial liability at its fair value plus or minus, in the case of a financial asset or financial liability not at fair value through profit or loss, transaction costs that are directly attributable to the acquisition or issue of the financial asset or financial liability. IFRS 9 is effective for annual periods beginning on or after January 1, 2015, with early adoption permitted. CEMEX does not consider that current IFRS 9 will have a significant effect on the classification and measurement of CEMEX's financial assets and financial liabilities. Nonetheless, CEMEX will evaluate the impact and will quantify the effect together with the other phases, when issued, to make a comprehensive analysis.

- In May 2011, the IASB issued IFRS 10, *Consolidated financial statements* ("IFRS 10"), effective beginning January 1, 2013. IFRS 10 establishes principles for the presentation and preparation of consolidated financial statements when an entity controls one or more other entities and replaces the consolidation requirements in SIC 12, *Consolidation — Special Purpose Entities* and IAS 27. IFRS 10 builds on existing principles by identifying the concept of control as the determining factor in whether an entity should be included within the consolidated financial statements of the parent company. An investor controls an investee when it is exposed, or has rights, to variable returns from its involvement with the investee and has the ability to affect those returns through its power over the investee. This standard also provides additional guidance to assist in the determination of control where this is difficult to assess. CEMEX does not expect the application of IFRS 10 to have a significant impact on its consolidated financial statements.
- In May 2011, the IASB issued IFRS 11, *Joint arrangements* ("IFRS 11"), effective beginning January 1, 2013. IFRS 11 addresses inconsistencies in the reporting of joint arrangements by requiring an entity to classify the type of joint arrangement in which it is involved by assessing its rights and obligations arising from the arrangement, as: a) joint operations, in which the parties that have joint control of the arrangement have rights to the assets and obligations for the liabilities relating to the arrangement; or b) joint ventures, in which the parties that have joint control of the arrangement have rights to the net assets of the arrangement. The equity method should be applied as the single method to account for interests in joint ventures. Meanwhile, joint operators should account for their interests in joint operations line-by-line considering their share in the assets, liabilities, revenues and expenses of the arrangement. In conjunction with the issuance of IFRS 11, IAS 28 was amended. CEMEX does not expect the application of IFRS 11 to have a significant impact on its consolidated financial statements.
- In May 2011, the IASB issued IFRS 12, *Disclosure of interests in other entities* ("IFRS 12"), effective beginning January 1, 2013, which is a new and comprehensive standard on disclosure requirements for all forms of interests in other entities, including subsidiaries, joint arrangements, associates and unconsolidated structured entities. IFRS 12 will require an entity to disclose information that enables users of financial statements to evaluate: a) the nature of, and risks associated with, its interests in other entities; and b) the effects of those interests on its financial position, financial performance and cash flows. CEMEX would modify its current disclosures regarding interest in other entities as required by IFRS 12, if applicable. Nonetheless, CEMEX does not expect the application of IFRS 12 to have a significant impact on its consolidated financial statements.
- In June 2011, the IASB amended IAS 19, which provides the accounting and disclosure requirements by employers for employee benefits. The amendments to IAS 19 intend to provide investors and other users of financial statements with a better understanding of an entity's obligations resulting from the provision of defined benefit plans and how those obligations will affect its financial position, financial performance and cash flows. Among other things, the amendments require: a) the use of a single rate for the determination of

**Newly issued IFRS not yet adopted - continued**

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Notes to the Consolidated Financial Statements**
**As of December 31, 2012, 2011 and 2010**
**(Millions of Mexican pesos)**

the expected return on plan assets' and the discount of the benefits' obligation to present value (together the "net interest expense"); b) the recognition of the net interest on the net defined benefit liability (liability minus plan assets), instead of an interest cost on the liability and a separate return on plan assets; and c) the recognition of all actuarial gains and losses for the period as part of other comprehensive income or loss, thereby, eliminating the option to defer the recognition of gains and losses, known as the 'corridor method'. The amendments to IAS 19 are effective for CEMEX beginning January 1, 2013, with earlier application permitted. The use of the single rate will generally increase the net interest expense for future periods. For the years ended December 31, 2012 and 2011, had CEMEX used a single rate to determine the net interest expense on its net defined pension liability, the effect would have increased the net interest expense on net defined pension liability of approximately Ps173 and Ps246, respectively (note 18).

- In October 2011, the IASB issued International Financial Reporting Interpretations Committee 20, *Stripping costs in the production phase of a surface mine* ("IFRIC 20"), which is effective beginning January 1, 2013, with early adoption permitted. IFRIC 20 addresses inconsistencies in the reporting of waste removal costs that are incurred in surface mining activity during the production phase of the mine ('production stripping costs'). To the extent that the benefit from the stripping activity is realized in the form of inventory produced, the entity shall account for the costs of that stripping activity in accordance with the principles of IAS 2, *Inventories*. To the extent the benefit is improved access to ore, the entity shall recognize these costs as an addition to, or as an enhancement of, the existing non-current asset. The capitalized amounts should be further amortized over the expected useful life of exposed ore body based on the units of production method. As mentioned in CEMEX's accounting policy in note 2I, as of December 31, 2012, ongoing stripping costs in the same quarry are expensed as incurred. Therefore, pursuant to IFRIC 20, beginning January 1, 2013, all stripping costs that result in improved access to quarry reserves will be recognized as capital expenditures, as part of the carrying amount of the related quarries, reducing cash production costs and increasing depletion expense. CEMEX estimates that the adoption of IFRIC 20 beginning in January 1, 2013 would increase its annual capital expenditures and quarry depletion expense by approximately US$25 (Ps321).
- In December 2011, the IASB amended IAS 32 for disclosure requirements for the offsetting of assets and liabilities on the statement of financial position. The amended standard requires entities to disclose both gross information and net information about both instruments and transactions eligible for offset in the statement of financial position and instruments and transactions subject to an agreement similar to a master netting arrangement. The scope includes derivatives, sale and repurchase agreements and reverse sale and repurchase agreements and securities borrowing and securities lending agreements. The amendments to IAS 32 are effective beginning January 1, 2014 and require retrospective application. CEMEX is currently evaluating the impact of adopting this amended standard; nonetheless, CEMEX does not expect that the adoption of this amended standard will have a significant impact on its consolidated financial statements.

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Notes to the Consolidated Financial Statements**
**As of December 31, 2012, 2011 and 2010**
**(Millions of Mexican pesos)**

## 3) REVENUES AND CONSTRUCTION CONTRACTS

For the years ended December 31, 2012, 2011 and 2010, net sales, after sales and eliminations between related parties resulting from consolidation, were as follows:

| (Millions of Mexican pesos) | | 2012 | 2011 | 2010 |
|---|---|---|---|---|
| From the sale of goods associated to CEMEX's main activities **1** | Ps | 189,219 | 182,835 | 171,116 |
| From the sale of services **2** | | 2,574 | 2,531 | 2,182 |
| From the sale of other goods and services **3** | | 5,243 | 4,521 | 4,343 |
| | Ps | 197,036 | 189,887 | 177,641 |

**1** Includes revenues generated under construction contracts as presented in the table below.
**2** Refers mainly to revenues generated by Neoris N.V., a subsidiary involved in the sale of information technology solutions.
**3** Refers mainly to revenues generated by minor subsidiaries operating in different lines of business.

For the years ended December 31, 2012, 2011 and 2010, revenues and costs related to construction contracts in progress were as follows:

| (Millions of Mexican pesos) | | Recognized to date 1 | 2012 | 2011 | 2010 |
|---|---|---|---|---|---|
| Revenue from construction contracts included in consolidated net sales **2** | Ps | 7,270 | 180 | 1,027 | 2,548 |
| Costs incurred in construction contracts included in consolidated cost of sales **3** | | (5,727) | (80) | (895) | (1,976) |
| Construction contracts operating profit | Ps | 1,543 | 100 | 132 | 572 |

**1** Revenues and costs recognized from inception of the contracts until December 31, 2012 in connection with those projects still in progress.
**2** Revenues from construction contracts during 2012, 2011 and 2010, determined under the percentage of completion method, were mainly obtained in Mexico.
**3** Refers to actual costs incurred during the periods. The oldest contract in progress as of December 31, 2012 started in 2008.

As of December 31, 2012 and 2011, amounts receivable for progress billings to customers of construction contracts and/or advances received by CEMEX from these customers were not significant.

## 4) SELECTED FINANCIAL INFORMATION BY GEOGRAPHIC OPERATING SEGMENT

CEMEX applies IFRS 8, *Operating Segments* ("IFRS 8"), for the disclosure of its operating segments, which are defined as the components of an entity that engage in business activities from which they may earn revenues and incur expenses, whose operating results are regularly reviewed by the entity's top management to make decisions about resources to be allocated to the segments and assess their performance, and for which discrete financial information is available.

**Selected Financial Information by Geographic Operating Segment - continued**

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Notes to the Consolidated Financial Statements**
**As of December 31, 2012, 2011 and 2010**
**(Millions of Mexican pesos)**

CEMEX's main activities are oriented to the construction industry segment through the production, distribution, marketing and sale of cement, ready-mix concrete, aggregates and other construction materials. CEMEX operates geographically on a regional basis. Beginning in April 2011, CEMEX's operations were reorganized into six geographical regions, each under the supervision of a regional president: 1) Mexico, 2) United States, 3) Northern Europe, 4) Mediterranean ("MED"), 5) South America and the Caribbean ("SAC"), and 6) Asia. Each regional president supervises and is responsible for all the business activities in the countries comprising the region. These activities refer to the production, distribution, marketing and sale of cement, ready-mix concrete, aggregates and other construction materials, the allocation of resources and the review of their performance and operating results. All regional presidents report directly to CEMEX's Chief Executive Officer. The country manager, who is one level below the regional president in the organizational structure, reports the performance and operating results of its country to the regional president, including all the operating sectors. CEMEX's top management internally evaluates the results and performance of each country and region for decision-making purposes and allocation of resources, following a vertical integration approach considering: a) that the operating components that comprise the reported segment have similar economic characteristics; b) that the reported segments are used by CEMEX to organize and evaluate its activities in its internal information system; c) the homogeneous nature of the items produced and traded in each operative component, which are all used by the construction industry; d) the vertical integration in the value chain of the products comprising each component; e) the type of clients, which are substantially similar in all components; f) the operative integration among components; and g) that the compensation system of a specific country is based on the consolidated results of the geographic segment and not on the particular results of the components. In accordance with this approach, in CEMEX's daily operations, management allocates economic resources and evaluates operating results on a country basis rather than on an operating component basis.

Based on IFRS 8 and considering the financial information that is regularly reviewed by CEMEX's top management, each of the six geographic regions in which CEMEX operates and the countries that comprise such regions represent reportable operating segments. However, for disclosure purposes in the notes to the financial statements, considering similar regional and economic characteristics and/or the fact that certain countries do not exceed the materiality thresholds included in IFRS 8 to be reported separately, such countries have been aggregated and presented as single line items as follows: a) "Rest of Northern Europe" is mainly comprised of CEMEX's operations in Ireland, the Czech Republic, Austria, Poland, Hungary and Latvia, as well as trading activities in Scandinavia and Finland; b) "Rest of Mediterranean" is mainly comprised of CEMEX's operations in Croatia, the United Arab Emirates and Israel; c) "Rest of South America and the Caribbean" is mainly comprised of CEMEX's operations in Costa Rica, Panama, Puerto Rico, the Dominican Republic, Nicaragua, Jamaica and other countries in the Caribbean, Guatemala, and small ready-mix concrete operations in Argentina; and d) "Rest of Asia" is mainly comprised of CEMEX's operations in Thailand, Bangladesh, China and Malaysia. The segment "Others" refers to: 1) cement trade maritime operations, 2) Neoris, N.V., CEMEX's subsidiary involved in the development of information technology solutions, 3) the Parent Company and other corporate entities, and 4) other minor subsidiaries with different lines of business.

Selected financial information by geographic operating segment for 2010 has been reclassified as applicable in order to be comparable to the new geographic organization implemented beginning in 2011. The major changes as compared to the previous geographic organization are the creation of the "Mediterranean" region with Spain and Croatia, formerly part of the previously titled "Europe" region, and Egypt and Israel, formerly part of the previously titled "Africa and Middle East" region, among others.

**Selected Financial Information by Geographic Operating Segment - continued**

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Notes to the Consolidated Financial Statements**
**As of December 31, 2012, 2011 and 2010**
**(Millions of Mexican pesos)**

The main indicator used by CEMEX's management to evaluate the performance of each country is "Operating EBITDA", representing operating earnings before other expenses, net, plus depreciation and amortization, considering that such amount represents a relevant measure for CEMEX's management as an indicator of the ability to internally fund capital expenditures, as well as a widely accepted financial indicator to measure CEMEX's ability to service or incur debt (note 16). Operating EBITDA should not be considered as an indicator of CEMEX's financial performance, as an alternative to cash flow, as a measure of liquidity, or as being comparable to other similarly titled measures of other companies. This indicator, which is presented in the selected financial information by geographic operating segment, is consistent with the information used by CEMEX's management for decision-making purposes. The accounting policies applied to determine the financial information by geographic operating segment are consistent with those described in note 2. CEMEX recognizes sales and other transactions between related parties based on market values.

Selected consolidated statements of operations information by geographic operating segment for the years ended December 31, 2012, 2011 and 2010 was as follows:

| 2012 | | Net sales (including related parties) | Less: Related parties | Net sales | Operating EBITDA | Less: depreciation and amortization | Operating earnings before other expenses, net | Other expenses, net | Financial expense | Other financing items, net |
|---|---|---|---|---|---|---|---|---|---|---|
| Mexico | Ps | 44,412 | (1,425) | 42,987 | 16,238 | 2,640 | 13,598 | (291) | (432) | (84) |
| United States | | 40,319 | (122) | 40,197 | 323 | 6,379 | (6,056) | (967) | (546) | (159) |
| **Northern Europe** | | | | | | | | | | |
| United Kingdom | | 14,620 | — | 14,620 | 1,870 | 956 | 914 | (297) | (151) | (701) |
| Germany | | 14,406 | (953) | 13,453 | 680 | 1,004 | (324) | (258) | (19) | (170) |
| France | | 13,324 | — | 13,324 | 1,251 | 493 | 758 | (156) | (69) | 13 |
| Rest of Northern Europe | | 12,778 | (806) | 11,972 | 1,739 | 858 | 881 | 440 | (118) | 56 |
| **Mediterranean** | | | | | | | | | | |
| Spain | | 4,841 | (155) | 4,686 | 1,355 | 684 | 671 | (1,443) | (111) | 944 |
| Egypt | | 6,382 | (190) | 6,192 | 2,470 | 553 | 1,917 | (203) | (9) | 82 |
| Rest of Mediterranean | | 8,160 | (37) | 8,123 | 1,063 | 302 | 761 | (112) | (47) | (91) |
| **South America and the Caribbean** | | | | | | | | | | |
| Colombia | | 11,932 | — | 11,932 | 4,905 | 396 | 4,509 | 31 | (139) | 348 |
| Rest of South America and the Caribbean | | 16,450 | (1,851) | 14,599 | 4,402 | 746 | 3,656 | (70) | (53) | 5 |
| **Asia** | | | | | | | | | | |
| Philippines | | 4,704 | — | 4,704 | 900 | 305 | 595 | 27 | (3) | (11) |
| Rest of Asia | | 2,430 | — | 2,430 | 110 | 75 | 35 | 13 | (13) | — |
| **Others** | | 15,153 | (7,336) | 7,817 | (2,922) | 1,793 | (4,715) | (2,406) | (16,625) | 745 |
| **Total** | Ps | 209,911 | (12,875) | 197,036 | 34,384 | 17,184 | 17,200 | (5,692) | (18,335) | 977 |

**Selected consolidated statements of operations information by geographic operating segment - continued**

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Notes to the Consolidated Financial Statements**
**As of December 31, 2012, 2011 and 2010**
**(Millions of Mexican pesos)**

| 2011 | | Net sales (including related parties) | Less: Related parties | Net sales | Operating EBITDA | Less: depreciation and amortization | Operating earnings before other expenses, net | Other expenses, net | Financial expense | Other financing items, net |
|---|---|---|---|---|---|---|---|---|---|---|
| Mexico | Ps | 43,361 | (924) | 42,437 | 15,536 | 2,391 | 13,145 | (963) | (528) | 590 |
| United States | | 32,759 | (86) | 32,673 | (1,106) | 6,801 | (7,907) | (322) | (373) | (132) |
| **Northern Europe** | | | | | | | | | | |
| United Kingdom | | 15,757 | — | 15,757 | 1,034 | 1,181 | (147) | (257) | (160) | (99) |
| Germany | | 15,975 | (1,015) | 14,960 | 1,215 | 1,041 | 174 | (236) | (55) | (130) |
| France | | 14,170 | — | 14,170 | 1,580 | 524 | 1,056 | (171) | (79) | 7 |
| Rest of Northern Europe | | 14,278 | (650) | 13,628 | 1,658 | 1,010 | 648 | (1,127) | (66) | (227) |
| **Mediterranean** | | | | | | | | | | |
| Spain | | 7,142 | (108) | 7,034 | 1,575 | 681 | 894 | (498) | (679) | 301 |
| Egypt | | 6,516 | (13) | 6,503 | 2,891 | 469 | 2,422 | (71) | (5) | — |
| Rest of Mediterranean | | 7,762 | (39) | 7,723 | 962 | 280 | 682 | (121) | (32) | (35) |
| **South America and the Caribbean** | | | | | | | | | | |
| Colombia | | 8,533 | — | 8,533 | 3,020 | 452 | 2,568 | (302) | (135) | (168) |
| Rest of South America and the Caribbean | | 14,852 | (1,689) | 13,163 | 3,868 | 912 | 2,956 | (240) | (35) | 9 |
| **Asia** | | | | | | | | | | |
| Philippines | | 3,701 | (44) | 3,657 | 617 | 259 | 358 | (53) | (5) | 7 |
| Rest of Asia | | 2,597 | — | 2,597 | 155 | 104 | 51 | (34) | (2) | (11) |
| **Others** | | 14,857 | (7,805) | 7,052 | (3,405) | 1,431 | (4,836) | (1,054) | (14,473) | (2,326) |
| **Total** | Ps | 202,260 | (12,373) | 189,887 | 29,600 | 17,536 | 12,064 | (5,449) | (16,627) | (2,214) |

**Selected consolidated statements of operations information by geographic operating segment - continued**

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Notes to the Consolidated Financial Statements**
**As of December 31, 2012, 2011 and 2010**
**(Millions of Mexican pesos)**

| 2010 | | Net sales (including related parties) | Less: Related parties | Net sales | Operating EBITDA | Less: depreciation and amortization | Operating earnings before other expenses, net | Other expenses, net | Financial expense | Other financing items, net |
|---|---|---|---|---|---|---|---|---|---|---|
| Mexico | Ps | 42,907 | (744) | 42,163 | 14,495 | 2,561 | 11,934 | (854) | (447) | (219) |
| United States | | 31,575 | (70) | 31,505 | (903) | 7,467 | (8,370) | (2,413) | (460) | (137) |
| **Northern Europe** | | | | | | | | | | |
| United Kingdom | | 14,320 | — | 14,320 | 508 | 1,231 | (723) | 164 | (139) | (256) |
| Germany | | 13,524 | (864) | 12,660 | 753 | 1,023 | (270) | (112) | (50) | (128) |
| France | | 12,179 | — | 12,179 | 1,172 | 656 | 516 | (98) | (72) | (10) |
| Rest of Northern Europe | | 11,677 | (454) | 11,223 | 903 | 1,015 | (112) | (50) | (66) | 201 |
| **Mediterranean** | | | | | | | | | | |
| Spain | | 8,013 | (110) | 7,903 | 1,768 | 721 | 1,047 | (693) | (732) | (24) |
| Egypt | | 8,053 | (174) | 7,879 | 4,175 | 476 | 3,699 | (141) | (8) | 15 |
| Rest of Mediterranean | | 7,253 | (178) | 7,075 | 770 | 299 | 471 | (30) | (28) | (87) |
| **South America and the Caribbean** | | | | | | | | | | |
| Colombia | | 6,964 | (8) | 6,956 | 2,556 | 377 | 2,179 | (161) | (57) | (264) |
| Rest of South America and the Caribbean | | 12,315 | (1,588) | 10,727 | 3,299 | 837 | 2,462 | (279) | (68) | 63 |
| **Asia** | | | | | | | | | | |
| Philippines | | 4,014 | — | 4,014 | 1,242 | 246 | 996 | (7) | (4) | (88) |
| Rest of Asia | | 2,512 | — | 2,512 | 197 | 101 | 96 | (69) | (2) | 16 |
| **Others** | | 8,216 | (1,691) | 6,525 | (1,091) | 2,098 | (3,189) | (1,592) | (12,620) | 395 |
| **Total** | Ps | 183,522 | (5,881) | 177,641 | 29,844 | 19,108 | 10,736 | (6,335) | (14,753) | (523) |

The information of equity in income of associates by geographic operating segment for the years ended December 31, 2012, 2011 and 2010 is included in note 13A.

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Notes to the Consolidated Financial Statements**
**As of December 31, 2012, 2011 and 2010**
**(Millions of Mexican pesos)**

As of December 31, 2012 and 2011, selected balance sheet information by geographic segment was as follows:

| 2012 | | Investments in associates | Other segment assets | Total assets | Total liabilities | Net assets by segment | Additions to fixed assets 1 |
|---|---|---|---|---|---|---|---|
| Mexico | Ps | 834 | 78,232 | 79,066 | 18,483 | 60,583 | 2,154 |
| United States | | 187 | 207,559 | 207,746 | 10,105 | 197,641 | 2,609 |
| **Northern Europe** | | | | | | | |
| United Kingdom | | 496 | 28,408 | 28,904 | 11,594 | 17,310 | 558 |
| Germany | | 86 | 12,534 | 12,620 | 6,727 | 5,893 | 459 |
| France | | 526 | 13,427 | 13,953 | 4,986 | 8,967 | 268 |
| Rest of Northern Europe | | 78 | 17,546 | 17,624 | 4,107 | 13,517 | 657 |
| **Mediterranean** | | | | | | | |
| Spain | | 56 | 22,366 | 22,422 | 2,856 | 19,566 | 347 |
| Egypt | | — | 7,208 | 7,208 | 3,548 | 3,660 | 277 |
| Rest of Mediterranean | | 7 | 10,074 | 10,081 | 3,275 | 6,806 | 315 |
| **South America and the Caribbean** | | | | | | | |
| Colombia | | — | 16,160 | 16,160 | 9,252 | 6,908 | 1,456 |
| Rest of South America and the Caribbean | | 23 | 16,764 | 16,787 | 3,856 | 12,931 | 500 |
| **Asia** | | | | | | | |
| Philippines | | 3 | 7,758 | 7,761 | 1,382 | 6,379 | 246 |
| Rest of Asia | | — | 2,801 | 2,801 | 865 | 1,936 | 77 |
| **Others** | | 5,683 | 29,954 | 35,637 | 242,134 | (206,497) | 103 |
| **Total** | Ps | 7,979 | 470,791 | 478,770 | 323,170 | 155,600 | 10,026 |

| 2011 | | Investments in associates | Other segment assets | Total assets | Total liabilities | Net assets by segment | Additions to fixed assets 1 |
|---|---|---|---|---|---|---|---|
| Mexico | Ps | 841 | 77,031 | 77,872 | 21,858 | 56,014 | 2,612 |
| United States | | 44 | 235,976 | 236,020 | 10,487 | 225,533 | 875 |
| **Northern Europe** | | | | | | | |
| United Kingdom | | 201 | 31,765 | 31,966 | 18,797 | 13,169 | 607 |
| Germany | | 96 | 13,877 | 13,973 | 7,576 | 6,397 | 340 |
| France | | 622 | 15,311 | 15,933 | 5,861 | 10,072 | 289 |
| Rest of Northern Europe | | 108 | 18,317 | 18,425 | 6,030 | 12,395 | 501 |
| **Mediterranean** | | | | | | | |
| Spain | | 161 | 47,160 | 47,321 | 14,989 | 32,332 | 501 |
| Egypt | | — | 7,819 | 7,819 | 4,052 | 3,767 | 175 |
| Rest of Mediterranean | | 7 | 9,916 | 9,923 | 3,438 | 6,485 | 273 |
| **South America and the Caribbean** | | | | | | | |
| Colombia | | — | 15,318 | 15,318 | 5,161 | 10,157 | 179 |
| Rest of South America and the Caribbean | | 25 | 19,980 | 20,005 | 4,656 | 15,349 | 484 |
| **Asia** | | | | | | | |
| Philippines | | — | 8,786 | 8,786 | 2,716 | 6,070 | 494 |
| Rest of Asia | | — | 2,432 | 2,432 | 853 | 1,579 | 69 |
| **Others** | | 6,428 | 29,431 | 35,859 | 263,475 | (227,616) | 178 |
| **Total** | Ps | 8,533 | 533,119 | 541,652 | 369,949 | 171,703 | 7,577 |

**1** In 2012 and 2011, the total "Additions to fixed assets" includes capital expenditures of approximately Ps7,899 and Ps5,943, respectively (note 14).

Total consolidated liabilities as of December 31, 2012 and 2011, included debt of Ps178,135 and Ps208,471, respectively. Of such balances, as of December 31, 2012 and 2011, 29% and 31% was in the Parent Company, 18% and 28% was in Spain, 51% and 39% was in finance subsidiaries in Holland, Luxembourg and the United States, and 2% and 2% was in other countries, respectively. As mentioned above, the Parent Company and the finance subsidiaries mentioned above are included within the segment "Others."

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Notes to the Consolidated Financial Statements**
**As of December 31, 2012, 2011 and 2010**
**(Millions of Mexican pesos)**

Net sales by product and geographic segment for the years ended December 31, 2012, 2011 and 2010 were as follows:

| 2012 | | Cement | Concrete | Aggregates | Others | Eliminations | Net sales |
|---|---|---|---|---|---|---|---|
| Mexico | Ps | 29,229 | 12,927 | 2,478 | 10,090 | (11,737) | 42,987 |
| United States | | 14,372 | 16,653 | 8,215 | 11,204 | (10,247) | 40,197 |
| **Northern Europe** | | | | | | | |
| United Kingdom | | 3,404 | 5,628 | 5,064 | 7,345 | (6,821) | 14,620 |
| Germany | | 4,546 | 6,264 | 3,882 | 3,283 | (4,522) | 13,453 |
| France | | — | 11,181 | 4,112 | 312 | (2,281) | 13,324 |
| Rest of Northern Europe | | 5,103 | 6,066 | 2,155 | 892 | (2,244) | 11,972 |
| **Mediterranean** | | | | | | | |
| Spain | | 3,829 | 965 | 316 | 397 | (821) | 4,686 |
| Egypt | | 5,461 | 463 | 24 | 525 | (281) | 6,192 |
| Rest of Mediterranean | | 1,910 | 5,130 | 1,187 | 1,018 | (1,122) | 8,123 |
| **South America and the Caribbean** | | | | | | | |
| Colombia | | 8,911 | 4,102 | 1,351 | 897 | (3,329) | 11,932 |
| Rest of South America and the Caribbean | | 12,832 | 3,337 | 619 | 703 | (2,892) | 14,599 |
| **Asia** | | | | | | | |
| Philippines | | 4,702 | — | 1 | 2 | (1) | 4,704 |
| Rest of Asia | | 954 | 1,320 | 102 | 92 | (38) | 2,430 |
| **Others** | | — | — | — | 15,153 | (7,336) | 7,817 |
| **Total** | Ps | 95,253 | 74,036 | 29,506 | 51,913 | (53,672) | 197,036 |

| 2011 | | Cement | Concrete | Aggregates | Others | Eliminations | Net sales |
|---|---|---|---|---|---|---|---|
| Mexico | Ps | 28,215 | 12,618 | 2,387 | 10,477 | (11,260) | 42,437 |
| United States | | 11,772 | 11,811 | 6,868 | 10,213 | (7,991) | 32,673 |
| **Northern Europe** | | | | | | | |
| United Kingdom | | 3,377 | 5,942 | 5,315 | 8,714 | (7,591) | 15,757 |
| Germany | | 5,156 | 6,797 | 4,143 | 3,609 | (4,745) | 14,960 |
| France | | — | 11,853 | 4,092 | 362 | (2,137) | 14,170 |
| Rest of Northern Europe | | 6,155 | 6,917 | 2,184 | 1,207 | (2,835) | 13,628 |
| **Mediterranean** | | | | | | | |
| Spain | | 5,567 | 1,676 | 647 | 441 | (1,297) | 7,034 |
| Egypt | | 5,917 | 490 | 26 | 197 | (127) | 6,503 |
| Rest of Mediterranean | | 2,015 | 4,801 | 1,092 | 304 | (489) | 7,723 |
| **South America and the Caribbean** | | | | | | | |
| Colombia | | 6,600 | 2,779 | 486 | 774 | (2,106) | 8,533 |
| Rest of South America and the Caribbean | | 11,164 | 3,037 | 449 | 813 | (2,300) | 13,163 |
| **Asia** | | | | | | | |
| Philippines | | 3,699 | — | — | 3 | (45) | 3,657 |
| Rest of Asia | | 843 | 1,524 | 200 | 122 | (92) | 2,597 |
| **Others** | | — | — | — | 14,689 | (7,637) | 7,052 |
| **Total** | Ps | 90,480 | 70,245 | 27,889 | 51,925 | (50,652) | 189,887 |

**Net sales by product and geographic segment - continued**

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Notes to the Consolidated Financial Statements**
**As of December 31, 2012, 2011 and 2010**
**(Millions of Mexican pesos)**

| 2010 | | Cement | Concrete | Aggregates | Others | Eliminations | Net sales |
|---|---|---|---|---|---|---|---|
| Mexico | Ps | 27,911 | 11,233 | 1,622 | 10,723 | (9,326) | 42,163 |
| United States | | 12,232 | 10,708 | 7,091 | 9,274 | (7,800) | 31,505 |
| **Northern Europe** | | | | | | | |
| United Kingdom | | 3,055 | 5,107 | 4,870 | 6,092 | (4,804) | 14,320 |
| Germany | | 4,313 | 5,770 | 3,494 | 3,126 | (4,043) | 12,660 |
| France | | — | 10,051 | 3,371 | 368 | (1,611) | 12,179 |
| Rest of Northern Europe | | 4,874 | 5,459 | 1,924 | 1,088 | (2,122) | 11,223 |
| **Mediterranean** | | | | | | | |
| Spain | | 6,107 | 2,057 | 757 | 1,089 | (2,107) | 7,903 |
| Egypt | | 7,050 | 702 | 41 | 413 | (327) | 7,879 |
| Rest of Mediterranean | | 2,312 | 4,125 | 1,020 | 687 | (1,069) | 7,075 |
| **South America and the Caribbean** | | | | | | | |
| Colombia | | 5,612 | 2,021 | 283 | 626 | (1,586) | 6,956 |
| Rest of South America and the Caribbean | | 10,139 | 2,732 | 337 | 404 | (2,885) | 10,727 |
| **Asia** | | | | | | | |
| Philippines | | 3,976 | — | — | 38 | — | 4,014 |
| Rest of Asia | | 779 | 1,497 | 190 | 146 | (100) | 2,512 |
| **Others** | | — | — | — | 7,661 | (1,136) | 6,525 |
| **Total** | Ps | 88,360 | 61,462 | 25,000 | 41,735 | (38,916) | 177,641 |

## 5) DEPRECIATION AND AMORTIZATION

Depreciation and amortization recognized during 2012, 2011 and 2010 is detailed as follows:

| | | 2012 | 2011 | 2010 |
|---|---|---|---|---|
| Depreciation and amortization expense related to assets used in the production process | Ps | 13,852 | 13,918 | 14,574 |
| Depreciation and amortization expense related to assets used in administrative and selling activities | | 3,332 | 3,618 | 4,534 |
| | Ps | 17,184 | 17,536 | 19,108 |

## 6) OTHER EXPENSES, NET

Other expenses, net in 2012, 2011 and 2010, consisted of the following:

| | | 2012 | 2011 | 2010 |
|---|---|---|---|---|
| Restructuring costs | Ps | (3,079) | (1,959) | (897) |
| Impairment losses (notes 12, 13B, 14 and 15) | | (1,661) | (1,751) | (1,904) |
| Charitable contributions | | (100) | (140) | (385) |
| Results from the sale of assets and others, net | | (852) | (1,599) | (3,149) |
| | Ps | (5,692) | (5,449) | (6,335) |

During 2012, in connection with the 10-year services agreement with IBM (note 23C), CEMEX recognized one-time restructuring costs of approximately US$138 (Ps1,818), of which, approximately US$54 (Ps710) are related to severance payments for termination of employees' employment. In 2011 and 2010, restructuring costs mainly refer to severance payments.

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Notes to the Consolidated Financial Statements**
**As of December 31, 2012, 2011 and 2010**
**(Millions of Mexican pesos)**

## 7) OTHER FINANCIAL (EXPENSES) INCOME, NET

Other financial (expenses) income, net in 2012, 2011 and 2010, is detailed as follows:

| | | 2012 | 2011 | 2010 |
|---|---|---|---|---|
| Financial income | Ps | 620 | 489 | 483 |
| Results from financial instruments, net (notes 13B and 16D) | | 178 | (76) | (1,103) |
| Foreign exchange results | | 1,142 | (1,919) | 895 |
| Effects of net present value on assets and liabilities and others, net | | (963) | (708) | (798) |
| | Ps | 977 | (2,214) | (523) |

## 8) CASH AND CASH EQUIVALENTS

As of December 31, 2012 and 2011, consolidated cash and cash equivalents consisted of:

| | | 2012 | 2011 |
|---|---|---|---|
| Cash and bank accounts | Ps | 7,581 | 6,123 |
| Fixed-income securities and other cash equivalents **1** | | 4,897 | 10,005 |
| | Ps | 12,478 | 16,128 |

**1** As of December 31, 2011, this caption included approximately Ps4,103 relating to the reserve for the Mexican promissory notes (" *Certificados Bursátiles*" or "CBs") (note 16A). As of December 31, 2012 and 2011, this caption included restricted deposits related to insurance contracts of approximately Ps239 and Ps425, respectively.

Based on net settlement agreements, the balance of cash and cash equivalents excludes deposits in margin accounts that guarantee several obligations of CEMEX of approximately Ps1,782 in 2012 and Ps4,010 in 2011, which were offset against the corresponding obligations of CEMEX with the counterparties, considering CEMEX's right, ability and intention to settle the amounts on a net basis.

## 9) TRADE ACCOUNTS RECEIVABLE

As of December 31, 2012 and 2011, consolidated trade accounts receivable consisted of:

| | | 2012 | 2011 |
|---|---|---|---|
| Trade accounts receivable | Ps | 25,464 | 28,376 |
| Allowances for doubtful accounts | | (1,766) | (2,171) |
| | Ps | 23,698 | 26,205 |

As of December 31, 2012 and 2011, trade accounts receivable include receivables of Ps10,792 (US$840) and Ps12,733 (US$912), respectively, that were sold under outstanding securitization programs for the sale of trade accounts receivable and/or factoring programs with recourse in Mexico, the United States, France and the United Kingdom. In October 2012, CEMEX terminated its program in Spain. Under the securitization programs, CEMEX

**Trade accounts receivable - continued**

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Notes to the Consolidated Financial Statements**
**As of December 31, 2012, 2011 and 2010**
**(Millions of Mexican pesos)**

effectively surrenders control associated with the trade accounts receivable sold and there is no guarantee or obligation to reacquire the assets. However, CEMEX retains certain residual interest in the programs and/or maintains continuing involvement with the accounts receivable; therefore, the amounts received are recognized within "Other financial obligations." Trade accounts receivable qualifying for sale exclude amounts over certain days past due or concentrations over certain limits to any one customer, according to the terms of the programs. The portion of the accounts receivable sold maintained as reserves amounted to Ps2,280 in 2012 and Ps3,181 in 2011. Therefore, the funded amount to CEMEX was Ps8,512 (US$662) in 2012 and Ps9,552 (US$684) in 2011. The discount granted to the acquirers of the trade accounts receivable is recorded as financial expense and amounted to approximately Ps368 (US$28) in 2012, Ps390 (US$31) in 2011 and Ps368 (US$29) in 2010. CEMEX's securitization programs are negotiated for specific periods and may be renewed at their maturity. The securitization programs outstanding as of December 31, 2012 in Mexico, the United States, France and the United Kingdom, were initiated or renewed during 2011 and mature in October 2015, May 2013, March 2013 and March 2013, respectively.

Allowances for doubtful accounts are established according to the credit history and risk profile of each customer. Changes in the valuation of allowance for doubtful accounts in 2012, 2011 and 2010, were as follows:

| | | 2012 | 2011 | 2010 |
|---|---|---|---|---|
| Allowances for doubtful accounts at beginning of period | Ps | 2,171 | 2,246 | 2,571 |
| Charged to selling expenses | | 372 | 338 | 353 |
| Deductions | | (595) | (695) | (609) |
| Business combinations | | — | 82 | 2 |
| Foreign currency translation effects | | (182) | 200 | (71) |
| Allowances for doubtful accounts at end of period | Ps | 1,766 | 2,171 | 2,246 |

## 10) OTHER ACCOUNTS RECEIVABLE

As of December 31, 2012 and 2011, consolidated other accounts receivable consisted of:

| | | 2012 | 2011 |
|---|---|---|---|
| Non-trade accounts receivable **1** | Ps | 2,321 | 1,964 |
| Interest and notes receivable **2** | | 2,721 | 2,284 |
| Loans to employees and others | | 171 | 191 |
| Refundable taxes | | 1,026 | 819 |
| | Ps | 6,239 | 5,258 |

**1** Non-trade accounts receivable are mainly attributable to the sale of assets.
**2** Includes Ps171 in 2012 and Ps185 in 2011, representing the short-term portion of the investment arising from the settlement of derivative instruments related to perpetual debentures issued by CEMEX (notes 16C and 20D)

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Notes to the Consolidated Financial Statements**
**As of December 31, 2012, 2011 and 2010**
**(Millions of Mexican pesos)**

## 11) INVENTORIES

As of December 31, 2012 and 2011, consolidated balances of inventories are summarized as follows:

| | | 2012 | 2011 |
|---|---|---|---|
| Finished goods | Ps | 5,934 | 6,437 |
| Work-in-process | | 2,819 | 2,597 |
| Raw materials | | 2,980 | 3,219 |
| Materials and spare parts | | 4,523 | 5,328 |
| Inventory in transit | | 820 | 517 |
| Allowance for obsolescence | | (591) | (444) |
| | Ps | 16,485 | 17,654 |

For the years ended December 31, 2012, 2011 and 2010, CEMEX recognized in the statements of operations, inventory impairment losses of approximately Ps44, Ps19 and Ps17, respectively.

## 12) OTHER CURRENT ASSETS

As of December 31, 2012 and 2011, consolidated other current assets consisted of:

| | | 2012 | 2011 |
|---|---|---|---|
| Advance payments | Ps | 2,228 | 1,946 |
| Assets held for sale | | 2,193 | 2,007 |
| | Ps | 4,421 | 3,953 |

As of December 31, 2012 and 2011, advance payments include Ps18 and Ps549, respectively, associated with advances to suppliers of inventory (note 2G). Assets held for sale are stated at their estimated realizable value and include real estate properties received in payment of trade receivables as well as other assets held for sale.

During 2012, 2011 and 2010, CEMEX recognized within “Other expenses, net” impairment losses in connection with assets held for sale of approximately Ps595, Ps190 and Ps420, respectively. Of such 2012 impairment losses, approximately Ps123 (US$9) related to the amount of goodwill that was written-off due to the decision to classify these assets as held for sale (note 15A).

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Notes to the Consolidated Financial Statements**
**As of December 31, 2012, 2011 and 2010**
**(Millions of Mexican pesos)**

## 13) INVESTMENTS IN ASSOCIATES, OTHER INVESTMENTS AND NON-CURRENT ACCOUNTS RECEIVABLE

### 13A) INVESTMENTS IN ASSOCIATES

As of December 31, 2012 and 2011, the main investments in shares of associates were as follows:

| | Activity | Country | % | | 2012 | 2011 |
|---|---|---|---|---|---|---|
| Control Administrativo Mexicano, S.A. de C.V. | Cement | Mexico | 49.0 | Ps | 4,471 | 4,566 |
| Camcem, S.A. de C.V. | Cement | Mexico | 10.3 | | 476 | 486 |
| AB Akmenés cementas | Cement | Lithuania | 33.9 | | 399 | 391 |
| ABC Capital, S.A. Institución de Banca Múltiple **1** | Financing | Mexico | 49.0 | | 369 | 371 |
| Trinidad Cement Ltd | Cement | Trinidad | 20.0 | | 252 | 548 |
| Société Méridionale de Carrières | Aggregates | France | 33.3 | | 213 | 253 |
| Société d'Exploitation de Carrières | Aggregates | France | 50.0 | | 172 | 202 |
| Lehigh White Cement Company | Cement | United States | 24.5 | | 162 | 160 |
| Industrias Básicas, S.A | Cement | Panama | 25.0 | | 121 | 129 |
| Société des Ciments Antillais | Cement | French Antilles | 26.0 | | 70 | 136 |
| Other companies | — | — | — | | 1,274 | 1,291 |
| | | | | Ps | 7,979 | 8,533 |
| **Out of which:** | | | | | | |
| Book value at acquisition date | | | | Ps | 2,420 | 2,627 |
| Changes in stockholders' equity | | | | Ps | 5,559 | 5,906 |

**1** Formerly ABC Capital, S.A. de C.V.S.O.F.O.M. until October 2, 2011.

As of December 31, 2012 and 2011, there were no put options outstanding for the purchase of non-controlling interests and/or investments in associates.

In April 2010, CEMEX announced its plans to contribute up to US$100 million for a non-controlling interest in a vehicle originally named Blue Rock Cement Holdings S.A. which is now named TRG Blue Rock HBM Holdings S.à.r.l. ("Blue Rock -TRG") that would invest in the cement and related industries. Blue Rock-TRG is managed by The Rohatyn Group and BK Cement Ltd. Depending on funds raised from third-party investors and the availability of financing, Blue Rock - TRG may decide to invest in different assets in the cement industry and/or related industries and/or enter into operating contracts providing for CEMEX's assistance in the development, building and operation of the invested assets, if any. As of December 31, 2012, different projects were being considered but CEMEX did not have any investment in Blue Rock - TRG.

Equity in net income (loss) of associates by geographic operating segment in 2012, 2011 and 2010 is detailed as follows:

| | | 2012 | 2011 | 2010 |
|---|---|---|---|---|
| Mexico | Ps | 92 | (53) | 32 |
| United States | | 343 | (204) | (648) |
| Northern Europe | | 157 | 146 | 78 |
| Mediterranean | | (90) | (8) | (3) |
| Corporate and Others | | 226 | (215) | 54 |
| | Ps | 728 | (334) | (487) |

**Investments in associates - continued**

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Notes to the Consolidated Financial Statements**
**As of December 31, 2012, 2011 and 2010**
**(Millions of Mexican pesos)**

Combined condensed balance sheet information of CEMEX's associates as of December 31, 2012 and 2011 is set forth below:

| | | 2012 | 2011 |
|---|---|---|---|
| Current assets | Ps | 14,302 | 15,728 |
| Non-current assets | | 38,533 | 42,196 |
| Total assets | | 52,835 | 57,924 |
| Current liabilities | | 7,546 | 7,912 |
| Non-current liabilities | | 17,420 | 21,190 |
| Total liabilities | | 24,966 | 29,102 |
| Total net assets | Ps | 27,869 | 28,822 |

Combined selected information of the statements of operations of CEMEX's associates in 2012, 2011 and 2010 is set forth below:

| | | 2012 | 2011 | 2010 |
|---|---|---|---|---|
| Sales | Ps | 11,693 | 15,736 | 18,798 |
| Operating earnings | | 1,160 | 1,118 | 1,233 |
| Income (loss) before income tax | | 531 | (846) | 608 |
| Net income (loss) | | 517 | (402) | 444 |

**13B) OTHER INVESTMENTS AND NON-CURRENT ACCOUNTS RECEIVABLE**

As of December 31, 2012 and 2011, consolidated other investments and non-current accounts receivable were summarized as follows:

| | | 2012 | 2011 |
|---|---|---|---|
| Non-current portion of valuation of derivative financial instruments | Ps | 4,279 | 1,787 |
| Non-current accounts receivable and other investments **1** | | 3,744 | 5,926 |
| Investments available-for-sale **2** | | 211 | 2,572 |
| Investments held for trading **3** | | 366 | 310 |
| | Ps | 8,600 | 10,595 |

**1** Includes, among other items: a) advances to suppliers of fixed assets of approximately Ps86 in 2012 and Ps216 in 2011; and b) a restricted investment used to pay coupons under the perpetual debentures (note 20D), of approximately Ps490 in 2012 and Ps632 in 2011. CEMEX recognized impairment losses of non-current accounts receivable in the United States of approximately Ps90 in 2012, in the Caribbean and in the United States of approximately Ps167 in 2011 and in the United States of approximately Ps129 in 2010 (note 6).

**2** This line item includes: a) an investment in CPOs of Axtel, S.A.B. de C.V. ("Axtel") of approximately Ps211 in 2012 and Ps59 in 2011; and b) notes issued by Petróleos de Venezuela, S.A. ("PDVSA") with a notional amount of approximately US$203 (Ps2,834) in 2011 and a fair value of approximately US$180 (Ps2,513). During 2012 and 2011, changes in valuation of these investments generated losses of approximately Ps102 and Ps93, respectively, recognized as part of other comprehensive loss within other equity reserves. In 2012, upon disposal of the PDVSA notes, CEMEX recognized a net gain of approximately Ps169 as part of other financial (expense) income, net, including the effects recognized within other comprehensive income in prior years

**3** This line item refers to investments in private funds. In 2012 and 2011, no contributions were made to such private funds.

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Notes to the Consolidated Financial Statements**
**As of December 31, 2012, 2011 and 2010**
**(Millions of Mexican pesos)**

### Nationalization of CEMEX Venezuela

In connection with the expropriation in 2008 of all businesses, assets and shares of CEMEX in Venezuela by the Government of Venezuela, and after an international arbitration process with the International Centre for Settlement of Investment Disputes ("ICSID"), on December 13, 2011, CEMEX and the Government of Venezuela concluded a settlement agreement pursuant to which CEMEX received compensation for the expropriation of CEMEX Venezuela and administrative services provided after the expropriation in the form of: (i) a cash payment of US$240; and (ii) notes issued by PDVSA, with nominal value and interest income to maturity totaling approximately US$360. Additionally, as part of the settlement, all intercompany payments due from or to CEMEX Venezuela to and from CEMEX were cancelled, resulting in the cancellation for CEMEX of accounts payable, net of approximately US$154. Pursuant to this settlement agreement, CEMEX and the Government of Venezuela agreed to withdraw the ICSID arbitration as well as other then outstanding legal proceedings. As a result of this settlement, CEMEX cancelled the book value of its net assets in Venezuela of approximately US$503 and recognized a settlement gain in the statement of operations for 2011 of approximately US$25, recognized within other expenses, net, which includes the write-off of the currency translation effects accrued in equity.

### 14) PROPERTY, MACHINERY AND EQUIPMENT

As of December 31, 2012 and 2011, consolidated property, machinery and equipment and the changes in such line item during 2012, 2011 and 2010, were as follows:

| | | 2012 | | | | |
|---|---|---|---|---|---|---|
| | | Land and mineral reserves 1 | Buildings 1 | Machinery and equipment 2 | Construction in progress | Total |
| Cost at beginning of period | Ps | 81,135 | 43,824 | 183,682 | 14,976 | 323,617 |
| Accumulated depreciation and depletion | | (5,817) | (11,911) | (72,180) | — | (89,908) |
| **Net book value at beginning of period** | | 75,318 | 31,913 | 111,502 | 14,976 | 233,709 |
| Capital expenditures | | 1,339 | 1,579 | 4,981 | — | 7,899 |
| Additions through capital leases | | — | 813 | 1,212 | — | 2,025 |
| Capitalization of financial expense | | — | — | — | 102 | 102 |
| Total additions | | 1,339 | 2,392 | 6,193 | 102 | 10,026 |
| Disposals **3** | | (1,548) | (397) | (1,451) | 15 | (3,381) |
| Reclassifications **4** | | (742) | (97) | (261) | (2) | (1,102) |
| Depreciation and depletion for the period | | (1,116) | (1,691) | (11,264) | — | (14,071) |
| Impairment losses | | (131) | (31) | (380) | — | (542) |
| Foreign currency translation effects | | (4,955) | (4,476) | (2,092) | (815) | (12,338) |
| Cost at end of period | | 75,198 | 40,316 | 176,720 | 14,276 | 306,510 |
| Accumulated depreciation and depletion | | (7,033) | (12,703) | (74,473) | — | (94,209) |
| **Net book value at end of period** | Ps | 68,165 | 27,613 | 102,247 | 14,276 | 212,301 |

**Properties, machinery and equipment - continued**

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Notes to the Consolidated Financial Statements**
**As of December 31, 2012, 2011 and 2010**
**(Millions of Mexican pesos)**

| | | 2011 | | | | | |
|---|---|---|---|---|---|---|---|
| | | Land and mineral reserves 1 | Buildings 1 | Machinery and equipment 2 | Construction in progress | Total | 2010 |
| Cost at beginning of period | Ps | 75,149 | 39,008 | 165,170 | 13,016 | 292,343 | 310,496 |
| Accumulated depreciation and depletion | | (4,446) | (8,990) | (57,636) | — | (71,072) | (64,373) |
| **Net book value at beginning of period** | | 70,703 | 30,018 | 107,534 | 13,016 | 221,271 | 246,123 |
| Capital expenditures | | 74 | 397 | 5,472 | — | 5,943 | 6,875 |
| Additions through capital leases | | 4 | — | 1,515 | — | 1,519 | — |
| Capitalization of financial expense | | — | — | — | 115 | 115 | 88 |
| Total additions | | 78 | 397 | 6,987 | 115 | 7,577 | 6,963 |
| Disposals **3** | | (1,251) | (654) | (1,185) | 261 | (2,829) | (2,797) |
| Reclassifications **4** | | — | — | — | — | — | 1,169 |
| Business combinations (note 15A) | | 1,157 | 615 | 2,388 | 1,006 | 5,166 | 38 |
| Depreciation and depletion for the period | | (1,461) | (1,630) | (11,366) | — | (14,457) | (15,337) |
| Impairment losses | | (667) | (85) | (497) | — | (1,249) | (1,161) |
| Foreign currency translation effects | | 6,759 | 3,252 | 7,641 | 578 | 18,230 | (13,727) |
| Cost at end of period | | 81,135 | 43,824 | 183,682 | 14,976 | 323,617 | 292,343 |
| Accumulated depreciation and depletion | | (5,817) | (11,911) | (72,180) | — | (89,908) | (71,072) |
| **Net book value at end of period** | Ps | 75,318 | 31,913 | 111,502 | 14,976 | 233,709 | 221,271 |

**1** Includes corporate buildings and related land sold to financial institutions during 2012 and 2011, which were leased back, without incurring any change in the carrying amount of such assets or gain or loss on the transactions. The aggregate carrying amount of these assets as of December 31, 2012 and 2011 was approximately Ps1,657 and Ps554, respectively.

**2** Includes assets, mainly mobile equipment, acquired in 2012 and 2011 through capital leases, which carrying amount as of December 31, 2012 and 2011 was approximately Ps2,025 and Ps1,519, respectively.

**3** In 2012, includes sales of non-strategic fixed assets in Mexico, the United Kingdom and the United States for Ps1,160, Ps1,129 and Ps384, respectively. In 2011, includes sales of non-strategic fixed assets in the United Kingdom, Mexico and the United States for Ps424, Ps567 and Ps968, respectively. In 2010, includes sales of non-strategic fixed assets in the United States and Mexico for Ps1,140 and Ps749, respectively.

**4** In 2012, due to decision to dispose of certain components of CGUs in the United States, CEMEX reclassified approximately Ps1,102 of fixed assets associated with such CGUs to assets held for sale (note 12). The reclassified assets were recognized at fair value less cost to sale. In 2010, refers to the capitalization of advances to suppliers of fixed assets during the period.

CEMEX has significant balances of property, machinery and equipment. As of December 31, 2012 and 2011, the consolidated balances of property, machinery and equipment, net, represented approximately 44.3% and 43.1%, respectively, of CEMEX's total consolidated assets. As a result of impairment tests conducted on several CGUs considering certain triggering events, mainly: a) the closing and/or reduction of operations of cement and ready-mix concrete plants resulting from adjusting the supply to current demand conditions; and b) the transferring of installed capacity to more efficient plants, for the years ended December 31, 2012, 2011 and 2010, CEMEX

**Properties, machinery and equipment - continued**

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Notes to the Consolidated Financial Statements**
**As of December 31, 2012, 2011 and 2010**
**(Millions of Mexican pesos)**

adjusted the related fixed assets to their estimated value in use in those circumstances in which the assets would continue in operation based on estimated cash flows during the remaining useful life, or to their realizable value, in case of permanent shut down, and recognized impairment losses (note 2K) during 2012, 2011 and 2010 in the following countries and for the following amounts:

| | | 2012 | 2011 | 2010 |
|---|---|---|---|---|
| Ireland | Ps | 64 | 790 | 91 |
| Mexico | | 203 | 101 | 138 |
| United Kingdom | | — | 84 | — |
| Latvia | | 38 | 68 | — |
| Colombia | | — | 46 | — |
| Poland | | 3 | 29 | 76 |
| Germany | | 128 | 21 | 103 |
| Thailand | | — | 15 | 136 |
| United States | | 71 | 11 | 500 |
| Other countries | | 35 | 84 | 117 |
| | Ps | 542 | 1,249 | 1,161 |

As of December 31, 2012, there were no items of property, machinery and equipment related to CGUs that due to impairment indicators, such as the reduction of operations and/or the extended economic slowdown in the respective country, were subject to impairment tests and presented relative impairment risk in that their value in use exceeded by only 10% or less their respective carrying amounts. As of December 31, 2011, the CGU that presented relative impairment risk was as follows:

| | | | 2011 | | |
|---|---|---|---|---|---|
| Country | Related assets | | Excess of value in use over carrying amount | Discount rate | Average remaining useful life |
| United States | Machinery and equipment | Ps | 105 | 10.7% | 21 years |

As of December 31, 2011, in connection with the items of property, machinery and equipment mentioned in the table above that presented relative impairment risk, the impairment charges resulting from the sensitivity analysis that would have resulted from a reasonable independent change in each of the relevant variables used to determine the related assets' value in use would have been as follows:

| | | 2011 | | | |
|---|---|---|---|---|---|
| | | Sensitivity analysis impact of described change in assumptions | | | |
| Country | | Excess of value in use over carrying amount | Recognized impairment losses | Discount rate + 1pt | Remaining useful live – 10% |
| United States | Ps | 105 | — | (105) | — |

As of December 31, 2011, CEMEX believed that the estimated useful lives of the assets subject to the impairment test above were reasonable. With respect to the discount rate, such rate is linked to the global cost of capital, which may increase in the future, subject to economic conditions in the respective country.

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Notes to the Consolidated Financial Statements**
**As of December 31, 2012, 2011 and 2010**
**(Millions of Mexican pesos)**

## 15) GOODWILL AND INTANGIBLE ASSETS

### 15A) BALANCES AND CHANGES DURING THE PERIOD

As of December 31, 2012 and 2011, consolidated goodwill, intangible assets and deferred charges were summarized as follows:

| | 2012 | | | 2011 | | |
|---|---|---|---|---|---|---|
| | Cost | Accumulated amortization | Carrying amount | Cost | Accumulated amortization | Carrying amount |
| **Intangible assets of indefinite useful life:** | | | | | | |
| Goodwill | Ps 142,444 | — | 142,444 | Ps 152,674 | — | 152,674 |
| **Intangible assets of definite useful life:** | | | | | | |
| Extraction rights | 27,685 | (2,242) | 25,443 | 29,839 | (2,307) | 27,532 |
| Industrial property and trademarks | 429 | (76) | 353 | 4,012 | (3,000) | 1,012 |
| Customer relations | 4,862 | (2,606) | 2,256 | 5,172 | (2,324) | 2,848 |
| Mining projects | 1,642 | (300) | 1,342 | 2,083 | (402) | 1,681 |
| Others intangible assets | 14,068 | (12,384) | 1,684 | 16,872 | (13,557) | 3,315 |
| | Ps 191,130 | (17,608) | 173,522 | Ps 210,652 | (21,590) | 189,062 |

The amortization of intangible assets of definite useful life was approximately Ps3,113 in 2012, Ps3,079 in 2011 and Ps3,771 in 2010, and was recognized within operating costs and expenses.

**Goodwill**

Changes in consolidated goodwill in 2012, 2011 and 2010 were as follows:

| | 2012 | 2011 | 2010 |
|---|---|---|---|
| Balance at beginning of period | Ps 152,674 | 135,822 | 144,190 |
| Business combinations | — | 14 | 81 |
| Disposals and cancellations **1** | (323) | — | (83) |
| Reclassification to assets held for sale **2** | (212) | — | — |
| Impairment losses (note 15C) **3** | — | (145) | (189) |
| Foreign currency translation effects | (9,695) | 16,983 | (8,177) |
| Balance at end of period | Ps 142,444 | 152,674 | 135,822 |

**1** In 2012, due to the decision to transfer certain milling assets from Spain to Colombia, CEMEX cancelled approximately Ps323 of goodwill in Spain associated with the original acquisition of the entity that held the assets against other expenses, net.

**2** In 2012, due to the classification of certain CGUs in the United States to assets held for sale, considering the historical average Operating EBITDA generation of such CGUs, CEMEX allocated approximately Ps212 of goodwill related to the groups of CGUs to which goodwill had been allocated in such country to the fair value less cost to sale associated with such assets recognized in assets held for sale (note 12).

**Goodwill - continued**

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Notes to the Consolidated Financial Statements**
**As of December 31, 2012, 2011 and 2010**
**(Millions of Mexican pesos)**

**3** In 2011 and 2010, based on impairment tests made during the last quarter of such years, CEMEX recognized within "Other expenses, net" goodwill impairment losses in connection with the CGUs to which goodwill had been allocated in Latvia for approximately Ps145 (US$12) in 2011, and in Puerto Rico for approximately Ps189 (US$15) in 2010. The impairment losses in such countries represented 100% of the amount of goodwill allocated to such CGUs. In 2012, there were no impairment losses of goodwill (note 15C).

**Intangible assets of definite life**

Changes in intangible assets of definite life in 2012, 2011 and 2010 were as follows:

| | | 2012 | | | | | |
|---|---|---|---|---|---|---|---|
| | | Extraction rights | Industrial property and trademarks | Customer relations | Mining projects | Others 1 | Total |
| **Balance at beginning of period** | Ps | 27,532 | 1,012 | 2,848 | 1,681 | 3,315 | 36,388 |
| Additions (disposals), net **1** | | (4) | (513) | 134 | 263 | (265) | (385) |
| Amortization | | (446) | (373) | (512) | (69) | (1,713) | (3,113) |
| Impairment losses | | (42) | — | — | — | (69) | (111) |
| Foreign currency translation effects | | (1,597) | 227 | (214) | (533) | 416 | (1,701) |
| **Balance at end of period** | Ps | 25,443 | 353 | 2,256 | 1,342 | 1,684 | 31,078 |

| | | 2011 | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | | Extraction rights | Industrial property and trademarks | Customer relations | Mining projects | Others 1 | Total | 2010 |
| **Balance at beginning of period** | Ps | 25,225 | 1,267 | 2,991 | 1,342 | 3,881 | 34,706 | 41,338 |
| Business combinations | | — | — | — | — | 6 | 6 | 48 |
| Additions (disposals), net **1** | | 61 | 92 | 11 | 117 | 340 | 621 | (287) |
| Amortization | | (386) | (506) | (463) | (86) | (1,638) | (3,079) | (3,771) |
| Impairment losses | | — | — | — | — | — | — | (5) |
| Foreign currency translation effects | | 2,632 | 159 | 309 | 308 | 726 | 4,134 | (2,617) |
| **Balance at end of period** | Ps | 27,532 | 1,012 | 2,848 | 1,681 | 3,315 | 36,388 | 34,706 |

**1** As of December 31, 2012 and 2011, "Others" includes the carrying amount of internal-use software of approximately Ps204 and Ps711, respectively. Capitalized direct costs incurred in the development stage of internal-use software, such as professional fees, direct labor and related travel expenses, amounted to approximately Ps352 in 2012, Ps501 in 2011 and Ps30 in 2010.

When impairment indicators exist, for each intangible asset, CEMEX determines its projected revenue streams over the estimated useful life of the asset. In order to obtain discounted cash flows attributable to each intangible asset, such revenues are adjusted for operating expenses, changes in working capital and other expenditures, as applicable, and discounted to net present value using the risk adjusted discount rate of return. Significant management judgment is necessary to determine the appropriate valuation method and estimates under the key assumptions, among which are: a) the useful life of the asset; b) the risk adjusted discount rate of return; c) royalty rates; and d) growth rates. Assumptions used for these cash flows are consistent with internal forecasts and industry practices.

**Intangible assets of definite life - continued**



The fair values of intangible assets are very sensitive to changes in the significant assumptions used in their calculation. Certain key assumptions are more subjective than others. In respect of trademarks, CEMEX considers the royalty rate, which is key in the determination of revenue streams, as the most subjective assumption. In respect of extraction rights and customer relationships, the most subjective assumptions are revenue growth rates and estimated useful lives. CEMEX validates its assumptions through benchmarking with industry practices and the corroboration of third party valuation advisors.

## 15B) MAIN ACQUISITIONS AND DIVESTITURES DURING THE REPORTED PERIODS

In 2005, CEMEX and Ready Mix USA formed two joint ventures: a) CEMEX Southeast, LLC, a joint venture that was 50.01% owned and consolidated by CEMEX, and was comprised of the Demopolis cement plant in Alabama and the Clinchfield cement plant in Georgia, with a combined annual installed capacity of 1.7 million tons, and 12 cement terminals; and b) Ready Mix USA LLC, a joint venture that was 50.01% owned and consolidated by Ready Mix USA, and was comprised of 10 sand and gravel pits, 149 concrete plants and 20 block plants located in the states of Arkansas, Mississippi, Tennessee, Alabama, Georgia, and Florida.

Starting on June 30, 2008, Ready Mix USA had the right, but not the obligation, to sell (or put) its interests in both joint ventures to CEMEX. On September 30, 2010, Ready Mix USA exercised this put option. As a result of Ready Mix USA's exercise of its put option and after performance of the obligations by both parties under the put option agreement, on August 12, 2011, through the payment of approximately US$352 (Ps4,914), CEMEX acquired its former joint venture partner's interests in CEMEX Southeast, LLC and Ready Mix USA, LLC, including a non-compete and a transition services agreement. In accordance with the joint venture agreements, from the date in which Ready Mix USA exercised its put option until CEMEX's acquisition date, Ready Mix USA continued to control and manage Ready Mix USA, LLC. Nonetheless, based on IAS 27, and considering the existence of a settlement price that could have been paid any time until September 30, 2011 at CEMEX election and potential voting rights, Ready Mix USA LLC was consolidated beginning March 31, 2011. Upon consolidation, the purchase price was assigned to each joint venture proportionately to CEMEX's relative contribution interest in CEMEX Southeast, LLC and Ready Mix USA, LLC, considering the original fair values as of the dates of the 2005 agreements. During 2011, the acquisition of the non-controlling interest in CEMEX Southeast, LLC, fully consolidated by CEMEX as of the acquisition date, and the non-controlling interest in Ready Mix USA, LLC, generated a gain of approximately US$24 (Ps316) resulting mainly to the measurement at fair value of CEMEX's previously held equity interest in Ready Mix USA, LLC, and was recognized within "Other expenses, net." The consolidated financial statements of CEMEX as of December 31, 2011 included the balance sheet of Ready Mix USA, LLC as of December 31, 2011, based on the best estimate of the fair value of its net assets as of the acquisition date of approximately Ps4,487, including cash and cash equivalents of approximately Ps912 and debt of approximately Ps1,352, and its results of operations for the nine-month period ended December 31, 2011. During 2012, after conclusion of the purchase price allocation, there were changes in the value of certain assets and liabilities, none of which were individually significant, which decreased the aggregate gain on purchase by approximately US$1 (Ps13).

On November 15, 2012, as described in note 20D, CEMEX sold a non-controlling interest of 26.65% in CEMEX Latam Holdings, S.A., a direct subsidiary of CEMEX España, for a net amount of approximately US$960 (Ps12,336).

**Main acquisitions and divestitures during the reported periods - continued**



On October 12, 2012, in a private transaction, CEMEX made the final payment in connection with the acquisition, initiated in April 2012 from third parties, of the 49% non-controlling interest in an indirect holding company of Global Cement, S.A., CEMEX's main operating subsidiary in Guatemala, for a total amount including the final payment of approximately US$54 (Ps694), recognizing within "Other equity reserves" a loss of approximately US$32 (Ps411).

On May 17, 2012, through a public tender offer commenced on March 12, 2012, and after compliance with applicable regulations in the Republic of Ireland, Readymix Investments, an indirect subsidiary of CEMEX España, acquired all the shares of Readymix plc ("Readymix"), CEMEX's main operating subsidiary in the Republic of Ireland, for €0.25 per share in cash. The acquisition price for the 38.8% non-controlling interest in Readymix was approximately €11 (US$15 or Ps187). The listing and trading of Readymix's shares on the Irish Stock Exchange was cancelled beginning on May 18, 2012.

## 15C) ANALYSIS OF GOODWILL IMPAIRMENT

As of December 31, 2012 and 2011, goodwill balances allocated by operating segment were as follows:

| | | 2012 | 2011 |
|---|---|---|---|
| United States | Ps | 109,326 | 117,867 |
| Mexico | | 6,369 | 6,369 |
| **Northern Europe** | | | |
| United Kingdom | | 4,552 | 4,647 |
| France | | 3,451 | 3,690 |
| Rest of Northern Europe **1** | | 297 | 420 |
| **Mediterranean** | | | |
| Spain | | 8,660 | 9,549 |
| United Arab Emirates | | 1,371 | 1,383 |
| Egypt | | 231 | 231 |
| **South America and the Caribbean** | | | |
| Colombia | | 5,510 | 5,628 |
| Dominican Republic | | 201 | 214 |
| Rest of South America and the Caribbean **2** | | 733 | 775 |
| **Asia** | | | |
| Philippines | | 1,389 | 1,513 |
| **Others** | | | |
| Other operating segments **3** | | 354 | 388 |
| | Ps | 142,444 | 152,674 |

**1** This caption refers to the operating segments in the Czech Republic and Latvia.
**2** This caption refers to the operating segments in the Caribbean, Argentina, Costa Rica and Panama.
**3** This caption is primarily associated with Neoris N.V., CEMEX's subsidiary in the information technology and software development business.

**Analysis of goodwill impairment - continued**

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Notes to the Consolidated Financial Statements**
**As of December 31, 2012, 2011 and 2010**
**(Millions of Mexican pesos)**

CEMEX is engaged in the production, marketing, distribution and sale of cement, ready-mix concrete, aggregates and other construction materials. The geographic operating segments reported by CEMEX (note 4) represent CEMEX's groups of CGUs to which goodwill has been allocated for purposes of testing goodwill for impairment. Correspondingly, each of CEMEX's geographic operating segments is comprised of CEMEX's operations in a country. Each country or operating segment is, in turn, comprised of a lower level of cash-generating units, which are not larger than an operating segment, identified by CEMEX as geographical zones within the country in which all main business activities are conducted. For purposes of goodwill impairment tests, all cash-generating units within a country are aggregated, as goodwill is allocated at that level. In order to arrive at these conclusions, CEMEX evaluated: a) that after the acquisition, goodwill is allocated at the level of the reportable operating segment and represents the lowest level within CEMEX at which goodwill is monitored for internal management purposes and reflects the way CEMEX manages its operations and allocates resources; b) that the cash-generating units that comprise the reported segment have similar economic characteristics; c) that the reported segments are used by CEMEX to organize and evaluate its activities in its internal information systems; d) the homogeneous nature of the items produced and traded in each cash-generating unit, which are all used by the construction industry; e) the vertical integration in the value chain of the products comprising each component; f) the type of clients, which are substantially similar in all components; g) the operative integration among components; and h) that the compensation system of a specific country is based on the consolidated results of the geographic operating segment and not on the particular results of the components. Considering materiality for disclosure purposes, in note 15C, certain balances of goodwill were presented for Rest of Northern Europe or Rest of South America and the Caribbean, but this does not represent that goodwill was tested at a level higher than for operations in an individual country.

Impairment tests are significantly sensitive to, among other factors, the estimation of future prices of CEMEX's products, the development of operating expenses, local and international economic trends in the construction industry, the long-term growth expectations in the different markets, as well as the discount rates and the long-term growth rates applied. CEMEX's cash flow projections to determine the value in use of its CGUs to which goodwill has been allocated consider the use of long-term economic assumptions. CEMEX believes that its discounted cash flow projections and the discount rates used reasonably reflect current economic conditions at the time of the calculations, considering, among other factors that: a) the cost of capital reflects current risks and volatility in the markets; and b) the cost of debt represents the average of industry specific interest rates observed in recent transactions. Other key assumptions used to determine CEMEX's discounted cash flows are volume and price increases or decreases by main product during the projected periods. Volume increases or decreases generally reflect forecasts issued by trustworthy external sources, occasionally adjusted based on CEMEX's actual backlog, experience and judgment considering its concentration in certain sectors, while price changes normally reflect the expected inflation in the respective country. Operating costs and expenses during all periods are maintained as a fixed percent of revenues considering historic performance.

During the last quarter of 2012, 2011 and 2010, CEMEX performed its annual goodwill impairment test. Based on these analyses, in 2012 CEMEX did not determine impairment losses of goodwill, whereas, in 2011 and 2010, CEMEX determined impairment losses of goodwill for approximately Ps145 (US$12) and Ps189 (US$15), respectively, associated with CEMEX's groups of CGUs to which goodwill has been allocated in Latvia in 2011 and Puerto Rico in 2010, in both cases representing 100% of the goodwill balance associated with such countries. The estimated impairment losses are mainly attributable to market dynamics in these countries and their position in their business economic cycles. In both countries, their net book value exceeded their respective recoverable amount.

**Analysis of goodwill impairment - continued**

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Notes to the Consolidated Financial Statements**
**As of December 31, 2012, 2011 and 2010**
**(Millions of Mexican pesos)**

As of December 31, 2012, 2011 and 2010, CEMEX's pre-tax discount rates and long-term growth rates used to determine the discounted cash flows in the group of CGUs with the main goodwill balances, were as follows:

| | Discount rates | | | Growth rates | | |
|---|---|---|---|---|---|---|
| Groups of CGUs | 2012 | 2011 | 2010 | 2012 | 2011 | 2010 |
| United States | 9.9% | 10.7% | 10.0% | 2.5% | 2.5% | 2.5% |
| Spain | 11.5% | 12.0% | 11.2% | 2.5% | 2.5% | 2.5% |
| Mexico | 10.7% | 11.4% | 11.0% | 3.0% | 2.5% | 2.5% |
| Colombia | 10.7% | 11.6% | 11.1% | 3.5% | 2.5% | 2.5% |
| France | 10.3% | 11.5% | 10.7% | 1.9% | 2.5% | 2.5% |
| United Arab Emirates | 13.3% | 13.9% | 11.7% | 3.6% | 2.5% | 2.5% |
| United Kingdom | 10.3% | 11.0% | 10.7% | 2.7% | 2.5% | 2.5% |
| Egypt | 13.5% | 13.0% | 11.9% | 4.0% | 2.5% | 2.5% |
| Range of rates in other countries | 11.1% –13.3% | 11.8% –14.0% | 10.5% –14.9% | 3.4% –4.0% | 2.5% | 2.5% |

As of December 31, 2012, the discount rates used by CEMEX in its cash flows projections decreased by an average 5% from the values determined in 2011, mainly as a result of a reduction in the industry specific average cost of debt observed in 2012, as compared to the prior year. In respect to long-term growth rates, following general practice under IFRS, in 2012, CEMEX started the use of country specific rates.

In connection with CEMEX's assumptions included in the table above, as of December 31, 2012 and 2011, CEMEX made sensitivity analyses to changes in assumptions, affecting the value in use of all groups of CGUs with an independent reasonable possible increase of 1% in the pre-tax discount rate, and an independent possible decrease of 1% in the long-term growth rate. In addition, CEMEX performed cross-check analyses for reasonableness of its results using multiples of Operating EBITDA. In order to arrive at these multiples, which represent a reasonableness check of CEMEX's discounted cash flow model, CEMEX determined a weighted average of multiples of Operating EBITDA to enterprise value observed in the industry. The average multiple was then applied to a stabilized amount of Operating EBITDA and the result was compared to the corresponding carrying amount for each group of CGUs to which goodwill has been allocated. As of December 31, 2012 and 2011, CEMEX considered an industry weighted average Operating EBITDA multiple of 10.3 times and 9.6 times, respectively. CEMEX's own Operating EBITDA multiples to enterprise value as of the same dates were 10.6 times in 2012 and 10 times in 2011. The lowest multiple observed in CEMEX's benchmark as of December 31, 2012 and 2011 was 7.2 times and 6.2 times, respectively, and the highest being 21.3 times and 22.1 times, respectively.

As of December 31, 2012, the impairment charges resulting from the sensitivity analyses that would have resulted from an independent change of each one of the variables and/or by the use of multiples of Operating EBITDA, regarding the operating segment that presented a relative impairment risk, would have been as follows:

| As of December 31, 2012 | Sensitivity analysis of described change in assumptions | | | |
|---|---|---|---|---|
| (Amounts in millions) | Recognized impairment charges | Discount rate + 1pt | Long-term growth rate - 1pt | Multiples of Operating EBITDA |
| Spain | US$ — | 99 | — | 39 |
| United Arab Emirates | — | 8 | — | — |

**Analysis of goodwill impairment - continued**

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Notes to the Consolidated Financial Statements**
**As of December 31, 2012, 2011 and 2010**
**(Millions of Mexican pesos)**

CEMEX will continue to monitor the evolution of the specific CGUs to which goodwill has been allocated that present relative goodwill impairment risk and, in the event that the relevant economic variables and the related cash flows projections would be negatively affected, it may result in a goodwill impairment loss in the future. As of December 31, 2011 and 2010, CEMEX made the sensitivity analyses to changes in assumptions mentioned above.

CEMEX has experienced a significant decline in its market capitalization with respect to levels prior to the 2008 global crisis, which CEMEX believes is due to factors such as: a) the contraction of the construction industry in the United States, which has experienced a continued slow recovery after the crisis of 2008, that has significantly affected CEMEX's operations in such country and consequently its overall generation of cash flows; b) CEMEX's significant amount of consolidated debt and its operation over the last few years under the Financing Agreement (note 16A), has also significantly affected CEMEX's valuation, considering the high uncertainty perceived by stakeholders regarding CEMEX's odds of successfully achieving the different milestones established with its main creditors; and c) the transfer of capital during the last few years, mainly due to high volatility generated by liquidity problems in certain European countries, from variable income securities in developing countries such as Mexico to fixed income securities in developed countries such as the United States. The market price of CEMEX's CPO has recovered significantly after CEMEX entering into the Facilities Agreement (note 16A). In dollar terms, CEMEX's market capitalization increased by approximately 93% in 2012 compared to 2011, to approximately US$10.8 billion (Ps138.7 billion).

Goodwill allocated to the United States accounted for approximately 77% of CEMEX's total amount of consolidated goodwill as of December 31, 2012 and 2011. In connection with CEMEX's determination of value in use relative to its groups of CGUs in the United States as of December 31, 2011 and 2012, CEMEX has considered several factors, such as the historical performance of such operating segment, including operating losses in recent years, the long-term nature of CEMEX's investment, the recent signs of recovery in the construction industry, the significant economic barriers for new potential competitors considering the high investment required, and the lack of susceptibility of the industry to technology improvements or alternate construction products, among other factors. CEMEX has also considered recent developments in its operations in the United States, such as the 20% and 7% increase in ready-mix concrete volumes in 2012 and 2011, respectively, and the 4% and 3% increase in 2012 and 2011, respectively, of ready-mix concrete prices, respectively, which are key drivers for cement consumption and CEMEX's profitability, and which trends are expected to continue over the next few years, as anticipated in CEMEX's cash flow projections.

In addition, as mentioned above, CEMEX performed a reasonableness test of the estimated value in use by performing a sensitivity analysis on key cash flow assumptions, and estimated the recoverable amount by using the method of multiples of Operating EBITDA.

Based on the above, considering economic assumptions that were verified for reasonableness with information generated by external sources, to the extent available, the value in use of the CEMEX's operating segment in the United States exceeded the respective carrying amount for goodwill impairment test purposes as of December 31, 2012 and 2011. The additional sensitivity analyses were as follows:

| Excess of value in use over carrying amount | 2012 | 2011 |
|---|---|---|
| Basic test | US$ 3,933 | 4,114 |
| Sensitivity to plus 1 percent point in discount rate | 1,390 | 1,335 |
| Sensitivity to minus 1 percent point in long-term growth | 2,574 | 2,493 |
| Excess of multiples of Operating EBITDA over carrying amount | 1,106 | 781 |

**Analysis of goodwill impairment - continued**

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Notes to the Consolidated Financial Statements**
**As of December 31, 2012, 2011 and 2010**
**(Millions of Mexican pesos)**

As of December 31, 2012 and 2011, CEMEX considers that its combination of discount rate and long-term growth rate applied in the base model for its group of CGUs in the United States to which goodwill has been allocated reflect the particular risk factors existing as of the date of analysis.

## 16) FINANCIAL INSTRUMENTS

### 16A) SHORT-TERM AND LONG-TERM DEBT

As of December 31, 2012 and 2011, CEMEX's consolidated debt summarized by interest rates, currencies and type of instrument, was as follows:

| | | 2012 | | | | 2011 | | |
|---|---|---|---|---|---|---|---|---|
| | | Short-term | Long-term | Total | | Short-term | Long-term | Total |
| Floating rate debt | Ps | 81 | 62,664 | 62,745 | Ps | 2,997 | 106,943 | 109,940 |
| Fixed rate debt | | 515 | 114,875 | 115,390 | | 1,676 | 96,855 | 98,531 |
| | Ps | 596 | 177,539 | 178,135 | Ps | 4,673 | 203,798 | 208,471 |
| **Effective rate 1** | | | | | | | | |
| Floating rate | | 5.5% | 5.2% | | | 5.0% | 5.3% | |
| Fixed rate | | 4.7% | 9.0% | | | 10.5% | 8.4% | |

| | | 2012 | | | | | 2011 | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| Currency | | Short-term | Long-term | Total | Effective rate 1 | | Short-term | Long-term | Total | Effective rate 1 |
| Dollars | Ps | 486 | 144,582 | 145,068 | 7.8% | Ps | 310 | 156,055 | 156,365 | 6.9% |
| Euros | | 46 | 30,461 | 30,507 | 5.9% | | 93 | 44,357 | 44,450 | 5.9% |
| Pesos | | 15 | 2,392 | 2,407 | 8.8% | | 4,268 | 3,268 | 7,536 | 9.5% |
| Other currencies | | 49 | 104 | 153 | 4.6% | | 2 | 118 | 120 | 5.8% |
| | Ps | 596 | 177,539 | 178,135 | | Ps | 4,673 | 203,798 | 208,471 | |

**1** Represents the weighted average effective interest rate.

**Short-term and long-term debt - continued**

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Notes to the Consolidated Financial Statements**
**As of December 31, 2012, 2011 and 2010**
**(Millions of Mexican pesos)**

| 2012 | | Short-term | Long-term |
|---|---|---|---|
| **Bank loans** | | | |
| Loans in Mexico, 2013 to 2014 | Ps | — | 1,088 |
| Loans in foreign countries, 2013 to 2018 | | 2 | 3,770 |
| Syndicated loans, 2013 to 2017 | | — | 49,972 |
| | | 2 | 54,830 |
| **Notes payable** | | | |
| Notes payable in Mexico, 2013 to 2017 | | — | 568 |
| Medium-term notes, 2013 to 2022 | | — | 120,535 |
| Other notes payable, 2013 to 2025 | | 80 | 2,120 |
| | | 80 | 123,223 |
| Total bank loans and notes payable | | 82 | 178,053 |
| Current maturities | | 514 | (514) |
| | Ps | 596 | 177,539 |

| 2011 | | Short-term | Long-term |
|---|---|---|---|
| **Bank loans** | | | |
| Loans in Mexico, 2012 to 2014 | Ps | — | 1,820 |
| Loans in foreign countries, 2012 to 2018 | | 16 | 23,797 |
| Syndicated loans, 2012 to 2014 | | — | 71,195 |
| | | 16 | 96,812 |
| **Notes payable** | | | |
| Notes payable in Mexico, 2012 to 2017 | | — | 4,647 |
| Medium-term notes, 2012 to 2020 | | — | 104,440 |
| Other notes payable, 2012 to 2025 | | 124 | 2,432 |
| | | 124 | 111,519 |
| Total bank loans and notes payable | | 140 | 208,331 |
| Current maturities | | 4,533 | (4,533) |
| | Ps | 4,673 | 203,798 |

Changes in consolidated debt for the years ended December 31, 2012, 2011 and 2010 were as follows:

| | | 2012 | 2011 | 2010 |
|---|---|---|---|---|
| Debt at beginning of year | Ps | 208,471 | 194,394 | 210,446 |
| Proceeds from new debt instruments | | 33,468 | 33,591 | 12,212 |
| Debt repayments | | (52,699) | (44,368) | (29,641) |
| Issuance of debt in exchange for perpetual notes | | 4,123 | 1,491 | 15,437 |
| Increase (decrease) from business combinations | | — | 1,352 | — |
| Foreign currency translation and inflation effects | | (15,228) | 22,011 | (14,060) |
| Debt at end of year | Ps | 178,135 | 208,471 | 194,394 |

The most representative exchange rates for the financial debt are as follows:

| | April 23, 2013 | 2012 | 2011 | 2010 |
|---|---|---|---|---|
| Mexican pesos per dollar | 12.26 | 12.85 | 13.96 | 12.36 |
| Euros per dollar | 0.7689 | 0.7576 | 0.7712 | 0.7499 |

**Short-term and long-term debt - continued**

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Notes to the Consolidated Financial Statements**
**As of December 31, 2012, 2011 and 2010**
**(Millions of Mexican pesos)**

The maturities of CEMEX's consolidated long-term debt as of December 31, 2012, were as follows:

| | | 2012 |
|---|---|---|
| 2014 | Ps | 7,346 |
| 2015 | | 9,797 |
| 2016 | | 22,391 |
| 2017 | | 62,417 |
| 2018 and thereafter | | 75,588 |
| | Ps | 177,539 |

As of December 31, 2012, CEMEX had the following lines of credit, the majority of which are subject to the banks' availability, at annual interest rates ranging between 2.14% and 10.0%, depending on the negotiated currency:

| | | Lines of credit | Available |
|---|---|---|---|
| Other lines of credit in foreign subsidiaries | Ps | 6,491 | 4,243 |
| Other lines of credit from banks | | 456 | — |
| | Ps | 6,947 | 4,243 |

**Relevant debt transactions during 2012, 2011 and 2010**

On September 17, 2012, CEMEX concluded the refinancing process of a substantial portion of its then outstanding debt under the Financing Agreement, as amended on several dates during 2009, 2010, 2011 and finally on September 17, 2012 (the "Financing Agreement"), with the completion of the Exchange Offer on September 17, 2012, as further described in this note 16.

On September 17, 2012, in connection with the Facilities Agreement described elsewhere in this note 16A, CEMEX issued US$500 aggregate principal amount of 9.5% senior secured notes due in 2018 (the "September 2012 Notes"). The September 2012 Notes were issued in exchange for loans and private placements outstanding under the Financing Agreement.

On October 12, 2012, through its subsidiary CEMEX Finance LLC, CEMEX closed the offering of US$1,500 aggregate principal amount of 9.375% senior secured notes due in 2022 (the "October 2012 Notes"). The October 2012 Notes, which were issued at par and will be callable commencing on their 5th anniversary, are unconditionally guaranteed by CEMEX, S.A.B. de C.V., CEMEX México, S.A. de C.V., CEMEX España, S.A., New Sunward Holding B.V., CEMEX Concretos, S.A. de C.V., CEMEX Corp. and Empresas Tolteca de México, S.A. de C.V., as well as by CEMEX Research Group AG, CEMEX Shipping B.V., CEMEX Asia B.V., CEMEX France Gestion (S.A.S.), CEMEX UK, and CEMEX Egyptian Investments B.V. ( jointly the "New Guarantors"), which also guarantee debt under the Facilities Agreement. The net proceeds from the offering, approximately US$1,489, were used to repay indebtedness under the Facilities Agreement, which allowed CEMEX to achieve the first debt repayment milestone thereunder of March 2013 and the reduction in the interest rate under such agreement by 25 basis points, as detailed in other section of this note 16A.

**Relevant debt transactions during 2012, 2011 and 2010 - continued**

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Notes to the Consolidated Financial Statements**
**As of December 31, 2012, 2011 and 2010**
**(Millions of Mexican pesos)**

On March 23, 2012, through several exchange offers made on a private placement basis by CEMEX España's Luxembourg branch, CEMEX finalized the issuance of: a) approximately €179 aggregate principal amount of 9.875% Euro-denominated senior secured notes due 2019; and b) approximately US$704 aggregate principal amount of 9.875% Dollar-denominated senior secured notes due 2019 (collectively, the "March 2012 Notes"), in exchange for approximately €470, or 53%, of its then outstanding Euro-denominated 4.75% notes due 2014, and approximately US$452, or 48%, in several series of its then aggregate outstanding perpetual debentures (note 20D). The March 2012 Notes are unconditionally guaranteed by CEMEX, S.A.B. de C.V., CEMEX México, S.A. de C.V., New Sunward Holding B.V. and the New Guarantors and share the same collateral that secures the Facilities Agreement and other senior secured debt having the benefit of such collateral. As a result of the private exchanges, CEMEX generated in 2012 a gain of approximately US$131 (Ps1,680), representing the difference between the notional amount of the March 2012 Notes, and the several series of the reacquired and cancelled perpetual debentures, which was recognized within "Other equity reserves."

During December 2011, CEMEX exchanged through market transactions a portion of the PDVSA notes received in payment from the Government of Venezuela (note 13B), for perpetual debentures and debt instruments issued by CEMEX subsidiaries. In addition, during the same month, CEMEX received from a third party, as a settlement of an account receivable, the equity interest of an entity whose assets where mainly comprised by perpetual debentures and debt instruments issued by CEMEX subsidiaries. As a result, as of December 31, 2011, CEMEX cancelled in its balance sheet a portion of several series of its subsidiaries' debt instruments, held by the newly acquired entity and its other subsidiaries, for an aggregate notional amount of approximately Ps977, including portions of the 9.25% Dollar-denominated senior secured notes due 2020 and portions of the April 2011 Notes, described below, as well as portions of several series of perpetual debentures (note 20D) for an aggregate notional amount of approximately Ps3,029, among others. Considering the difference between the fair value of the instruments and their notional amount, as part of this cancellation, CEMEX recognized gains, net of certain commissions, of approximately Ps1,630, of which, approximately Ps239 associated with CEMEX's debt instruments, were recognized within other expenses, net, and approximately Ps1,391 associated with the perpetual debentures, were recognized in stockholders' equity as part of other equity reserves.

As of December 31, 2010 and 2011, in connection with its obligations under the Financing Agreement, which is described within this note 16A, CEMEX had already paid 35.4% of the original principal amount, or approximately US$5,263, of debt under the Financing Agreement and 51.0% of the original principal amount, or approximately US$7,571, of debt under the Financing Agreement, respectively. These repayments exceeded the scheduled amortizations of 19.1%, or approximately US$2,837 by December 15, 2010, and 33.1%, or approximately US$4,918 by December 15, 2011. Through these repayments, CEMEX avoided a 0.5% increase in the interest rate of debt under the Financing Agreement beginning in January 2012 and addressed all maturities under the Financing Agreement until December 2013.

On July 11, 2011, CEMEX, S.A.B. de C.V. closed the reopening of the January 2011 Notes, described below, and issued US$650 aggregate principal amount of additional notes at 97.616% of face value plus any accrued interest. CEMEX used the net proceeds from the reopening for general corporate purposes and the repayment of debt, including debt under the Financing Agreement.

On April 5, 2011, CEMEX, S.A.B. de C.V. closed the offering of US$800 aggregate principal amount of Floating Rate Senior Secured Notes due in 2015 (the "April 2011 Notes"), which were issued at 99.001% of face value. The April 2011 Notes are unconditionally guaranteed by CEMEX México, S.A. de C.V., New Sunward

**Relevant debt transactions during 2012, 2011 and 2010 - continued**



Holding B.V., CEMEX España, S.A. and the New Guarantors. The net proceeds from the offering, approximately US$788, were used to repay indebtedness under the Financing Agreement.

On March 4, 2011, a CEMEX subsidiary closed a private exchange transaction whereby it exchanged approximately €119 aggregate principal amount of 6.277% perpetual debentures for approximately US$125 (Ps1,491) aggregate principal amount of new 9.25% Dollar-denominated senior secured notes due 2020, described below. As a result of the private exchange, approximately €119 in aggregate principal amount of the 6.277% Perpetual Debentures were cancelled, generating in 2011 a gain of approximately Ps446, representing the difference between the notional amount of the reacquired perpetual debentures and the new senior secured notes, which was recognized within "Other equity reserves."

On January 11, 2011, CEMEX, S.A.B. de C.V. closed the offering of US$1,000 aggregate principal amount of its 9.0% senior secured notes due in 2018 (the "January 2011 Notes"), which were issued at 99.364% of face value, and are callable beginning on their fourth anniversary. The January 2011 Notes share the collateral pledged to the lenders under the Facilities Agreement and other senior secured indebtedness having the benefit of such collateral, and are guaranteed by CEMEX México, S.A. de C.V., New Sunward Holding B.V., CEMEX España, S.A. and the New Guarantors.

In May 2010, CEMEX exchanged at a discount, part of each series of its perpetual debentures (note 20D) into new senior secured notes as follows: (1) US$1,067 senior secured notes denominated in Dollars maturing in May 2020, with an annual coupon of 9.25% and callable commencing on the fifth anniversary of their issuance; and (2) €115 (US$153) senior secured notes denominated in Euros maturing in May 2017, with an annual coupon of 8.875% and callable commencing on the fourth anniversary of their issuance. The senior secured notes, issued by the Luxembourg branch of CEMEX España, S.A., are fully guaranteed by CEMEX, S.A.B. de C.V., CEMEX México S.A. de C.V., New Sunward Holding B.V. and the New Guarantors. As a result of the exchange, CEMEX generated a gain of approximately Ps5,401 (US$437), representing the difference between the amount of perpetual debentures reacquired and the amount of new secured notes issued, which was recorded in "other equity reserves" in 2010.

On January 13, 2010, through a reopening of the offering of its 9.5% notes due in 2016 issued on December 14, 2009, a CEMEX financial subsidiary issued notes for an additional amount of US$500. The additional notes were issued at a price of US$105.25 per US$100 principal amount plus accrued interest from December 14, 2009 with a yield to maturity of 8.477%. CEMEX used approximately US$411 of the net proceeds to prepay principal due in 2011 under the Financing Agreement and the difference was used for general corporate purposes. The original and additional notes are guaranteed by CEMEX, S.A.B. de C.V., CEMEX México S.A. de C.V., New Sunward Holding B.V. and the New Guarantors.

**Facilities Agreement and Financing Agreement**

On August 14, 2009, CEMEX, S.A.B. de C.V. and certain subsidiaries entered into the original Financing Agreement with its major creditors, by means of which the maturities of approximately US$14,961 (Ps195,839) (amount determined in accordance with the contracts) of syndicated and bilateral loans, private placement notes and other obligations were extended, providing for a semi-annual amortization schedule. The Financing Agreement is guaranteed by CEMEX, S.A.B. de C.V., CEMEX México, S.A. de C.V., New Sunward Holding B.V., CEMEX España, S.A., CEMEX Concretos, S.A. de C.V., CEMEX Corp., CEMEX Finance LLC and Empresas Tolteca de México, S.A. de C.V. As of December 31, 2011 and 2010, after the application of the

**Facilities Agreement and Financing Agreement - continued**



proceeds from the refinancing transactions disclosed above and in note 16B and others, the application of the net proceeds obtained from the sale of assets, and the equity offering in 2009, the remaining debt balance under the Financing Agreement was approximately US$7,195 (Ps100,442) and US$9,566 (Ps118,235), respectively, with payments due as of August 31, 2012 of approximately US$488 in December 2013 and US$6,707 at final maturity in February 2014, each calculated as of August 30, 2012. Considering that CEMEX was able to prepay by December 31, 2011 approximately US$2,301 of debt under the Financing Agreement, CEMEX avoided an increase in the interest rate of debt under such agreement of 0.5%. Until its maturity, the Financing Agreement does not provide for any further increases in the interest rate associated with a certain amount of prepayments.

On September 17, 2012, CEMEX completed a refinancing process of a substantial portion of its then outstanding debt under the Financing Agreement, as amended on several dates. Pursuant to CEMEX's exchange proposal (the "Exchange Offer"), creditors were invited to exchange their existing exposures under the existing Financing Agreement into one or a combination of the following instruments: a) new loans ("New Loans") or private placement notes ("New USPP Notes"), as applicable, or b) up to US$500 in new 9.5% notes (the "September 2012 Notes") to be issued by CEMEX maturing in June 2018, having terms substantially similar to those of senior secured notes previously issued by CEMEX, S.A.B. de C.V. and/or its subsidiaries. The September 2012 Notes were allocated pro rata to the participating creditors of the Financing Agreement in the Exchange Offer that elected to receive the September 2012 Notes in the Exchange Offer. Financing Agreement creditors accepting certain amendments, including the elimination of the benefit of the security package among others, received an amendment fee of 20 basis points ("bps") calculated on the amount of their existing exposures under such agreement.

Pursuant to the Exchange Offer, participating creditors representing approximately 92.7% of the aggregate principal amount of debt outstanding under the existing Financing Agreement agreed to extinguish their existing loans and private placement notes and to receive in place thereof: a) approximately US$6,155 in aggregate principal amount of New Loans with an initial interest rate of LIBOR plus 525 bps (subject to decrease depending on certain prepayments), and new USPP Notes with an initial interest rate of 9.66% (subject to decrease depending on certain prepayments), issued pursuant to a new agreement (the "Facilities Agreement") dated as of September 17, 2012, and with a final maturity on February 14, 2017, and an exchange fee of 80 bps calculated on the amount of their existing exposures under the Financing Agreement that were extinguished and for which New Loans or New USPP Notes were issued in place thereof; and b) US$500 of the September 2012 Notes, issued pursuant to an indenture dated as of September 17, 2012. Approximately US$525 aggregate principal amount of loans and U.S. Dollar private placement notes remained outstanding after the Exchange Offer under the existing Financing Agreement, as amended, after the Exchange Offer. As of December 31, 2012, after the application of proceeds resulting from the CEMEX Latam Holdings, S.A. initial offering (note 20D), the aggregate principal amount of loans and U.S. dollar private placement notes under the amended Financing Agreement was US$55 (Ps707), with a final maturity on February 14, 2014.

The Facilities Agreement required CEMEX to make the following amortization payments: (i) US$500 on February 14, 2014, (ii) US$250 on June 30, 2016, and (iii) US$250 on December 31, 2016. The Facilities Agreement also provides that CEMEX must: (a) repay at least US$1,000 of the indebtedness under the Facilities Agreement on or prior to March 31, 2013 (or a date falling no more than 90 days thereafter, if agreed to by two thirds of the participating creditors under the Facilities Agreement), or the maturity date of the indebtedness under the Facilities Agreement will become due on February 14, 2014; (b) on or before March 5, 2014, in case CEMEX does not redeem, purchase, repurchase, refinance or extend the maturity date of 100% of the notes issued by CEMEX Finance Europe B.V. and guaranteed by CEMEX España to a maturity date falling after December 31, 2017, or the maturity date of the indebtedness under the Facilities Agreement will become

**Facilities Agreement and Financing Agreement - continued**

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Notes to the Consolidated Financial Statements**
**As of December 31, 2012, 2011 and 2010**
**(Millions of Mexican pesos)**

March 5, 2014; (c) on or before March 15, 2015, in case CEMEX does not redeem, convert into equity, purchase, repurchase, refinance or extend the maturity date of 100% of the 2015 Convertible Subordinated Notes to a maturity date falling after December 31, 2017, or the maturity date of the indebtedness under the Facilities Agreement will become March 15, 2015; (d) on or before September 30, 2015, in case CEMEX does not redeem or extend the maturity date of 100% of the April 2011 Notes to a maturity date falling after December 31, 2017, or the maturity date of the indebtedness under the Facilities Agreement will become September 30, 2015; (e) on or before March 15, 2016, in case CEMEX does not redeem, convert into equity, purchase, repurchase, refinance or extend the maturity date of 100% of the 2016 Convertible Subordinated Notes to a maturity date falling after December 31, 2017, or the maturity date of the indebtedness under the Facilities Agreement will become March 15, 2016; and (f) on or before December 14, 2016, in case CEMEX does not redeem or extend the maturity date of 100% of the December 2009 Notes to a maturity date falling after December 31, 2017, or the maturity date of the indebtedness under the Facilities Agreement will become December 14, 2016.

For the initial US$1,000 repayment, at its sole discretion, CEMEX may elect to: a) sell minority stakes in CEMEX's operations; b) sell selected assets in the United States; c) sell selected assets in Europe; and/or d) sale of other non-core assets. If during the Facilities Agreement term CEMEX pays down US$1,500 and US$2,000 of aggregate principal amount under the Facilities Agreement, the interest rate under the outstanding amount of the New Notes would be reduced to LIBOR plus 500 bps and LIBOR plus 450 bps, respectively, and in the New USPP Notes would be reduced to 9.41% and 8.91%, respectively.

As of December 31, 2012, CEMEX achieved the US$1,000 repayment milestone of March 2013, and the debt amortization requirements under the Facilities Agreement through and including the amortization on December 15, 2016; with US$4,187 remaining outstanding with a final maturity in February 2017. As a result of the prepayments, the interest rate on the New Loans under the Facilities Agreement was reduced to LIBOR plus 450 bps and on the New USPP Notes was reduced to 8.91%.

As mentioned above, the debt under the Facilities Agreement is guaranteed by the same entities that guarantee the debt under the Financing Agreement, and additionally by the New Guarantors. The amended Financing Agreement and certain other precedent facilities did not receive guarantees from the New Guarantors. The debt under the Facilities Agreement (together with other senior capital markets debt issued or guaranteed by CEMEX, and certain other precedent facilities) is also secured by a first-priority security interest in: (a) substantially all the shares of CEMEX México, S.A. de C.V.; Centro Distribuidor de Cemento, S.A. de C.V.; Corporación Gouda, S.A. de C.V.; Mexcement Holdings, S.A. de C.V.; New Sunward Holding B.V.; CEMEX Trademarks Holding Ltd. and CEMEX España, S.A. (the "Collateral"), and (b) all proceeds of such Collateral.

Pursuant to the Facilities Agreement, CEMEX is prohibited from making aggregate annual capital expenditures in excess of US$800 (excluding certain capital expenditures, and, joint venture investments and acquisitions by CEMEX Latam and its subsidiaries, which capital expenditures, joint venture investments and acquisitions at any time then incurred are subject to a separate aggregate limit of US$350 (or its equivalent)). In the Facilities Agreement, and subject in each case to the permitted negotiated amounts and other exceptions, CEMEX is also subject to a number of negative covenants that, among other things, restrict or limit its ability to: (i) create liens; (ii) incur additional debt; (iii) change CEMEX's business or the business of any obligor or material subsidiary (in each case, as defined in the Facilities Agreement); (iv) enter into mergers; (v) enter into agreements that restrict its subsidiaries' ability to pay dividends or repay intercompany debt; (vi) acquire assets; (vii) enter into or invest in joint venture agreements; (viii) dispose of certain assets; (ix) grant additional guarantees or indemnities; (x) declare or pay cash dividends or make share redemptions; (xi) issue shares; (xii) enter into certain derivatives

**Facilities Agreement and Financing Agreement - continued**

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Notes to the Consolidated Financial Statements**
**As of December 31, 2012, 2011 and 2010**
**(Millions of Mexican pesos)**

transactions; (xiii) exercise any call option in relation to any perpetual bonds CEMEX issues unless the exercise of the call options does not have a materially negative impact on its cash flow; and (xiv) transfer assets from subsidiaries or more than 10% of shares in subsidiaries into or out of CEMEX España or its subsidiaries if those assets or subsidiaries are not controlled by CEMEX España or any of its subsidiaries.

The Facilities Agreement also contains a number of affirmative covenants that, among other things, require CEMEX to provide periodic financial information to its lenders. However, a number of those covenants and restrictions will automatically cease to apply or become less restrictive if (i) CEMEX's consolidated leverage ratio for the two most recently completed semi-annual testing periods is less than or equal to 3.5 times; and (ii) no default under the Facilities Agreement is continuing. Restrictions that will cease to apply when CEMEX satisfies such conditions include the capital expenditure limitations mentioned above and several negative covenants, including limitations on CEMEX's ability to declare or pay cash dividends and distributions to shareholders, limitations on CEMEX's ability to repay existing financial indebtedness, certain asset sale restrictions, the quarterly cash balance sweep, certain mandatory prepayment provisions, and restrictions on exercising call options in relation to any perpetual bonds CEMEX issues (provided that creditors will continue to receive the benefit of any restrictive covenants that other creditors receive relating to other financial indebtedness of CEMEX in excess of US$75). At such time, several baskets and caps relating to negative covenants will also increase, including permitted financial indebtedness, permitted guarantees and limitations on liens. However, CEMEX cannot assure that it will be able to meet the conditions for these restrictions to cease to apply prior to the final maturity date under the Facilities Agreement.

In addition, the Facilities Agreement contains events of default, some of which may be outside of CEMEX's control. CEMEX cannot assure that it will be able to meet any or all of the above milestones for repaying indebtedness pursuant the Facilities Agreement or redeeming, converting into equity, purchasing, repurchasing or extending the maturities of CEMEX's other indebtedness. Failure to meet any of these milestones will result in a spring back of the maturity date of CEMEX's indebtedness under the Facilities Agreement, and CEMEX cannot assure that at such time it will be able to repay such indebtedness. Moreover, CEMEX cannot assure that it will be able to comply with the restrictive covenants and limitations contained in the Facilities Agreement. CEMEX's failure to comply with such covenants and limitations could result in an event of default, which could materially and adversely affect CEMEX's business and financial condition.

**Financial Covenants**

The Facilities Agreement requires the compliance with financial ratios calculated on a consolidated basis, which mainly include: a) the ratio of net debt to operating EBITDA ("leverage ratio"); and b) the ratio of operating EBITDA to interest expense ("coverage ratio"). Pursuant to the Facilities Agreement, beginning on September 17, 2012, at each compliance date, financial ratios should be calculated according to the formulas established in the debt contracts using the consolidated amounts under IFRS. During 2011 and 2010, financial ratios were calculated according to the formulas established in the Financing Agreement using the consolidated amounts under MFRS. The determinations of financial ratios require in most cases *pro forma* adjustments, according to the definitions of the contracts that differed from terms defined under IFRS and MFRS.

Based on the Facilities Agreement, CEMEX must comply with consolidated financial ratios and tests under IFRS, including a coverage ratio for each period of four consecutive fiscal quarters (measured semi-annually) of not less than (i) 1.50 times for the period ending on December 31, 2012 up to and including the period ending on June 30, 2014, (ii) 1.75 times from the period ending on December 31, 2014 up to and including the period

**Financial Covenants - continued**

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Notes to the Consolidated Financial Statements**
**As of December 31, 2012, 2011 and 2010**
**(Millions of Mexican pesos)**

ending on June 30, 2015, (iii) 1.85 times for the period ending on December 31, 2015, (iv) 2.0 times for the period ending on June 30, 2016, and (v) 2.25 times for the period ending on December 31, 2016. In addition, the Facilities Agreement allows CEMEX a maximum consolidated leverage ratio for each period of four consecutive fiscal quarters (measured semi-annually) not to exceed: (i) 7.0 times for each period from the period ending on December 31, 2012 up to and including the period ending on December 31, 2013, (ii) 6.75 times for the period ending on June 30, 2014, (iii) 6.5 times for the period ending on December 31, 2014, (iv) 6.0 times for the period ending on June 30, 2015, (v) 5.5 times for the period ending on December 31, 2015, (vi) 5.0 times for the period ending on June 30, 2016, and (vii) 4.25 times for the period ending on December 31, 2016. Applicable during 2011 and 2010, and resulting from the amendments made to the original Financing Agreement on October 25, 2010, CEMEX had to comply with consolidated financial ratios and tests under MFRS, including a coverage ratio of not less than 1.75 times for the periods ended on December 31, 2011 and 2010. In addition, the maximum leverage ratio must not have exceeded 7.75 times for the period ending December 31, 2010 and 7.0 times for the period ending December 31, 2011.

CEMEX's ability to comply with these ratios may be affected by economic conditions and volatility in foreign exchange rates, as well as by overall conditions in the financial and capital markets. For the compliance periods ended as of December 31, 2012, 2011 and 2010, taking into account the Facilities Agreement and the amended Financing Agreement, as applicable, and based on its IFRS and MFRS amounts, as applicable, CEMEX, S.A.B. de C.V. and its subsidiaries were in compliance with the financial covenants imposed by its debt contracts.

The main consolidated financial ratios as of December 31, 2012, 2011 and 2010 were as follows:

| | | IFRS Consolidated financial ratios | MFRS Consolidated financial ratios | |
|---|---|---|---|---|
| | | 2012 | 2011 | 2010 |
| Leverage ratio **1, 2** | **Limit** | =< 7.00 | =< 7.00 | =< 7.75 |
| | **Calculation** | 5.44 | 6.64 | 7.43 |
| Coverage ratio **3** | **Limit** | > 1.50 | > 1.75 | > 1.75 |
| | **Calculation** | 2.10 | 1.88 | 1.95 |

**1** The leverage ratio is calculated in pesos by dividing "funded debt" by pro forma Operating EBITDA for the last twelve months as of the calculation date. Funded debt equals debt, as reported in the balance sheet excluding finance leases, plus perpetual debentures and guarantees, plus or minus the fair value of derivative financial instruments, as applicable, among other adjustments.

**2** Pro forma Operating EBITDA represents, all calculated in pesos, Operating EBITDA for the last twelve months as of the calculation date, plus the portion of Operating EBITDA referring to such twelve-month period of any significant acquisition made in the period before its consolidation in CEMEX, minus Operating EBITDA referring to such twelve-month period of any significant disposal that had already been liquidated.

**3** The coverage ratio is calculated in pesos using the amounts from the financial statements, by dividing the pro forma operating EBITDA by the financial expense for the last twelve months as of the calculation date. Financial expense includes interest accrued on the perpetual debentures.

**Financial Covenants - continued**

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Notes to the Consolidated Financial Statements**
**As of December 31, 2012, 2011 and 2010**
**(Millions of Mexican pesos)**

For 2013 and going forward, CEMEX believes that it will continue to comply with its covenants under its Facilities Agreement, as it is expecting to benefit from cost savings programs implemented during 2012 and 2011, favorable market conditions in some of its key markets and decreasing costs for key inputs such as energy. Furthermore, CEMEX has an asset disposal plan in place which, as in prior years, is expected to support CEMEX's efforts to reduce its overall debt.

CEMEX will classify all of its outstanding debt as current debt in its balance sheet if: 1) as of any relevant measurement date on which CEMEX fails to comply with the financial ratios agreed upon pursuant to the Facilities Agreement; or 2) as of any date prior to a subsequent measurement date on which CEMEX expects not to be in compliance with its financial ratios agreed upon under the Facilities Agreement, in the absence of: a) amendments and/or waivers covering the next succeeding 12 months; b) high probability that the violation will be cured during any agreed upon remediation period and be sustained for the next succeeding 12 months; and/or c) a signed refinancing agreement to refinance the relevant debt on a long-term basis. Moreover, concurrent with the aforementioned classification of debt in the short-term, the noncompliance of CEMEX with the financial ratios agreed upon pursuant to the Facilities Agreement or, in such event, the absence of a waiver of compliance or a negotiation thereof, after certain procedures upon CEMEX's lenders' request, they would call for the acceleration of payments due under the Facilities Agreement. That scenario will have a material adverse effect on CEMEX's liquidity, capital resources and financial position.

**16B) OTHER FINANCIAL OBLIGATIONS**

As of December 31, 2012 and 2011, other financial obligations in the consolidated balance sheet are detailed as follows:

| | 2012 | | | 2011 | | |
|---|---|---|---|---|---|---|
| | Short-term | Long-term | Total | Short-term | Long-term | Total |
| I. Convertible subordinated notes due 2018 | Ps — | 7,100 | 7,100 | Ps — | 7,451 | 7,451 |
| I. Convertible subordinated notes due 2016 | — | 10,768 | 10,768 | — | 11,236 | 11,236 |
| II. Convertible subordinated notes due 2015 | — | 8,397 | 8,397 | — | 8,829 | 8,829 |
| III. Convertible securities due 2019 | 152 | 1,561 | 1,713 | 131 | 1,703 | 1,834 |
| IV. Liabilities secured with accounts receivable | 6,013 | 2,500 | 8,513 | 7,052 | 2,500 | 9,552 |
| V. Capital leases | 813 | 2,587 | 3,400 | 528 | 1,471 | 1,999 |
| | Ps 6,978 | 32,913 | 39,891 | Ps 7,711 | 33,190 | 40,901 |

Financial instruments convertible into CEMEX's CPOs contain components of liability and equity, which are recognized differently depending upon whether the instrument is mandatorily convertible or is optionally convertible by election of the note holders (note 2L).

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Notes to the Consolidated Financial Statements**
**As of December 31, 2012, 2011 and 2010**
**(Millions of Mexican pesos)**

**I. Optional convertible subordinated notes due in 2016 and 2018**

On March 15, 2011, CEMEX, S.A.B. de C.V. closed the offering of US$978 (Ps11,632) aggregate principal amount of 3.25% convertible subordinated notes due in 2016 (the "2016 Notes") and US$690 (Ps8,211) aggregate principal amount of 3.75% convertible subordinated notes due in 2018 (the "2018 Notes"). The notes are subordinated to all of CEMEX's liabilities and commitments. The notes are convertible into a fixed number of CEMEX's ADSs, at the holder's election, at any time after June 30, 2011 and are subject to antidilution adjustments. As of December 31, 2012 and 2011, the conversion price per ADS was US$10.4327 and US$10.85, respectively. A portion of the net proceeds from this transaction were used to fund the purchase of capped call transactions (note 16D), which are generally expected to reduce the potential dilution cost to CEMEX, S.A.B. de C.V. upon future conversion of the 2016 Notes and the 2018 Notes. The fair value of the conversion option as of the issuance date amounted to approximately Ps3,959, which considering the functional currency of the issuer, was recognized as a derivative instrument within "Other non-current liabilities" (note 16D). Changes in fair value of the conversion option generated a net loss of approximately Ps1,094 (US$88) in 2012 and a net gain of approximately Ps167 (US$13) in 2011, recognized within other financial (expense) income, net. After antidilution adjustments, the conversion rate as of December 31, 2012 and 2011 was 95.8525 ADS and 92.1659 ADS, respectively, per each 1 thousand dollars principal amount of such notes.

**II. Optional convertible subordinated notes due in 2015**

On March 30, 2010, CEMEX, S.A.B. de C.V. issued US$715 (Ps8,837) aggregate principal amount of 4.875% Optional Convertible Subordinated Notes due 2015 (the "2015 Notes"). The notes are subordinated to all of CEMEX's liabilities and commitments. The notes are convertible into a fixed number of CEMEX's ADSs, at the holder's election, and are subject to antidilution adjustments. As of December 31, 2012 and 2011, the conversion price per ADS was US$12.0886 and US$12.5721, respectively. In connection with the offering, CEMEX, S.A.B. de C.V. entered into a capped call transaction expected to generally reduce the potential dilution cost to CEMEX, S.A.B. de C.V. upon future conversion of the notes (note 16D). The fair value of the conversion option as of the issuance date amounted to Ps1,232, which considering the functional currency of the issuer was recognized as a derivative instrument within "Other non-current liabilities" (note 16D). Changes in fair value of the conversion option generated a net loss of approximately Ps114 (US$9) in 2012 and a net gain of approximately Ps39 (US$3) in 2011, recognized within other financial (expense) income, net. After antidilution adjustments, the conversion rate as of December 31, 2012 and 2011 was 82.7227 ADS and 79.5411 ADS, respectively, per each 1 thousand dollars principal amount of such notes.

**III. Mandatorily convertible securities due in 2019**

In December 2009, CEMEX, S.A.B. de C.V. completed its offer to exchange CBs issued in Mexico with maturities between 2010 and 2012, into mandatorily convertible securities for approximately Ps4,126 (US$315). Reflecting antidilution adjustments, at their scheduled conversion in 2019 or earlier if the price of the CPO reaches approximately Ps31.9 the securities will be mandatorily convertible into approximately 194 million CPOs at a conversion price of approximately Ps21.269 per CPO. During their tenure, the securities bear interest at an annual rate of 10% payable quarterly. Holders have an option to voluntarily convert their securities, after the first anniversary of their issuance, on any interest payment date into CPOs. The equity component represented by the fair value of the conversion option as of the issuance date of Ps1,971 was recognized within "Other equity reserves."

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Notes to the Consolidated Financial Statements**
**As of December 31, 2012, 2011 and 2010**
**(Millions of Mexican pesos)**

### IV. Liabilities secured with accounts receivable

As mentioned in note 9, as of December 31, 2012 and 2011, CEMEX maintained securitization programs for the sale of trade accounts receivable established in Mexico, the United States, France and the United Kingdom, and terminated its program in Spain during October 2012, by means of which, CEMEX effectively surrenders control associated with the trade accounts receivable sold and there is no guarantee or obligation to reacquire the assets. However, CEMEX retains certain residual interest in the programs and/or maintains continuing involvement with the accounts receivable. Based on IAS 39, CEMEX recognizes cash flows received, that is the funded amounts of the trade receivables sold within "Other financial obligations", and maintains the receivables sold in the balance sheet.

### V. Capital leases

CEMEX has several operating and administrative assets, including buildings and mobile equipment, under capital lease contracts. Future payments associated with these contracts are presented in note 23E.

## 16C) FAIR VALUE OF FINANCIAL INSTRUMENTS

### Financial assets and liabilities

CEMEX's carrying amounts of cash, trade accounts receivable, other accounts receivable, trade accounts payable, other accounts payable and accrued expenses, as well as short-term debt, approximate their corresponding estimated fair values due to the short-term maturity and revolving nature of these financial assets and liabilities. Temporary investments (cash equivalents) and certain long-term investments are recognized at fair value, considering to the extent available, quoted market prices for the same or similar instruments. The estimated fair value of long-term debt is either based on estimated market prices for such or similar instruments, considering interest rates currently available for CEMEX to negotiate debt with the same maturities, or determined by discounting future cash flows using market-based interest rates currently available to CEMEX. As of December 31, 2012 and 2011, the carrying amounts of financial assets and liabilities and their respective fair values were as follows:

| | 2012 | | 2011 | |
|---|---|---|---|---|
| | Carrying amount | Fair value | Carrying amount | Fair value |
| **Financial assets** | | | | |
| Derivative instruments (note 13B) | Ps 4,279 | 4,279 | Ps 1,787 | 1,793 |
| Other investments and non-current accounts receivable (note 13B) | 4,321 | 4,121 | 8,808 | 8,453 |
| | Ps 8,600 | 8,400 | Ps 10,595 | 10,246 |
| **Financial liabilities** | | | | |
| Long-term debt (note 16A) | 177,539 | 188,128 | 203,798 | 176,867 |
| Other financial obligations (note 16B) | 32,913 | 42,651 | 33,190 | 28,788 |
| Derivative instruments (notes 16D and 17) | 5,451 | 5,451 | 998 | 998 |
| | Ps 215,903 | 236,230 | Ps 237,986 | 206,653 |

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Notes to the Consolidated Financial Statements**
**As of December 31, 2012, 2011 and 2010**
**(Millions of Mexican pesos)**

### Fair Value Hierarchy

As mentioned in note 2A, CEMEX applies IFRS 13 for fair value measurements of financial assets and financial liabilities recognized or disclosed at fair value. Assets and liabilities carried at fair value in the consolidated balance sheets as of December 31, 2012 and 2011, are included in the following fair value hierarchy categories:

| 2012 | | Level 1 | Level 2 | Level 3 | Total |
|---|---|---|---|---|---|
| **Assets measured at fair value** | | | | | |
| Derivative instruments (note 13B) | Ps | — | 4,279 | — | 4,279 |
| Investments available-for-sale (note 13B) | | 211 | — | — | 211 |
| Investments held for trading (note 13B) | | — | 366 | — | 366 |
| | Ps | 211 | 4,645 | — | 4,856 |
| **Liabilities measured at fair value** | | | | | |
| Derivative instruments (note 16D and 17) | Ps | — | 5,451 | — | 5,451 |

| 2011 | | Level 1 | Level 2 | Level 3 | Total |
|---|---|---|---|---|---|
| **Assets measured at fair value** | | | | | |
| Derivative instruments (note 13B) | Ps | — | 1,793 | — | 1,793 |
| Investments available-for-sale (note 13B) | | 2,572 | — | — | 2,572 |
| Investments held for trading (note 13B) | | — | 310 | — | 310 |
| | Ps | 2,572 | 2,103 | — | 4,675 |
| **Liabilities measured at fair value** | | | | | |
| Derivative instruments (note 16D and 17) | Ps | — | 998 | — | 998 |

### 16D) DERIVATIVE FINANCIAL INSTRUMENTS

During the reported periods, CEMEX held interest rate swaps, as well as forward contracts and other derivative instruments on CEMEX, S.A.B. de C.V.'s own shares and third parties' shares, with the objective of, as the case may be: a) changing the risk profile associated with the price of raw materials and other energy projects; and b) other corporate purposes.

As of December 31, 2012 and 2011, the notional amounts and fair values of CEMEX's derivative instruments were as follows:

| | | 2012 | | 2011 | |
|---|---|---|---|---|---|
| (U.S. dollars millions) | | Notional amount | Fair value | Notional amount | Fair value |
| I.Interest rate swaps | US$ | 181 | 49 | 189 | 46 |
| II.Equity forwards on third party shares | | 27 | — | 46 | 1 |
| III.Forward instruments over indexes | | 5 | — | 5 | — |
| IV.Options on CEMEX's own shares | | 2,743 | (138) | 2,743 | 11 |
| | US$ | 2,956 | (89) | 2,983 | 58 |

The fair values determined by CEMEX for its derivative financial instruments are Level 2. There is no direct measure for the risk of CEMEX or its counterparties in connection with the derivative instruments. Therefore, the risk factors

**Derivative financial instruments - continued**



applied for CEMEX's assets and liabilities originated by the valuation of such derivatives were extrapolated from publicly available risk discounts for other public debt instruments of CEMEX and its counterparties.

The caption "Other financial income (expenses), net" includes gains and losses related to the recognition of changes in fair values of the derivative instruments during the applicable period and that represented a net loss of approximately Ps98 (US$8) in 2012 and a net gain of approximately Ps329 (US$26) in 2011. As of December 31, 2012 and 2011, pursuant to net balance settlement agreements, cash deposits in margin accounts that guaranteed obligations through derivative financial instruments were offset with the fair value of the derivative instruments for approximately US$91 (Ps1,168) and US$234 (Ps3,266), respectively.

The estimated fair value of derivative instruments fluctuates over time and is determined by measuring the effect of future relevant economic variables according to the yield curves shown in the market as of the reporting date. These values should be analyzed in relation to the fair values of the underlying transactions and as part of CEMEX's overall exposure attributable to fluctuations in interest rates and foreign exchange rates. The notional amounts of derivative instruments do not represent amounts exchanged by the parties, and consequently, there is no direct measure of CEMEX's exposure to the use of these derivatives. The amounts exchanged are determined based on the notional amounts and other terms included in the derivative instruments.

**I. Interest rate swap contracts**

As of December 31, 2012 and 2011, CEMEX had an interest rate swap maturing in September 2022 associated with agreements entered into by CEMEX for the acquisition of electric energy in Mexico (note 23C), which fair value represented assets of approximately US$49 and US$46, respectively. Pursuant to this instrument, during the tenure of the swap and based on its notional amount, CEMEX will receive a fixed rate of 5.4% and will pay LIBOR, which is the international reference rate for debt denominated in U.S. dollars. As of December 31, 2012 and 2011, LIBOR was 0.513% and 0.7705%, respectively. Changes in the fair value of this interest rate swap generated gains of approximately US$2 (Ps35) in 2012, US$12 (Ps150) in 2011 and US$8 (Ps99) in 2010, recognized in the statements of operations for each period.

**II. Equity forwards in third party shares**

As of December 31, 2012 and 2011, CEMEX had forward contracts to be settled in cash over the price of 59.5 million and 119 million CPOs of Axtel, respectively. During April 2012, at maturity of one of the contracts for 59.5 million CPOs of Axtel, by agreement with the counterparty CEMEX elected to acquire the underlying shares. The remaining contract matures in October 2013. These contracts were intended to maintain the exposure to changes in the price of such entity. Changes in the fair value of this instrument generated losses of approximately US$7 (Ps100) in 2012, US$35 (Ps437) in 2011 and US$42 (Ps526) in 2010, recognized in the statements of operations for each period.

**III. Forward instruments over indexes**

As of December 31, 2012 and 2011, CEMEX held forward derivative instruments over the TRI (Total Return Index) of the Mexican Stock Exchange, with maturity in April and July 2013. By means of these instruments, CEMEX maintained exposure to increases or decreases of such index. TRI expresses the market return on stocks based on market capitalization of the issuers comprising the index. Changes in the fair value of these instruments generated a gain of approximately US$1 (Ps13) in 2012, a loss of US$1 (Ps13) in 2011, and a gain of approximately US$5 (Ps67) in 2010, recognized in the statements of operations for each year.

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Notes to the Consolidated Financial Statements**
**As of December 31, 2012, 2011 and 2010**
**(Millions of Mexican pesos)**

**IV. Options on CEMEX's own shares**

In August 2011, upon their maturity, CEMEX settled through a payment of approximately US$188 (Ps2,346), options based on the price of CEMEX's ADS for a notional amount of US$500, structured within a debt transaction of US$500 (Ps6,870) issued in June 2008. By means of these options, considering that the price per ADS remained below approximately US$20.5, as adjusted as of December 31, 2010, CEMEX paid the maximum net interest rate of 12% on the related debt transaction. CEMEX could have gradually obtained a net interest rate of zero on this debt, had the ADS price exceeded approximately US$30.4, as adjusted as of December 31, 2010. Changes in the fair value of these options represented losses of approximately US$2 (Ps29) in 2011 and US$27 (Ps346) in 2010.

On March 15, 2011, in connection with the offering of the 2016 Notes and the 2018 Notes and to effectively increase the conversion price for CEMEX CPOs under such notes, CEMEX, S.A.B. de C.V. entered into a capped call transaction over approximately 160 million ADSs (94 million ADS maturing in March 2016 and 66 million ADSs maturing in March 2018), by means of which, for the 2016 Notes, at maturity of the notes in March 2016, if the price per ADS is above US$10.4327, CEMEX will receive in cash the difference between the market price of the ADS and US$10.4327, with a maximum appreciation per ADS of US$4.8151. Likewise, for the 2018 Notes, at maturity of the notes in March 2018, if the price per ADS is above US$10.4327, CEMEX will receive in cash the difference between the market price of the ADS and US$10.433, with a maximum appreciation per ADS of US$6.4201. CEMEX paid a total premium of approximately US$222. As of December 31, 2012 and 2011, the fair value of such options represented an asset of approximately US$226 (Ps2,899) and US$71 (Ps984), respectively. During 2012 and 2011, changes in the fair value of these instruments generated a gain of approximately US$155 (Ps1,973) and a loss of approximately US$153 (Ps1,906), respectively, recognized within "Other financial income (expense), net" in the statements of operations. In addition, considering that the currency in which the notes are denominated and the functional currency of the issuer differ, CEMEX separates the conversion options embedded in the 2016 Notes and the 2018 Notes and recognizes them at fair value, which as of December 31, 2012 and 2011, resulted in a liability of approximately US$301 (Ps3,862) and US$58 (Ps806), respectively. Changes in fair value of the conversion options generated a loss in 2012 of approximately US$243 (Ps3,078) and a gain in 2011 of approximately US$279 (Ps3,482).

On March 30, 2010, in connection with the offering of the 2015 Notes and to effectively increase the conversion price for CEMEX's CPOs under such notes, CEMEX, S.A.B. de C.V. entered into a capped call transaction over approximately 59.1 million ADSs maturing in March 2015, by means of which, at maturity of the notes, if the price per ADS is above US$12.0086, CEMEX will receive in cash the difference between the market price of the ADS and US$12.0886, with a maximum appreciation per ADS of US$4.6494. CEMEX paid a premium of approximately US$105. As of December 31, 2012 and 2011, the fair value of such options represented an asset of approximately US$58 (Ps751) and US$11 (Ps157), respectively. During 2012, 2011 and 2010, changes in the fair value of this contract generated a gain of approximately US$47 (Ps594), a loss of approximately US$79 (Ps984) and a loss of approximately US$16 (Ps201), respectively, which were recognized within "Other financial income (expense), net" in the statements of operations. In addition, considering that the currency in which the notes are denominated and the functional currency of the issuer differ, CEMEX separates the conversion option embedded in the 2015 Notes and recognizes it at fair value, which as of December 31, 2012 and 2011, resulted in liabilities of approximately US$64 (Ps828) and US$8 (Ps120), respectively. Changes in fair value of the conversion option generated a loss of approximately US$56 (Ps708) in 2012, a gain of approximately US$97 (Ps1,211) in 2011 and a loss of approximately US$5 (Ps67) in 2010.

**Options on CEMEX's own shares - continued**



As of December 31, 2012 and 2011, CEMEX had granted a guarantee for a notional amount of approximately US$360, in connection with put option transactions on CEMEX's CPOs entered into by Citibank with a Mexican trust that CEMEX established on behalf of its Mexican pension fund and certain of CEMEX's directors and current and former employees in April 2008, as described in note 23C, which fair value, net of deposits in margin accounts, represented a net liability of approximately US$58 (Ps740) and US$4 (Ps58), as of December 31, 2012 and 2011, respectively. Changes in fair value were recognized in the statements of operations within "Other financial income (expense), net," representing a gain of approximately US$95 (Ps1,198) in 2012, a loss of approximately US$92 (Ps1,145) in 2011 and a gain of approximately US$5 (Ps69) in 2010. As of December 31, 2012 and 2011, cash deposits in margin accounts were approximately US$76 (Ps975) and US$225 (Ps3,141), respectively.

## 16E) RISK MANAGEMENT

Since the beginning of 2009, with the exception of the capped call transactions entered into in March 2010 and March 2011 in connection with CEMEX's 2015 Notes, 2016 Notes and 2018 Notes (notes 16B and 16D), CEMEX has been reducing the aggregate notional amount of its derivatives, thereby reducing the risk of cash margin calls. This initiative included closing substantially all notional amounts of derivative instruments related to CEMEX's debt (currency and interest rate derivatives), which was completed during April 2009. The Facilities Agreement significantly restricts CEMEX's ability to enter into derivative transactions.

### Interest rate risk

Interest rate risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in market interest rates. Changes in the market interest rates of long-term debt with fixed interest rates only affects CEMEX's results if such debt is measured at fair value. All of CEMEX's fixed-rate long-term debt is carried at amortized cost and therefore is not subject to interest rate risk. CEMEX's exposure to the risk of changes in market interest rates relates primarily to its long-term debt obligations with floating interest rates. As of December 31, 2012 and 2011, CEMEX was subject to the volatility of floating interest rates, which, if such rates were to increase, may adversely affect its financing cost and increase its net loss. CEMEX manages its interest rate risk by balancing its exposure to fixed and variable rates while attempting to reduce its interest costs.

As of December 31, 2012 and 2011, approximately 35% and approximately 52%, respectively, of CEMEX's long-term debt was denominated in floating rates at a weighted average interest rate of LIBOR plus 456 basis points in 2012 and 454 basis points in 2011. As of December 31, 2012 and 2011, if interest rates at that date had been 0.5% higher, with all other variables held constant, CEMEX's net loss for 2012 and 2011 would have increased by approximately US$25 (Ps315) and US$40 (Ps550), respectively, as a result of higher interest expense on variable rate denominated debt.

### Foreign currency risk

Foreign currency risk is the risk that the fair value of future cash flows of a financial instrument will fluctuate because of changes in foreign exchange rates. CEMEX's exposure to the risk of changes in foreign exchange rates relates primarily to its operating activities. Due to its geographic diversification, CEMEX's revenues and costs are generated and settled in various countries and in different currencies. For the year ended December 31, 2012, approximately 21% of CEMEX's net sales, before eliminations resulting from consolidation, were generated in Mexico, 19% in the United States, 7% in the United Kingdom, 7% in Germany, 6% in France, 6% in the Rest of Northern Europe geographic segment, 2% in Spain, 3% in Egypt, 4% in the Rest of Mediterranean segment, 6% in Colombia, 8% in the Rest of South America and the Caribbean, 3% in Asia and 8% in CEMEX's other operations.

**Foreign currency risk - continued**

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Notes to the Consolidated Financial Statements**
**As of December 31, 2012, 2011 and 2010**
**(Millions of Mexican pesos)**

As of December 31, 2012, approximately 81% of CEMEX's financial debt was Dollar-denominated, approximately 17% was Euro-denominated, approximately 1% was Peso-denominated and immaterial amounts were denominated in other currencies; therefore, CEMEX had a foreign currency exposure arising from the Dollar-denominated financial debt, and the Euro-denominated financial debt, versus the currencies in which CEMEX's revenues are settled in most countries in which it operates. CEMEX cannot guarantee that it will generate sufficient revenues in Dollars and Euros from its operations to service these obligations. As of December 31, 2012 and 2011, CEMEX had not implemented any derivative financing hedging strategy to address this foreign currency risk.

Foreign exchange fluctuations occur when the Parent Company or any subsidiary incurs monetary assets or liabilities in a currency different from its functional currency. These translation gains and losses are recorded in the consolidated statements of operations, except for exchange fluctuations associated with foreign currency indebtedness directly related to the acquisition of foreign entities and related parties' long-term balances denominated in foreign currency, for which the resulting gains or losses are reported in other comprehensive income. As of December 31, 2012 and 2011, excluding from the sensitivity analysis the impact of translating the net assets of foreign operations into CEMEX's reporting currency, considering a hypothetic 10% strengthening of the U.S. dollar against the Mexican peso, with all other variables held constant, CEMEX's net loss for 2012 and 2011 would have increased by approximately US$108 (Ps1,522) and US$41 (Ps578), respectively, as a result of higher foreign exchange losses on CEMEX's dollar-denominated net monetary liabilities held in consolidated entities with other functional currencies. Conversely, a hypothetic 10% weakening of the U.S. dollar against the Mexican peso would have the opposite effect.

As of December 31, 2012 and 2011, CEMEX's consolidated net monetary assets (liabilities) by currency are as follows:

| | | 2012 | 2011 |
|---|---|---|---|
| Monetary assets | Ps | 55,435 | 62,139 |
| Monetary liabilities | | (310,102) | (352,275) |
| Net monetary liabilities | Ps | (254,667) | (290,136) |
| **Out of which:** | | | |
| Dollars | Ps | (167,157) | (169,139) |
| Pesos | | (30,989) | (26,701) |
| Other currencies | | (56,521) | (94,296) |
| | Ps | (254,667) | (290,136) |

**Equity risk**

As of December 31, 2012 and 2011, equity risk is the risk that the fair value of future cash flows of a financial instrument will fluctuate because of changes in the market price of CEMEX's and/or third party's shares. As described in note 16D, CEMEX has entered into equity forward contracts on Axtel CPOs and the TRI index, as well as options and guarantees of a put option transaction based on the price of CEMEX's own CPOs. Under these equity derivative instruments, there is a direct relationship in the change in the fair value of the derivative with the change in value of the underlying share or index. All changes in fair value of such equity derivative instruments are recognized through the statements of operations as part of "Other financial income (expense), net." A significant decrease in the market price of CEMEX's CPOs and third party shares would negatively affect CEMEX's liquidity and financial position.

**Equity risk - continued**



As of December 31, 2012 and 2011, the potential change in the fair value of CEMEX's equity forward contracts in Axtel's shares that would result from a hypothetical, instantaneous decrease of 10% in the market price of Axtel CPOs, with all other variables held constant, would have increased CEMEX's net loss for 2012 and 2011 by approximately US$1 (Ps17) and US$4 (Ps53), respectively, as a result of additional negative changes in fair value associated with such forward contracts. A 10% hypothetical increase in the CPO price would generate approximately the opposite effect.

As of December 31, 2012 and 2011, the potential change in the fair value of CEMEX's forward contracts in the TRI index that would result from a hypothetical, instantaneous decrease of 10% in the aforementioned index, with all other variables held constant, would have increased CEMEX's net loss for 2012 and 2011 by approximately US$1 (Ps6) and US$1 (Ps14), respectively, as a result of additional negative changes in fair value associated with such forward contracts. A 10% hypothetical increase in the TRI index would generate approximately the opposite effect.

As of December 31, 2012 and 2011, the potential change in the fair value of CEMEX's options (capped call) and the put option transaction based on the price of CEMEX's own CPOs that would result from a hypothetical, instantaneous decrease of 10% in the market price of CEMEX's CPOs, with all other variables held constant, would have increased CEMEX's net loss for 2012 and 2011 by approximately US$76 (Ps971) and US$24 (Ps332), respectively, as a result of additional negative changes in fair value associated with these contracts. A 10% hypothetical increase in the CPO price would generate approximately the opposite effect.

In addition, even though the changes in fair value of CEMEX's embedded conversion options in the convertible notes affect the statements of operations, they do not imply any risk or variability in cash flows, considering that through their exercise, CEMEX will settle a fixed amount of debt with a fixed amount of shares. As of December 31, 2012 and 2011, the potential change in the fair value of these embedded conversion options that would result from a hypothetical, instantaneous decrease of 10% in the market price of CEMEX's CPOs, with all other variables held constant, would have decreased CEMEX's net loss for 2012 and 2011 by approximately US$89 (Ps1,148) and US$17 (Ps240), respectively, as a result of additional positive changes in fair value associated with this option. A 10% hypothetical increase in the CPO price would generate approximately the opposite effect.

**Liquidity risk**

Liquidity risk is the risk that CEMEX will not have sufficient funds available to meet its obligations. CEMEX has satisfied its operating liquidity needs primarily through the operations of its subsidiaries and expect to continue to do so for both the short and long-term. Although cash flow from our operations has historically met CEMEX's overall liquidity needs for operations, servicing debt and funding capital expenditures and acquisitions, its subsidiaries are exposed to risks from changes in foreign currency exchange rates, price and currency controls, interest rates, inflation, governmental spending, social instability and other political, economic and/or social developments in the countries in which they operate, any one of which may materially increase CEMEX net loss and reduce cash from operations. Consequently, in order to meet its liquidity needs, CEMEX also relies on cost-cutting and operating improvements to optimize capacity utilization and maximize profitability, as well as borrowing under credit facilities, proceeds of debt and equity offerings, and proceeds from asset sales. CEMEX's consolidated net cash flows provided by operating activities, as presented in its consolidated statements of cash flows, were approximately Ps5,624 in 2012, Ps6,486 in 2011 and Ps6,674 in 2010. The maturities of CEMEX's contractual obligations are included in note 23E.

The requirement of margin calls based on the relevant master agreements under CEMEX's derivative instruments can have a significant negative effect on CEMEX's liquidity position and can impair CEMEX's ability to service its

**Liquidity risk - continued**



debt and fund its capital expenditures. In addition to the current amount of margin calls previously described as of December 31, 2012 referring to CEMEX's derivative financial instruments positions of approximately Ps1,169 (US$91), the potential requirement for additional margin calls that would result from reasonable and hypothetical instantaneous changes in the key variables associated with CEMEX's derivative instruments is as follows:

- As of December 31, 2012, the potential requirement for additional margin calls that would result from a hypothetical instantaneous decrease of 10% in the value of the shares of Axtel, with all other variables held constant, was approximately US$1.
- As of December 31, 2012, the potential requirement for additional margin calls that would result from a hypothetical instantaneous decrease of 10% in CEMEX's CPO price, with all other variables held constant, was approximately US$36.

## 17) OTHER CURRENT AND NON-CURRENT LIABILITIES

As of December 31, 2012 and 2011, consolidated other current accounts payable and accrued expenses were as follows:

| | | 2012 | 2011 |
|---|---|---|---|
| Provisions | Ps | 9,496 | 11,625 |
| Other accounts payable and accrued expenses | | 4,174 | 4,056 |
| Advances from customers | | 1,641 | 1,830 |
| Interest payable | | 3,003 | 3,134 |
| Current liabilities for valuation of derivative instruments | | 623 | 2 |
| Dividends payable | | 30 | 33 |
| | Ps | 18,967 | 20,680 |

Current provisions primarily consist of employee benefits accrued at the balance sheet date, insurance payments, and accruals related to legal and environmental assessments expected to be settled in the short-term. These amounts are revolving in nature and are expected to be settled and replaced by similar amounts within the next 12 months.

As of December 31, 2012 and 2011, other non-current liabilities, which include the best estimate of cash flows with respect to diverse issues where CEMEX is determined to be responsible and which are expected to be settled over a period greater than 12 months, were as follows:

| | | 2012 | 2011 |
|---|---|---|---|
| Asset retirement obligations **1** | Ps | 7,062 | 5,377 |
| Environmental liabilities **2** | | 520 | 1,174 |
| Accruals for legal assessments and other responsibilities **3** | | 7,412 | 11,816 |
| Non-current liabilities for valuation of derivative instruments | | 4,828 | 996 |
| Other non-current liabilities and provisions **4** | | 12,782 | 16,179 |
| | Ps | 32,604 | 35,542 |

**1** Provisions for asset retirement include future estimated costs for demolition, cleaning and reforestation of production sites at the end of their operation, which are initially recognized against the related assets and are depreciated over their estimated useful life.

**Other current and non-current liabilities - continued**

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Notes to the Consolidated Financial Statements**
**As of December 31, 2012, 2011 and 2010**
**(Millions of Mexican pesos)**

**2** Environmental liabilities include future estimated costs arising from legal or constructive obligations, related to cleaning, reforestation and other remedial actions to remediate damage caused to the environment. The expected average period to settle these obligations is greater than 15 years.

**3** Provisions for legal claims and other responsibilities include items related to tax contingencies.

**4** As of December 31, 2012 and 2011, includes approximately Ps12,526 and Ps11,717, respectively, of the non-current portion of taxes payable recognized in 2009 as a result of changes to the tax consolidation regime in Mexico (note 19D). Approximately Ps2,020 and Ps693 as of December 31, 2012 and 2011, respectively, were included within current taxes payable.

As of December 31, 2012 and 2011, some significant proceedings that gave rise to a portion of the carrying amount of CEMEX's other current and non-current liabilities and provisions are detailed in note 24A.

Changes in consolidated current and non-current provisions for the years ended December 31, 2012 and 2011 were as follows:

| | | 2012 | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | | Asset retirement obligations | Environmental liabilities | Accruals for legal assessments | Valuation of derivative instruments | Other provisions | Total | Total 2011 |
| Balance at beginning of period | Ps | 5,377 | 1,174 | 11,816 | 998 | 27,804 | 47,169 | 40,362 |
| Additions or increase in estimates | | 310 | 75 | 132 | 5,241 | 29,768 | 35,526 | 19,602 |
| Releases or decrease in estimates | | (154) | (23) | (1,002) | — | (33,070) | (34,249) | (15,738) |
| Additions due to business combinations | | — | — | — | — | — | — | 27 |
| Reclassification from current to non-current liabilities, net | | 162 | 133 | (312) | — | (742) | (759) | 209 |
| Accretion expense | | 213 | — | — | — | (1,176) | (963) | (708) |
| Foreign currency translation | | 1,154 | (839) | (3,222) | (787) | (307) | (4,001) | 3,415 |
| Balance at end of period | Ps | 7,062 | 520 | 7,412 | 5,452 | 22,277 | 42,723 | 47,169 |
| **Out of which:** | | | | | | | | |
| Current provisions | Ps | — | — | — | 623 | 9,496 | 10,119 | 11,627 |

## 18) PENSIONS AND POSTRETIREMENT EMPLOYEE BENEFITS

**Defined contribution pension plans**

The costs of defined contribution plans for the years ended December 31, 2012, 2011 and 2010 were approximately Ps528, Ps357 and Ps550, respectively. CEMEX contributes periodically the amounts offered by the pension plan to the employee's individual accounts, not retaining any remaining liability as of the balance sheet date.

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Notes to the Consolidated Financial Statements**
**As of December 31, 2012, 2011 and 2010**
**(Millions of Mexican pesos)**

### Defined benefit pension plans

Actuarial results related to pension and other postretirement benefits are recognized in the results and/or in other comprehensive income (loss) for the period in which they are generated, as applicable. For the years ended December 31, 2012, 2011 and 2010, the effects of pension plans and other postretirement benefits are summarized as follows:

| | | Pensions | | | Other benefits | | | Total | | |
|---|---|---|---|---|---|---|---|---|---|---|
| Net period cost (revenue): | | 2012 | 2011 | 2010 | 2012 | 2011 | 2010 | 2012 | 2011 | 2010 |
| **Recorded in operating costs and expenses** | | | | | | | | | | |
| Service cost | Ps | 138 | 330 | 273 | 59 | 63 | 52 | 197 | 393 | 325 |
| Past service cost | | (1,454) | (510) | (2) | (21) | (40) | (6) | (1,475) | (550) | (8) |
| Loss (gain) for settlements and curtailments | | (513) | (254) | (11) | (18) | (95) | — | (531) | (349) | (11) |
| | | (1,829) | (434) | 260 | 20 | (72) | 46 | (1,809) | (506) | 306 |
| **Recorded in other financial income (expenses), net** | | | | | | | | | | |
| Interest cost | | 1,712 | 1,792 | 1,826 | 93 | 100 | 99 | 1,805 | 1,892 | 1,925 |
| Actuarial return on plan assets | | (1,201) | (1,328) | (1,314) | (2) | (2) | (3) | (1,203) | (1,330) | (1,317) |
| | | 511 | 464 | 512 | 91 | 98 | 96 | 602 | 562 | 608 |
| **Recorded in other comprehensive income for the period** | | | | | | | | | | |
| Actuarial (gains) losses for the period | | 843 | 1,123 | 1,097 | 97 | (81) | 95 | 940 | 1,042 | 1,192 |
| | Ps | (475) | 1,153 | 1,869 | 208 | (55) | 237 | (267) | 1,098 | 2,106 |

**Defined benefit pension plans - continued**

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Notes to the Consolidated Financial Statements**
**As of December 31, 2012, 2011 and 2010**
**(Millions of Mexican pesos)**

The reconciliations of the actuarial benefits obligations, pension plan assets, and liabilities recognized in the balance sheet as of December 31, 2012 and 2011 are presented as follows:

| | | Pensions | | Other benefits | | Total | |
|---|---|---|---|---|---|---|---|
| | | 2012 | 2011 | 2012 | 2011 | 2012 | 2011 |
| **Change in benefits obligation:** | | | | | | | |
| Projected benefit obligation at beginning of year | Ps | 35,716 | 32,431 | 1,631 | 1,653 | 37,347 | 34,084 |
| Service cost | | 138 | 330 | 59 | 63 | 197 | 393 |
| Interest cost | | 1,712 | 1,792 | 93 | 100 | 1,805 | 1,892 |
| Actuarial results | | 1,201 | 796 | 99 | (86) | 1,300 | 710 |
| Employee contributions | | 11 | 55 | — | — | 11 | 55 |
| Foreign currency translation | | (1,525) | 3,584 | (60) | 112 | (1,585) | 3,696 |
| Settlements and curtailments | | (2,209) | (1,447) | (18) | (140) | (2,227) | (1,587) |
| Benefits paid | | (1,604) | (1,825) | (75) | (71) | (1,679) | (1,896) |
| Projected benefit obligation at end of year | | 33,440 | 35,716 | 1,729 | 1,631 | 35,169 | 37,347 |
| **Change in plan assets:** | | | | | | | |
| Fair value of plan assets at beginning of year | | 22,031 | 20,388 | 21 | 23 | 22,052 | 20,411 |
| Return on plan assets | | 1,558 | 1,001 | 2 | (2) | 1,560 | 999 |
| Foreign currency translation | | (995) | 2,409 | — | — | (995) | 2,409 |
| Employer contributions | | 933 | 677 | 75 | 71 | 1,008 | 748 |
| Employee contributions | | 11 | 55 | — | — | 11 | 55 |
| Settlements and curtailments | | (243) | (674) | — | — | (243) | (674) |
| Benefits paid | | (1,604) | (1,825) | (75) | (71) | (1,679) | (1,896) |
| Fair value of plan assets at end of year | | 21,691 | 22,031 | 23 | 21 | 21,714 | 22,052 |
| **Amounts recognized in the balance sheets:** | | | | | | | |
| Funded status | | 11,749 | 13,685 | 1,706 | 1,610 | 13,455 | 15,295 |
| Unrecognized prior services | | 3 | 5 | 2 | 25 | 5 | 30 |
| Net projected liability recognized in the balance sheet | Ps | 11,752 | 13,690 | 1,708 | 1,635 | 13,460 | 15,325 |

As of December 31, 2012 and 2011, plan assets were measured at their estimated fair value and consisted of:

| | | 2012 | 2011 |
|---|---|---|---|
| Cash | Ps | 1,353 | 642 |
| Investments in corporate bonds | | 3,619 | 3,354 |
| Investments in government bonds | | 7,859 | 9,650 |
| Total fixed-income securities | | 12,831 | 13,646 |
| Investment in marketable securities | | 5,651 | 4,936 |
| Other investments and private funds | | 3,232 | 3,470 |
| Total variable-income securities | | 8,883 | 8,406 |
| Total plan assets | Ps | 21,714 | 22,052 |

**Defined benefit pension plans - continued**

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Notes to the Consolidated Financial Statements**
**As of December 31, 2012, 2011 and 2010**
**(Millions of Mexican pesos)**

As of December 31, 2012 and 2011, based on the hierarchy of fair values established in IFRS 13 (note 16C), investments in plan assets are summarized as follows:

| | 2012 | | | | 2011 | | | |
|---|---|---|---|---|---|---|---|---|
| (Millions of pesos) | Level 1 | Level 2 | Level 3 | Total | Level 1 | Level 2 | Level 3 | Total |
| Cash | 1,353 | — | — | 1,353 | 319 | 13 | 310 | 642 |
| Investments in corporate bonds | 2,685 | 934 | — | 3,619 | 2,508 | 846 | — | 3,354 |
| Investments in government bonds | 7,859 | — | — | 7,859 | 9,273 | 377 | — | 9,650 |
| Total fixed-income securities | 11,897 | 934 | — | 12,831 | 12,100 | 1,236 | 310 | 13,646 |
| Investment in marketable securities | 4,550 | 1,102 | — | 5,652 | 3,816 | 1,120 | — | 4,936 |
| Other investments and private funds | 1,362 | 1,869 | — | 3,231 | 1,539 | 1,931 | — | 3,470 |
| Total variable-income securities | 5,912 | 2,971 | — | 8,883 | 5,355 | 3,051 | — | 8,406 |
| Total plan assets | 17,809 | 3,905 | — | 21,714 | 17,455 | 4,287 | 310 | 22,052 |

As of December 31, 2012, estimated payments for pensions and other postretirement benefits over the next ten years were as follows:

| | 2012 |
|---|---|
| 2013 | Ps 1,985 |
| 2014 | 1,931 |
| 2015 | 1,940 |
| 2016 | 1,999 |
| 2017 | 2,037 |
| 2018 – 2022 | 11,344 |

The most significant assumptions used in the determination of the net periodic cost were as follows:

| | 2012 | | | | 2011 | | | |
|---|---|---|---|---|---|---|---|---|
| | Mexico | United States | United Kingdom | Range of rates in other countries | Mexico | United States | United Kingdom | Range of rates in other countries |
| Discount rates | 8.0% | 5.2% | 5.0% | 4.2% - 8.5% | 8.0% | 5.5% | 5.3% | 4.2% -9.5% |
| Rate of return on plan assets | 9.0% | 7.5% | 5.6% | 3.0% - 9.0% | 9.0% | 7.5% | 6.5% | 3.0% -9.0% |
| Rate of salary increases | 4.0% | — | 3.2% | 2.5% - 5.0% | 4.5% | — | 3.4% | 2.3% -4.9% |

**Defined benefit pension plans - continued**

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Notes to the Consolidated Financial Statements**
**As of December 31, 2012, 2011 and 2010**
**(Millions of Mexican pesos)**

As of December 31, 2012 and 2011, the aggregate projected benefit obligation ("PBO") for pension plans and other postretirement benefits and the plan assets by country were as follows:

| | | 2012 | | | 2011 | | |
|---|---|---|---|---|---|---|---|
| | | PBO | Assets | Deficit | PBO | Assets | Deficit |
| Mexico | Ps | 3,595 | 574 | 3,021 | 3,320 | 269 | 3,051 |
| United States | | 5,148 | 3,106 | 2,042 | 5,177 | 3,426 | 1,751 |
| United Kingdom | | 20,162 | 16,812 | 3,350 | 23,039 | 17,053 | 5,986 |
| Germany | | 3,479 | 272 | 3,207 | 3,267 | 304 | 2,963 |
| Other countries | | 2,785 | 950 | 1,835 | 2,544 | 1,000 | 1,544 |
| | Ps | 35,169 | 21,714 | 13,455 | 37,347 | 22,052 | 15,295 |

**Significant events related to employees' pension benefits**

Applicable regulation in the United Kingdom requires entities to maintain plan assets at a level similar to that of the obligations. In November 2012, in order to better manage CEMEX's obligations under its defined benefit pension schemes and future cash funding requirements thereof, CEMEX implemented an asset backed pension funding arrangement in its operations in the United Kingdom by means of which CEMEX transferred certain operating assets to a non-transferable limited partnership, owned, controlled and consolidated by CEMEX UK with a total value of approximately US$553 and entered into lease agreements for the use of such assets with the limited partnership, in which the pension schemes hold a limited interest. On an ongoing basis CEMEX UK will make annual rental payments of approximately US$20, increasing at annual rate of 5%, which will generate profits in the limited partnership that are then distributed to the pension schemes. As previously mentioned, the purpose of the structure, in addition to provide the pension schemes with secured assets producing an annual return over a period of 25 years, improves the security for the trustees of the pension schemes, and reduces the level of cash funding that CEMEX UK will have to make in future periods. In 2037, on expiry of the lease arrangements, the limited partnership will be terminated and under the terms of the agreement, the remaining assets will be distributed to CEMEX UK. Any future profit distribution from the limited partnership to the pension fund will be considered as an employer contribution to plan assets in the period in which they occur.

On February 29, 2012, CEMEX UK agreed with the trustees of its employees' defined benefits pension plans to the modification of certain terms and benefits accrued until February 29, 2012. Beginning on this date, the eligible employees in the United Kingdom started to accrue pension benefits in the existing defined contribution scheme. In addition, during 2012, the adjustment for the change in the consumer price index explained below was extended to retirees under the pension plan. As of the modifications dates, the changes to the defined benefits schemes resulted in a curtailment event and also affected prior service costs, generating a net gain in the operating results for 2012 of approximately Ps1,914 (US$146), mainly related to: 1) the effect of replacing salary increases with inflationary ones for the current retirees, and 2) the removal of certain death and termination benefits. In addition, during 2011, based on the applicable regulation, CEMEX UK communicated to the pension plans' trustees its decision to adopt for active beneficiaries the consumer price index for purposes of the restatement by inflation of the related obligations, in replacement of the retail price index, which had been used until 2010, resulting in a decrease in the projected benefit obligation related to past services of approximately Ps509, which is reflected in both the table of the net periodic cost and the table of the reconciliation of the benefits' obligations, within the line item of actuarial results. As of December 31, 2012, the deficit in these plans, excluding other postretirement benefits, was approximately Ps2,929 (US$228). These plans in the United Kingdom have been closed to new participants since 2004.

**Significant events related to employees' pension benefits - continued**



During 2011, following the required notices to the plans' trustees, CEMEX settled its defined benefit pension plans in the Republic of Ireland. As a result, the available assets were used to provide beneficiaries' entitlements in accordance with the agreement reached between CEMEX and the trustees of the relevant pension schemes. As of the wind up date, the total deficit in these schemes was approximately €15 (US$19 or Ps266). As part of the wind up agreement to settle this liability, CEMEX agreed to make contributions of approximately €11, of which approximately €10 will be paid over the next 20 years subject to a compound annual interest rate of 3% from the date of wind up to the date of payment. CEMEX granted security over certain non-operating assets for this payment. The wind up gave rise to a settlement gain in 2011 of approximately €4 (US$6 or Ps70), and the remaining liability as of December 31, 2011 of approximately €10 (US$13 or Ps181) was reclassified to other current and non-current liabilities, as appropriate.

During 2011, CEMEX reduced significantly its workforce subject to defined pension and other postretirement benefits due to the ongoing streamlining of its operations in Mexico. The net periodic cost for 2011 reflects a curtailment gain of approximately Ps107 related to the significant decrease in the number of active participants, of which approximately Ps10 refer to pensions and approximately Ps97 to other postretirement benefits.

**Information related to other postretirement benefits**

In some countries, CEMEX has established health care benefits for retired personnel limited to a certain number of years after retirement. As of December 31, 2012 and 2011, the projected benefits obligation related to these benefits was approximately Ps1,247 and Ps1,256, respectively. The medical inflation rates used to determine the projected benefits obligation of these benefits for Mexico were 7.0% in 2012 and 7.0% in 2011, for Puerto Rico and the United States were 4.6% in 2012 and 4.7% in 2011, and for the United Kingdom were 6.6% in 2012 and 7.4% in 2011.

During 2012, in Puerto Rico, CEMEX eliminated coverage under the medical plan for any participants who had not retired by January 2, 2012. This event generated a curtailment gain of approximately Ps18 recognized as part of the net periodic cost.

**Sensitivity analysis of pension and other postretirement benefits**

A 50 basis points decrease in the discount rate would have increased the defined benefit pension obligation by approximately Ps2,192 (US$171) as of December 31, 2012, and the pension service cost in 2012 by approximately Ps32. A 50 basis points increase in the discount rate would have decreased the defined benefit pension obligation by approximately Ps2,170 (US$169) as of December 31, 2012, and the pension service cost in 2012 by approximately Ps26.

A 50 basis points decrease in the discount rate would have increased the postretirement benefit obligation by approximately Ps104 (US$8) as of December 31, 2012, and the postretirement service cost in 2012 by approximately Ps5. A 50 basis points increase in the same discount rate would have decreased the postretirement benefit obligation by approximately Ps96 (US$7) as of December 31, 2012, and the postretirement service cost in 2012 by approximately Ps5.

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Notes to the Consolidated Financial Statements**
**As of December 31, 2012, 2011 and 2010**
**(Millions of Mexican pesos)**

## 19) INCOME TAXES

### 19A) INCOME TAXES FOR THE PERIOD

The amounts for income taxes included in the statements of operations in 2012, 2011 and 2010 are summarized as follows:

| | | 2012 | 2011 | 2010 |
|---|---|---|---|---|
| **Current income taxes** | | | | |
| From Mexican operations | Ps | 1,825 | (11,010) | (208) |
| From foreign operations | | 4,377 | (3,326) | (4,494) |
| | | 6,202 | (14,336) | (4,702) |
| **Deferred income taxes** | | | | |
| From Mexican operations | | 1,276 | 327 | 1,108 |
| From foreign operations | | (13,575) | 1,802 | 1,520 |
| | | (12,299) | 2,129 | 2,628 |
| | Ps | (6,097) | (12,207) | (2,074) |

As of December 31, 2012, consolidated tax loss and tax credits carryforwards and reserved carryforwards expire as follows:

| | | Amount of carryforwards | Amount of reserved carryforwards |
|---|---|---|---|
| 2013 | Ps | 1,019 | 98 |
| 2014 | | 10,272 | 3,042 |
| 2015 | | 9,702 | 2,675 |
| 2016 | | 17,082 | 4,656 |
| 2017 and thereafter | | 341,635 | 271,260 |
| | Ps | 379,710 | 281,731 |

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Notes to the Consolidated Financial Statements**
**As of December 31, 2012, 2011 and 2010**
**(Millions of Mexican pesos)**

## 19B) DEFERRED INCOME TAXES

As of December 31, 2012 and 2011, the main temporary differences that generated the consolidated deferred income tax assets and liabilities are presented below:

| | | 2012 | 2011 |
|---|---|---|---|
| **Deferred tax assets:** | | | |
| Tax loss carryforwards and other tax credits | Ps | 16,118 | 34,826 |
| Accounts payable and accrued expenses | | 11,734 | 9,643 |
| Intangible assets and deferred charges, net | | 9,786 | 14,992 |
| Others | | 177 | 534 |
| Net deferred tax assets | | 37,815 | 59,995 |
| **Deferred tax liabilities:** | | | |
| Property, machinery and equipment | | (33,672) | (41,165) |
| Investments and other assets | | (3,531) | (2,469) |
| Others | | (426) | (3,366) |
| Total deferred tax liabilities | | (37,629) | (47,000) |
| **Net deferred tax asset** | Ps | 186 | 12,995 |

The breakdown of changes in consolidated deferred income taxes during 2012, 2011 and 2010 were as follows:

| | | 2012 | 2011 | 2010 |
|---|---|---|---|---|
| Deferred income tax (charged) credited to the statements of operations **1** | Ps | (12,299) | 2,129 | 2,628 |
| Deferred income tax (charged) credited to stockholders' equity | | (515) | 159 | 1,467 |
| Reclassification to other captions in the balance sheet | | 5 | (801) | (1,631) |
| Change in deferred income tax for the period | Ps | (12,809) | 1,487 | 2,464 |

**1** Considering current estimates of future taxable income in Spain and due to changes in the applicable regulations, during 2012, CEMEX reduced its deferred tax assets associated with tax loss carryforwards by approximately Ps17,018, against the deferred income tax expense for the period.

Current and/or deferred income tax relative to items of other comprehensive loss during 2012, 2011 and 2010 were as follows:

| | | 2012 | 2011 | 2010 |
|---|---|---|---|---|
| Tax effects relative to foreign exchange fluctuations from debt (note 20B) | Ps | (2,082) | 3,391 | (566) |
| Tax effects relative to foreign exchange fluctuations from intercompany balances (note 20B) | | (724) | 1,424 | 5,449 |
| Tax effects relative to actuarial (losses) gains (note 20B) | | 318 | 343 | 392 |
| Other effects | | (833) | (184) | 1,075 |
| | Ps | (3,321) | 4,974 | 6,350 |

**Deferred income taxes - continued**

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Notes to the Consolidated Financial Statements**
**As of December 31, 2012, 2011 and 2010**
**(Millions of Mexican pesos)**

For the recognition of deferred tax assets, CEMEX analyzes the aggregate amount of self-determined tax loss carryforwards included in its income tax returns in each country where CEMEX believes, based on available evidence, that the tax authorities would not reject such tax loss carryforwards; and the likelihood of the recoverability of such tax loss carryforwards prior to their expiration through an analysis of estimated future taxable income. If CEMEX believes that it is probable that the tax authorities would reject a self-determined deferred tax asset, it would decrease such asset. Likewise, if CEMEX believes that it would not be able to use a tax loss carryforward before its expiration or any other tax asset, CEMEX would not recognize such asset. Both situations would result in additional income tax expense for the period in which such determination is made. In order to determine whether it is probable that deferred tax assets will ultimately be realized, CEMEX takes into consideration all available positive and negative evidence, including factors such as market conditions, industry analysis, expansion plans, projected taxable income, carryforward periods, current tax structure, potential changes or adjustments in tax structure, tax planning strategies, future reversals of existing temporary differences, etc. In addition, every reporting period, CEMEX analyzes its actual results versus its estimates, and adjusts, as necessary, its tax asset valuations. If actual results vary from CEMEX's estimates, the deferred tax asset may be affected and necessary adjustments will be made based on relevant information. Any adjustments recorded will affect CEMEX's statements of operations in such period.

As of December 31, 2012, CEMEX's deferred tax loss carryforwards that have been recognized expire as follows:

| | | Amount of unreserved carryforwards |
|---|---|---|
| 2013 | Ps | 921 |
| 2014 | | 7,230 |
| 2015 | | 7,027 |
| 2016 | | 12,426 |
| 2017 and thereafter | | 70,375 |
| | Ps | 97,979 |

In connection with CEMEX's deferred tax loss carryforwards presented in the table above, as of December 31, 2012, in order to realize the benefits associated with such deferred tax assets that have not been reserved, before their expiration, CEMEX would need to generate approximately Ps97,979 in consolidated pre-tax income in future periods. For the years ended December 31, 2012, 2011 and 2010, CEMEX has reported pre-tax losses on a worldwide consolidated basis. Nonetheless, based on the same forecasts of future cash flows and operating results used by CEMEX's management to allocate resources and evaluate performance in the countries in which CEMEX operates, which include expected growth in revenues and reductions in interest expense in several countries due to a reduction in intra-group debt balances, along with the implementation of feasible tax strategies, CEMEX believes that it will recover the balance of its tax loss carryforwards that have not been reserved before their expiration. In addition, CEMEX concluded that, the deferred tax liabilities that were considered in the analysis of recoverability of its deferred tax assets will reverse in the same period and tax jurisdiction of the related recognized deferred tax assets. Moreover, a certain amount of CEMEX's deferred tax assets refer to operating segments and tax jurisdictions in which CEMEX is currently generating taxable income or in which, according to CEMEX's management cash flow projections, will generate taxable income in the relevant periods before the expiration of the deferred tax assets, considering that the amount of taxable income required to recover CEMEX's deferred tax assets over the next four years is not significant, and that approximately Ps70,375 out of the Ps97,979 of consolidated pre-tax income mentioned above would be required over several years in 2017 and thereafter.

**Deferred income taxes - continued**

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Notes to the Consolidated Financial Statements**
**As of December 31, 2012, 2011 and 2010**
**(Millions of Mexican pesos)**

CEMEX, S.A.B de C.V. has not provided for any deferred tax liability for the undistributed earnings generated by its subsidiaries recognized under the equity method, considering that such undistributed earnings are expected to be reinvested, and to not generate income tax in the foreseeable future. Likewise, CEMEX does not recognize a deferred income tax liability related to its investments in subsidiaries and interests in joint ventures, considering that CEMEX controls the reversal of the temporary differences arising from these investments.

## 19C) EFFECTIVE TAX RATE

Differences between the financial reporting and the corresponding tax basis of assets and liabilities and the different income tax rates and laws applicable to CEMEX, among other factors, give rise to permanent differences between the statutory tax rate applicable in Mexico, and the effective tax rate presented in the consolidated statements of operations, which in 2012, 2011 and 2010 were as follows:

| | 2012 | 2011 | 2010 |
|---|---|---|---|
| | % | % | % |
| Consolidated statutory tax rate | (30.0) | (30.0) | (30.0) |
| Non-taxable dividend income | (0.7) | (1.9) | — |
| Expenses and other non-deductible items | 7.7 | 53.4 | 10.3 |
| Unrecognized tax benefits in the year | (44.6) | 34.8 | (33.2) |
| Non-taxable sale of marketable securities and fixed assets | (14.2) | (14.4) | 22.1 |
| Difference between book and tax inflation | 34.0 | 9.9 | 12.3 |
| Other tax non-accounting benefits **1** | 166.4 | 45.9 | 33.3 |
| Others | 0.4 | (0.5) | 3.4 |
| Effective consolidated tax rate | 119.0 | 97.2 | 18.2 |

**1** Includes: a) the effects of the different income tax rates in the countries where CEMEX operates and other permanent differences; b) changes during the period related to deferred tax assets originated by tax loss carryforwards (note 19B); and c) changes in the balance of provisions for tax uncertainties during the period, as described in note 19D.

## 19D) UNCERTAIN TAX POSITIONS AND SIGNIFICANT TAX PROCEEDINGS

As of December 31, 2012 and 2011, as part of short-term and long-term provisions and other liabilities (note 17), CEMEX has recognized provisions related to unrecognized tax benefits in connection with uncertain tax positions taken, in which it is deemed probable that the tax authority would differ from the position adopted by CEMEX (note 2O). As of December 31, 2012, the tax returns submitted by some subsidiaries of CEMEX located in several countries are under review by the respective tax authorities in the ordinary course of business. CEMEX cannot anticipate if such reviews will result in new tax assessments, which would, should any arise, be appropriately disclosed and/or recognized in the financial statements.

**Uncertain tax positions and significant tax proceedings - continued**

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Notes to the Consolidated Financial Statements**
**As of December 31, 2012, 2011 and 2010**
**(Millions of Mexican pesos)**

A summary of the beginning and ending amount of unrecognized tax benefits for the years ended December 31, 2012, 2011 and 2010, excluding interest and penalties, is as follows:

| | | 2012 | 2011 | 2010 |
|---|---|---|---|---|
| Balance of tax positions at beginning of year | Ps | 21,936 | 17,260 | 20,333 |
| Additions for tax positions of prior years | | 325 | 1,162 | 3,687 |
| Additions for tax positions of current year | | 110 | 4,812 | 765 |
| Reductions for tax positions related to prior years and other items | | (14,601) | (2,513) | (2,240) |
| Settlements and reclassifications | | (4,053) | (121) | (81) |
| Expiration of the statue of limitations | | (1,599) | (120) | (4,195) |
| Foreign currency translation effects | | (883) | 1,456 | (1,009) |
| Balance of tax positions at end of year | Ps | 1,235 | 21,936 | 17,260 |

Tax examinations can involve complex issues, and the resolution of issues may span multiple years, particularly if subject to negotiation or litigation. Although CEMEX believes its estimates of the total unrecognized tax benefits are reasonable, uncertainties regarding the final determination of income tax audit settlements and any related litigation could affect the amount of total unrecognized tax benefits in future periods. It is difficult to estimate the timing and range of possible changes related to the uncertain tax positions, as finalizing audits with the income tax authorities may involve formal administrative and legal proceedings. Accordingly, it is not possible to reasonably estimate the expected changes to the total unrecognized tax benefits over the next 12 months, although any settlements or statute of limitations expirations may result in a significant increase or decrease in the total unrecognized tax benefits, including those positions related to tax examinations being currently conducted.

As of December 31, 2012, certain significant proceedings associated with these tax positions are as follows:

- During 2011, the U.S. Internal Revenue Service ("IRS") had issued various Notices of Proposed Adjustment ("NOPAs") for the years 2005 through 2009 proposing certain adjustments to CEMEX's tax returns. As of December 31, 2012, CEMEX's subsidiaries in the United States and the IRS have reached a resolution regarding the income tax audits for the years 2005 through 2009 and also tax losses to applicable prior years to recover taxes previously paid. CEMEX expects a net refund from the IRS of approximately US$25. In connection with this resolution, CEMEX expects to owe additional state and local income taxes and interest resulting from the IRS audit adjustments. The IRS has recently commenced an audit of years 2010 and 2011. CEMEX believes it has adequately reserved for its uncertain tax position. The amount of which is not specified, as doing so may harm the current negotiations of CEMEX with the IRS. Nonetheless, there can be no assurance that the outcome of the IRS negotiations will not require further provisions for taxes.

- Pursuant to amendments to the Mexican income tax law effective January 1, 2005, Mexican companies with investments in foreign entities whose income tax liability is less than 75% of the income tax that would be payable in Mexico, are required to pay taxes in Mexico on net passive income, such as dividends, royalties, interest, capital gains and rental fees obtained by such entities, provided, however, that those revenues are not derived from entrepreneurial activities in such countries. CEMEX challenged the constitutionality of the amendments before the Mexican federal courts. In September 2008, the Supreme Court of Justice ruled the amendments were constitutional for tax years 2005 to 2007. On March 1, 2012 and July 5, 2012, CEMEX

**Uncertain tax positions and significant tax proceedings - continued**



self-assessed the taxes corresponding to the 2005 and 2006 tax years, respectively, for a total amount, inclusive of surcharges and carry-forward charges, of approximately Ps4,642 (US$358) for 2005 and Ps1,100 (US$86) for 2006, of which 20%, equivalent to approximately Ps928 (US$72) for 2005 and Ps221 (US$17) for 2006, was paid in connection with the submission of amended tax returns. The remaining 80% of such total amounts would have been due in February 2013 and July 2013 for the 2005 and 2006 tax years, respectively, plus additional interest if CEMEX would have elected to extend the payment date in thirty-six monthly installments. On January 31, 2013 in connection with the transitory amnesty provision described below, CEMEX reached a settlement agreement with the tax authorities (note 26). Changes in the provision were recognized through income tax expense for the period.

- In November 2009, Mexico approved amendments to the income tax law, which became effective on January 1, 2010. Such amendments modified the tax consolidation regime by requiring entities to determine income taxes as if the tax consolidation provisions did not exist from 1999 onward, specifically turning into taxable items: a) the difference between the sum of the equity of the controlled entities for tax purposes and the equity of the consolidated entity for tax purposes; b) dividends from the controlled entities for tax purposes to CEMEX, S.A.B. de C.V.; and c) other transactions that represented the transfer of resources between the companies included in the tax consolidation. In connection with these changes to the tax consolidation regime, as of December 31, 2009, CEMEX had accrued an aggregate liability of Ps10,461, of which: i) Ps8,216 had been recognized against "Other non-current assets" before the new tax law became effective, assets which, CEMEX expects to recover through the payment of the related tax liability; and ii) Ps2,245 was recognized in December 2009, in connection with the amendments to the income tax law mentioned above. In December 2010, pursuant to miscellaneous rules, the tax authority in Mexico granted the option to defer the calculation and payment of the income tax over the difference in equity explained above, until the subsidiary is disposed of or CEMEX eliminates the tax consolidation. As a result, CEMEX reduced its estimated tax payable by approximately Ps2,911 against a credit to income taxes for the period in the statements of operations. Tax liabilities associated with the tax loss carryforwards used in the tax consolidation of the Mexican subsidiaries are not offset with deferred tax assets in the balance sheet. The realization of these tax assets is subject to the generation of future tax earnings in the controlled subsidiaries that generated the tax loss carryforwards in the past. Changes in the Parent Company's tax payable associated with the tax consolidation in Mexico in 2012, 2011 and 2010 were as follows:

| | | 2012 | 2011 | 2010 |
|---|---|---|---|---|
| Balance at the beginning of the year | Ps | 12,410 | 10,079 | 10,461 |
| Income tax received from subsidiaries | | 2,089 | 2,352 | 2,496 |
| Restatement for the period | | 745 | 485 | 358 |
| Payments during the period | | (698) | (506) | (325) |
| Effects associated with miscellaneous rules | | — | — | (2,911) |
| Balance at the end of the year | Ps | 14,546 | 12,410 | 10,079 |

- On January 21, 2011, the Mexican tax authority notified CEMEX, S.A.B. de C.V., of a tax assessment for approximately Ps996 (US$77) pertaining to the tax year 2005. The tax assessment is related to the corporate income tax in connection with the tax consolidation regime. As a result of a tax reform in 2005, the law allows the cost of goods sold to be deducted, instead of deducting purchases. Since there were inventories as

**Uncertain tax positions and significant tax proceedings - continued**



of December 31, 2004, in a transition provision, the law allowed the inventory to be accumulated as income (thus reversing the deduction via purchases) and then be deducted from 2005 onwards as cost of goods sold. In order to compute the income resulting from the inventories in 2004, the law allowed this income to be offset against accumulated tax losses of some of CEMEX's subsidiaries. The authorities argued that because of this offsetting, the right to use such losses at the consolidated level had been lost; therefore, CEMEX had to increase its consolidated income or decrease its consolidated losses. CEMEX believes that there is no legal support for the conclusion of the Mexican tax authority and, on March 29, 2011, CEMEX challenged the assessment before the tax court.

- On November 16, 2011, the Mexican tax authorities notified Centro Distribuidor de Cemento, S.A. de C.V. and Mexcement Holdings, S.A. de C.V., subsidiaries of CEMEX in Mexico, of tax assessments related to direct and indirect investments in entities considered to be preferential tax regimes, in the amount of approximately Ps1,251 (US$101) and approximately Ps759 (US$59), respectively. In February 2012, CEMEX filed a claim against these assessments before the corresponding courts. At this stage, CEMEX is not able to assess the likelihood of an adverse result in these proceedings.
- On December 17, 2012, the Mexican authorities published the decree of the Federation Revenues Law for the 2013 tax year. The decree contains a transitory amnesty provision that grants tax amnesty of up to 80% of certain tax proceedings originated before the 2007 tax period, and 100% of interest and penalties, as well as 100% of interest and penalties of tax proceedings originated in the 2007 tax period and thereafter. CEMEX is a beneficiary of such transitory amnesty provision in connection with several of the Mexican tax proceedings mentioned in the paragraphs above. The tax authorities must issue the relevant rules for the implementation of such decree no later than March 2013. CEMEX awaits the publication of such rules in order to definitively determine the final amount of taxes payable and benefits that would be obtained pursuant to the decree. Based on CEMEX's best estimates and current understanding of the transitory amnesty provision, CEMEX reduced the provision accrued in prior years related to these tax proceedings and the effect is included as part of the changes of unrecognized tax benefits during the year presented in the table above.
- On November 10, 2010, the Colombian tax authority notified CEMEX Colombia of a proceeding in which the Colombian tax authority rejected certain tax losses taken by CEMEX Colombia in its 2008 year-end tax return. In addition, the Colombian tax authority assessed an increase in taxes to be paid by CEMEX Colombia in the amount of approximately 43 billion Colombian pesos (US$24 or Ps308) and imposed a penalty in the amount of approximately 69 billion Colombian pesos (US$39 or Ps501), both amounts as of December 31, 2012. The Colombian tax authority argues that CEMEX Colombia is limited in its use of prior year tax losses to 25% of such losses per subsequent year. CEMEX believes that the tax provision that limits the use of prior year tax losses does not apply in the case of CEMEX Colombia because the applicable tax law was repealed in 2006. Furthermore, CEMEX believes that the Colombian tax authority is no longer able to review the 2008 tax return because the time to review such return has already expired pursuant to Colombian law. The Colombian tax authority issued an official settlement on July 27, 2011, which confirmed its position in the special request. The official settlement was appealed by CEMEX on September 27, 2011. On July 31, 2012, the Colombian tax authority notified CEMEX Colombia of the resolution confirming the official liquidation. In November 2012, CEMEX Colombia appealed the official assessment. CEMEX believes it has adequately reserved for this proceeding. Nonetheless, CEMEX is not able to assess the likelihood of an adverse result or potential damages which could be borne by CEMEX Colombia, but if adversely resolved, this proceeding could have a material adverse impact on CEMEX's liquidity and financial position.

**Uncertain tax positions and significant tax proceedings - continued**



- On April 1, 2011, the Colombian Tax Authority notified CEMEX Colombia of a special proceeding ( *requerimiento especial*) in which the Colombian Tax Authority rejected certain deductions taken by CEMEX Colombia in its 2009 year-end tax return. The Colombian Tax Authority assessed an increase in taxes to be paid by CEMEX Colombia in the amount of approximately Ps90 billion Colombian Pesos (approximately US$51 or Ps655) and imposed a penalty in the amount of approximately Ps144 billion Colombian Pesos (approximately US$81 or Ps1,041). The Colombian Tax Authority argues that certain expenses are not deductible for fiscal purposes because they are not linked to direct revenues recorded in the same fiscal year, without taking into consideration that future revenue will be taxed with income tax in Colombia. CEMEX Colombia responded to the special proceeding notice on June 25, 2011. On December 15, 2011, the Colombian Tax Authority issued its final determination, which confirmed the information in the special proceeding. CEMEX Colombia appealed the final determination on February 15, 2012 and it is expected to have a response from the Tax Authorities no later than February, 2013. At this stage, CEMEX is not able to assess the likelihood of an adverse result or potential damages which could be borne by CEMEX Colombia, but if adversely resolved, this proceeding could have a material adverse impact on CEMEX's liquidity and financial position.

## 20) STOCKHOLDERS' EQUITY

As of December 31, 2012 and 2011, stockholders' equity excludes investments in CPOs of CEMEX, S.A.B. de C.V. held by subsidiaries of approximately Ps229 (18,028,276 CPOs) and Ps129 (17,334,881 CPOs), respectively, which were eliminated within "Other equity reserves." The increase in the number of CPOs held by subsidiaries during 2012 relates to CPOs received by subsidiaries as a result of the recapitalization of retained earnings as described below.

## 20A) COMMON STOCK AND ADDITIONAL PAID-IN CAPITAL

As of December 31, 2012 and 2011, the breakdown of common stock and additional paid-in capital was as follows:

| | | 2012 | 2011 |
|---|---|---|---|
| Common stock | Ps | 4,139 | 4,135 |
| Additional paid-in capital | | 113,929 | 109,309 |
| | Ps | 118,068 | 113,444 |

As of December 31, 2012 and 2011, the common stock of CEMEX, S.A.B. de C.V. was represented as follows:

| | 2012 | | 2011 | |
|---|---|---|---|---|
| Shares 1 | Series A 2 | Series B 3 | Series A 2 | Series B 3 |
| Subscribed and paid shares | 21,872,295,096 | 10,936,147,548 | 20,939,727,526 | 10,469,863,763 |
| Unissued shares authorized for stock compensation programs | 1,155,804,458 | 577,902,229 | 250,782,926 | 125,391,463 |
| Shares that guarantee the issuance of convertible securities 4 | 6,162,438,520 | 3,081,219,260 | 5,932,438,520 | 2,966,219,260 |
| Shares authorized for the issuance of stock or convertible securities 5 | 4,146,404 | 2,073,202 | 7,561,480 | 3,780,740 |
| | 29,194,684,478 | 14,597,342,239 | 27,130,510,452 | 13,565,255,226 |

**Common stock and additional paid-in capital - continued**

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Notes to the Consolidated Financial Statements**
**As of December 31, 2012, 2011 and 2010**
**(Millions of Mexican pesos)**

**1** As of December 31, 2012 and 2011, 13,068,000,000 shares correspond to the fixed portion, and 30,724,026,717 shares in 2012 and 27,627,765,678 shares in 2011, correspond to the variable portion.

**2** Series "A" or Mexican shares must represent at least 64% of CEMEX's capital stock.

**3** Series "B" or free subscription shares may represent up to 36% of CEMEX's capital stock.

**4** Shares that guarantee the conversion of both the voluntary and mandatorily convertible securities (note 16B).

**5** Shares authorized for the issuance of stock through a public offer or through the issuance of convertible securities.

On February 23, 2012, stockholders at the annual ordinary shareholders' meeting approved resolutions to: (i) increase the variable common stock through the capitalization of retained earnings by issuing up to 1,256.4 million shares (418.8 million CPOs), which shares were issued, representing an increase in common stock of approximately Ps3.4, considering a nominal value of Ps0.00833 per CPO, and additional paid-in capital of approximately Ps4,133.8; (ii) increase the variable common stock by issuing up to 345 million shares (115 million CPOs),which will be kept in CEMEX's treasury to be used to preserve the anti-dilutive rights of note holders pursuant CEMEX's convertible securities (note 16B); (iii) the cancellation of 5,122 million treasury shares, which were not subject to public offer or convertible notes issuance in the 24 months period authorized by the extraordinary shareholders meeting held on September 4, 2009; and (iv) increase the variable common stock by issuing up to 1,500 million shares (500 million CPOs) which will be kept in CEMEX's treasury and used to be subscribed and paid pursuant to the terms and conditions of CEMEX's long-term compensation stock program (note 21), without triggering the shareholders' preemptive rights.

On February 24, 2011, stockholders at the extraordinary shareholders' meeting approved an increase in the variable portion of our capital stock of up to 6 billion shares (2 billion CPOs). Pursuant to the resolution approved by CEMEX, S.A.B. de C.V.'s stockholders, the subscription and payment of the new shares may occur through a public offer of CPOs and/or the issuance of convertible securities. These shares are kept in CEMEX's treasury as a guarantee for the potential issuance of shares through CEMEX's convertible securities (note 16B).

On February 24, 2011, stockholders at the annual ordinary shareholders' meeting approved resolutions to: (i) increase the variable common stock through the capitalization of retained earnings, issuing up to 1,202.6 million shares (400.9 million CPOs) based on a price of Ps10.52 per CPO. Stockholders received 3 new shares for each 75 shares held (1 new CPO for each 25 CPOs held), through the capitalization of retained earnings. As a result, shares equivalent to approximately 401 million CPOs were issued, representing an increase in common stock of approximately Ps3, considering a nominal value of Ps0.00833 per CPO, and additional paid-in capital of approximately Ps4,213; and (ii) increase the variable common stock by up to 60 million shares (20 million CPOs) issuable as a result of antidilution adjustments upon conversion of CEMEX's convertible securities (note 16B). These shares are kept in CEMEX's treasury. There was no cash distribution and no entitlement to fractional shares.

On April 29, 2010, stockholders at the annual ordinary shareholders' meeting approved resolutions to: (i) increase the variable common stock through the capitalization of retained earnings, issuing up to 1,153.8 million shares (384.6 million CPOs) based on a price of Ps14.24 per CPO. Stockholders received 3 new shares for each 75 shares held (1 new CPO for each 25 CPOs held), through the capitalization of retained earnings. As a result, shares equivalent to approximately 384.6 million CPOs were issued, representing an

**Common stock and additional paid-in capital - continued**

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Notes to the Consolidated Financial Statements**
**As of December 31, 2012, 2011 and 2010**
**(Millions of Mexican pesos)**

increase in common stock of approximately Ps3, considering a nominal value of Ps0.00833 per CPO, and additional paid-in capital of approximately Ps5,476, and (ii) increase the variable common stock by up to 750 million shares (250 million CPOs) issuable as a result of antidilution adjustments upon conversion of CEMEX's convertible securities (note 16B). These shares are kept in CEMEX's treasury. There was no cash distribution and no entitlement to fractional shares.

The CPOs issued pursuant to the exercise of options under the "Fixed program" (note 21A) generated additional paid-in capital of approximately Ps11 in 2011 and Ps5 in 2010, and increased the number of shares outstanding. In addition, in connection with the long-term executive stock-based compensation programs (note 21), in 2012, 2011 and 2010, CEMEX issued approximately 46.4 million CPOs, 43.4 million CPOs and 25.7 million CPOs, respectively, generating additional paid-in capital of approximately Ps486, Ps495 and Ps312, respectively, associated with the fair value of the compensation received by executives.

**20B) OTHER EQUITY RESERVES**

As of December 31, 2012 and 2011 other equity reserves are summarized as follows:

| | | 2012 | 2011 |
|---|---|---|---|
| Cumulative translation effect, net of effects from perpetual debentures and deferred income taxes recognized directly in equity (notes 19B and 20D) | Ps | 13,635 | 15,189 |
| Cumulative actuarial gains (losses) | | (3,174) | (2,234) |
| Issuance of convertible securities **1** | | 1,971 | 1,971 |
| Treasury shares held by subsidiaries | | (229) | (129) |
| | Ps | 12,203 | 14,797 |

**1** Represents the equity component associated with the issuances of mandatorily convertible notes described in note 16B. Upon mandatory conversion of these securities, these balances will be correspondingly reclassified to common stock and/or additional paid-in capital.

For the years ended December 31, 2012, 2011 and 2010, the translation effects of foreign subsidiaries included in the statements of comprehensive loss were as follows:

| | | 2012 | 2011 | 2010 |
|---|---|---|---|---|
| Foreign currency translation adjustment **1** | Ps | (16,031) | 30,733 | 11,144 |
| Foreign exchange fluctuations from debt **2** | | 6,939 | (11,305) | 1,886 |
| Foreign exchange fluctuations from intercompany balances **3** | | 1,756 | (8,068) | (20,059) |
| | Ps | (7,336) | 11,360 | (7,029) |

**1** These effects refer to the result from the translation of the financial statements of foreign subsidiaries.
**2** Generated by foreign exchange fluctuations over a notional amount of debt in CEMEX, S.A.B. de C.V. associated with the acquisition of foreign subsidiaries and designated as a hedge of the net investment in foreign subsidiaries.

**Other equity reserves - continued**



**3** Refers to foreign exchange fluctuations arising from balances with related parties in foreign currencies that are of a long-term investment nature considering that their liquidation is not anticipated in the foreseeable future and foreign exchange fluctuations over a notional amount of debt of a subsidiary of CEMEX España identified and designated as a hedge of the net investment in foreign subsidiaries.

## 20C) RETAINED EARNINGS

Net income for the year is subject to a 5% allocation toward a legal reserve until such reserve equals one fifth of the capital represented by the common stock. As of December 31, 2012, the legal reserve amounted to Ps1,804.

## 20D) NON-CONTROLLING INTEREST AND PERPETUAL DEBENTURES

### Non-controlling interest

Non-controlling interest represents the share of non-controlling stockholders in the results and equity of consolidated subsidiaries. As of December 31, 2012 and 2011, non-controlling interest in equity amounted to approximately Ps8,410 and Ps3,513, respectively.

As mentioned in note 15B, on May 17, 2012, CEMEX acquired the non-controlling interest in Readymix, the Company's subsidiary in Ireland.

On November 15, 2012, CEMEX Latam Holdings, S.A. ("CEMEX Latam"), a wholly-owned subsidiary of CEMEX España, S.A., concluded its initial offering of 170,388,000 new common shares, at a price of 12,250 Colombian Pesos per common share. The common shares offered by CEMEX Latam included (a) 148,164,000 new common shares offered in a public offering to investors in Colombia and in a concurrent private placement to eligible investors outside of Colombia, and (b) an additional 22,224,000 new common shares offered in such private placement that were subject to a put option granted to the initial purchasers during the 30-day period following closing of the offering. CEMEX Latam's assets include substantially all of CEMEX's cement and ready-mix assets in Colombia, Panama, Costa Rica, Brazil, Guatemala and El Salvador. After giving effect to the offering, and the exercise of the put option by the initial purchasers, CEMEX España, S.A., owns approximately 73.35% of CEMEX Latam's outstanding common shares, excluding shares held in treasury. CEMEX Latam's common shares are listed on the Colombian Stock Exchange ( *Bolsa de Valores de Colombia S.A.*) under the ticker CLH. The net proceeds from the offering of approximately US$960, after deducting commissions and offering expenses and after giving effect to the exercise of the put option by the initial purchasers, were used by CEMEX to repay indebtedness under the Facilities Agreement and the Financing Agreement. During September and October 2012, CEMEX entered into foreign exchange call options and forward contracts for notional amounts of US$200 and US$510, respectively; to hedge the exposure to the exchange rate fluctuations between the Colombian peso to the U.S. dollar. At settlement, changes in the fair value of these instruments generated a loss of approximately US$2 (Ps26).

### Perpetual debentures

As of December 31, 2012 and 2011, the balances of the non-controlling interest included approximately US$473 (Ps6,078) and US$938 (Ps13,089), respectively, representing the notional amount of perpetual debentures. The balance in 2012 and 2011 excludes the notional amount of perpetual debentures held by subsidiaries, acquired during 2012 and 2011 through a series of exchange transaction of each series of its then outstanding perpetual debentures for new secured notes or other financial instruments (note 16A). The exchange offers previously mentioned were contemporarily agreed by CEMEX and its perpetual debentures' holders, without any existing commitment.

**Perpetual debentures - continued**

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Notes to the Consolidated Financial Statements**
**As of December 31, 2012, 2011 and 2010**
**(Millions of Mexican pesos)**

Interest expense on the perpetual debentures, which is accrued based on the principal amount, was included within "Other equity reserves" and represented expenses of approximately Ps453 in 2012, Ps1,010 in 2011 and Ps1,624 in 2010, excluding in all periods the amount of interest accrued by perpetual debentures held by subsidiaries.

CEMEX's perpetual debentures have no fixed maturity date and there are no contractual obligations for CEMEX to exchange any series of its outstanding perpetual debentures for financial assets or financial liabilities. As a result, these debentures, issued entirely by Special Purpose Vehicles ("SPVs"), qualify as equity instruments and are classified within non-controlling interest, as they were issued by consolidated entities. In addition, subject to certain conditions, CEMEX has the unilateral right to defer indefinitely the payment of interest due on the debentures. The classification of the debentures as equity instruments was made under applicable IFRS. The different SPVs were established solely for purposes of issuing the perpetual debentures and were included in CEMEX's consolidated financial statements.

As of December 31, 2012 and 2011, the detail of CEMEX's perpetual debentures, giving effect to the exchange transactions that occurred during these periods, as mentioned above, and to the exclusion of perpetual debentures held by subsidiaries, was as follows:

| Issuer | Issuance date | 2012 Nominal amount | 2011 Nominal amount | Repurchase option | Interest rate |
|---|---|---|---|---|---|
| C10-EUR Capital (SPV) Ltd. | May 2007 | € 64 | € 147 | Tenth anniversary | 6.3% |
| C8 Capital (SPV) Ltd. | February 2007 | US$137 | US$288 | Eighth anniversary | 6.6% |
| C5 Capital (SPV) Ltd **1**. | December 2006 | US$ 69 | US$111 | Fifth anniversary | LIBOR + 4.277% |
| C10 Capital (SPV) Ltd. | December 2006 | US$183 | US$349 | Tenth anniversary | 6.7% |

**1** Beginning January 1, 2012, the annual interest rate of this series changed from 6.2% to 3-month LIBOR plus 4.277%, which is reset quarterly. Interest payments on this series will be made quarterly instead of semi-annually. CEMEX is not permitted to call these debentures under the Facilities Agreement. As of December 31, 2012 and 2011, 3-month LIBOR was approximately 0.306% and 0.5810%, respectively.

**21) EXECUTIVE STOCK-BASED COMPENSATION**

CEMEX has long-term restricted stock-based compensation programs providing for the grant of CEMEX's CPOs to a group of executives, pursuant to which, new CPOs are issued under each annual program over a service period of 4 years. By agreement with the executives, the CPOs of the annual grant (25% of each annual program) are placed in a trust established for the benefit of the executives to comply with a 1 year restriction on sale. Under these programs, CEMEX granted approximately 46.4 million CPOs in 2012, 43.4 million CPOs in 2011 and 25.7 million CPOs in 2010 that were subscribed and pending for payment in CEMEX's treasury. Of the total CPOs granted in 2011, approximately 10.3 million CPOs were related to termination payments associated with restructuring events (note 6). As of December 31, 2012, there are approximately 87.4 million CPOs associated with these annual programs that are expected to be issued during the following years as the executives render services. The compensation expense related to these programs in 2012, 2011 and 2010 recognized in the operating results amounted to approximately Ps486, Ps415 and Ps536, respectively. The weighted average price per CPO granted during the period was approximately Ps10.48 in 2012, Ps11.42 in 2011 and Ps12.12 in 2010.

In 2012, CEMEX initiated a new stock-based compensation program for a group of executives which is linked to both internal performance conditions (increase in Operating EBITDA), as well as market conditions (increase in

**Executive stock-based compensation - continued**



the price of CEMEX's CPO), over a period of three years. Under this program, CEMEX granted awards over approximately 39.9 million CPOs, which become vested upon achievement of the annual performance conditions. Any CPOs vested would be delivered, fully unrestricted, only to active executives in March 2015. The compensation expense related to this program in 2012 of approximately Ps136 was recognized in the operating results against "Other equity reserves."

Until 2005, CEMEX granted stock options to executives based on CEMEX's CPO. Options outstanding under CEMEX's programs represent liability instruments, except for those of its "Fixed program," which was designated as equity instruments (note 2S). The information related to options granted in respect of CEMEX, S.A.B. de C.V. shares is as follows:

| Options | Fixed program (A) | Variable program (B) | Restricted program (C) | Special program (D) |
|---|---|---|---|---|
| Options at the beginning of 2011 | 448,743 | 1,358,920 | 15,022,272 | 714,618 |
| **Changes in 2011:** | | | | |
| Options cancelled and adjustments | (115,617) | (815,424) | — | (81,826) |
| Options exercised | (333,126) | — | — | — |
| Options at the end of 2011 | — | 543,496 | 15,022,272 | 632,792 |
| **Changes in 2012:** | | | | |
| Options cancelled and adjustments | — | (279,720) | (15,022,272) | (125,345) |
| Options exercised | — | — | — | — |
| Options at the end of 2012 | — | 263,776 | — | 507,447 |
| Underlying CPOs **1** | — | 1,451,249 | — | 10,148,940 |
| **Weighted average exercise prices per CPO:** | | | | |
| Options outstanding at the beginning of 2012 **1** | — | US$ 1.55 | US$ 2.00 | US$ 1.36 |
| Options exercised in the year **1** | — | — | — | — |
| Options outstanding at the end of 2012 **1** | — | US$ 1.42 | — | US$ 1.40 |
| **Average life of options:** | — | 0.6 years | — | 1.4 years |
| **Number of options per exercise price:** | | | | |
| | — | — | — | 135,751 - US$1.0 |
| | — | 205,034 - US$1.4 | — | 257,291 - US$1.4 |
| | — | 58,742 - US$1.6 | — | 114,405 - US$1.9 |
| **Percent of options fully vested:** | 100% | — | 100% | — |

Prices and the number of underlying CPOs are technically adjusted for the dilutive effect of stock dividends and recapitalization of retained earnings.

**Executive stock-based compensation - continued**

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Notes to the Consolidated Financial Statements**
**As of December 31, 2012, 2011 and 2010**
**(Millions of Mexican pesos)**

### A) Fixed program

From June 1995 through June 2001, CEMEX granted stock options with a fixed exercis **e** price in pesos, equivalent to the market price of the CPO at the grant date and with tenure of 10 years. The employees' option rights vested up to 25% annually during the first 4 years after having been granted.

### B) Variable program

This program started in November 2001, through an exchange of fixed program options, with exercise prices denominated in dollars increasing annually at a 7% rate.

### C) Restricted program

This program started in February 2004 through a voluntary exchange of options mainly from the variable program. These options had an exercise price denominated in dollars which, depending on the program, increased annually at a 5.5% rate or at a 7% rate. Executives' gains under these options were settled in the form of CPOs, which were restricted for sale for an approximate period of 4 years from the exercise date.

### D) Special program

From June 2001 through June 2005, a CEMEX subsidiary in the United States granted to a group of its employees a stock option program to purchase CEMEX ADSs. The options granted have a fixed exercise price denominated in dollars and tenure of 10 years. The employees' option rights vested up to 25% annually after having been granted. The option exercises are hedged using ADSs currently owned by subsidiaries, which increases stockholders' equity and the number of shares outstanding. The amounts of these ADS programs are presented in terms of equivalent CPOs.

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Notes to the Consolidated Financial Statements**
**As of December 31, 2012, 2011 and 2010**
**(Millions of Mexican pesos)**

**Valuation of options at fair value and accounting recognition**

All options of programs that qualify as liability instruments are valued at their estimated fair value as of the date of the financial statements, recognizing changes in valuations in the statements of operations. Changes in the provision for executive stock option programs for the years ended December 31, 2012, 2011 and 2010 were as follows:

| | | Restricted program | Variable program | Special program | Total |
|---|---|---|---|---|---|
| Provision as of January 1, 2010 | Ps | 114 | 24 | 54 | 192 |
| Net revenue in current period results | | (92) | (15) | (40) | (147) |
| Estimated decrease from exercises of options | | — | — | 2 | 2 |
| Foreign currency translation effect | | (7) | (1) | (3) | (11) |
| Provision as of December 31, 2010 | | 15 | 8 | 13 | 36 |
| Net revenue in current period results | | (17) | (9) | (15) | (41) |
| Estimated decrease from exercises of options | | — | — | — | — |
| Foreign currency translation effect | | 2 | 1 | 2 | 5 |
| Provision as of December 31, 2011 | | — | — | — | — |
| Net expense (revenue) in current period results | | — | — | 9 | 9 |
| Estimated decrease from exercises of options | | — | — | — | — |
| Foreign currency translation effect | | — | — | — | — |
| Provision as of December 31, 2012 | Ps | — | — | 9 | 9 |

The options' fair values were determined through the binomial option-pricing model. As of December 31, 2012, 2011 and 2010, the most significant assumptions used in the valuations were as follows:

| Assumptions | 2012 | 2011 | 2010 |
|---|---|---|---|
| Expected dividend yield | 4.0% | 4.0% | 4.0% |
| Volatility | 35% | 35% | 35% |
| Interest rate | 0.1% | 0.1% | 1.2% |
| Weighted average remaining tenure | 1.1 years | 1.2 years | 2.1 years |

**22) LOSS PER SHARE**

Based on IAS 33 *Earnings per Share* ("IAS 33"), basic earnings (loss) per share shall be calculated by dividing profit or loss attributable to ordinary equity holders of the parent entity (the numerator) by the weighted average number of shares outstanding (the denominator) during the period. Shares that would be issued depending only on the passage of time should be included in the determination of the basic weighted average number of shares outstanding. Diluted earnings (loss) per share should reflect in both, the numerator and denominator, the assumption that convertible instruments are converted, that options or warrants are exercised, or that ordinary shares are issued upon the satisfaction of specified conditions, to the extent that such assumption would lead to a reduction in basic earnings per share or an increase in basic loss per share, otherwise, the effects of potential shares are not considered because they generate antidilution.

**Loss per share - continued**

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Notes to the Consolidated Financial Statements**
**As of December 31, 2012, 2011 and 2010**
**(Millions of Mexican pesos)**

The amounts considered for calculations of loss per share ("LPS") in 2012, 2011 and 2010 were as follows:

| | | 2012 | 2011 | 2010 |
|---|---|---|---|---|
| **Denominator (thousands of shares)** | | | | |
| Weighted average number of shares outstanding **1** | | 32,926,445 | 32,523,572 | 32,433,494 |
| Capitalization of retained earnings **2** | | 1,312,380 | 1,312,380 | 1,312,380 |
| Effect of dilutive instruments – mandatorily convertible securities (note 16B) **3** | | 582,050 | 559,663 | 538,138 |
| Weighted average number of shares outstanding – basic | | 34,820,875 | 34,395,615 | 34,284,012 |
| Effect of dilutive instruments – stock-based compensation (note 21) **3** | | 286,042 | 174,934 | 153,640 |
| Effect of potentially dilutive instruments – optionally convertible securities (note 16B) **3** | | 6,569,423 | 6,316,755 | 1,640,535 |
| Weighted average number of shares outstanding – diluted | | 41,676,341 | 40,887,304 | 36,078,187 |
| **Numerator** | | | | |
| Consolidated net loss | Ps | (11,219) | (24,767) | (13,436) |
| Less: non-controlling interest net income | | 662 | 21 | 46 |
| Controlling interest net loss | | (11,881) | (24,788) | (13,482) |
| Plus: after tax interest expense on mandatorily convertible securities | | 196 | 209 | 220 |
| Controlling interest net loss – basic loss per share | | (11,685) | (24,579) | (13,262) |
| Plus: after tax interest expense on optionally convertible securities | | 1,501 | 1,153 | 344 |
| Controlling interest net loss – diluted loss per share | Ps | (10,184) | (23,426) | (12,918) |
| **Controlling Interest Basic Loss Per Share** | Ps | (0.34) | (0.71) | (0.39) |
| **Controlling Interest Diluted Loss Per Share 4** | Ps | (0.34) | (0.71) | (0.39) |

**1** Based on IAS 33, the weighted average number of shares outstanding in 2012 and 2011 reflects the shares issued as a result of the capitalization of retained earnings declared in February 2012 and February 2011, as applicable (note 20A).

**2** According to resolution of the stockholders' meetings on March 21, 2013 (note 26).

**3** The number of CPO to be issued under the executive stock-based compensation programs, as well as the total amount of CPOs committed for issuance in the future under the mandatorily and optionally convertible securities, are computed from the beginning of the reporting period. The number of shares resulting from the executives' stock option programs is determined under the inverse treasury method.

**4** For 2012, 2011 and 2010, the effects on the denominator and numerator of potential dilutive shares generate antidilution; therefore, there is no change between the reported basic and diluted loss per share.

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Notes to the Consolidated Financial Statements**
**As of December 31, 2012, 2011 and 2010**
**(Millions of Mexican pesos)**

## 23) COMMITMENTS

### 23A) GUARANTEES

As of December 31, 2012 and 2011, CEMEX, S.A.B. de C.V. had guaranteed loans to certain subsidiaries of approximately US$9,148 (Ps117,557) and US$8,993 (Ps125,538), respectively.

### 23B) PLEDGED ASSETS

As of December 31, 2012 and 2011, CEMEX had liabilities amounting to US$84 and US$129, respectively, secured by property, machinery and equipment. These amounts exclude the financial liabilities associated with capital leases (note 16B), as there are no legal liens on the related assets.

In addition, in connection with the Facilities Agreement (note 16A), CEMEX transferred to a guarantee trust and entered into pledge agreements for the benefit of the Facilities Agreement lenders, note holders and other creditors having the benefit of negative pledge clauses, the shares of several of its main subsidiaries, including CEMEX México, S.A. de C.V. and CEMEX España, S.A., in order to secure payment obligations under the Facilities Agreement and other debt instruments. These shares also secure several other financings entered into prior to the date of the Facilities Agreement.

### 23C) OTHER COMMITMENTS

As of December 31, 2012 and 2011, CEMEX had commitments for the purchase of raw materials for an approximate amount of US$127 (Ps1,632) and US$184 (Ps2,569), respectively.

In 2006, in order to take advantage of the high wind potential in the "Tehuantepec Isthmus," CEMEX and the Spanish company ACCIONA formed an alliance to develop a wind farm project for the generation of 250 Megawatts (MW) in the Mexican state of Oaxaca. CEMEX acted as promoter of the project, which was named EURUS. ACCIONA provided the required financing, constructed the facility and currently operates the wind farm. The installation of 167 wind turbines in the farm was finished on November 15, 2009. The agreements between CEMEX and ACCIONA established that CEMEX's plants in Mexico will acquire a portion of the energy generated by the wind farm for a period of at least 20 years, which began in February 2010, when EURUS reached the committed limit capacity. For the years ended December 31, 2012, 2011 and 2010, EURUS supplied (unaudited) approximately 29.1%, 23.7% and 20.1%, respectively, of CEMEX's overall electricity needs in Mexico during such year. This agreement is for CEMEX's own use and there is no intention of trading in energy by CEMEX.

In 1999, CEMEX entered into agreements with an international partnership, which built and operated an electrical energy generating plant in Mexico called *Termoeléctrica del Golfo* ("TEG"). In 2007, another international company replaced the original operator. The agreements established that CEMEX would purchase the energy generated for a term of not less than 20 years, which started in April 2004. Likewise, CEMEX committed to supply TEG all fuel necessary for its operations, a commitment that has been hedged through a 20-year agreement entered with *Petróleos Mexicanos*, which terminates in 2024. With the change of the operator, in 2007, CEMEX extended the term of its agreement with TEG until 2027. Consequently, for the last 3 years of the TEG fuel supply contract, CEMEX intends to purchase the required fuel in the market. CEMEX is not required to make any capital expenditure in the project. For the years ended December 31, 2012, 2011 and 2010, TEG supplied (unaudited) approximately 67.8%, 69.3% and 72.8%, respectively, of CEMEX's 15 cement plants' electricity needs in Mexico during such year. This agreement is for CEMEX's own use and there is no intention of trading in energy by CEMEX.

**Other commitments - continued**

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Notes to the Consolidated Financial Statements**
**As of December 31, 2012, 2011 and 2010**
**(Millions of Mexican pesos)**

In 2007, CEMEX Ostzement GmbH ("COZ"), CEMEX's subsidiary in Germany, entered into a long-term energy supply contract with *Vattenfall Europe New Energy Ecopower* ("VENEE"), pursuant to which VENEE committed to supply energy to CEMEX's Rüdersdorf plant for a period of 15 years starting on January 1, 2008. Based on the contract, each year COZ has the option to fix in advance the volume of energy that it will acquire from VENEE, with the option to adjust the purchase amount one time on a monthly and quarterly basis. According to the contract, COZ acquired (unaudited) approximately 27 MW in 2010, 2011 and 2012. COZ expects to acquire 27 MW per year for 2013 and 2014, and expects to acquire between 26 and 28 MW per year starting in 2015 and thereafter. The contract, which establishes a price mechanism for the energy acquired, based on the price of energy future contracts quoted on the European Energy Exchange, did not require initial investments and was expected to be performed at a future date. Based on its terms, this contract qualified as a financial instrument under IFRS. However, as the contract is for CEMEX's own use and CEMEX sells any energy surplus as soon as actual energy requirements are known, regardless of changes in prices and thereby avoiding any intention of trading in energy, such contract is not recognized at its fair value.

In April 2008, Citibank entered into put option transactions on CEMEX's CPOs with a Mexican trust that CEMEX established on behalf of its Mexican pension fund and certain of CEMEX's directors and current and former employees (the "participating individuals"). The transaction was structured with two main components. Under the first component, the trust sold, for the benefit of CEMEX's Mexican pension fund, put options to Citibank in exchange for a premium of approximately US$38. The premium was deposited into the trust and was used to purchase, on a prepaid forward basis, securities that track the performance of the Mexican Stock Exchange. Under the second component, the trust sold, on behalf of the participating individuals, additional put options to Citibank in exchange for a premium of approximately US$38, which was used to purchase prepaid forward CPOs. These prepaid forward CPOs, together with additional CPOs representing an equal amount in U.S. dollars, were deposited into the trust by the participating individuals as security for their obligations, and represent the maximum exposure of the participating individuals under this transaction. The put options gave Citibank the right to require the trust to purchase, in April 2013, approximately 136 million CPOs at a price of US$2.6498 per CPO (120% of initial CPO price in dollars), as adjusted as of December 31, 2012. If the value of the assets held in the trust (34.7 million CPOs and the securities that track the performance of the Mexican Stock Exchange) were insufficient to cover the obligations of the trust, a guarantee would be triggered and CEMEX, S.A.B. de C.V. would be required to purchase, in April 2013, the total CPOs at a price per CPO equal to the difference between US$2.6498 and the market value of the assets of the trust. The purchase price per CPO in dollars and the corresponding number of CPOs under this transaction are subject to dividend adjustments. CEMEX recognizes a liability for the fair value of the guarantee, and changes in valuation were recorded in the statements of operations (note 16D).

On July 30, 2012, CEMEX signed a 10-year strategic agreement with IBM pursuant to which IBM will provide business processes services and information technology ("IT"). Moreover, IBM will provide business consulting to detect and promote sustainable improvements in CEMEX's profitability. The 10-year contract assigned to IBM is expected to generate cost reductions to CEMEX of approximately US$1,000 (unaudited) over such period, and includes: data processing services (back office) in finance, accounting and human resources; as well as IT infrastructure services, support and maintenance of IT applications in the countries in which CEMEX operates.

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Notes to the Consolidated Financial Statements**
**As of December 31, 2012, 2011 and 2010**
**(Millions of Mexican pesos)**

## 23D) COMMITMENTS FROM EMPLOYEE BENEFITS

In some countries, CEMEX has self-insured health care benefits plans for its active employees, which are managed on cost plus fee arrangements with major insurance companies or provided through health maintenance organizations. As of December 31, 2012, in certain plans, CEMEX has established stop-loss limits for continued medical assistance derived from a specific cause (e.g., an automobile accident, illness, etc.) ranging from 23 thousand dollars to 400 thousand dollars. In other plans, CEMEX has established stop-loss limits per employee regardless of the number of events ranging from 350 thousand dollars to 2 million dollars. The contingency for CEMEX if all employees qualifying for health care benefits required medical services simultaneously is significantly larger. However, this scenario is remote. The amount expensed through self-insured health care benefits was approximately US$96 (Ps1,234) in 2012, US$78 (Ps1,089) in 2011 and US$81 (Ps1,026) in 2010.

## 23E) CONTRACTUAL OBLIGATIONS

As of December 31, 2012 and 2011, CEMEX had the following contractual obligations:

| (U.S. dollars millions) | | 2012 | | | | | 2011 |
|---|---|---|---|---|---|---|---|
| Obligations | | Less than 1 year | 1-3 Years | 3-5 Years | More than 5 Years | Total | Total |
| Long-term debt | US$ | 42 | 1,333 | 6,600 | 5,882 | 13,857 | 14,924 |
| Capital lease obligations **1** | | 83 | 112 | 51 | 115 | 361 | 182 |
| Convertible notes **2** | | 12 | 683 | 878 | 604 | 2,177 | 2,102 |
| Total debt and other financial obligations **3** | | 137 | 2,128 | 7,529 | 6,601 | 16,395 | 17,208 |
| Operating leases **4** | | 129 | 155 | 76 | 53 | 413 | 565 |
| Interest payments on debt **5** | | 747 | 1,437 | 1,066 | 463 | 3,713 | 4,111 |
| Pension plans and other benefits **6** | | 154 | 301 | 314 | 884 | 1,653 | 1,845 |
| Purchases of raw materials **7** | | 102 | 25 | — | — | 127 | 184 |
| Purchases of fuel and energy **8** | | 201 | 413 | 430 | 2,495 | 3,539 | 3,794 |
| Total contractual obligations | US$ | 1,470 | 4,459 | 9,415 | 10,496 | 25,840 | 27,707 |
| | Ps | 18,889 | 57,298 | 120,983 | 134,874 | 332,044 | 386,791 |

**1** The amounts of payments under capital leases have been determined on the basis of nominal cash flows. As of December 31, 2012, the net present value of future payments under such leases was approximately US$265 (Ps3,400), of which, approximately US$90 (Ps1,163) refers to cash flows from 1 to 3 years, and approximately US$32 (Ps413) refer to cash flows from 3 to 5 years, and approximately US$79 (Ps1,011) refer to cash flows of more than 5 years.

**2** Refers to the convertible notes described in note 16B and assumes repayment at maturity and no conversion of the notes.

**3** The schedule of debt payments, which includes current maturities, does not consider the effect of any refinancing of debt that may occur during the following years. In the past, CEMEX has replaced its long-term obligations for others of a similar nature.

**4** The amounts for operating leases have been determined on the basis of nominal cash flows. CEMEX has operating leases, primarily for operating facilities, cement storage and distribution facilities and certain transportation and other equipment, under which annual rental payments are required plus the payment of certain operating expenses. Rental expense was US$156 (Ps2,003) in 2012, US$256 (Ps3,195) in 2011 and US$199 (Ps2,521) in 2010.

**Contractual obligations - continued**



**5** For the determination of the future estimated interest payments on floating rate denominated debt, CEMEX used the floating interest rates in effect as of December 31, 2012 and 2011.

**6** Represents estimated annual payments under these benefits for the next 10 years (note 18). Future payments include the estimate of new retirees during such future years.

**7** Future payments for the purchase of raw materials are presented on the basis of contractual nominal cash flows.

**8** Future nominal payments for energy have been estimated for all contractual commitments on the basis of an aggregate average expected consumption of approximately 3,171.4 GWh per year using the future prices of energy established in the contracts for each period. Future payments also include CEMEX's commitments for the purchase of fuel.

## 24) CONTINGENCIES

### 24A) PROVISIONS RESULTING FROM LEGAL PROCEEDINGS

CEMEX is involved in various significant legal proceedings, other than tax related matters which are detailed in note 19D, the resolutions of which are deemed probable and imply cash outflows or the delivery of other resources owned by CEMEX. As a result, certain provisions have been recognized in the financial statements, representing the best estimate of the amounts payable. Therefore, CEMEX believes that it will not incur significant expenditure in excess of the amounts recorded.

As of December 31, 2012, the details of the most significant legal proceedings that have required the recognition of certain provisions are as follows:

- In January 2007, the Polish Competition and Consumers Protection Office (the "Protection Office") notified CEMEX Polska, a subsidiary in Poland, about the initiation of an antitrust proceeding against all cement producers in the country, including CEMEX Polska and another of CEMEX's indirect subsidiaries in Poland. The Protection Office alleged that there was an agreement between all cement producers in Poland regarding prices, market quotas and other sales conditions of cement, and that the producers exchanged confidential information, all of which limited competition in the Polish cement market. In January 2007, CEMEX Polska filed its response to the notification, denying that it had committed the practices listed by the Protection Office, and submitted formal comments and objections gathered during the proceeding, as well as facts supporting its position that its activities were in line with Polish competition law. In December 2009, the Protection Office issued a resolution imposing fines on a number of Polish cement producers, including CEMEX Polska for the period of 1998 to 2006. The fine imposed on CEMEX Polska amounted to approximately 116 million Polish Zloty (US$34 or Ps437), which represents 10% of CEMEX Polska's total revenue for the calendar year preceding the imposition of the fine. CEMEX Polska filed an appeal before the Polish Court of Competition and Consumer Protection (the "Court of Consumer Protection"). On February 7, 2011, the Protection Office made an application to the Court of Consumer Protection to reject CEMEX Polska's appeal, arguing that such appeal is not justified, and the Protection Office maintained all the statements and arguments from its prior decision. On February 21, 2011, CEMEX Polska sent a letter to the Court of Consumer Protection in which it kept its position and argumentation from the appeal and opposed the arguments and statements of the Protection Office. The decision on the fines will not be enforced until two appeals are exhausted, which CEMEX estimates could take until the end of 2014 to be resolved. As of December 31, 2012, CEMEX recognized a provision of approximately 75 million Polish Zloty (US$24 or Ps308), representing the best estimate on such date of the expected cash outflow in connection with this resolution. The hearing of this case is scheduled to take place on February 19, 2013.

**Provisions resulting from legal proceedings - continued**



- CEMEX has environmental remediation liabilities in the United Kingdom pertaining to closed and current landfill sites for the confinement of waste. As of December 31, 2012, CEMEX had generated a provision for the net present value of such obligations of approximately £131 (US$214 or Ps2,745). Expenditure was assessed and quantified over the period in which the sites have the potential to cause environmental harm, which was accepted by the regulator as being up to 60 years from the date of closure. The assessed expenditure included the costs of monitoring the sites and the installation, repair and renewal of environmental infrastructure.
- In August 2005, Cartel Damages Claims, S.A. ("CDC"), filed a lawsuit in the District Court in Düsseldorf, Germany, against CEMEX Deutschland AG, CEMEX's subsidiary in Germany, and other German cement companies originally seeking approximately €102 (US$132 or Ps1,696) in respect of damage claims by 28 entities relating to alleged price and quota fixing by German cement companies between 1993 and 2002. Since that time, CDC has acquired new claims by assignment, and the claim has increased to €131 (US$170 or Ps2,185). CDC is a Belgian company established in the aftermath of the German cement cartel investigation that took place from July 2002 to April 2003 by Germany's Federal Cartel Office, with the purpose of purchasing potential damage claims from cement consumers and pursuing those claims against the cartel participants. In February 2007, the District Court in Düsseldorf allowed this lawsuit to proceed without going into the merits of this case by issuing an interlocutory judgment. All defendants appealed the resolution but the appeal was dismissed in May 2008 and the lawsuit will proceed at the level of the court of first instance. On March 1, 2012, the District Court in Düsseldorf revealed several preliminary considerations on relevant legal questions and allowed the parties to submit their plea and reply. A new hearing has been rescheduled to June 6, 2013 to allow plaintiff to prepare and submit their plea. As of December 31, 2012, CEMEX Deutschland AG had accrued liabilities regarding this matter of approximately €28 (US$36 or Ps463), including accrued interests over the principal amount of the claim.
- As of December 31, 2012, CEMEX's subsidiaries in the United States have accrued liabilities specifically relating to environmental matters in the aggregate amount of approximately US$21 (Ps270). The environmental matters relate to: a) the disposal of various materials in accordance with past industry practice, which might currently be categorized as hazardous substances or wastes, and b) the cleanup of sites used or operated by CEMEX, including discontinued operations, regarding the disposal of hazardous substances or waste, either individually or jointly with other parties. Most of the proceedings are in the preliminary stages, and a final resolution might take several years. For purposes of recording the provision, CEMEX's subsidiaries believe that it is probable that a liability has been incurred and the amount of the liability is reasonably estimable, whether or not claims have been asserted, and without giving effect to any possible future recoveries. Based on the information developed to date, CEMEX's subsidiaries do not believe that they will be required to spend significant sums on these matters in excess of the amounts previously recorded. The ultimate cost that may be incurred to resolve these environmental issues cannot be assured until all environmental studies, investigations, remediation work and negotiations with, or litigation against, potential sources of recovery have been completed.

**24B) OTHER CONTINGENCIES FROM LEGAL PROCEEDINGS**

CEMEX is involved in various legal proceedings, other than tax related matters which are detailed in note 19D, which have not required the recognition of accruals, as CEMEX believes that the probability of loss is less than probable or remote after considering all the elements of such proceedings, as well as proceedings in which a negative resolution for CEMEX may represent, among other things, the revocation of operating licenses or the

**Other contingencies from legal proceedings - continued**

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Notes to the Consolidated Financial Statements**
**As of December 31, 2012, 2011 and 2010**
**(Millions of Mexican pesos)**

assessment of fines, whereby CEMEX may experience a decrease in future revenues, an increase in operating costs or a loss. Where no amount of the estimation is disclosed, it is because such disclosure could impair the outcome of the relevant proceeding.

As of December 31, 2012, the details of the most significant events with a quantification of the potential loss, when it is determinable, were as follows:

- On September 13, 2012, Assiut Cement Company ("ACC"), CEMEX's subsidiary in Egypt, learned about a preliminary non-enforceable decision against ACC made by a court of first instance in Assiut, Egypt, regarding the annulment of a Share Purchase Agreement signed in November 1999 between CEMEX and state-owned Metallurgical Industries Company ("MIC") pursuant to which CEMEX acquired a controlling interest in ACC. On September 19, 2012, ACC received the formal notification of the ruling made by the Assiut court of first instance. On October 18, 2012 and October 20, 2012, ACC and MIC, respectively, filed appeals of the decision with the Assiut Court of Appeals. The first hearings were held on December 19, 2012 and January 22, 2013 with such Court of Appeals, and a third hearing is scheduled for April 16, 2013.
- On June 21, 2012, one of CEMEX's subsidiaries in Israel was notified about an application for the approval of a class action suit against it. The application, filed by a homeowner who built his house with concrete supplied by CEMEX in October of 2010, claims that the concrete supplied to him did not meet with the "Israel Standard for Concrete Strength No. 118" and that as a result CEMEX acted unlawfully toward all of its customers who received concrete that did not comply with the Israeli standard requirements. As per the application, the plaintiff claims that the supply of the alleged non-conforming concrete has caused financial and non-financial damages to those customers, including the plaintiff. CEMEX presumes that the class action would represent the claim of all the clients who purchased the alleged non-conforming concrete from its subsidiary in Israel during the past 7 years, the limitation period according to applicable laws in Israel. The damages that could be sought amount to approximately 276 million Israeli Shekel (US$74 or Ps951). CEMEX's subsidiary has until January 31, 2013 to submit a formal response to the corresponding court. At this stage, CEMEX believes the application is vexatious and should be dismissed without any expense to CEMEX. As of December 31, 2012, CEMEX is analyzing the legal strategy to be employed and is not able to assess the likelihood of the class action application being approved or, if approved, of an adverse result, but if adversely resolved, CEMEX does not believe the final resolutions would have a material adverse impact on its liquidity and financial position.
- On January 20, 2012, the United Kingdom Competition Commission (the "UK Commission"), commenced a market investigation into the supply or acquisition of cement, ready-mix concrete and aggregates. The referral to the UK Commission was made by the Office of Fair Trading, following an investigation by them of the aggregates sector. Those companies and persons invited to participate in the market investigation are required by law to comply with certain requests for information and, if necessary, to attend hearings. The UK Commission is required to report on this investigation by no later than January 17, 2014. CEMEX's subsidiaries in the UK have been invited to participate in the market investigation and will fully cooperate with it. At this stage of the market investigation, as of December 31, 2012, CEMEX is not able to assess what would be the scope of the recommendations made by the UK Commission, if any, or if such recommendations would have a material adverse impact on its results of operations.
- On December 8, 2010, the European Commission ("EC") informed CEMEX that it has decided to initiate formal proceedings in respect of possible anticompetitive practices in Austria, Belgium, the Czech Republic, France, Germany, Italy, Luxembourg, the Netherlands, Spain and the United Kingdom, which include CEMEX and seven other companies. The proceedings may lead to an infringement decision or, if the

**Other contingencies from legal proceedings - continued**



objections raised by the EC are not substantiated, the case might be closed. In April 2011, the EC requested CEMEX to deliver a material amount of information and documentation. CEMEX filed an appeal before the General Court of the European Union for the annulment of such request for information and documentation on the grounds that it is contrary to several principals of European Union Law. Nonetheless, the request was fulfilled by CEMEX on August 2, 2011. On September 16, 2011, without discussing the main arguments of the claim, the EC rejected the claim from CEMEX asking for the annulment of the request. On December 15, 2011, CEMEX complied with the terms of this decision and submitted a new reply with the amendments and clarifications identified in the revision and audit process. On December 21, 2011, CEMEX filed its reply to the EC's rejection. The EC filed its rejoinder on March 27, 2012. The hearing is scheduled for February 6, 2013. If the alleged infringements are substantiated, the EC may impose a maximum fine of up to 10% of the total turnover of the relevant companies for the last year preceding the imposition of the fine for which the financial statements have been approved. CEMEX intends to defend its position vigorously in this proceeding and is fully cooperating and will continue to cooperate with the EC in connection with this matter. As of December 31, 2012, the extent of the charges and the alleged infringements are unknown, and it is not clear which revenues would be used for the determination of the possible penalties. As a result, CEMEX cannot assess the likelihood of an adverse result or the amount of the potential fine, but, if adversely resolved, it may have a material adverse impact on CEMEX's financial position.

- On October 26, 2010, CEMEX, Inc., one of CEMEX's subsidiaries in the United States, received an Antitrust Civil Investigative Demand from the Office of the Florida Attorney General, which seeks documents and information in connection with an antitrust investigation by the Florida Attorney General into the ready-mix concrete industry in Florida. As of December 31, 2012, CEMEX is working with the Office of the Florida Attorney General to comply with the civil investigative demand, and it is unclear at this stage whether any formal proceeding will be initiated by the Office of the Florida Attorney General.
- In September 2009, officers from the EC, in conjunction with local officials of the Spanish national competition enforcement authority ( *Comisión Nacional de la Competencia* or "CNC"), conducted an unannounced inspection at CEMEX's offices in Spain. The EC alleges that CEMEX may have participated in anti-competitive agreements and/or concerted practices. This investigation is related to unannounced previous inspections carried out by the EC in the United Kingdom and Germany in November 2008. CEMEX has received requests for information from the EC in September 2009, October 2010 and December 2010, and CEMEX has fully cooperated by providing the relevant information on time. As of December 31, 2012, CEMEX cannot assess the likelihood of an adverse result, or quantify the potential damages that could be borne by CEMEX. Nonetheless, CEMEX would not expect a material adverse effect on its financial position.
- On June 5, 2010, the *Secretaría Distrital de Ambiente de Bogotá*, the District of Bogota's environmental secretary (or the "Environmental Secretary"), ordered the suspension of CEMEX Colombia's mining activities at El Tunjuelo quarry, located in Bogotá, as well as those of other aggregates producers in the same area. The Environmental Secretary claims that during the past 60 years CEMEX Colombia and the other companies have illegally changed the course of the Tunjuelo River, have used the percolating waters without permission and have improperly used the edge of the river for mining activities. In connection with the injunction, on June 5, 2010, CEMEX Colombia received a notification from the Environmental Secretary informing the initiation of proceedings to impose fines against CEMEX Colombia based on the above mentioned alleged environmental violations. CEMEX Colombia responded to the injunction by requesting that it be revoked based on the fact that the mining activities at El Tunjuelo quarry are supported

**Other contingencies from legal proceedings - continued**

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Notes to the Consolidated Financial Statements**
**As of December 31, 2012, 2011 and 2010**
**(Millions of Mexican pesos)**

by the authorizations required by the applicable environmental laws and that all the environmental impact statements submitted by CEMEX Colombia have been reviewed and permanently authorized by the *Ministerio del Medio Ambiente, Vivienda y Desarrollo Territorial.* On June 11, 2010, the local authorities in Bogotá, in compliance with the environmental secretary's decision, sealed off the mine to machinery and prohibited the removal of our aggregates inventory. Although there is not an official quantification of the possible fine, the environmental secretary has publicly declared that the fine could be as much as 300 billion Colombian pesos (US$170 or Ps2,184). The temporary injunction does not currently compromise the production and supply of ready-mix concrete to our clients in Colombia. CEMEX Colombia is analyzing its legal strategy to defend itself against these proceedings. At this stage, we are not able to assess the likelihood of an adverse result or potential damages which could be borne by CEMEX Colombia.

- In October 2009, CEMEX Corp., one of CEMEX's subsidiaries in the United States, and other cement and concrete suppliers were named as defendants in several purported class action lawsuits alleging price fixing in Florida. The purported class action lawsuits are of two distinct types: a) those filed by entities purporting to have purchased cement or ready-mix concrete directly from one or more of the defendants; and b) those filed by entities purporting to have purchased cement or ready-mix concrete indirectly from one or more of the defendants. Underlying all proposed suits is the allegation that the defendants conspired to raise prices of cement and concrete and hinder competition in Florida. After a period of amended claims and responses in 2010 and 2011, in which all parties presented their arguments, on September 21, 2011, both groups of plaintiffs filed motions for class certification. On January 3, 2012, the court denied both motions, ruling that the cases cannot proceed as class certification. On January 5, 2012, the court stayed both cases pending the resolution of any potential appeal of the court's ruling denying the motions for class certification. On January 17, 2012, the plaintiffs in the action involving entities that purchased ready-mix concrete directly from one or more of the defendants filed a petition with the Eleventh Circuit Court of Appeals, requesting such court to exercise its discretion to review the trial court's decision denying their class certification motion. In March 2012, CEMEX Corp. and the other defendants effected a settlement of both cases resulting in CEMEX having to pay approximately 460 thousand dollars. CEMEX did not admit any wrongdoing as part of the settlements and denies allegations of misconduct.
- In September 2009, the CNC separately conducted its own inspection in the context of possible anticompetitive practices in the production and distribution of mortar, ready-mix and aggregates within the Chartered Community of Navarre ("Navarre"). In December 2009, the CNC started a procedure against CEMEX España for alleged practices prohibited under the Spanish competition law. In November 2010, the CNC provided CEMEX España with a Statement of Facts that included a possible infringement by CEMEX España of Spanish competition law in Navarre. The Statement of Facts indicated to CEMEX España that its parent company, New Sunward Holding B.V., could be jointly and severally liable for the investigated behavior. On December 10, 2010, the CNC Investigative Department notified CEMEX of its proposed decision, which declared an existence of infringement, and that it would submit the proposed decision to the CNC Council. The notification of the proposed decision marked the end of the investigation phase. On December 29, 2010, CEMEX submitted its opposition to the proposed decision denying all charges formulated by the CNC. On May 17, 2011, the CNC Council decided to accept CEMEX's request to review the evidence presented by the other parties. The maximum fine that the CNC could have imposed would be 10% of the total revenues of CEMEX España's ready-mix production activities within Navarre for the calendar year preceding the imposition of the fine. On January 12, 2012, the CNC notified CEMEX of its final decision on this matter, imposing a fine of 500 thousand euro (660 thousand dollars or Ps8,481) against CEMEX España for price-fixing and market sharing in the concrete market of Navarre from June 2008

**Other contingencies from legal proceedings - continued**



through September 2009. CEMEX España denies any wrongdoing and on March 1, 2012, filed an appeal before the competent court ( *Audiencia Nacional*) requesting the interim suspension of the decision from the court until a final judgment is issued. To that effect, CEMEX España has requested the CNC Council to suspend the implementation of its decision until the court has decided on the requested interim measure. On July 10, 2012, the court has issued a resolution agreeing to the suspension of payment of the fine.

- In June 2009, the Texas General Land Office ("GLO") alleged that CEMEX failed to pay approximately US$550 in royalties related to mining activities by CEMEX and its predecessors since the 1940s on lands that, when transferred originally by the State of Texas, contained a reservation of mineral rights. On December 17, 2009, the Texas court handling this matter granted CEMEX's motion for summary judgment finding that the GLO's claims had no merit. The GLO filed an appeal on March 25, 2010 and its appellate brief on May 28, 2010. The GLO requested that the Texas Court of Appeals hear oral arguments in this matter. On May 3, 2011, the GLO and CEMEX submitted briefs and the Court of Appeals heard oral arguments on this matter. On August 31, 2011, the El Paso Court of Appeals reversed the trial court's judgment and rendered judgment in favor of the State of Texas with respect to the ownership of the mineral rights on the lands mined by CEMEX and its predecessors in interest. On February 23, 2012, the GLO and CEMEX entered into an agreement to settle all claims, including claims for past royalties, without any admission of liability by CEMEX. Pursuant to the settlement, CEMEX will pay 750 thousand dollars in five equal installments of 150 thousand per year and will enter into a royalty mining lease at the royalty rate required by the Texas Natural Resources Code on a going forward basis, beginning in September 2012. Further, CEMEX's pending appeal to the Texas Supreme Court has been withdrawn and all ancillary claims that were held in abeyance have been dismissed.
- In January and March 2009, one of CEMEX's subsidiaries in Mexico was notified of two findings issued by the Mexican Competition Authority (*Comisión Federal de Competencia* or "CFC"), for presumptive violations of Mexican antitrust laws. During the CFC investigation, CEMEX filed constitutional challenges for both cases considering that these findings contain substantial violations of rights granted by the Mexican Constitution. In both challenges, the Circuit Courts resolved that CEMEX lacked standing since the notice of presumptive responsibility did not affect any of CEMEX's rights. CEMEX appealed such resolutions. On October 14, 2011, the CFC determined to close one of the cases due to a lack of evidence to impose any sanctions. Third parties subsequently filed an appeal before the CFC to reconsider its ruling, but CEMEX believes that legal precedent exists that establishes that third parties lack standing in these cases. On February 14, 2012, CEMEX was fined approximately Ps10.2 million for anticompetitive practices and was ordered to implement certain measures. CEMEX has appealed the resolution before the CFC and the Circuit Court and denies any wrongdoing. In June 2012, the CFC confirmed its resolution. As a result, in July 2012, CEMEX filed a constitutional challenge and simultaneously filed a claim against the CFC's resolution before the Circuit Court, which nullified the fine imposed on CEMEX. On December 18, 2012, the CFC ratified its resolution, which CEMEX expects to appeal. As of December 31, 2012, a resolution regarding the constitutional challenge has not been issued.
- In January 2009, in response to litigation brought by environmental groups concerning the manner in which certain federal quarry permits were granted, a judge from the U.S. District Court for the Southern District of Florida ordered the withdrawal of the federal quarry permits of CEMEX's SCL, FEC and Kendall Krome quarries, in the Lake Belt area in South Florida, which were granted in 2002 to CEMEX Construction Materials Florida, LLC ("CEMEX Florida"), one of CEMEX's subsidiaries in the United States. The judge ruled that there were deficiencies in the procedures and analysis undertaken by the relevant governmental agencies involved with the issuance of the permits. On January 29, 2010, in connection with the withdrawal

**Other contingencies from legal proceedings - continued**



of federal quarry permits in Lake Belt, Florida, the Army Corps of Engineers concluded a revision and determined procedures for granting new federal quarry permits in the area. During February 2010, new quarry permits were granted to the SCL and FEC quarries. However, at December 31, 2012, a number of potential environmental impacts must be addressed at the wetlands located at the Kendall Krome site before a new federal quarry permit may be issued for mining at that quarry. If CEMEX Florida were unable to maintain the new Lake Belt permits, CEMEX Florida would need to source aggregates, to the extent available, from other locations in Florida or import aggregates. The cessation or significant restriction of quarrying operations in the Lake Belt area could have a significant adverse effect on CEMEX's Florida operating results.

- In November 2008, AMEC/Zachry, the general contractor for CEMEX's expansion program in Brooksville, Florida, filed a lawsuit against CEMEX Florida in the United States, alleging delay damages and seeking an equitable adjustment to the contract and payment of change orders. In its claim, AMEC/Zachry sought indemnity for US$60 (Ps771). During 2009, FLSmidth ("FLS"), a supplier for the mining and cement industry, became a co-defendant in the lawsuit. During 2009 and 2010, CEMEX filed counterclaims against both suppliers. On November 18, 2010, the court denied AMEC/Zachry's motion to dismiss against CEMEX Florida, and denied FLS's motion on the pleading against CEMEX Florida. On January 6, 2011, CEMEX Florida amended its pleadings in accordance with the court's rulings. On March 17, 2011, FLS filed another motion seeking dismissal of one of CEMEX Florida's new claims asserted in the amended pleading. The parties have exchanged documents, and depositions are scheduled for the next several months. On July 1, 2011, AMEC/Zachry filed a motion for substitution of counsel and a motion for a limited stay of discovery proceedings. As of December 31, 2012, the parties to this proceeding finalized the terms and conditions of a settlement. The settlement of this matter will not have a material adverse effect on CEMEX's liquidity and financial position.
- In July 2008, Strabag SE ("Strabag"), one of the leading suppliers of building materials in Europe, entered into a Share Purchase Agreement ("SPA") to purchase CEMEX's operations in Austria and Hungary for €310 (US$409 or Ps5,256), subject to authorization of the competition authorities in such countries. On July 1, 2009, Strabag notified CEMEX of its purported rescission of the SPA, arguing that the regulatory approvals were not obtained before June 30, 2009. In October 2009, CEMEX filed a claim against Strabag before the International Arbitration Court of the International Chamber of Commerce ("ICC"), requesting a declaration that Strabag's rescission of the SPA was invalid and claiming the payment of damages caused to CEMEX for the alleged breach of the SPA for €150 (US$198 or Ps2,544). After a period of hearings, counterclaims, responses and the conformation of the arbitration tribunal, a final award dated May 29, 2012, was notified to CEMEX on June 1, 2012. According to this final award, the arbitral tribunal declared that Strabag's rescission of the SPA was unlawful and ineffective, and ordered Strabag to pay to CEMEX a compensation for damages (including accrued interest), arbitration and legal costs. Also, Strabag's counterclaim was dismissed. Strabag filed an annulment action before the Swiss Federal Supreme Court (the "Swiss Court") on July 2, 2012. In relation to the annulment process with the Swiss Court, on July 20, 2012, Strabag paid CEMEX, through RMC Holdings B.V., the amounts ordered by the arbitral tribunal on its final award (principal plus surplus accrued interest and expenses) for approximately €43 (US$57 or Ps732), and, in order to secure the potential obligation for RMC Holdings B.V. to repay these amounts to Strabag in the event that the Swiss Court resolves to annul the May 29, 2012 final award, RMC Holdings B.V. pledged in favor of Strabag 496,355 shares (representing approximately a 33% stake) in its subsidiary Cemex Austria AG. On September 6, 2012, CEMEX presented its reply to the annulment action before the Swiss Court, and expects a final judgment during the first quarter 2013. CEMEX considers the likelihood of a negative

**Other contingencies from legal proceedings - continued**



resolution from the Swiss Court to be very remote. As a result, the amount of the final award mentioned above was recorded in the statement of operations in 2012, of which approximately €35 (US$46 or Ps591) identified with CEMEX's damages was recognized as part of other expenses, net, and approximately €8 (US$11 or Ps141) related to the recovery of operating losses and expenses caused by Strabag was recognized as part of costs and administration expenses.

- In April 2006, the cities of Kaštela and Solin in Croatia published their respective development master plans, adversely impacting the mining concession granted to a CEMEX's subsidiary in Croatia by the Croatian government in September 2005. In May 2006, CEMEX filed an appeal before a constitutional court seeking a declaration by the court of its rights and seeking prohibition of the implementation of the master plans. The municipal courts in Kaštela and Solin had previously rejected the appeals presented by CEMEX. These resolutions were appealed. These cases are currently under review by the Constitutional Court in Croatia, and it is expected that these proceedings will continue for several years before resolution. During the proceedings, the Administrative Court in Croatia ruled in favor of CEMEX, validating the legality of the mining concession granted by the government of Croatia. This decision was final. However, as of December 31, 2012, CEMEX has not been notified of an official declaration from the Constitutional Court as to whether the cities of Kaštela and Solin, within the scope of their master plans, can unilaterally change the borders of exploited fields. CEMEX believes that a declaration of the Constitutional Court will enable it to seek compensation for the losses caused by the proposed changes to the borders of the land available for extraction.
- In August 2005, a lawsuit was filed against a subsidiary of CEMEX Colombia and other members of the *Asociación Colombiana de Productores de Concreto*, or ASOCRETO, a union formed by all the ready-mix concrete producers in Colombia. The lawsuit claimed that CEMEX Colombia and other ASOCRETO members were liable for the premature distress of the roads built for the mass public transportation system in Bogotá using ready-mix concrete supplied by CEMEX Colombia and other ASOCRETO members. The plaintiffs alleged that the base material supplied for the road construction failed to meet the quality standards offered by CEMEX Colombia and the other ASOCRETO members and/or that they provided insufficient or inaccurate information in connection with the product. The plaintiffs sought the repair of the roads and estimated that the cost of such repair would be approximately 100 billion Colombian pesos (US$57 or Ps732). In January 2008, CEMEX Colombia was subject to a court order, sequestering a quarry called El Tunjuelo, as security for a possible future money judgment to be rendered against CEMEX Colombia in these proceedings. The court determined that in order to lift this attachment and prevent further attachments, CEMEX Colombia would be required to deposit with the court 337.8 billion Colombian pesos (US$191 or Ps2,454) in cash. CEMEX appealed this decision and also requested that the guarantee be covered by all defendants in the case. In March 2009, the Superior Court of Bogotá allowed CEMEX to offer security in the amount of 20 billion Colombian pesos (US$11 or Ps141). CEMEX deposited the security and, in July 2009, the attachment was lifted. The preliminary hearing to dismiss was unsuccessful and the final argument stage concluded on August 28, 2012. On October 10, 2012, the court nullified the accusation made against two ASOCRETO officials, but the judgment convicted the former director of the Urban Development Institute, and legal representatives of the builder and the auditor to a prison term of 85 months and a fine of 32 million Colombian Pesos (Ps18 thousand dollars). As a consequence of the annulment the judge ordered a restart of the proceedings against the ASOCRETO officers. The ruling can be appealed, but the practical effect of this decision is that the criminal action against ASOCRETO officers will prescribe and therefore there will be no condemnation against CEMEX. As of December 31, 2012, CEMEX Colombia has not recorded any provision as it feels it has sufficient arguments to overcome this action, but if adversely resolved it could have a negative effect on CEMEX's liquidity and financial position.

**Other contingencies from legal proceedings - continued**

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Notes to the Consolidated Financial Statements**
**As of December 31, 2012, 2011 and 2010**
**(Millions of Mexican pesos)**

As of December 31, 2012, CEMEX is involved in various legal proceedings of minor impact that have arisen in the ordinary course of business. These proceedings involve: 1) product warranty claims; 2) claims for environmental damages; 3) indemnification claims relating to acquisitions; 4) claims to revoke permits and/or concessions; and 5) other diverse civil actions. CEMEX considers that in those instances in which obligations have been incurred, CEMEX has accrued adequate provisions to cover the related risks. CEMEX believes these matters will be resolved without any significant effect on its business, financial position or results of operations. In addition, in relation to certain ongoing legal proceedings, CEMEX is sometimes able to make and disclose reasonable estimates of the expected loss or range of possible loss, as well as disclose any provision accrued for such loss, but for a limited number of ongoing legal proceedings, CEMEX may not be able to make a reasonable estimate of the expected loss or range of possible loss or may be able to do so but believes that disclosure of such information on a case-by-case basis would seriously prejudice CEMEX's position in the ongoing legal proceedings or in any related settlement discussions. Accordingly, in these cases, CEMEX has disclosed qualitative information with respect to the nature and characteristics of the contingency, but has not disclosed the estimate of the range of potential loss.

## 25) RELATED PARTIES

All significant balances and transactions between the entities that constitute the CEMEX group have been eliminated in the preparation of the consolidated financial statements. These balances with related parties resulted primarily from: (i) the sale and purchase of goods between group entities; (ii) the sale and/or acquisition of subsidiaries' shares within the CEMEX group; (iii) the invoicing of administrative services, rentals, trademarks and commercial name rights, royalties and other services rendered between group entities; and (iv) loans between related parties. Transactions between group entities were conducted on arm's length terms based on market prices and conditions.

The definition of related parties includes entities or individuals outside the CEMEX group, which, pursuant to their relationship with CEMEX, may take advantage of being in a privileged situation. Likewise, this applies to cases in which CEMEX may take advantage of such relationships and obtain benefits in its financial position or operating results.

CEMEX's transactions with related parties are executed under market conditions. CEMEX has identified the following transactions between related parties:

- Mr. Bernardo Quintana Isaac, a member of the board of directors of CEMEX, S.A.B. de C.V., is the current chairman of the board of directors of *Empresas ICA, S.A.B. de C.V.* ("Empresas ICA"). Empresas ICA is one of the most important engineering and construction companies in Mexico. In the ordinary course of business, CEMEX extends financing to Empresas ICA in connection with the purchase of CEMEX's products, on the same credit conditions that CEMEX awards to other customers.
- Mr. José Antonio Fernández Carbajal, former member of the board of directors of CEMEX, S.A.B. de C.V. until February 23, 2012, is president and chief executive officer of *Fomento Empresarial Mexicano, S.A.B. de C.V.* ("FEMSA"), a large multinational beverage company. In the ordinary course of business, CEMEX pays and receives various amounts to and from FEMSA for products and services for varying amounts on market terms. Mr. Fernández Carbajal is the actual chairman of the board of *Consejo de Enseñanza e Investigación Superior, A.C.* (the managing entity of *Instituto Tecnológico y de Estudios Superiores de Monterrey* or ITESM). Mr. Lorenzo Zambrano, chief executive officer and chairman of CEMEX's board of

**Related parties - continued**



directors, was chairman of the board of ITESM until February 13, 2012. ITESM has received contributions from CEMEX for amounts that were not material in the periods presented.

- Mr. Rafael Rangel Sostmann, a member of the board of directors of CEMEX, S.A.B. de C.V., was the dean of ITESM until September 12, 2011.
- On April 12, 2011, Juan Pablo San Agustín Rubio was appointed to the role of executive vice president for strategic planning and business development, which is part of CEMEX's senior management. In 2007, in compliance with CEMEX's then applicable policies, CEMEX extended a loan to Mr. San Agustín Rubio for the construction of a house. During the first quarter of 2012, the loan was repaid in full. The loan bore interest at an annual rate of 1.2% and the largest amount outstanding from January 1, 2011 until it was repaid was approximately €275 thousand. Except for the previously described loan, during 2012, 2011 and 2010, there were no loans between CEMEX and its board members or other members of its top management.
- For the years ended December 31, 2012, 2011 and 2010, the aggregate amount of compensation of CEMEX, S.A.B. de C.V.'s board of directors, including alternate directors, and top management executives, was approximately US$37 (Ps490), US$24 (Ps300) and US$11 (Ps139), respectively. Of these amounts, approximately US$26 (Ps343) in 2012, US$18 (Ps225) in 2011 and US$8 (Ps101) in 2010, was paid as compensation plus performance bonuses, including pension and postretirement benefits. In addition, approximately US$11 (Ps147) in 2012, US$6 (Ps75) in 2011 and US$3 (Ps38) in 2010 of the aggregate amount in each year, corresponded to allocations of CPOs under CEMEX's executive stock-based compensation programs. In 2012, the amount of CPOs allocated included approximately US$3 (Ps39) of compensation earned under the program that is linked to the fulfillment of certain performance conditions and that is payable through March 2015 to then still active members of CEMEX, S.A.B. de C.V.'s board of directors and top management executives (note 21).

## 26) SUBSEQUENT EVENTS

In connection with the put option transactions on CEMEX's CPOs entered into by Citibank with a Mexican trust that CEMEX established on behalf of its Mexican pension fund and certain of CEMEX's directors and current and former employees in April 2008 (notes 16D and 23C). As of April 17, 2013, the notional amount of the guarantee was completely closed, as a result of the unwinding of 136 million put options over CEMEX's CPOs (100% of the original underlying amount). Cash deposits in margin accounts, after deducting the proceeds from the sale of securities that track the performance of the Mexican Stock Exchange and CEMEX's CPOs held by the Mexican trust, in an aggregate amount of US$112 were used to settle the unwinding of these put options.

In connection with the tax proceeding related to the taxes payable in Mexico from passive income generated by foreign investments for the years 2005 and 2006 and the transitory amnesty provision both of which are described in note 19D, on January 31, 2013, CEMEX, S.A.B. de C.V. was notified that an agreement had been reached with the Mexican tax authorities regarding the settlement of such tax proceeding pursuant to a final payment according to the rules of the transitory provision. CEMEX paid the amount on February 1, 2013.

Considering the guidance under IFRS set forth by International Accounting Standard 21, *The Effects of Changes in Foreign Exchange Rates* ("IAS 21"), and based on changing circumstances on the net monetary position in foreign currencies of CEMEX, S.A.B. de C.V. (on a parent company only basis) resulting mainly from: a) a significant decrease in tax liabilities denominated in Mexican Pesos; b) a significant increase in its U.S. Dollar-denominated

**Subsequent events - continued**

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Notes to the Consolidated Financial Statements**
**As of December 31, 2012, 2011 and 2010**
**(Millions of Mexican pesos)**

debt and other financial obligations; and c) the expected increase in U.S. Dollar-denominated intra-group administrative expenses associated with the externalization of major back office activities with IBM; effective as of January 1, 2013, CEMEX, S.A.B. de C.V., for purposes of its parent company only financial statements, was required to prospectively change its functional currency from the Mexican Peso to the U.S. Dollar, as the U.S. Dollar was determined to be the currency of CEMEX, S.A.B. de C.V.'s primary economic environment. The aforementioned change has no effect on the functional currencies of CEMEX, S.A.B. de C.V.'s subsidiaries, which continue to be the currency in the primary economic environment in which each subsidiary operates. Moreover, the reporting currency for the consolidated financial statements of CEMEX, S.A.B. de C.V. and its subsidiaries and the parent company only financial statements of CEMEX, S.A.B. de C.V. continues to be the Mexican Peso.

The main effects in CEMEX, S.A.B. de C.V.'s parent company only financial statements beginning on January 1, 2013, associated with the change in functional currency, as compared to prior years are: a) all transactions, revenues and expenses in any currency are recognized in U.S. Dollars at the exchange rates prevailing at their execution dates; b) monetary balances of CEMEX, S.A.B. de C.V. denominated in U.S. Dollars will not generate foreign currency fluctuations, while monetary balances in Mexican Pesos and other non-U.S. Dollar-denominated balances will now generate foreign currency fluctuations through CEMEX, S.A.B. de C.V.'s statement of operations; and c) the conversion option embedded in CEMEX, S.A.B. de C.V.'s Mandatory Convertible Notes denominated in Mexican Pesos will now be treated as a stand-alone derivative instrument through CEMEX, S.A.B. de C.V.'s statement of operations, while the options embedded in CEMEX, S.A.B. de C.V.'s U.S. Dollar-Denominated 2010 Optional Convertible Subordinated Notes and 2011 Optional Convertible Subordinated Notes will cease to be treated as stand-alone derivatives through CEMEX, S.A.B. de C.V.'s statement of operations. Prior period financial statements are not required to be restated.

On March 21, 2013, stockholders at the annual ordinary shareholders' meeting approved resolutions to: (i) increase the variable common stock through the capitalization of retained earnings by issuing up to 1,312.3 million shares (437.4 million CPOs), which shares were issued, representing an increase in common stock of approximately Ps3.6, considering a nominal value of Ps0.00833 per CPO; (ii) increase the variable common stock by issuing up to 369 million shares (123 million CPOs),which will be kept in CEMEX's treasury to be used to preserve the anti-dilutive rights of note holders pursuant CEMEX's convertible securities (note 16B).

On March 25, 2013, CEMEX, S.A.B. de C.V. issued U.S.$600 aggregate principal amount of its 5.875% Senior Secured Notes due 2019 (the "March 2013 Notes"). The net proceeds from the offering of approximately U.S.$595 were used for the repayment in full of the remaining indebtedness under the 2009 Financing Agreement of approximately U.S.$55 and the remainder for general corporate purposes, including the purchase of Eurobonds in the Eurobond Tender Offer.

On March 27, 2013, CEMEX paid Ps 2,035 in connection with the account payable with the amendments to the tax consolidation regime in Mexico described in note 19D.

On March 28, 2013, CEMEX purchased €183 aggregate principal amount of Eurobonds through a cash tender offer using a portion of the proceeds from the issuance of the March 2013 Notes, which Eurobonds were immediately cancelled.

**Subsequent events - continued**

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Notes to the Consolidated Financial Statements**
**As of December 31, 2012, 2011 and 2010**
**(Millions of Mexican pesos)**

During the court hearing regarding the appeal filed by CEMEX Polska held on February 27, 2013, (note 24A) in reference to the antitrust proceeding against Cemex Polska, the judge presiding over the case confirmed the court's decision to combine the separate appeals of six Polish cement producers in one joint case, as per the motion presented by CEMEX Polska, and reviewed the witness list proposed by CEMEX Polska. The next joint court hearing for all appeals is scheduled for September 18, 2013.

In connection with the Egypt Share Purchase Agreement proceeding, in which CEMEX acquired a controlling interest in ACC (note 24B), on April 16, 2013, the court decided to schedule a new hearing on June 16, 2013.

In connection to the Antitrust Investigations in Europe by the European Commission proceedings, (note 24 B) a hearing with respect to the proceedings against CEMEX, S.A.B. de C.V. and several of its affiliates in Europe was held on February 6, 2013, with the hearings for all other companies being investigated expected to be held during April 2013. CEMEX, S.A.B. de C.V estimates a judgment could be issued during September 2013.

## 27) MAIN OPERATING SUBSIDIARIES

The main operating subsidiaries as of December 31, 2012 and 2011 were as follows:

| Subsidiary | Country | % interest 2012 | % interest 2011 |
|---|---|---|---|
| CEMEX México, S. A. de C.V. **1** | Mexico | 100.0 | 100.0 |
| CEMEX España, S.A. **2** | Spain | 99.9 | 99.9 |
| CEMEX, Inc. | United States | 100.0 | 100.0 |
| CEMEX Latam Holdings, S.A. **3** | Spain | 74.4 | — |
| CEMEX (Costa Rica), S.A. | Costa Rica | 99.1 | 99.1 |
| CEMEX Nicaragua, S.A. | Nicaragua | 100.0 | 100.0 |
| Assiut Cement Company | Egypt | 95.8 | 95.8 |
| CEMEX Colombia S.A. | Colombia | 99.7 | 99.7 |
| Cemento Bayano, S.A. | Panama | 99.5 | 99.5 |
| CEMEX Dominicana, S.A. | Dominican Republic | 100.0 | 100.0 |
| CEMEX de Puerto Rico Inc. | Puerto Rico | 100.0 | 100.0 |
| CEMEX France Gestion (S.A.S.) | France | 100.0 | 100.0 |
| Solid Cement Corporation **4** | Philippines | 100.0 | 100.0 |
| APO Cement Corporation **4** | Philippines | 100.0 | 100.0 |
| CEMEX (Thailand) Co., Ltd. **4** | Thailand | 100.0 | 100.0 |
| CEMEX Holdings (Malaysia) Sdn Bhd **4** | Malaysia | 100.0 | 100.0 |
| CEMEX U.K. | United Kingdom | 100.0 | 100.0 |
| CEMEX Deutschland, AG. | Germany | 100.0 | 100.0 |
| CEMEX Austria, AG. | Austria | 100.0 | 100.0 |
| CEMEX Hrvatska d.d. | Croatia | 100.0 | 100.0 |
| CEMEX Czech Operations, s.r.o. | Czech Republic | 100.0 | 100.0 |
| CEMEX Polska sp. Z.o.o. | Poland | 100.0 | 100.0 |
| CEMEX Hungária Kft. | Hungary | 100.0 | 100.0 |
| Readymix PLC. **5** | Ireland | 100.0 | 61.2 |
| CEMEX Holdings (Israel) Ltd. | Israel | 100.0 | 100.0 |
| CEMEX SIA | Latvia | 100.0 | 100.0 |

**Main operating subsidiaries - continued**

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Notes to the Consolidated Financial Statements**
**As of December 31, 2012, 2011 and 2010**
**(Millions of Mexican pesos)**

| Subsidiary | Country | % interest 2012 | % interest 2011 |
|---|---|---|---|
| CEMEX Topmix LLC, CEMEX Supermix LLC and CEMEX Falcon LLC **6** | United Arab Emirates | 100.0 | 100.0 |
| CEMEX AS | Norway | 100.0 | 100.0 |
| Cimentos Vencemos do Amazonas, Ltda. . | Brazil | 100.0 | 100.0 |
| Global Cement, S.A. | Guatemala | 100.0 | 51.0 |
| CEMEX El Salvador, S.A. | El Salvador | 100.0 | 100.0 |
| Readymix Argentina, S.A. | Argentina | 100.0 | 100.0 |
| CEMEX Jamaica | Jamaica | 100.0 | 100.0 |
| Neoris N.V. | The Netherlands | 99.6 | 99.6 |

**1.** CEMEX México, S.A. de C.V. is the indirect holding company of CEMEX España, S.A. and subsidiaries.
**2.** CEMEX España, S.A. is the indirect holding company of all CEMEX's international operations.
**3.** CEMEX Latam Holdings, S.A., which is listed in the Colombian stock exchange, is subsidiary of CEMEX España and the indirect holding company of CEMEX's operations in Colombia, Costa Rica, Panama, Brazil, Guatemala and El Salvador (note 20D).
**4.** Represents CEMEX's indirect interest in the economic benefits of these entities.
**5.** Readymix plc was listed in the Irish stock exchange until May 17, 2012 (note 15A).
**6.** CEMEX owns 49% of the common stock of these entities and obtains 100% of the economic benefits, through arrangements with other stockholders.

**Exhibit 4.7.1**

**SUPPLEMENTAL INDENTURE NO. 1**

SUPPLEMENTAL INDENTURE No. 1, dated as of September 17, 2012, among CEMEX Finance LLC, a limited liability company organized and existing pursuant to the laws of the State of Delaware (the "Issuer"), the existing guarantors under the Indenture (as defined below) listed on Schedule I hereto (collectively, the "Existing Guarantors"), the additional guarantors listed on Schedule II hereto (collectively, the "New Guarantors" and, together with the Existing Guarantors, the "Note Guarantors") and The Bank of New York Mellon, as trustee (the "Trustee").

**W I T N E S S E T H:**

**WHEREAS**, the Issuer, the Existing Guarantors and the Trustee previously have entered into an indenture, dated as of December 14, 2009 (the "Indenture"), providing for the issuance of the Issuer's 9.625% Senior Secured Notes due 2017 (the " Notes");

**WHEREAS**, Section 9.1(a)(1) of the Indenture provides that the Issuer, the Existing Guarantors and the Trustee may enter into a supplemental indenture without notice to or consent of any Holder to cure any ambiguity, omission, defect or inconsistency in the Indenture;

**WHEREAS**, the Issuer desires to amend and supplement the Indenture as provided in Article II hereof to cure certain ambiguities, omissions, defects and inconsistencies in the Indenture;

**WHEREAS**, Section 9.1(a)(4) of the Indenture provides that the Issuer, the Existing Guarantors and the Trustee may enter into a supplemental indenture without notice to or consent of any Holder to add guarantees with respect to the Notes;

**WHEREAS**, the Issuer desires to amend and supplement the Indenture as provided in Article III hereof to provide for the guarantee by the New Guarantors of the Issuer's Obligations under the Notes and the Indenture on the terms and conditions set forth herein;

**WHEREAS**, the Issuer and the Note Guarantors are authorized to execute and deliver this Supplemental Indenture No. 1;

**WHEREAS**, the Issuer has requested that the Trustee join in the execution of this Supplemental Indenture No. 1 pursuant to Section 9.6 of the Indenture; and

**WHEREAS**, all things necessary to make this Supplemental Indenture No. 1 a valid agreement of the parties and a valid supplement to the Indenture have been done.

**NOW, THEREFORE**, for and in consideration of the premises and the mutual covenants contained herein and in the Indenture and for other good and valuable consideration, the receipt and sufficiency of which are herein acknowledged, the Issuer, the Note Guarantors and the Trustee hereby agree, for the benefit of all Holders, as follows:

## ARTICLE I

DEFINITIONS

Section 1.01 Defined Terms. All capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Indenture, as supplemented and amended hereby. All definitions in the Indenture shall be read in a manner consistent with the terms of this Supplemental Indenture No. 1.

## ARTICLE II

AMENDMENTS

Section 2.01 Definitions. Section 1.1 of the Indenture is amended as follows:

(a) The definition of "Note Guarantors" is amended in its entirety to read as follows:

> "Note Guarantors" means (i) each of the Company's Restricted Subsidiaries that executes this Indenture as a Note Guarantor or an Additional Note Guarantor and (ii) each of the Company's Restricted Subsidiaries that in the future executes a supplemental indenture in which such Restricted Subsidiary agrees to be bound by the terms of this Indenture as a Note Guarantor, and their respective successors and assigns; provided that any Person constituting a Note Guarantor as described above shall cease to constitute a Note Guarantor when its respective Note Guarantee is released in accordance with the terms of this Indenture."

(b) Clause (3) of the definition of "Capital Stock" is amended in its entirety to read as follows:

> "(3) any warrants, rights or options to purchase any of the instruments or interests referred to in clause (1) or (2) above, but excluding any Indebtedness exchangeable into such equity interest in existence on the Issue Date or Incurred pursuant to Section 3.9."

## ARTICLE III

NOTE GUARANTEES

Section 3.01 Agreement to Guarantee. Subject to the limitations set out in Section 3.02 and 3.03, each New Guarantor hereby agrees, jointly and severally with the other Note Guarantors, irrevocably, fully and unconditionally, to guarantee the Obligations under the Indenture and the Notes on the terms and subject to the conditions set forth in Article X of the Indenture and to be bound by (and shall be entitled to the benefits of) all other applicable provisions of the Indenture as a Note Guarantor.

Section 3.02 French Guarantee Limitation.

(a) The obligations of any New Guarantor incorporated in France (a "French Note Guarantor") are subject to the limitations set out in this Section 3.02.

(b) The obligations and liabilities of any French Note Guarantor under the Indenture and the Notes, and in particular under this Article III and Article X of the Indenture, shall not include any obligation or liability which, if incurred, would constitute the provision of financial assistance within the meaning of article L.225-216 of the French Commercial Code and/or would constitute a misuse of corporate assets within the meaning of article(s) L. 241-3 or L. 242-6 of the French Commercial Code or any other law or regulations having the same effect, as interpreted by French courts.

(c) The obligations and liabilities of any French Note Guarantor under this Article III and Article X of the Indenture for the Issuer's obligations under the Indenture and the Notes shall be limited, at any time, to an amount equal to the aggregate of all amounts made available under the Notes and the Indenture to the Issuer to the extent directly or indirectly on-lent to such French Note Guarantor and/or its direct and indirect Subsidiaries under intercompany loan agreements (excluding, for the avoidance of doubt, any cash-pooling arrangements or other cash management agreements, provided that the proceeds of the Notes shall not be used, in whole or in part, to finance, directly or indirectly, such cash pooling arrangements or other cash management agreements) and outstanding at the date a payment is to be made by such French Note Guarantor under this Article III and Article X of the Indenture, it being specified that any payment made by a French Note Guarantor under this Article III and Article X of the Indenture in respect of the obligations of the Issuer shall reduce *pro tanto* the outstanding amount of the intercompany loans due by such French Note Guarantor or its relevant direct or indirect Subsidiary under the intercompany loan agreements referred to above and that any repayment of the intercompany loans by the French Note Guarantor or its relevant direct or indirect Subsidiary shall reduce *pro tanto* the amount payable by the French Note Guarantor under this Article III and Article X of the Indenture.

(d) It is acknowledged that no French Note Guarantor is acting jointly and severally with the other Note Guarantors and no French Guarantor shall therefore be considered as "*co-débiteur solidaire*" as to its obligations pursuant to the guarantee given pursuant to this Article III and Article X of the Indenture.

Section 3.03 Swiss Guarantee Limitation.

(a) The obligations of any New Guarantor incorporated in Switzerland (a " Swiss Note Guarantor") are subject to the limitations set out in this Section 3.03.

(b) The obligations and liabilities of a Swiss Note Guarantor under the Indenture, the Notes or any other agreement, and in particular under this Article III and Article X of the Indenture, in relation to the obligations, undertakings, indemnities or liabilities of a Note Guarantor other than that Swiss Note Guarantor or any of its fully owned and controlled subsidiaries (the " Restricted Obligations") shall not include any obligation or liability which, if incurred, would constitute the provision of financial assistance not permitted under the laws of Switzerland then in force and/or would constitute a misuse of corporate assets under Swiss law as interpreted by Swiss courts and shall be limited to the amount of that Swiss Note Guarantor's Free Reserves Available for Distribution at the time payment is requested, provided that such limitation is a requirement under applicable law (including any case law) at that point in time and that such limitation shall not free the Swiss Note Guarantor from its obligations in excess thereof, but merely postpone the performance date until such time as performance is permitted notwithstanding such limitation.

(c) For the purpose of this clause, "Free Reserves Available for Distribution" means an amount equal to the maximal amount in which the relevant Swiss Note Guarantor can make a dividend payment to its shareholder(s) (being the balance sheet profit and any freely disposable reserves available for this purpose, in each case in accordance with applicable Swiss law).

(d) As soon as possible after having been requested to discharge a Restricted Obligation, the Swiss Note Guarantor shall, if it cannot discharge the full amount of the Restricted Obligations, provide the Trustee with an interim statutory balance sheet audited by the statutory auditors of the Swiss Note Guarantor setting out the Free Reserves Available for Distribution and, immediately thereafter, pay the amount corresponding to the Free Reserves Available for Distribution to the Trustee (save to the extent provided below).

(e) In respect of the Restricted Obligations, the Swiss Note Guarantor shall:

(i) if and to the extent required by applicable law in force at the relevant time:

(A) subject to any applicable double taxation treaties, deduct Swiss withholding tax at the rate of 35 percent (or such other rate as is in force at that time) from any payment made by it;

(B) pay any such deduction to the Swiss Federal Tax Administration; and

(C) notify and provide evidence to the Trustee that the Swiss withholding tax has been paid to the Swiss Federal Tax Administration;

(ii) to the extent such deduction is made, not be required to make a gross-up, indemnify or otherwise hold harmless the Trustee or the Holders for the deduction of the Swiss withholding tax notwithstanding anything to the contrary contained in the Indenture, the Notes or any other agreement, unless grossing up is permitted under the laws of Switzerland then in force and provided that this should not in any way limit any obligations of any non-Swiss Note Guarantors under the Indenture, the Notes or any other agreement to indemnify the Trustee or the Holders in respect of the deduction of the Swiss withholding tax. The Swiss Note Guarantor shall use all reasonable efforts to procure that any person which is entitled to a full or partial refund of any Swiss withholding tax paid pursuant to paragraph (a) above will, as soon as possible after the deduction of the Swiss withholding tax: (y) request a refund of the Swiss withholding tax under any applicable law (including double taxation treaties) and (z) pay to the Trustee upon receipt any amount so refunded.

(f) The Swiss Note Guarantor will take, and cause to be taken, all and any other action, including, without limitation, the passing of any shareholders' resolutions to approve any payment or other performance under the Indenture and the Notes and the receipt of any confirmations from the Swiss Note Guarantor's auditors, whether following a request to discharge a Restricted Obligation or which may be required as a matter of mandatory Swiss law in force at the time it is required to make a payment or perform other obligations under the Indenture, the Notes or any other agreement in order to allow a prompt payment or performance of other obligations under the Indenture or the Notes.

(g) If the enforcement of the Restricted Obligations would be limited due to the effects referred to in this Section 3.03 and if any asset of the Swiss Note Guarantor has a book value that is less than its market value (an " Undervalued Asset"), the Swiss Note Guarantor shall, to the extent permitted by applicable law and its accounting standards (i) write up the book value of such Undervalued Asset such that its balance sheet reflects a book value that is equal to the market value of such Undervalued Asset, and (ii) make reasonable efforts to realize the Undervalued Asset for a sum which is at least equal to the market value of such asset. Without prejudice to the rights of the Trustee and the Holders under the Indenture, the Notes or any other agreement, the Swiss Note Guarantor will only be required to realize an Undervalued Asset if such asset is not necessary for the Swiss Note Guarantor's business ( *nicht betriebsnotwendig*).

## ARTICLE IV

MISCELLANEOUS

Section 4.01. Effect of This Supplemental Indenture No. 1. This Supplemental Indenture No. 1 supplements the Indenture and shall be a part, and subject to all the terms, thereof. The Indenture, as supplemented and amended by this Supplemental Indenture No. 1, is in all respects ratified and confirmed, and the Indenture and this Supplemental Indenture No. 1 shall be read, taken and construed as one and the same instrument. All provisions included in this Supplemental Indenture No. 1 supersede any conflicting provisions included in the Indenture, unless not permitted by law.

Section 4.02 Governing Law. This Supplemental Indenture No. 1 shall be governed by, and construed in accordance with, the laws of the State of New York.

Section 4.03 Effect of Headings. The section headings herein are for convenience only and shall not affect the construction of this Supplemental Indenture No. 1.

Section 4.04 Counterparts. The parties may sign any number of copies of this Supplemental Indenture No. 1. Each signed copy shall be an original, but all of them shall represent the same agreement.

Section 4.05 The Trustee. The Trustee shall not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Supplemental Indenture No. 1 or for or in respect of the recitals contained herein, all of which are made solely by the Issuer and the Note Guarantors. In entering into this Supplemental Indenture No. 1, the Trustee shall be entitled to the benefit of every provision of the Indenture relating to the conduct or affecting the liability or affording protection to the Trustee whether or not elsewhere herein so provided. The Issuer and the Note Guarantors expressly reaffirm and confirm their obligations to indemnify the Trustee in connection with the Indenture and all the actions contemplated hereby, all in accordance with the terms of the Indenture.

[SIGNATURE PAGE TO FOLLOW IMMEDIATELY]

IN WITNESS WHEREOF, the parties have caused this Supplemental Indenture No. 1 to be duly executed as of the date first written above.

CEMEX Finance LLC, as Issuer

By: /s/ Héctor José Vela Dib
Name: Héctor José Vela Dib
Title: Attorney-In-Fact

CEMEX, S.A.B. de C.V., as Note Guarantor

By: /s/ José Antonio González Flores
Name: José Antonio González Flores
Title: Attorney-In-Fact

CEMEX México, S.A. de C.V., as Note Guarantor

By: /s/ José Antonio González Flores
Name: José Antonio González Flores
Title: Attorney-In-Fact

CEMEX España, S.A., as Note Guarantor

By: /s/ Héctor José Vela Dib
Name: Héctor José Vela Dib
Title: Attorney-In-Fact

CEMEX Corp., as Note Guarantor

By: /s/ Héctor José Vela Dib
Name: Héctor José Vela Dib
Title: Attorney-In-Fact

New Sunward Holding B.V., as Additional Note Guarantor

By: /s/ Héctor José Vela Dib
Name: Héctor José Vela Dib
Title: Attorney-In-Fact

CEMEX Concretos, S.A. de C.V., as Additional Note Guarantor

By: /s/ José Antonio González Flores
Name: José Antonio González Flores
Title: Attorney-In-Fact

Empresas Tolteca de México, S.A. de C.V., as Additional Note Guarantor

By: /s/ José Antonio González Flores
Name: José Antonio González Flores
Title: Attorney-In-Fact

CEMEX Research Group AG, as Note Guarantor

By: /s/ Francisco Javier García Ruiz de Morales
Name: Francisco Javier García Ruiz de Morales
Title: Attorney-In-Fact

CEMEX Shipping B.V., as Note Guarantor

By: /s/ Francisco Javier García Ruiz de Morales
Name: Francisco Javier García Ruiz de Morales
Title: Attorney-In-Fact

CEMEX Asia B.V., as Note Guarantor

By: /s/ Francisco Javier García Ruiz de Morales
Name: Francisco Javier García Ruiz de Morales
Title: Attorney-In-Fact

CEMEX France Gestion (S.A.S.), as Note Guarantor

By: /s/ Francisco Javier García Ruiz de Morales
Name: Francisco Javier García Ruiz de Morales
Title: Attorney-In-Fact

CEMEX UK, as Note Guarantor

By: /s/ Francisco Javier García Ruiz de Morales
Name: Francisco Javier García Ruiz de Morales
Title: Attorney-In-Fact

CEMEX Egyptian Investments B.V., as Note Guarantor

By: /s/ Francisco Javier García Ruiz de Morales
Name: Francisco Javier García Ruiz de Morales
Title: Attorney-In-Fact

[Signature page to Supplemental Indenture No. 1 (9.625% Senior Secured Notes due 2017)]

THE BANK OF NEW YORK MELLON, as Trustee

By: /s/ Catherine F. Donohue
Name: Catherine F. Donohue
Title: Vice President

[Signature page to Supplemental Indenture No. 1 (9.625% Senior Secured Notes due 2017)]

**SCHEDULE I**

EXISTING GUARANTORS

1. CEMEX, S.A.B. de C.V.
2. CEMEX México, S.A. de C.V.
3. CEMEX España, S.A.
4. New Sunward Holding B.V.
5. CEMEX Corp.
6. CEMEX Concretos, S.A. de C.V.
7. Empresas Tolteca de México, S.A. de C.V.

**SCHEDULE II**

NEW GUARANTORS

1. CEMEX Research Group AG
2. CEMEX Shipping B.V.
3. CEMEX Asia B.V.
4. CEMEX France Gestion (S.A.S.)
5. CEMEX UK
6. CEMEX Egyptian Investments B.V.

**Exhibit 4.8.2**

**SUPPLEMENTAL INDENTURE NO. 2**

SUPPLEMENTAL INDENTURE No. 2, dated as of September 17, 2012, among CEMEX Finance LLC, a limited liability company organized and existing pursuant to the laws of the State of Delaware (the "Issuer"), the existing guarantors under the Indenture (as defined below) listed on Schedule I hereto (collectively, the "Existing Guarantors"), the additional guarantors listed on Schedule II hereto (collectively, the "New Guarantors" and, together with the Existing Guarantors, the "Note Guarantors") and The Bank of New York Mellon, as trustee (the "Trustee").

**W I T N E S S E T H:**

**WHEREAS**, the Issuer, the Existing Guarantors and the Trustee previously have entered into an indenture, dated as of December 14, 2009, as supplemented by Supplemental Indenture No. 1 thereto, dated as of January 19, 2010, (as supplemented, the " Indenture"), providing for the issuance of the Issuer's 9.50% Senior Secured Notes due 2016 (the "Notes");

**WHEREAS**, Section 9.1(a)(1) of the Indenture provides that the Issuer, the Existing Guarantors and the Trustee may enter into a supplemental indenture without notice to or consent of any Holder to cure any ambiguity, omission, defect or inconsistency in the Indenture;

**WHEREAS**, the Issuer desires to amend and supplement the Indenture as provided in Article II hereof to cure certain ambiguities, omissions, defects and inconsistencies in the Indenture;

**WHEREAS**, Section 9.1(a)(4) of the Indenture provides that the Issuer, the Existing Guarantors and the Trustee may enter into a supplemental indenture without notice to or consent of any Holder to add guarantees with respect to the Notes;

**WHEREAS**, the Issuer desires to amend and supplement the Indenture as provided in Article III hereof to provide for the guarantee by the New Guarantors of the Issuer's Obligations under the Notes and the Indenture on the terms and conditions set forth herein;

**WHEREAS**, the Issuer and the Note Guarantors are authorized to execute and deliver this Supplemental Indenture No. 2;

**WHEREAS**, the Issuer has requested that the Trustee join in the execution of this Supplemental Indenture No. 2 pursuant to Section 9.6 of the Indenture; and

**WHEREAS**, all things necessary to make this Supplemental Indenture No. 2 a valid agreement of the parties and a valid supplement to the Indenture have been done.

**NOW, THEREFORE**, for and in consideration of the premises and the mutual covenants contained herein and in the Indenture and for other good and valuable consideration, the receipt and sufficiency of which are herein acknowledged, the Issuer, the Note Guarantors and the Trustee hereby agree, for the benefit of all Holders, as follows:

## ARTICLE I

DEFINITIONS

Section 1.01 Defined Terms. All capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Indenture, as supplemented and amended hereby. All definitions in the Indenture shall be read in a manner consistent with the terms of this Supplemental Indenture No. 2.

## ARTICLE II

AMENDMENTS

Section 2.01 Definitions. Section 1.1 of the Indenture is amended as follows:

(a) The definition of "Note Guarantors" is amended in its entirety to read as follows:

> "Note Guarantors" means (i) each of the Company's Restricted Subsidiaries that executes this Indenture as a Note Guarantor or an Additional Note Guarantor and (ii) each of the Company's Restricted Subsidiaries that in the future executes a supplemental indenture in which such Restricted Subsidiary agrees to be bound by the terms of this Indenture as a Note Guarantor, and their respective successors and assigns; provided that any Person constituting a Note Guarantor as described above shall cease to constitute a Note Guarantor when its respective Note Guarantee is released in accordance with the terms of this Indenture."

(b) Clause (3) of the definition of "Capital Stock" is amended in its entirety to read as follows:

> "(3) any warrants, rights or options to purchase any of the instruments or interests referred to in clause (1) or (2) above, but excluding any Indebtedness exchangeable into such equity interest in existence on the Issue Date or Incurred pursuant to Section 3.9."

## ARTICLE III

NOTE GUARANTEES

Section 3.01 Agreement to Guarantee. Subject to the limitations set out in Section 3.02 and 3.03, each New Guarantor hereby agrees, jointly and severally with the other Note Guarantors, irrevocably, fully and unconditionally, to guarantee the Obligations under the Indenture and the Notes on the terms and subject to the conditions set forth in Article X of the Indenture and to be bound by (and shall be entitled to the benefits of) all other applicable provisions of the Indenture as a Note Guarantor.

Section 3.02 French Guarantee Limitation.

(a) The obligations of any New Guarantor incorporated in France (a "French Note Guarantor") are subject to the limitations set out in this Section 3.02.

(b) The obligations and liabilities of any French Note Guarantor under the Indenture and the Notes, and in particular under this Article III and Article X of the Indenture, shall not include any obligation or liability which, if incurred, would constitute the provision of financial assistance within the meaning of article L.225-216 of the French Commercial Code and/or would constitute a misuse of corporate assets within the meaning of article(s) L. 241-3 or L. 242-6 of the French Commercial Code or any other law or regulations having the same effect, as interpreted by French courts.

(c) The obligations and liabilities of any French Note Guarantor under this Article III and Article X of the Indenture for the Issuer's obligations under the Indenture and the Notes shall be limited, at any time, to an amount equal to the aggregate of all amounts made available under the Notes and the Indenture to the Issuer to the extent directly or indirectly on-lent to such French Note Guarantor and/or its direct and indirect Subsidiaries under intercompany loan agreements (excluding, for the avoidance of doubt, any cash-pooling arrangements or other cash management agreements, provided that the proceeds of the Notes shall not be used, in whole or in part, to finance, directly or indirectly, such cash pooling arrangements or other cash management agreements) and outstanding at the date a payment is to be made by such French Note Guarantor under this Article III and Article X of the Indenture, it being specified that any payment made by a French Note Guarantor under this Article III and Article X of the Indenture in respect of the obligations of the Issuer shall reduce *pro tanto* the outstanding amount of the intercompany loans due by such French Note Guarantor or its relevant direct or indirect Subsidiary under the intercompany loan agreements referred to above and that any repayment of the intercompany loans by the French Note Guarantor or its relevant direct or indirect Subsidiary shall reduce *pro tanto* the amount payable by the French Note Guarantor under this Article III and Article X of the Indenture.

(d) It is acknowledged that no French Note Guarantor is acting jointly and severally with the other Note Guarantors and no French Guarantor shall therefore be considered as "*co-débiteur solidaire*" as to its obligations pursuant to the guarantee given pursuant to this Article III and Article X of the Indenture.

Section 3.03 Swiss Guarantee Limitation.

(a) The obligations of any New Guarantor incorporated in Switzerland (a " Swiss Note Guarantor") are subject to the limitations set out in this Section 3.03.

(b) The obligations and liabilities of a Swiss Note Guarantor under the Indenture, the Notes or any other agreement, and in particular under this Article III and Article X of the Indenture, in relation to the obligations, undertakings, indemnities or liabilities of a Note Guarantor other than that Swiss Note Guarantor or any of its fully owned and controlled subsidiaries (the " Restricted Obligations") shall not include any obligation or liability which, if incurred, would constitute the provision of financial assistance not permitted under the laws of Switzerland then in force and/or would constitute a misuse of corporate assets under Swiss law as interpreted by Swiss courts and shall be limited to the amount of that Swiss Note Guarantor's Free Reserves Available for Distribution at the time payment is requested, provided that such limitation is a requirement under applicable law (including any case law) at that point in time and that such limitation shall not free the Swiss Note Guarantor from its obligations in excess thereof, but merely postpone the performance date until such time as performance is permitted notwithstanding such limitation.

(c) For the purpose of this clause, "Free Reserves Available for Distribution" means an amount equal to the maximal amount in which the relevant Swiss Note Guarantor can make a dividend payment to its shareholder(s) (being the balance sheet profit and any freely disposable reserves available for this purpose, in each case in accordance with applicable Swiss law).

(d) As soon as possible after having been requested to discharge a Restricted Obligation, the Swiss Note Guarantor shall, if it cannot discharge the full amount of the Restricted Obligations, provide the Trustee with an interim statutory balance sheet audited by the statutory auditors of the Swiss Note Guarantor setting out the Free Reserves Available for Distribution and, immediately thereafter, pay the amount corresponding to the Free Reserves Available for Distribution to the Trustee (save to the extent provided below).

(e) In respect of the Restricted Obligations, the Swiss Note Guarantor shall:

(i) if and to the extent required by applicable law in force at the relevant time:

(A) subject to any applicable double taxation treaties, deduct Swiss withholding tax at the rate of 35 percent (or such other rate as is in force at that time) from any payment made by it;

(B) pay any such deduction to the Swiss Federal Tax Administration; and

(C) notify and provide evidence to the Trustee that the Swiss withholding tax has been paid to the Swiss Federal Tax Administration;

(ii) to the extent such deduction is made, not be required to make a gross-up, indemnify or otherwise hold harmless the Trustee or the Holders for the deduction of the Swiss withholding tax notwithstanding anything to the contrary contained in the Indenture, the Notes or any other agreement, unless grossing up is permitted under the laws of Switzerland then in force and provided that this should not in any way limit any obligations of any non-Swiss Note Guarantors under the Indenture, the Notes or any other agreement to indemnify the Trustee or the Holders in respect of the deduction of the Swiss withholding tax. The Swiss Note Guarantor shall use all reasonable efforts to procure that any person which is entitled to a full or partial refund of any Swiss withholding tax paid pursuant to paragraph (a) above will, as soon as possible after the deduction of the Swiss withholding tax: (y) request a refund of the Swiss withholding tax under any applicable law (including double taxation treaties) and (z) pay to the Trustee upon receipt any amount so refunded.

(f) The Swiss Note Guarantor will take, and cause to be taken, all and any other action, including, without limitation, the passing of any shareholders' resolutions to approve any payment or other performance under the Indenture and the Notes and the receipt of any confirmations from the Swiss Note Guarantor's auditors, whether following a request to discharge a Restricted Obligation or which may be required as a matter of mandatory Swiss law in force at the time it is required to make a payment or perform other obligations under the Indenture, the Notes or any other agreement in order to allow a prompt payment or performance of other obligations under the Indenture or the Notes.

(g) If the enforcement of the Restricted Obligations would be limited due to the effects referred to in this Section 3.03 and if any asset of the Swiss Note Guarantor has a book value that is less than its market value (an " Undervalued Asset"), the Swiss Note Guarantor shall, to the extent permitted by applicable law and its accounting standards (i) write up the book value of such Undervalued Asset such that its balance sheet reflects a book value that is equal to the market value of such Undervalued Asset, and (ii) make reasonable efforts to realize the Undervalued Asset for a sum which is at least equal to the market value of such asset. Without prejudice to the rights of the Trustee and the Holders under the Indenture, the Notes or any other agreement, the Swiss Note Guarantor will only be required to realize an Undervalued Asset if such asset is not necessary for the Swiss Note Guarantor's business ( *nicht betriebsnotwendig*).

## ARTICLE IV

MISCELLANEOUS

Section 4.01. Effect of This Supplemental Indenture No. 2. This Supplemental Indenture No. 2 supplements the Indenture and shall be a part, and subject to all the terms, thereof. The Indenture, as supplemented and amended by this Supplemental Indenture No. 2, is in all respects ratified and confirmed, and the Indenture and this Supplemental Indenture No. 2 shall be read, taken and construed as one and the same instrument. All provisions included in this Supplemental Indenture No. 2 supersede any conflicting provisions included in the Indenture, unless not permitted by law.

Section 4.02 Governing Law. This Supplemental Indenture No. 2 shall be governed by, and construed in accordance with, the laws of the State of New York.

Section 4.03 Effect of Headings. The section headings herein are for convenience only and shall not affect the construction of this Supplemental Indenture No. 2.

Section 4.04 Counterparts. The parties may sign any number of copies of this Supplemental Indenture No. 2. Each signed copy shall be an original, but all of them shall represent the same agreement.

Section 4.05 The Trustee. The Trustee shall not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Supplemental Indenture No. 2 or for or in respect of the recitals contained herein, all of which are made solely by the Issuer and the Note Guarantors. In entering into this Supplemental Indenture No. 2, the Trustee shall be entitled to the benefit of every provision of the Indenture relating to the conduct or affecting the liability or affording protection to the Trustee whether or not elsewhere herein so provided. The Issuer and the Note Guarantors expressly reaffirm and confirm their obligations to indemnify the Trustee in connection with the Indenture and all the actions contemplated hereby, all in accordance with the terms of the Indenture.

[SIGNATURE PAGE TO FOLLOW IMMEDIATELY]

IN WITNESS WHEREOF, the parties have caused this Supplemental Indenture No. 2 to be duly executed as of the date first written above.

CEMEX Finance LLC, as Issuer

By: /s/ Héctor José Vela Dib
Name: Héctor José Vela Dib
Title: Attorney-In-Fact

CEMEX, S.A.B. de C.V., as Note Guarantor

By: /s/ José Antonio González Flores
Name: José Antonio González Flores
Title: Attorney-In-Fact

CEMEX México, S.A. de C.V., as Note Guarantor

By: /s/ José Antonio González Flores
Name: José Antonio González Flores
Title: Attorney-In-Fact

CEMEX España, S.A., as Note Guarantor

By: /s/ Héctor José Vela Dib
Name: Héctor José Vela Dib
Title: Attorney-In-Fact

CEMEX Corp., as Note Guarantor

By: /s/ Héctor José Vela Dib
Name: Héctor José Vela Dib
Title: Attorney-In-Fact

New Sunward Holding B.V., as Additional Note Guarantor

By: /s/ Héctor José Vela Dib
Name: Héctor José Vela Dib
Title: Attorney-In-Fact

CEMEX Concretos, S.A. de C.V., as Additional Note Guarantor

By: /s/ José Antonio González Flores
Name: José Antonio González Flores
Title: Attorney-In-Fact

Empresas Tolteca de México, S.A. de C.V., as Additional Note Guarantor

By: /s/ José Antonio González Flores
Name: José Antonio González Flores
Title: Attorney-In-Fact

CEMEX Research Group AG, as Note Guarantor

By: /s/ Francisco Javier García Ruiz de Morales
Name: Francisco Javier García Ruiz de Morales
Title: Attorney-In-Fact

CEMEX Shipping B.V., as Note Guarantor

By: /s/ Francisco Javier García Ruiz de Morales
Name: Francisco Javier García Ruiz de Morales
Title: Attorney-In-Fact

[Signature page to Supplemental Indenture No. 2 (9.50% Senior Secured Notes due 2016)]

CEMEX Asia B.V., as Note Guarantor

By: /s/ Francisco Javier García Ruiz de Morales
Name: Francisco Javier García Ruiz de Morales
Title: Attorney-In-Fact

CEMEX France Gestion (S.A.S.), as Note Guarantor

By: /s/ Francisco Javier García Ruiz de Morales
Name: Francisco Javier García Ruiz de Morales
Title: Attorney-In-Fact

CEMEX UK, as Note Guarantor

By: /s/ Francisco Javier García Ruiz de Morales
Name: Francisco Javier García Ruiz de Morales
Title: Attorney-In-Fact

CEMEX Egyptian Investments B.V., as Note Guarantor

By: /s/ Francisco Javier García Ruiz de Morales
Name: Francisco Javier García Ruiz de Morales
Title: Attorney-In-Fact

[Signature page to Supplemental Indenture No. 2 (9.50% Senior Secured Notes due 2016)]

THE BANK OF NEW YORK MELLON, as Trustee

By: /s/ Catherine F. Donohue
Name: Catherine F. Donohue
Title: Vice President

[Signature page to Supplemental Indenture No. 2 (9.50% Senior Secured Notes due 2016)]

**SCHEDULE I**

EXISTING GUARANTORS

1. CEMEX, S.A.B. de C.V.
2. CEMEX México, S.A. de C.V.
3. CEMEX España, S.A.
4. New Sunward Holding B.V.
5. CEMEX Corp.
6. CEMEX Concretos, S.A. de C.V.
7. Empresas Tolteca de México, S.A. de C.V.

**SCHEDULE II**

NEW GUARANTORS

1. CEMEX Research Group AG
2. CEMEX Shipping B.V.
3. CEMEX Asia B.V.
4. CEMEX France Gestion (S.A.S.)
5. CEMEX UK
6. CEMEX Egyptian Investments B.V.

**Exhibit 4.13.1**

**SUPPLEMENTAL INDENTURE NO. 1**

SUPPLEMENTAL INDENTURE No. 1, dated as of September 17, 2012, among CEMEX España, S.A., a corporation ( *sociedad anónima*) organized under the laws of Spain, acting through its Luxembourg branch, CEMEX España, S.A., Luxembourg Branch (the " Issuer"), the existing guarantors under the Indenture (as defined below) listed on Schedule I hereto (collectively, the "Existing Guarantors"), the additional guarantors listed on Schedule II hereto (collectively, the "New Guarantors" and, together with the Existing Guarantors, the " Note Guarantors") and The Bank of New York Mellon, as trustee (the "Trustee").

**W I T N E S S E T H:**

**WHEREAS**, the Issuer, the Existing Guarantors and the Trustee previously have entered into an indenture, dated as of May 12, 2010 (the "Indenture"), providing for the issuance of the Issuer's 9.25% U.S. Dollar-Denominated Senior Secured Notes due 2020 and 8.875% Euro-Denominated Senior Secured Notes due 2017 (together, the "Notes");

**WHEREAS**, Section 9.1(a)(i) of the Indenture provides that the Issuer, the Existing Guarantors and the Trustee may enter into a supplemental indenture without notice to or consent of any Holder to cure any ambiguity, omission, defect or inconsistency in the Indenture;

**WHEREAS**, the Issuer desires to amend and supplement the Indenture as provided in Article II hereof to cure certain ambiguities, omissions, defects and inconsistencies in the Indenture;

**WHEREAS**, Section 9.1(a)(iv) of the Indenture provides that the Issuer, the Existing Guarantors and the Trustee may enter into a supplemental indenture without notice to or consent of any Holder to add guarantees with respect to the Notes;

**WHEREAS**, the Issuer desires to amend and supplement the Indenture as provided in Article III hereof to provide for the guarantee by the New Guarantors of the Issuer's Obligations under the Notes and the Indenture on the terms and conditions set forth herein;

**WHEREAS**, the Issuer and the Note Guarantors are authorized to execute and deliver this Supplemental Indenture No. 1;

**WHEREAS**, the Issuer has requested that the Trustee join in the execution of this Supplemental Indenture No. 1 pursuant to Section 9.6 of the Indenture; and

**WHEREAS**, all things necessary to make this Supplemental Indenture No. 1 a valid agreement of the parties and a valid supplement to the Indenture have been done.

**NOW, THEREFORE**, for and in consideration of the premises and the mutual covenants contained herein and in the Indenture and for other good and valuable consideration, the receipt and sufficiency of which are herein acknowledged, the Issuer, the Note Guarantors and the Trustee hereby agree, for the benefit of all Holders, as follows:

## ARTICLE I

DEFINITIONS

Section 1.01 Defined Terms. All capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Indenture, as supplemented and amended hereby. All definitions in the Indenture shall be read in a manner consistent with the terms of this Supplemental Indenture No. 1.

## ARTICLE II

AMENDMENTS

Section 2.01 Definitions. Section 1.1 of the Indenture is amended as follows:

(a) The definition of "Note Guarantors" is amended in its entirety to read as follows:

> "Note Guarantors" means (i) each of the Company's Restricted Subsidiaries that executes this Indenture as a Note Guarantor or an Additional Note Guarantor and (ii) each of the Company's Restricted Subsidiaries that in the future executes a supplemental indenture in which such Restricted Subsidiary agrees to be bound by the terms of this Indenture as a Note Guarantor, and their respective successors and assigns; provided that any Person constituting a Note Guarantor as described above shall cease to constitute a Note Guarantor when its respective Note Guarantee is released in accordance with the terms of this Indenture."

(b) Clause (3) of the definition of "Capital Stock" is amended in its entirety to read as follows:

> "(3) any warrants, rights or options to purchase any of the instruments or interests referred to in clause (1) or (2) above, but excluding any Indebtedness exchangeable into such equity interest in existence on the Issue Date or Incurred pursuant to Section 3.9."

## ARTICLE III

NOTE GUARANTEES

Section 3.01 Agreement to Guarantee. Subject to the limitations set out in Section 3.02 and 3.03, each New Guarantor hereby agrees, jointly and severally with the other Note Guarantors, irrevocably, fully and unconditionally, to guarantee the Obligations under the Indenture and the Notes on the terms and subject to the conditions set forth in Article X of the Indenture and to be bound by (and shall be entitled to the benefits of) all other applicable provisions of the Indenture as a Note Guarantor.

Section 3.02 French Guarantee Limitation.

(a) The obligations of any New Guarantor incorporated in France (a "French Note Guarantor") are subject to the limitations set out in this Section 3.02.

(b) The obligations and liabilities of any French Note Guarantor under the Indenture and the Notes, and in particular under this Article III and Article X of the Indenture, shall not include any obligation or liability which, if incurred, would constitute the provision of financial assistance within the meaning of article L.225-216 of the French Commercial Code and/or would constitute a misuse of corporate assets within the meaning of article(s) L. 241-3 or L. 242-6 of the French Commercial Code or any other law or regulations having the same effect, as interpreted by French courts.

(c) The obligations and liabilities of any French Note Guarantor under this Article III and Article X of the Indenture for the Issuer's obligations under the Indenture and the Notes shall be limited, at any time, to an amount equal to the aggregate of all amounts made available under the Notes and the Indenture to the Issuer to the extent directly or indirectly on-lent to such French Note Guarantor and/or its direct and indirect Subsidiaries under intercompany loan agreements (excluding, for the avoidance of doubt, any cash-pooling arrangements or other cash management agreements, provided that the proceeds of the Notes shall not be used, in whole or in part, to finance, directly or indirectly, such cash pooling arrangements or other cash management agreements) and outstanding at the date a payment is to be made by such French Note Guarantor under this Article III and Article X of the Indenture, it being specified that any payment made by a French Note Guarantor under this Article III and Article X of the Indenture in respect of the obligations of the Issuer shall reduce *pro tanto* the outstanding amount of the intercompany loans due by such French Note Guarantor or its relevant direct or indirect Subsidiary under the intercompany loan agreements referred to above and that any repayment of the intercompany loans by the French Note Guarantor or its relevant direct or indirect Subsidiary shall reduce *pro tanto* the amount payable by the French Note Guarantor under this Article III and Article X of the Indenture.

(d) It is acknowledged that no French Note Guarantor is acting jointly and severally with the other Note Guarantors and no French Guarantor shall therefore be considered as "*co-débiteur solidaire*" as to its obligations pursuant to the guarantee given pursuant to this Article III and Article X of the Indenture.

Section 3.03 Swiss Guarantee Limitation.

(a) The obligations of any New Guarantor incorporated in Switzerland (a " Swiss Note Guarantor") are subject to the limitations set out in this Section 3.03.

(b) The obligations and liabilities of a Swiss Note Guarantor under the Indenture, the Notes or any other agreement, and in particular under this Article III and Article X of the Indenture, in relation to the obligations, undertakings, indemnities or liabilities of a Note Guarantor other than that Swiss Note Guarantor or any of its fully owned and controlled subsidiaries (the " Restricted Obligations") shall not include any obligation or liability which, if incurred, would constitute the provision of financial assistance not permitted under the laws of Switzerland then in force and/or would constitute a misuse of corporate assets under Swiss law as interpreted by Swiss courts and shall be limited to the amount of that Swiss Note Guarantor's Free Reserves Available for Distribution at the time payment is requested, provided that such limitation is a requirement under applicable law (including any case law) at that point in time and that such limitation shall not free the Swiss Note Guarantor from its obligations in excess thereof, but merely postpone the performance date until such time as performance is permitted notwithstanding such limitation.

(c) For the purpose of this clause, "Free Reserves Available for Distribution" means an amount equal to the maximal amount in which the relevant Swiss Note Guarantor can make a dividend payment to its shareholder(s) (being the balance sheet profit and any freely disposable reserves available for this purpose, in each case in accordance with applicable Swiss law).

(d) As soon as possible after having been requested to discharge a Restricted Obligation, the Swiss Note Guarantor shall, if it cannot discharge the full amount of the Restricted Obligations, provide the Trustee with an interim statutory balance sheet audited by the statutory auditors of the Swiss Note Guarantor setting out the Free Reserves Available for Distribution and, immediately thereafter, pay the amount corresponding to the Free Reserves Available for Distribution to the Trustee (save to the extent provided below).

(e) In respect of the Restricted Obligations, the Swiss Note Guarantor shall:

(i) if and to the extent required by applicable law in force at the relevant time:

(A) subject to any applicable double taxation treaties, deduct Swiss withholding tax at the rate of 35 percent (or such other rate as is in force at that time) from any payment made by it;

(B) pay any such deduction to the Swiss Federal Tax Administration; and

(C) notify and provide evidence to the Trustee that the Swiss withholding tax has been paid to the Swiss Federal Tax Administration;

(ii) to the extent such deduction is made, not be required to make a gross-up, indemnify or otherwise hold harmless the Trustee or the Holders for the deduction of the Swiss withholding tax notwithstanding anything to the contrary contained in the Indenture, the Notes or any other agreement, unless grossing up is permitted under the laws of Switzerland then in force and provided that this should not in any way limit any obligations of any non-Swiss Note Guarantors under the Indenture, the Notes or any other agreement to indemnify the Trustee or the Holders in respect of the deduction of the Swiss withholding tax. The Swiss Note Guarantor shall use all reasonable efforts to procure that any person which is entitled to a full or partial refund of any Swiss withholding tax paid pursuant to paragraph (a) above will, as soon as possible after the deduction of the Swiss withholding tax: (y) request a refund of the Swiss withholding tax under any applicable law (including double taxation treaties) and (z) pay to the Trustee upon receipt any amount so refunded.

(f) The Swiss Note Guarantor will take, and cause to be taken, all and any other action, including, without limitation, the passing of any shareholders' resolutions to approve any payment or other performance under the Indenture and the Notes and the receipt of any confirmations from the Swiss Note Guarantor's auditors, whether following a request to discharge a Restricted Obligation or which may be required as a matter of mandatory Swiss law in force at the time it is required to make a payment or perform other obligations under the Indenture, the Notes or any other agreement in order to allow a prompt payment or performance of other obligations under the Indenture or the Notes.

(g) If the enforcement of the Restricted Obligations would be limited due to the effects referred to in this Section 3.03 and if any asset of the Swiss Note Guarantor has a book value that is less than its market value (an " Undervalued Asset"), the Swiss Note Guarantor shall, to the extent permitted by applicable law and its accounting standards (i) write up the book value of such Undervalued Asset such that its balance sheet reflects a book value that is equal to the market value of such Undervalued Asset, and (ii) make reasonable efforts to realize the Undervalued Asset for a sum which is at least equal to the market value of such asset. Without prejudice to the rights of the Trustee and the Holders under the Indenture, the Notes or any other agreement, the Swiss Note Guarantor will only be required to realize an Undervalued Asset if such asset is not necessary for the Swiss Note Guarantor's business ( *nicht betriebsnotwendig*).

## ARTICLE IV

MISCELLANEOUS

Section 4.01. Effect of This Supplemental Indenture No. 1. This Supplemental Indenture No. 1 supplements the Indenture and shall be a part, and subject to all the terms, thereof. The Indenture, as supplemented and amended by this Supplemental Indenture No. 1, is in all respects ratified and confirmed, and the Indenture and this Supplemental Indenture No. 1 shall be read, taken and construed as one and the same instrument. All provisions included in this Supplemental Indenture No. 1 supersede any conflicting provisions included in the Indenture, unless not permitted by law.

Section 4.02 Governing Law. This Supplemental Indenture No. 1 shall be governed by, and construed in accordance with, the laws of the State of New York.

Section 4.03 Effect of Headings. The section headings herein are for convenience only and shall not affect the construction of this Supplemental Indenture No. 1.

Section 4.04 Counterparts. The parties may sign any number of copies of this Supplemental Indenture No. 1. Each signed copy shall be an original, but all of them shall represent the same agreement.

Section 4.05 The Trustee. The Trustee shall not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Supplemental Indenture No. 1 or for or in respect of the recitals contained herein, all of which are made solely by the Issuer and the Note Guarantors. In entering into this Supplemental Indenture No. 1, the Trustee shall be entitled to the benefit of every provision of the Indenture relating to the conduct or affecting the liability or affording protection to the Trustee whether or not elsewhere herein so provided. The Issuer and the Note Guarantors expressly reaffirm and confirm their obligations to indemnify the Trustee in connection with the Indenture and all the actions contemplated hereby, all in accordance with the terms of the Indenture.

[SIGNATURE PAGE TO FOLLOW IMMEDIATELY]

IN WITNESS WHEREOF, the parties have caused this Supplemental Indenture No. 1 to be duly executed as of the date first written above.

CEMEX España, S.A., acting through its Luxembourg branch, CEMEX España, S.A., Luxembourg Branch

By: /s/ José Antonio González Flores
Name: José Antonio González Flores
Title: Attorney-In-Fact

By: /s/ Héctor José Vela Dib
Name: Héctor José Vela Dib
Title: Attorney-In-Fact

CEMEX, S.A.B. de C.V., as Note Guarantor

By: /s/ José Antonio González Flores
Name: José Antonio González Flores
Title: Attorney-In-Fact

CEMEX México, S.A. de C.V., as Note Guarantor

By: /s/ José Antonio González Flores
Name: José Antonio González Flores
Title: Attorney-In-Fact

New Sunward Holding B.V., as Additional Note Guarantor

By: /s/ Héctor José Vela Dib
Name: Héctor José Vela Dib
Title: Attorney-In-Fact

CEMEX Research Group AG, as Note Guarantor

By: /s/ Francisco Javier García Ruiz de Morales
Name: Francisco Javier García Ruiz de Morales
Title: Attorney-In-Fact

CEMEX Shipping B.V., as Note Guarantor

By: /s/ Francisco Javier García Ruiz de Morales
Name: Francisco Javier García Ruiz de Morales
Title: Attorney-In-Fact

CEMEX Asia B.V., as Note Guarantor

By: /s/ Francisco Javier García Ruiz de Morales
Name: Francisco Javier García Ruiz de Morales
Title: Attorney-In-Fact

CEMEX France Gestion (S.A.S.), as Note Guarantor

By: /s/ Francisco Javier García Ruiz de Morales
Name: Francisco Javier García Ruiz de Morales
Title: Attorney-In-Fact

CEMEX UK, as Note Guarantor

By: /s/ Francisco Javier García Ruiz de Morales
Name: Francisco Javier García Ruiz de Morales
Title: Attorney-In-Fact

CEMEX Egyptian Investments B.V., as Note Guarantor

By: /s/ Francisco Javier García Ruiz de Morales
Name: Francisco Javier García Ruiz de Morales
Title: Attorney-In-Fact

THE BANK OF NEW YORK MELLON, as Trustee

By: /s/ Catherine F. Donohue

Name: Catherine F. Donohue

Title: Vice President

[Signature page to Supplemental Indenture No. 1 (9.25% U.S. Dollar-Denominated Senior Secured Notes due 2020 and 8.875% Euro-Denominated Senior Secured Notes due 2017)]

**SCHEDULE I**

EXISTING GUARANTORS

1. CEMEX, S.A.B. de C.V.
2. CEMEX México, S.A. de C.V.
3. New Sunward Holding B.V.

**SCHEDULE II**

NEW GUARANTORS

1. CEMEX Research Group AG
2. CEMEX Shipping B.V.
3. CEMEX Asia B.V.
4. CEMEX France Gestion (S.A.S.)
5. CEMEX UK
6. CEMEX Egyptian Investments B.V.

**Exhibit 4.13.2**

**SUPPLEMENTAL INDENTURE NO. 2**

SUPPLEMENTAL INDENTURE No. 2, dated as of March 25, 2013, among CEMEX España, S.A., a corporation ( *sociedad anónima*) organized under the laws of Spain, acting through its Luxembourg branch, CEMEX España, S.A., Luxembourg Branch (the " Issuer"), the existing guarantors under the Indenture (as defined below) listed on Schedule I hereto (collectively, the "Existing Guarantors"), the additional guarantors listed on Schedule II hereto (collectively, the "New Guarantors" and, together with the Existing Guarantors, the " Note Guarantors") and The Bank of New York Mellon, as trustee (the "Trustee").

**W I T N E S S E T H:**

**WHEREAS**, the Issuer, the Existing Guarantors and the Trustee previously have entered into an indenture, dated as of May 12, 2010, as supplemented by Supplemental Indenture No. 1 thereto, dated as of September 17, 2012, (as supplemented, the " Indenture"), providing for the issuance of the Issuer's 9.25% U.S. Dollar-Denominated Senior Secured Notes due 2020 and 8.875% Euro-Denominated Senior Secured Notes due 2017 (together, the "Notes");

**WHEREAS**, Section 9.1(a)(iv) of the Indenture provides that the Issuer, the Existing Guarantors and the Trustee may enter into a supplemental indenture without notice to or consent of any Holder to add guarantees with respect to the Notes;

**WHEREAS**, the Issuer desires to amend and supplement the Indenture as provided in Article II hereof to provide for the guarantee by the New Guarantors of the Issuer's Obligations under the Notes and the Indenture on the terms and conditions set forth herein;

**WHEREAS**, the Issuer and the Note Guarantors are authorized to execute and deliver this Supplemental Indenture No. 2;

**WHEREAS**, the Issuer has requested that the Trustee join in the execution of this Supplemental Indenture No. 2 pursuant to Section 9.6 of the Indenture; and

**WHEREAS**, all things necessary to make this Supplemental Indenture No. 2 a valid agreement of the parties and a valid supplement to the Indenture have been done.

**NOW, THEREFORE**, for and in consideration of the premises and the mutual covenants contained herein and in the Indenture and for other good and valuable consideration, the receipt and sufficiency of which are herein acknowledged, the Issuer, the Note Guarantors and the Trustee hereby agree, for the benefit of all Holders, as follows:

## ARTICLE I

DEFINITIONS

Section 1.01 Defined Terms. All capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Indenture, as supplemented and amended hereby. All definitions in the Indenture shall be read in a manner consistent with the terms of this Supplemental Indenture No. 2.

## ARTICLE II

NOTE GUARANTEES

Section 2.01 Agreement to Guarantee. Each New Guarantor hereby agrees, jointly and severally with the other Note Guarantors, irrevocably, fully and unconditionally, to guarantee the Obligations under the Indenture and the Notes on the terms and subject to the conditions set forth in Article X of the Indenture and to be bound by (and shall be entitled to the benefits of) all other applicable provisions of the Indenture as a Note Guarantor.

## ARTICLE III

MISCELLANEOUS

Section 3.01. Effect of This Supplemental Indenture No. 2. This Supplemental Indenture No. 2 supplements the Indenture and shall be a part, and subject to all the terms, thereof. The Indenture, as supplemented and amended by this Supplemental Indenture No. 2, is in all respects ratified and confirmed, and the Indenture and this Supplemental Indenture No. 2 shall be read, taken and construed as one and the same instrument. All provisions included in this Supplemental Indenture No. 2 supersede any conflicting provisions included in the Indenture, unless not permitted by law.

Section 3.02 Governing Law. This Supplemental Indenture No. 2 shall be governed by, and construed in accordance with, the laws of the State of New York.

Section 3.03 Effect of Headings. The section headings herein are for convenience only and shall not affect the construction of this Supplemental Indenture No. 2.

Section 3.04 Counterparts. The parties may sign any number of copies of this Supplemental Indenture No. 2. Each signed copy shall be an original, but all of them shall represent the same agreement.

Section 3.05 The Trustee. The Trustee shall not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Supplemental Indenture No. 2 or for or in respect of the recitals contained herein, all of which are made solely by the Issuer and the Note Guarantors. In entering into this Supplemental Indenture No. 2, the Trustee shall be entitled to the benefit of every provision of the Indenture relating to the conduct or affecting the

liability or affording protection to the Trustee whether or not elsewhere herein so provided. The Issuer and the Note Guarantors expressly reaffirm and confirm their obligations to indemnify the Trustee in connection with the Indenture and all the actions contemplated hereby, all in accordance with the terms of the Indenture.

[SIGNATURE PAGE TO FOLLOW IMMEDIATELY]

IN WITNESS WHEREOF, the parties have caused this Supplemental Indenture No. 2 to be duly executed as of the date first written above.

CEMEX España, S.A., acting through its Luxembourg branch, CEMEX España, S.A., Luxembourg Branch

By: /s/ Héctor José Vela Dib
Name: Héctor José Vela Dib
Title: Attorney-In-Fact

By: /s/ José Antonio González Flores
Name: José Antonio González Flores
Title: Attorney-In-Fact

CEMEX, S.A.B. de C.V., as Note Guarantor

By: /s/ Héctor José Vela Dib
Name: Héctor José Vela Dib
Title: Attorney-In-Fact

CEMEX México, S.A. de C.V., as Note Guarantor

By: /s/ Héctor José Vela Dib
Name: Héctor José Vela Dib
Title: Attorney-In-Fact

New Sunward Holding B.V., as Additional Note Guarantor

By: /s/ Héctor José Vela Dib
Name: Héctor José Vela Dib
Title: Attorney-In-Fact

CEMEX Research Group AG, as Note Guarantor

By: /s/ Héctor José Vela Dib
Name: Héctor José Vela Dib
Title: Attorney-In-Fact

CEMEX Shipping B.V., as Note Guarantor

By: /s/ Héctor José Vela Dib
Name: Héctor José Vela Dib
Title: Attorney-In-Fact

CEMEX Asia B.V., as Note Guarantor

By: /s/ Héctor José Vela Dib
Name: Héctor José Vela Dib
Title: Attorney-In-Fact

CEMEX France Gestion (S.A.S.), as Note Guarantor

By: /s/ Héctor José Vela Dib
Name: Héctor José Vela Dib
Title: Attorney-In-Fact

CEMEX UK, as Note Guarantor

By: /s/ Héctor José Vela Dib
Name: Héctor José Vela Dib
Title: Attorney-In-Fact

CEMEX Egyptian Investments B.V., as Note Guarantor

By: /s/ Héctor José Vela Dib
Name: Héctor José Vela Dib
Title: Attorney-In-Fact

CEMEX Corp., as Note Guarantor

By: /s/ Héctor José Vela Dib
Name: Héctor José Vela Dib
Title: Attorney-In-Fact

CEMEX Concretos, S.A. de C.V., as Note Guarantor

By: /s/ Héctor José Vela Dib
Name: Héctor José Vela Dib
Title: Attorney-In-Fact

Empresas Tolteca de México, S.A. de C.V., as Note Guarantor

By: /s/ Héctor José Vela Dib
Name: Héctor José Vela Dib
Title: Attorney-In-Fact

THE BANK OF NEW YORK MELLON, as Trustee

By: /s/ John T. Needham, Jr.
Name: John T. Needham, Jr.
Title: Vice President

[Signature page to Supplemental Indenture No. 2 (9.25% U.S. Dollar-Denominated Senior Secured Notes due 2020 and 8.875% Euro-Denominated Senior Secured Notes due 2017)]

**SCHEDULE I**

EXISTING GUARANTORS

1. CEMEX, S.A.B. de C.V.
2. CEMEX México, S.A. de C.V.
3. New Sunward Holding B.V.
4. CEMEX Research Group AG
5. CEMEX Shipping B.V.
6. CEMEX Asia B.V.
7. CEMEX France Gestion (S.A.S.)
8. CEMEX UK
9. CEMEX Egyptian Investments B.V.

**SCHEDULE II**

NEW GUARANTORS

1. CEMEX Corp.
2. CEMEX Concretos, S.A. de C.V.
3. Empresas Tolteca de México, S.A. de C.V.

**Exhibit 4.15.2**

**SUPPLEMENTAL INDENTURE NO. 2**

SUPPLEMENTAL INDENTURE No. 2, dated as of September 17, 2012, among CEMEX, S.A.B. de C.V., a *sociedad anónima bursátil de capital variable* organized under the laws of the United Mexican States (the "Issuer"), the existing guarantors under the Indenture (as defined below) listed on Schedule I hereto (collectively, the "Existing Guarantors"), the additional guarantors listed on Schedule II hereto (collectively, the "New Guarantors" and, together with the Existing Guarantors, the "Note Guarantors") and The Bank of New York Mellon, as trustee (the "Trustee").

**W I T N E S S E T H:**

**WHEREAS**, the Issuer, the Existing Guarantors and the Trustee previously have entered into an indenture, dated as of January 11, 2011, as supplemented by Supplemental Indenture No. 1 thereto, dated as of July 11, 2011, (as supplemented, the " Indenture"), providing for the issuance of the Issuer's 9.000% Senior Secured Notes due 2018 (the "Notes");

**WHEREAS**, Section 9.1(a)(i) of the Indenture provides that the Issuer, the Existing Guarantors and the Trustee may enter into a supplemental indenture without notice to or consent of any Holder to cure any ambiguity, omission, defect or inconsistency in the Indenture;

**WHEREAS**, the Issuer desires to amend and supplement the Indenture as provided in Article II hereof to cure certain ambiguities, omissions, defects and inconsistencies in the Indenture;

**WHEREAS**, Section 9.1(a)(iv) of the Indenture provides that the Issuer, the Existing Guarantors and the Trustee may enter into a supplemental indenture without notice to or consent of any Holder to add guarantees with respect to the Notes;

**WHEREAS**, the Issuer desires to amend and supplement the Indenture as provided in Article III hereof to provide for the guarantee by the New Guarantors of the Issuer's Obligations under the Notes and the Indenture on the terms and conditions set forth herein;

**WHEREAS**, the Issuer and the Note Guarantors are authorized to execute and deliver this Supplemental Indenture No. 2;

**WHEREAS**, the Issuer has requested that the Trustee join in the execution of this Supplemental Indenture No. 2 pursuant to Section 9.6 of the Indenture; and

**WHEREAS**, all things necessary to make this Supplemental Indenture No. 2 a valid agreement of the parties and a valid supplement to the Indenture have been done.

**NOW, THEREFORE**, for and in consideration of the premises and the mutual covenants contained herein and in the Indenture and for other good and valuable consideration, the receipt and sufficiency of which are herein acknowledged, the Issuer, the Note Guarantors and the Trustee hereby agree, for the benefit of all Holders, as follows:

## ARTICLE I

DEFINITIONS

Section 1.01 Defined Terms. All capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Indenture, as supplemented and amended hereby. All definitions in the Indenture shall be read in a manner consistent with the terms of this Supplemental Indenture No. 2.

## ARTICLE II

AMENDMENTS

Section 2.01 Definitions. Section 1.1 of the Indenture is amended as follows:

(a) The definition of "Note Guarantors" is amended in its entirety to read as follows:

> "Note Guarantors" means (i) each of the Issuer's Restricted Subsidiaries that executes this Indenture as a Note Guarantor or an Additional Note Guarantor and (ii) each of the Issuer's Restricted Subsidiaries that in the future executes a supplemental indenture in which such Restricted Subsidiary agrees to be bound by the terms of this Indenture as a Note Guarantor, and their respective successors and assigns; provided that any Person constituting a Note Guarantor as described above shall cease to constitute a Note Guarantor when its respective Note Guarantee is released in accordance with the terms of this Indenture."

(b) Clause (3) of the definition of "Capital Stock" is amended in its entirety to read as follows:

> "(3) any warrants, rights or options to purchase any of the instruments or interests referred to in clause (1) or (2) above, but excluding any Indebtedness exchangeable into such equity interest in existence on the Issue Date or Incurred pursuant to Section 3.9."

## ARTICLE III

NOTE GUARANTEES

Section 3.01 Agreement to Guarantee. Subject to the limitations set out in Section 3.02 and 3.03, each New Guarantor hereby agrees, jointly and severally with the other Note Guarantors, irrevocably, fully and unconditionally, to guarantee the Obligations under the Indenture and the Notes on the terms and subject to the conditions set forth in Article X of the Indenture and to be bound by (and shall be entitled to the benefits of) all other applicable provisions of the Indenture as a Note Guarantor.

Section 3.02 French Guarantee Limitation.

(a) The obligations of any New Guarantor incorporated in France (a "French Note Guarantor") are subject to the limitations set out in this Section 3.02.

(b) The obligations and liabilities of any French Note Guarantor under the Indenture and the Notes, and in particular under this Article III and Article X of the Indenture, shall not include any obligation or liability which, if incurred, would constitute the provision of financial assistance within the meaning of article L.225-216 of the French Commercial Code and/or would constitute a misuse of corporate assets within the meaning of article(s) L. 241-3 or L. 242-6 of the French Commercial Code or any other law or regulations having the same effect, as interpreted by French courts.

(c) The obligations and liabilities of any French Note Guarantor under this Article III and Article X of the Indenture for the Issuer's obligations under the Indenture and the Notes shall be limited, at any time, to an amount equal to the aggregate of all amounts made available under the Notes and the Indenture to the Issuer to the extent directly or indirectly on-lent to such French Note Guarantor and/or its direct and indirect Subsidiaries under intercompany loan agreements (excluding, for the avoidance of doubt, any cash-pooling arrangements or other cash management agreements, provided that the proceeds of the Notes shall not be used, in whole or in part, to finance, directly or indirectly, such cash pooling arrangements or other cash management agreements) and outstanding at the date a payment is to be made by such French Note Guarantor under this Article III and Article X of the Indenture, it being specified that any payment made by a French Note Guarantor under this Article III and Article X of the Indenture in respect of the obligations of the Issuer shall reduce *pro tanto* the outstanding amount of the intercompany loans due by such French Note Guarantor or its relevant direct or indirect Subsidiary under the intercompany loan agreements referred to above and that any repayment of the intercompany loans by the French Note Guarantor or its relevant direct or indirect Subsidiary shall reduce *pro tanto* the amount payable by the French Note Guarantor under this Article III and Article X of the Indenture.

(d) It is acknowledged that no French Note Guarantor is acting jointly and severally with the other Note Guarantors and no French Guarantor shall therefore be considered as "*co-débiteur solidaire*" as to its obligations pursuant to the guarantee given pursuant to this Article III and Article X of the Indenture.

Section 3.03 Swiss Guarantee Limitation.

(a) The obligations of any New Guarantor incorporated in Switzerland (a " Swiss Note Guarantor") are subject to the limitations set out in this Section 3.03.

(b) The obligations and liabilities of a Swiss Note Guarantor under the Indenture, the Notes or any other agreement, and in particular under this Article III and Article X of the Indenture, in relation to the obligations, undertakings, indemnities or liabilities of a Note Guarantor other than that Swiss Note Guarantor or any of its fully owned and controlled subsidiaries (the " Restricted Obligations") shall not include any obligation or liability which, if incurred, would constitute the provision of financial assistance not permitted under the laws of Switzerland then in force and/or would constitute a misuse of corporate assets under Swiss law as interpreted by Swiss courts and shall be limited to the amount of that Swiss Note Guarantor's Free Reserves Available for Distribution at the time payment is requested, provided that such limitation is a requirement under applicable law (including any case law) at that point in time and that such limitation shall not free the Swiss Note Guarantor from its obligations in excess thereof, but merely postpone the performance date until such time as performance is permitted notwithstanding such limitation.

(c) For the purpose of this clause, "Free Reserves Available for Distribution" means an amount equal to the maximal amount in which the relevant Swiss Note Guarantor can make a dividend payment to its shareholder(s) (being the balance sheet profit and any freely disposable reserves available for this purpose, in each case in accordance with applicable Swiss law).

(d) As soon as possible after having been requested to discharge a Restricted Obligation, the Swiss Note Guarantor shall, if it cannot discharge the full amount of the Restricted Obligations, provide the Trustee with an interim statutory balance sheet audited by the statutory auditors of the Swiss Note Guarantor setting out the Free Reserves Available for Distribution and, immediately thereafter, pay the amount corresponding to the Free Reserves Available for Distribution to the Trustee (save to the extent provided below).

(e) In respect of the Restricted Obligations, the Swiss Note Guarantor shall:

(i) if and to the extent required by applicable law in force at the relevant time:

(A) subject to any applicable double taxation treaties, deduct Swiss withholding tax at the rate of 35 percent (or such other rate as is in force at that time) from any payment made by it;

(B) pay any such deduction to the Swiss Federal Tax Administration; and

(C) notify and provide evidence to the Trustee that the Swiss withholding tax has been paid to the Swiss Federal Tax Administration;

(ii) to the extent such deduction is made, not be required to make a gross-up, indemnify or otherwise hold harmless the Trustee or the Holders for the deduction of the Swiss withholding tax notwithstanding anything to the contrary contained in the Indenture, the Notes or any other agreement, unless grossing up is permitted under the laws of Switzerland then in force and provided that this should not in any way limit any obligations of any non-Swiss Note Guarantors under the Indenture, the Notes or any other agreement to indemnify the Trustee or the Holders in respect of the deduction of the Swiss withholding tax. The Swiss Note Guarantor shall use all reasonable efforts to procure that any person which is entitled to a full or partial refund of any Swiss withholding tax paid pursuant to paragraph (a) above will, as soon as possible after the deduction of the Swiss withholding tax: (y) request a refund of the Swiss withholding tax under any applicable law (including double taxation treaties) and (z) pay to the Trustee upon receipt any amount so refunded.

(f) The Swiss Note Guarantor will take, and cause to be taken, all and any other action, including, without limitation, the passing of any shareholders' resolutions to approve any payment or other performance under the Indenture and the Notes and the receipt of any confirmations from the Swiss Note Guarantor's auditors, whether following a request to discharge a Restricted Obligation or which may be required as a matter of mandatory Swiss law in force at the time it is required to make a payment or perform other obligations under the Indenture, the Notes or any other agreement in order to allow a prompt payment or performance of other obligations under the Indenture or the Notes.

(g) If the enforcement of the Restricted Obligations would be limited due to the effects referred to in this Section 3.03 and if any asset of the Swiss Note Guarantor has a book value that is less than its market value (an " Undervalued Asset"), the Swiss Note Guarantor shall, to the extent permitted by applicable law and its accounting standards (i) write up the book value of such Undervalued Asset such that its balance sheet reflects a book value that is equal to the market value of such Undervalued Asset, and (ii) make reasonable efforts to realize the Undervalued Asset for a sum which is at least equal to the market value of such asset. Without prejudice to the rights of the Trustee and the Holders under the Indenture, the Notes or any other agreement, the Swiss Note Guarantor will only be required to realize an Undervalued Asset if such asset is not necessary for the Swiss Note Guarantor's business ( *nicht betriebsnotwendig*).

## ARTICLE IV

MISCELLANEOUS

Section 4.01. Effect of This Supplemental Indenture No. 2. This Supplemental Indenture No. 2 supplements the Indenture and shall be a part, and subject to all the terms, thereof. The Indenture, as supplemented and amended by this Supplemental Indenture No. 2, is in all respects ratified and confirmed, and the Indenture and this Supplemental Indenture No. 2 shall be read, taken and construed as one and the same instrument. All provisions included in this Supplemental Indenture No. 2 supersede any conflicting provisions included in the Indenture, unless not permitted by law.

Section 4.02 Governing Law. This Supplemental Indenture No. 2 shall be governed by, and construed in accordance with, the laws of the State of New York.

Section 4.03 Effect of Headings. The section headings herein are for convenience only and shall not affect the construction of this Supplemental Indenture No. 2.

Section 4.04 Counterparts. The parties may sign any number of copies of this Supplemental Indenture No. 2. Each signed copy shall be an original, but all of them shall represent the same agreement.

Section 4.05 The Trustee. The Trustee shall not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Supplemental Indenture No. 2 or for or in respect of the recitals contained herein, all of which are made solely by the Issuer and the Note Guarantors. In entering into this Supplemental Indenture No. 2, the Trustee shall be entitled to the benefit of every provision of the Indenture relating to the conduct or affecting the liability or affording protection to the Trustee whether or not elsewhere herein so provided. The Issuer and the Note Guarantors expressly reaffirm and confirm their obligations to indemnify the Trustee in connection with the Indenture and all the actions contemplated hereby, all in accordance with the terms of the Indenture.

[SIGNATURE PAGE TO FOLLOW IMMEDIATELY]

IN WITNESS WHEREOF, the parties have caused this Supplemental Indenture No. 2 to be duly executed as of the date first written above.

CEMEX, S.A.B. de C.V., as Issuer

By: /s/ José Antonio González Flores
Name: José Antonio González Flores
Title: Attorney-In-Fact

CEMEX México, S.A. de C.V., as Note Guarantor

By: /s/ José Antonio González Flores
Name: José Antonio González Flores
Title: Attorney-In-Fact

CEMEX España, S.A., as Note Guarantor

By: /s/ Héctor José Vela Dib
Name: Héctor José Vela Dib
Title: Attorney-In-Fact

New Sunward Holding B.V., as Additional Note Guarantor

By: /s/ Héctor José Vela Dib
Name: Héctor José Vela Dib
Title: Attorney-In-Fact

CEMEX Research Group AG, as Note Guarantor

By: /s/ Francisco Javier García Ruiz de Morales
Name: Francisco Javier García Ruiz de Morales
Title: Attorney-In-Fact

CEMEX Shipping B.V., as Note Guarantor

By: /s/ Francisco Javier García Ruiz de Morales
Name: Francisco Javier García Ruiz de Morales
Title: Attorney-In-Fact

CEMEX Asia B.V., as Note Guarantor

By: /s/ Francisco Javier García Ruiz de Morales
Name: Francisco Javier García Ruiz de Morales
Title: Attorney-In-Fact

CEMEX France Gestion (S.A.S.), as Note Guarantor

By: /s/ Francisco Javier García Ruiz de Morales
Name: Francisco Javier García Ruiz de Morales
Title: Attorney-In-Fact

CEMEX UK, as Note Guarantor

By: /s/ Francisco Javier García Ruiz de Morales
Name: Francisco Javier García Ruiz de Morales
Title: Attorney-In-Fact

CEMEX Egyptian Investments B.V., as Note Guarantor

By: /s/ Francisco Javier García Ruiz de Morales
Name: Francisco Javier García Ruiz de Morales
Title: Attorney-In-Fact

THE BANK OF NEW YORK MELLON, as Trustee

By: /s/ Catherine F. Donohue
Name: Catherine F. Donohue
Title: Vice President

[Signature page to Supplemental Indenture No. 2]

**SCHEDULE I**

EXISTING GUARANTORS

1. CEMEX México, S.A. de C.V.
2. CEMEX España, S.A.
3. New Sunward Holding B.V.

**SCHEDULE II**

NEW GUARANTORS

1. CEMEX Research Group AG
2. CEMEX Shipping B.V.
3. CEMEX Asia B.V.
4. CEMEX France Gestion (S.A.S.)
5. CEMEX UK
6. CEMEX Egyptian Investments B.V.

**Exhibit 4.15.3**

**SUPPLEMENTAL INDENTURE NO. 3**

SUPPLEMENTAL INDENTURE No. 3, dated as of March 25, 2013, among CEMEX, S.A.B. de C.V., a *sociedad anónima bursátil de capital variable* organized under the laws of the United Mexican States (the "Issuer"), the existing guarantors under the Indenture (as defined below) listed on Schedule I hereto (collectively, the "Existing Guarantors"), the additional guarantors listed on Schedule II hereto (collectively, the "New Guarantors" and, together with the Existing Guarantors, the "Note Guarantors") and The Bank of New York Mellon, as trustee (the "Trustee").

**W I T N E S S E T H:**

**WHEREAS**, the Issuer, the Existing Guarantors and the Trustee previously have entered into an indenture, dated as of January 11, 2011, as supplemented by Supplemental Indenture No. 1 thereto, dated as of July 11, 2011, and Supplemental Indenture No. 2 thereto, dated as of September 17, 2012, (as supplemented, the "Indenture"), providing for the issuance of the Issuer's 9.000% Senior Secured Notes due 2018 (the " Notes");

**WHEREAS**, Section 9.1(a)(iv) of the Indenture provides that the Issuer, the Existing Guarantors and the Trustee may enter into a supplemental indenture without notice to or consent of any Holder to add guarantees with respect to the Notes;

**WHEREAS**, the Issuer desires to amend and supplement the Indenture as provided in Article II hereof to provide for the guarantee by the New Guarantors of the Issuer's Obligations under the Notes and the Indenture on the terms and conditions set forth herein;

**WHEREAS**, the Issuer and the Note Guarantors are authorized to execute and deliver this Supplemental Indenture No. 3;

**WHEREAS**, the Issuer has requested that the Trustee join in the execution of this Supplemental Indenture No. 3 pursuant to Section 9.6 of the Indenture; and

**WHEREAS**, all things necessary to make this Supplemental Indenture No. 3 a valid agreement of the parties and a valid supplement to the Indenture have been done.

**NOW, THEREFORE**, for and in consideration of the premises and the mutual covenants contained herein and in the Indenture and for other good and valuable consideration, the receipt and sufficiency of which are herein acknowledged, the Issuer, the Note Guarantors and the Trustee hereby agree, for the benefit of all Holders, as follows:

## ARTICLE I

DEFINITIONS

Section 1.01. Section 1.01 Defined Terms. All capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Indenture, as supplemented and amended hereby. All definitions in the Indenture shall be read in a manner consistent with the terms of this Supplemental Indenture No. 3.

## ARTICLE II

NOTE GUARANTEES

Section 2.01 Agreement to Guarantee. Each New Guarantor hereby agrees, jointly and severally with the other Note Guarantors, irrevocably, fully and unconditionally, to guarantee the Obligations under the Indenture and the Notes on the terms and subject to the conditions set forth in Article X of the Indenture and to be bound by (and shall be entitled to the benefits of) all other applicable provisions of the Indenture as a Note Guarantor.

## ARTICLE III

MISCELLANEOUS

Section 3.01. Effect of This Supplemental Indenture No. 3. This Supplemental Indenture No. 3 supplements the Indenture and shall be a part, and subject to all the terms, thereof. The Indenture, as supplemented and amended by this Supplemental Indenture No. 3, is in all respects ratified and confirmed, and the Indenture and this Supplemental Indenture No. 3 shall be read, taken and construed as one and the same instrument. All provisions included in this Supplemental Indenture No. 3 supersede any conflicting provisions included in the Indenture, unless not permitted by law.

Section 3.02 Governing Law. This Supplemental Indenture No. 3 shall be governed by, and construed in accordance with, the laws of the State of New York.

Section 3.03 Effect of Headings. The section headings herein are for convenience only and shall not affect the construction of this Supplemental Indenture No. 3.

Section 3.04 Counterparts. The parties may sign any number of copies of this Supplemental Indenture No. 3. Each signed copy shall be an original, but all of them shall represent the same agreement.

Section 3.05 The Trustee. The Trustee shall not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Supplemental Indenture No. 3 or for or in respect of the recitals contained herein, all of which are made solely by the Issuer and the Note Guarantors. In entering into this Supplemental Indenture No. 3, the Trustee shall be entitled to the benefit of every provision of the Indenture relating to the conduct or affecting the

liability or affording protection to the Trustee whether or not elsewhere herein so provided. The Issuer and the Note Guarantors expressly reaffirm and confirm their obligations to indemnify the Trustee in connection with the Indenture and all the actions contemplated hereby, all in accordance with the terms of the Indenture.

[SIGNATURE PAGE TO FOLLOW IMMEDIATELY]

IN WITNESS WHEREOF, the parties have caused this Supplemental Indenture No. 3 to be duly executed as of the date first written above.

CEMEX, S.A.B. de C.V., as Issuer

By: /s/ Héctor José Vela Dib
Name: Héctor José Vela Dib
Title: Attorney-In-Fact

CEMEX México, S.A. de C.V., as Note Guarantor

By: /s/ Héctor José Vela Dib
Name: Héctor José Vela Dib
Title: Attorney-In-Fact

CEMEX España, S.A., as Note Guarantor

By: /s/ Héctor José Vela Dib
Name: Héctor José Vela Dib
Title: Attorney-In-Fact

New Sunward Holding B.V., as Additional Note Guarantor

By: /s/ Héctor José Vela Dib
Name: Héctor José Vela Dib
Title: Attorney-In-Fact

CEMEX Research Group AG, as Note Guarantor

By: /s/ Héctor José Vela Dib
Name: Héctor José Vela Dib
Title: Attorney-In-Fact

CEMEX Shipping B.V., as Note Guarantor

By: /s/ Héctor José Vela Dib
Name: Héctor José Vela Dib
Title: Attorney-In-Fact

CEMEX Asia B.V., as Note Guarantor

By: /s/ Héctor José Vela Dib
Name: Héctor José Vela Dib
Title: Attorney-In-Fact

CEMEX France Gestion (S.A.S.), as Note Guarantor

By: /s/ Héctor José Vela Dib
Name: Héctor José Vela Dib
Title: Attorney-In-Fact

CEMEX UK, as Note Guarantor

By: /s/ Héctor José Vela Dib
Name: Héctor José Vela Dib
Title: Attorney-In-Fact

CEMEX Egyptian Investments B.V., as Note Guarantor

By: /s/ Héctor José Vela Dib
Name: Héctor José Vela Dib
Title: Attorney-In-Fact

CEMEX Corp., as Note Guarantor

By: /s/ Héctor José Vela Dib
Name: Héctor José Vela Dib
Title: Attorney-In-Fact

CEMEX Concretos, S.A. de C.V., as Note Guarantor

By: /s/ Héctor José Vela Dib
Name: Héctor José Vela Dib
Title: Attorney-In-Fact

Empresas Tolteca de México, S.A. de C.V., as Note Guarantor

By: /s/ Héctor José Vela Dib
Name: Héctor José Vela Dib
Title: Attorney-In-Fact

THE BANK OF NEW YORK MELLON, as Trustee

By: /s/ John T. Needham, Jr.
Name: John T. Needham, Jr.
Title: Vice President

[Signature page to Supplemental Indenture No. 3 (9.000% Senior Secured Notes due 2018)]

**SCHEDULE I**

EXISTING GUARANTORS

1. CEMEX México, S.A. de C.V.
2. CEMEX España, S.A.
3. New Sunward Holding B.V.
4. CEMEX Research Group AG
5. CEMEX Shipping B.V.
6. CEMEX Asia B.V.
7. CEMEX France Gestion (S.A.S.)
8. CEMEX UK
9. CEMEX Egyptian Investments B.V.

**SCHEDULE II**

NEW GUARANTORS

1. CEMEX Corp.
2. CEMEX Concretos, S.A. de C.V.
3. Empresas Tolteca de México, S.A. de C.V.

**Exhibit 4.26.1**

**SUPPLEMENTAL INDENTURE NO. 1**

SUPPLEMENTAL INDENTURE No. 1, dated as of September 17, 2012, among CEMEX, S.A.B. de C.V., a *sociedad anónima bursátil de capital variable* organized under the laws of the United Mexican States (the "Issuer"), the existing guarantors under the Indenture (as defined below) listed on Schedule I hereto (collectively, the "Existing Guarantors"), the additional guarantors listed on Schedule II hereto (collectively, the "New Guarantors" and, together with the Existing Guarantors, the "Note Guarantors") and The Bank of New York Mellon, as trustee (the "Trustee").

**W I T N E S S E T H:**

**WHEREAS**, the Issuer, the Existing Guarantors and the Trustee previously have entered into an indenture, dated as of April 5, 2011 (the "Indenture"), providing for the issuance of the Issuer's Floating Rate Senior Secured Notes due 2015 (the " Notes");

**WHEREAS**, Section 9.1(a)(i) of the Indenture provides that the Issuer, the Existing Guarantors and the Trustee may enter into a supplemental indenture without notice to or consent of any Holder to cure any ambiguity, omission, defect or inconsistency in the Indenture;

**WHEREAS**, the Issuer desires to amend and supplement the Indenture as provided in Article II hereof to cure certain ambiguities, omissions, defects and inconsistencies in the Indenture;

**WHEREAS**, Section 9.1(a)(iv) of the Indenture provides that the Issuer, the Existing Guarantors and the Trustee may enter into a supplemental indenture without notice to or consent of any Holder to add guarantees with respect to the Notes;

**WHEREAS**, the Issuer desires to amend and supplement the Indenture as provided in Article III hereof to provide for the guarantee by the New Guarantors of the Issuer's Obligations under the Notes and the Indenture on the terms and conditions set forth herein;

**WHEREAS**, the Issuer and the Note Guarantors are authorized to execute and deliver this Supplemental Indenture No. 1;

**WHEREAS**, the Issuer has requested that the Trustee join in the execution of this Supplemental Indenture No. 1 pursuant to Section 9.6 of the Indenture; and

**WHEREAS**, all things necessary to make this Supplemental Indenture No. 1 a valid agreement of the parties and a valid supplement to the Indenture have been done.

**NOW, THEREFORE**, for and in consideration of the premises and the mutual covenants contained herein and in the Indenture and for other good and valuable consideration, the receipt and sufficiency of which are herein acknowledged, the Issuer, the Note Guarantors and the Trustee hereby agree, for the benefit of all Holders, as follows:

## ARTICLE I

DEFINITIONS

Section 1.01 Defined Terms. All capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Indenture, as supplemented and amended hereby. All definitions in the Indenture shall be read in a manner consistent with the terms of this Supplemental Indenture No. 1.

## ARTICLE II

AMENDMENTS

Section 2.01 Definitions. Section 1.1 of the Indenture is amended as follows:

(a) The definition of "Note Guarantors" is amended in its entirety to read as follows:

> "Note Guarantors" means (i) each of the Issuer's Restricted Subsidiaries that executes this Indenture as a Note Guarantor or an Additional Note Guarantor and (ii) each of the Issuer's Restricted Subsidiaries that in the future executes a supplemental indenture in which such Restricted Subsidiary agrees to be bound by the terms of this Indenture as a Note Guarantor, and their respective successors and assigns; provided that any Person constituting a Note Guarantor as described above shall cease to constitute a Note Guarantor when its respective Note Guarantee is released in accordance with the terms of this Indenture."

(b) Clause (3) of the definition of "Capital Stock" is amended in its entirety to read as follows:

> "(3) any warrants, rights or options to purchase any of the instruments or interests referred to in clause (1) or (2) above, but excluding any Indebtedness exchangeable into such equity interest in existence on the Issue Date or Incurred pursuant to Section 3.9."

## ARTICLE III

NOTE GUARANTEES

Section 3.01 Agreement to Guarantee. Subject to the limitations set out in Section 3.02 and 3.03, each New Guarantor hereby agrees, jointly and severally with the other Note Guarantors, irrevocably, fully and unconditionally, to guarantee the Obligations under the Indenture and the Notes on the terms and subject to the conditions set forth in Article X of the Indenture and to be bound by (and shall be entitled to the benefits of) all other applicable provisions of the Indenture as a Note Guarantor.

Section 3.02 French Guarantee Limitation.

(a) The obligations of any New Guarantor incorporated in France (a "French Note Guarantor") are subject to the limitations set out in this Section 3.02.

(b) The obligations and liabilities of any French Note Guarantor under the Indenture and the Notes, and in particular under this Article III and Article X of the Indenture, shall not include any obligation or liability which, if incurred, would constitute the provision of financial assistance within the meaning of article L.225-216 of the French Commercial Code and/or would constitute a misuse of corporate assets within the meaning of article(s) L. 241-3 or L. 242-6 of the French Commercial Code or any other law or regulations having the same effect, as interpreted by French courts.

(c) The obligations and liabilities of any French Note Guarantor under this Article III and Article X of the Indenture for the Issuer's obligations under the Indenture and the Notes shall be limited, at any time, to an amount equal to the aggregate of all amounts made available under the Notes and the Indenture to the Issuer to the extent directly or indirectly on-lent to such French Note Guarantor and/or its direct and indirect Subsidiaries under intercompany loan agreements (excluding, for the avoidance of doubt, any cash-pooling arrangements or other cash management agreements, provided that the proceeds of the Notes shall not be used, in whole or in part, to finance, directly or indirectly, such cash pooling arrangements or other cash management agreements) and outstanding at the date a payment is to be made by such French Note Guarantor under this Article III and Article X of the Indenture, it being specified that any payment made by a French Note Guarantor under this Article III and Article X of the Indenture in respect of the obligations of the Issuer shall reduce *pro tanto* the outstanding amount of the intercompany loans due by such French Note Guarantor or its relevant direct or indirect Subsidiary under the intercompany loan agreements referred to above and that any repayment of the intercompany loans by the French Note Guarantor or its relevant direct or indirect Subsidiary shall reduce *pro tanto* the amount payable by the French Note Guarantor under this Article III and Article X of the Indenture.

(d) It is acknowledged that no French Note Guarantor is acting jointly and severally with the other Note Guarantors and no French Guarantor shall therefore be considered as "*co-débiteur solidaire*" as to its obligations pursuant to the guarantee given pursuant to this Article III and Article X of the Indenture.

Section 3.03 Swiss Guarantee Limitation.

(a) The obligations of any New Guarantor incorporated in Switzerland (a " Swiss Note Guarantor") are subject to the limitations set out in this Section 3.03.

(b) The obligations and liabilities of a Swiss Note Guarantor under the Indenture, the Notes or any other agreement, and in particular under this Article III and Article X of the Indenture, in relation to the obligations, undertakings, indemnities or liabilities of a Note Guarantor other than that Swiss Note Guarantor or any of its fully owned and controlled subsidiaries (the " Restricted Obligations") shall not include any obligation or liability which, if incurred, would constitute the provision of financial assistance not permitted under the laws of Switzerland then in force and/or would constitute a misuse of corporate assets under Swiss law as interpreted by Swiss courts and shall be limited to the amount of that Swiss Note Guarantor's Free Reserves Available for Distribution at the time payment is requested, provided that such limitation is a requirement under applicable law (including any case law) at that point in time and that such limitation shall not free the Swiss Note Guarantor from its obligations in excess thereof, but merely postpone the performance date until such time as performance is permitted notwithstanding such limitation.

(c) For the purpose of this clause, "Free Reserves Available for Distribution" means an amount equal to the maximal amount in which the relevant Swiss Note Guarantor can make a dividend payment to its shareholder(s) (being the balance sheet profit and any freely disposable reserves available for this purpose, in each case in accordance with applicable Swiss law).

(d) As soon as possible after having been requested to discharge a Restricted Obligation, the Swiss Note Guarantor shall, if it cannot discharge the full amount of the Restricted Obligations, provide the Trustee with an interim statutory balance sheet audited by the statutory auditors of the Swiss Note Guarantor setting out the Free Reserves Available for Distribution and, immediately thereafter, pay the amount corresponding to the Free Reserves Available for Distribution to the Trustee (save to the extent provided below).

(e) In respect of the Restricted Obligations, the Swiss Note Guarantor shall:

(i) if and to the extent required by applicable law in force at the relevant time:

(A) subject to any applicable double taxation treaties, deduct Swiss withholding tax at the rate of 35 percent (or such other rate as is in force at that time) from any payment made by it;

(B) pay any such deduction to the Swiss Federal Tax Administration; and

(C) notify and provide evidence to the Trustee that the Swiss withholding tax has been paid to the Swiss Federal Tax Administration;

(ii) to the extent such deduction is made, not be required to make a gross-up, indemnify or otherwise hold harmless the Trustee or the Holders for the deduction of the Swiss withholding tax notwithstanding anything to the contrary contained in the Indenture, the Notes or any other agreement, unless grossing up is permitted under the laws of Switzerland then in force and provided that this should not in any way limit any obligations of any non-Swiss Note Guarantors under the Indenture, the Notes or any other agreement to indemnify the Trustee or the Holders in respect of the deduction of the Swiss withholding tax. The Swiss Note Guarantor shall use all reasonable efforts to procure that any person which is entitled to a full or partial refund of any Swiss withholding tax paid pursuant to paragraph (a) above will, as soon as possible after the deduction of the Swiss withholding tax: (y) request a refund of the Swiss withholding tax under any applicable law (including double taxation treaties) and (z) pay to the Trustee upon receipt any amount so refunded.

(f) The Swiss Note Guarantor will take, and cause to be taken, all and any other action, including, without limitation, the passing of any shareholders' resolutions to approve any payment or other performance under the Indenture and the Notes and the receipt of any confirmations from the Swiss Note Guarantor's auditors, whether following a request to discharge a Restricted Obligation or which may be required as a matter of mandatory Swiss law in force at the time it is required to make a payment or perform other obligations under the Indenture, the Notes or any other agreement in order to allow a prompt payment or performance of other obligations under the Indenture or the Notes.

(g) If the enforcement of the Restricted Obligations would be limited due to the effects referred to in this Section 3.03 and if any asset of the Swiss Note Guarantor has a book value that is less than its market value (an " Undervalued Asset"), the Swiss Note Guarantor shall, to the extent permitted by applicable law and its accounting standards (i) write up the book value of such Undervalued Asset such that its balance sheet reflects a book value that is equal to the market value of such Undervalued Asset, and (ii) make reasonable efforts to realize the Undervalued Asset for a sum which is at least equal to the market value of such asset. Without prejudice to the rights of the Trustee and the Holders under the Indenture, the Notes or any other agreement, the Swiss Note Guarantor will only be required to realize an Undervalued Asset if such asset is not necessary for the Swiss Note Guarantor's business ( *nicht betriebsnotwendig*).

## ARTICLE IV

MISCELLANEOUS

Section 4.01. Effect of This Supplemental Indenture No. 1. This Supplemental Indenture No. 1 supplements the Indenture and shall be a part, and subject to all the terms, thereof. The Indenture, as supplemented and amended by this Supplemental Indenture No. 1, is in all respects ratified and confirmed, and the Indenture and this Supplemental Indenture No. 1 shall be read, taken and construed as one and the same instrument. All provisions included in this Supplemental Indenture No. 1 supersede any conflicting provisions included in the Indenture, unless not permitted by law.

Section 4.02 Governing Law. This Supplemental Indenture No. 1 shall be governed by, and construed in accordance with, the laws of the State of New York.

Section 4.03 Effect of Headings. The section headings herein are for convenience only and shall not affect the construction of this Supplemental Indenture No. 1.

Section 4.04 Counterparts. The parties may sign any number of copies of this Supplemental Indenture No. 1. Each signed copy shall be an original, but all of them shall represent the same agreement.

Section 4.05 The Trustee. The Trustee shall not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Supplemental Indenture No. 1 or for or in respect of the recitals contained herein, all of which are made solely by the Issuer and the Note Guarantors. In entering into this Supplemental Indenture No. 1, the Trustee shall be entitled to the benefit of every provision of the Indenture relating to the conduct or affecting the liability or affording protection to the Trustee whether or not elsewhere herein so provided. The Issuer and the Note Guarantors expressly reaffirm and confirm their obligations to indemnify the Trustee in connection with the Indenture and all the actions contemplated hereby, all in accordance with the terms of the Indenture.

[SIGNATURE PAGE TO FOLLOW IMMEDIATELY]

IN WITNESS WHEREOF, the parties have caused this Supplemental Indenture No. 1 to be duly executed as of the date first written above.

CEMEX, S.A.B. de C.V., as Issuer

By: /s/ José Antonio González Flores
Name: José Antonio González Flores
Title: Attorney-In-Fact

CEMEX México, S.A. de C.V., as Note Guarantor

By: /s/ José Antonio González Flores
Name: José Antonio González Flores
Title: Attorney-In-Fact

CEMEX España, S.A., as Note Guarantor

By: /s/ Héctor José Vela Dib
Name: Héctor José Vela Dib
Title: Attorney-In-Fact

New Sunward Holding B.V., as Additional Note Guarantor

By: /s/ Héctor José Vela Dib
Name: Héctor José Vela Dib
Title: Attorney-In-Fact

CEMEX Research Group AG, as Note Guarantor

By: /s/ Francisco Javier García Ruiz de Morales
Name: Francisco Javier García Ruiz de Morales
Title: Attorney-In-Fact

CEMEX Shipping B.V., as Note Guarantor

By: /s/ Francisco Javier García Ruiz de Morales
Name: Francisco Javier García Ruiz de Morales
Title: Attorney-In-Fact

CEMEX Asia B.V., as Note Guarantor

By: /s/ Francisco Javier García Ruiz de Morales
Name: Francisco Javier García Ruiz de Morales
Title: Attorney-In-Fact

CEMEX France Gestion (S.A.S.), as Note Guarantor

By: /s/ Francisco Javier García Ruiz de Morales
Name: Francisco Javier García Ruiz de Morales
Title: Attorney-In-Fact

CEMEX UK, as Note Guarantor

By: /s/ Francisco Javier García Ruiz de Morales
Name: Francisco Javier García Ruiz de Morales
Title: Attorney-In-Fact

CEMEX Egyptian Investments B.V., as Note Guarantor

By: /s/ Francisco Javier García Ruiz de Morales
Name: Francisco Javier García Ruiz de Morales
Title: Attorney-In-Fact

THE BANK OF NEW YORK MELLON, as Trustee

By: /s/ Catherine F. Donohue

Name: Catherine F. Donohue

Title: Vice President

[Signature page to Supplemental Indenture No. 1 (Floating Rate Senior Secured Notes due 2015)]

**SCHEDULE I**

EXISTING GUARANTORS

1. CEMEX México, S.A. de C.V.
2. CEMEX España, S.A.
3. New Sunward Holding B.V.

**SCHEDULE II**

NEW GUARANTORS

1. CEMEX Research Group AG
2. CEMEX Shipping B.V.
3. CEMEX Asia B.V.
4. CEMEX France Gestion (S.A.S.)
5. CEMEX UK
6. CEMEX Egyptian Investments B.V.

**Exhibit 4.26.2**

**SUPPLEMENTAL INDENTURE NO. 2**

SUPPLEMENTAL INDENTURE No. 2, dated as of March 25, 2013, among CEMEX, S.A.B. de C.V., a *sociedad anónima bursátil de capital variable* organized under the laws of the United Mexican States (the "Issuer"), the existing guarantors under the Indenture (as defined below) listed on Schedule I hereto (collectively, the "Existing Guarantors"), the additional guarantors listed on Schedule II hereto (collectively, the "New Guarantors" and, together with the Existing Guarantors, the "Note Guarantors") and The Bank of New York Mellon, as trustee (the "Trustee").

**W I T N E S S E T H:**

**WHEREAS**, the Issuer, the Existing Guarantors and the Trustee previously have entered into an indenture, dated as of April 5, 2011, as supplemented by Supplemental Indenture No. 1, dated as of September 17, 2012, (as supplemented, the " Indenture"), providing for the issuance of the Issuer's Floating Rate Senior Secured Notes due 2015 (the "Notes");

**WHEREAS**, Section 9.1(a)(iv) of the Indenture provides that the Issuer, the Existing Guarantors and the Trustee may enter into a supplemental indenture without notice to or consent of any Holder to add guarantees with respect to the Notes;

**WHEREAS**, the Issuer desires to amend and supplement the Indenture as provided in Article II hereof to provide for the guarantee by the New Guarantors of the Issuer's Obligations under the Notes and the Indenture on the terms and conditions set forth herein;

**WHEREAS**, the Issuer and the Note Guarantors are authorized to execute and deliver this Supplemental Indenture No. 2;

**WHEREAS**, the Issuer has requested that the Trustee join in the execution of this Supplemental Indenture No. 2 pursuant to Section 9.6 of the Indenture; and

**WHEREAS**, all things necessary to make this Supplemental Indenture No. 2 a valid agreement of the parties and a valid supplement to the Indenture have been done.

**NOW, THEREFORE**, for and in consideration of the premises and the mutual covenants contained herein and in the Indenture and for other good and valuable consideration, the receipt and sufficiency of which are herein acknowledged, the Issuer, the Note Guarantors and the Trustee hereby agree, for the benefit of all Holders, as follows:

## ARTICLE I

DEFINITIONS

Section 1.01 Defined Terms. All capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Indenture, as supplemented and amended hereby. All definitions in the Indenture shall be read in a manner consistent with the terms of this Supplemental Indenture No. 2.

## ARTICLE II

NOTE GUARANTEES

Section 2.01 Agreement to Guarantee. Each New Guarantor hereby agrees, jointly and severally with the other Note Guarantors, irrevocably, fully and unconditionally, to guarantee the Obligations under the Indenture and the Notes on the terms and subject to the conditions set forth in Article X of the Indenture and to be bound by (and shall be entitled to the benefits of) all other applicable provisions of the Indenture as a Note Guarantor.

## ARTICLE III

MISCELLANEOUS

Section 3.01. Effect of This Supplemental Indenture No. 2. This Supplemental Indenture No. 2 supplements the Indenture and shall be a part, and subject to all the terms, thereof. The Indenture, as supplemented and amended by this Supplemental Indenture No. 2, is in all respects ratified and confirmed, and the Indenture and this Supplemental Indenture No. 2 shall be read, taken and construed as one and the same instrument. All provisions included in this Supplemental Indenture No. 2 supersede any conflicting provisions included in the Indenture, unless not permitted by law.

Section 3.02 Governing Law. This Supplemental Indenture No. 2 shall be governed by, and construed in accordance with, the laws of the State of New York.

Section 3.03 Effect of Headings. The section headings herein are for convenience only and shall not affect the construction of this Supplemental Indenture No. 2.

Section 3.04 Counterparts. The parties may sign any number of copies of this Supplemental Indenture No. 2. Each signed copy shall be an original, but all of them shall represent the same agreement.

Section 3.05 The Trustee. The Trustee shall not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Supplemental Indenture No. 2 or for or in respect of the recitals contained herein, all of which are made solely by the Issuer and the Note Guarantors. In entering into this Supplemental Indenture No. 2, the Trustee shall be entitled to the benefit of every provision of the Indenture relating to the conduct or affecting the

liability or affording protection to the Trustee whether or not elsewhere herein so provided. The Issuer and the Note Guarantors expressly reaffirm and confirm their obligations to indemnify the Trustee in connection with the Indenture and all the actions contemplated hereby, all in accordance with the terms of the Indenture.

[SIGNATURE PAGE TO FOLLOW IMMEDIATELY]

IN WITNESS WHEREOF, the parties have caused this Supplemental Indenture No. 2 to be duly executed as of the date first written above.

CEMEX, S.A.B. de C.V., as Issuer

By: /s/ Héctor José Vela Dib
Name: Héctor José Vela Dib
Title: Attorney-In-Fact

CEMEX México, S.A. de C.V., as Note Guarantor

By: /s/ Héctor José Vela Dib
Name: Héctor José Vela Dib
Title: Attorney-In-Fact

CEMEX España, S.A., as Note Guarantor

By: /s/ Héctor José Vela Dib
Name: Héctor José Vela Dib
Title: Attorney-In-Fact

New Sunward Holding B.V., as Additional Note Guarantor

By: /s/ Héctor José Vela Dib
Name: Héctor José Vela Dib
Title: Attorney-In-Fact

CEMEX Research Group AG, as Note Guarantor

By: /s/ Héctor José Vela Dib
Name: Héctor José Vela Dib
Title: Attorney-In-Fact

CEMEX Shipping B.V., as Note Guarantor

By: /s/ Héctor José Vela Dib
Name: Héctor José Vela Dib
Title: Attorney-In-Fact

CEMEX Asia B.V., as Note Guarantor

By: /s/ Héctor José Vela Dib
Name: Héctor José Vela Dib
Title: Attorney-In-Fact

CEMEX France Gestion (S.A.S.), as Note Guarantor

By: /s/ Héctor José Vela Dib
Name: Héctor José Vela Dib
Title: Attorney-In-Fact

CEMEX UK, as Note Guarantor

By: /s/ Héctor José Vela Dib
Name: Héctor José Vela Dib
Title: Attorney-In-Fact

CEMEX Egyptian Investments B.V., as Note Guarantor

By: /s/ Héctor José Vela Dib
Name: Héctor José Vela Dib
Title: Attorney-In-Fact

[Signature page to Supplemental Indenture No. 2 (Floating Rate Senior Secured Notes due 2015)]

CEMEX Corp., as Note Guarantor

By: /s/ Héctor José Vela Dib
Name: Héctor José Vela Dib
Title: Attorney-In-Fact

CEMEX Concretos, S.A. de C.V., as Note Guarantor

By: /s/ Héctor José Vela Dib
Name: Héctor José Vela Dib
Title: Attorney-In-Fact

Empresas Tolteca de México, S.A. de C.V., as Note Guarantor

By: /s/ Héctor José Vela Dib
Name: Héctor José Vela Dib
Title: Attorney-In-Fact

THE BANK OF NEW YORK MELLON, as Trustee

By: /s/ John T. Needham, Jr.
Name: John T. Needham, Jr.
Title: Vice President

[Signature page to Supplemental Indenture No. 2 (Floating Rate Senior Secured Notes due 2015)]

**SCHEDULE I**

EXISTING GUARANTORS

1. CEMEX México, S.A. de C.V.
2. CEMEX España, S.A.
3. New Sunward Holding B.V.
4. CEMEX Research Group AG
5. CEMEX Shipping B.V.
6. CEMEX Asia B.V.
7. CEMEX France Gestion (S.A.S.)
8. CEMEX UK
9. CEMEX Egyptian Investments B.V.

**SCHEDULE II**

NEW GUARANTORS

1. CEMEX Corp.
2. CEMEX Concretos, S.A. de C.V.
3. Empresas Tolteca de México, S.A. de C.V.

**Exhibit 4.30.1**

**SUPPLEMENTAL INDENTURE NO. 1**

SUPPLEMENTAL INDENTURE No. 1, dated as of September 17, 2012, among CEMEX España, S.A., a corporation ( *sociedad anónima*) organized under the laws of Spain, acting through its Luxembourg branch, CEMEX España, S.A., Luxembourg Branch (the " Issuer"), the existing guarantors under the Indenture (as defined below) listed on Schedule I hereto (collectively, the "Existing Guarantors"), the additional guarantors listed on Schedule II hereto (collectively, the "New Guarantors" and, together with the Existing Guarantors, the " Note Guarantors") and The Bank of New York Mellon, as trustee (the "Trustee").

**W I T N E S S E T H:**

**WHEREAS**, the Issuer, the Existing Guarantors and the Trustee previously have entered into an indenture, dated as of March 28, 2012 (the "Indenture"), providing for the issuance of the Issuer's 9.875% U.S. Dollar-Denominated Senior Secured Notes Due 2019 and 9.875% Euro-Denominated Senior Secured Notes Due 2019 (together, the "Notes");

**WHEREAS**, Section 9.1(a)(i) of the Indenture provides that the Issuer, the Existing Guarantors and the Trustee may enter into a supplemental indenture without notice to or consent of any Holder to cure any ambiguity, omission, defect or inconsistency in the Indenture;

**WHEREAS**, the Issuer desires to amend and supplement the Indenture as provided in Article II hereof to cure certain ambiguities, omissions, defects and inconsistencies in the Indenture;

**WHEREAS**, Section 9.1(a)(iv) of the Indenture provides that the Issuer, the Existing Guarantors and the Trustee may enter into a supplemental indenture without notice to or consent of any Holder to add guarantees with respect to the Notes;

**WHEREAS**, the Issuer desires to amend and supplement the Indenture as provided in Article III hereof to provide for the guarantee by the New Guarantors of the Issuer's Obligations under the Notes and the Indenture on the terms and conditions set forth herein;

**WHEREAS**, the Issuer and the Note Guarantors are authorized to execute and deliver this Supplemental Indenture No. 1;

**WHEREAS**, the Issuer has requested that the Trustee join in the execution of this Supplemental Indenture No. 1 pursuant to Section 9.6 of the Indenture; and

**WHEREAS**, all things necessary to make this Supplemental Indenture No. 1 a valid agreement of the parties and a valid supplement to the Indenture have been done.

**NOW, THEREFORE**, for and in consideration of the premises and the mutual covenants contained herein and in the Indenture and for other good and valuable consideration, the receipt and sufficiency of which are herein acknowledged, the Issuer, the Note Guarantors and the Trustee hereby agree, for the benefit of all Holders, as follows:

## ARTICLE I

DEFINITIONS

Section 1.01 Defined Terms. All capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Indenture, as supplemented and amended hereby. All definitions in the Indenture shall be read in a manner consistent with the terms of this Supplemental Indenture No. 1.

## ARTICLE II

AMENDMENTS

Section 2.01 Definitions. Section 1.1 of the Indenture is amended as follows:

The definition of "Note Guarantors" is amended in its entirety to read as follows:

"Note Guarantors" means (i) each of the Company's Restricted Subsidiaries that executes this Indenture as a Note Guarantor or an Additional Note Guarantor and (ii) each of the Company's Restricted Subsidiaries that in the future executes a supplemental indenture in which such Restricted Subsidiary agrees to be bound by the terms of this Indenture as a Note Guarantor, and their respective successors and assigns; provided that any Person constituting a Note Guarantor as described above shall cease to constitute a Note Guarantor when its respective Note Guarantee is released in accordance with the terms of this Indenture."

## ARTICLE III

NOTE GUARANTEES

Section 3.01 Agreement to Guarantee. Subject to the limitations set out in Section 3.02 and 3.03, each New Guarantor hereby agrees, jointly and severally with the other Note Guarantors, irrevocably, fully and unconditionally, to guarantee the Obligations under the Indenture and the Notes on the terms and subject to the conditions set forth in Article X of the Indenture and to be bound by (and shall be entitled to the benefits of) all other applicable provisions of the Indenture as a Note Guarantor.

Section 3.02 French Guarantee Limitation.

(a) The obligations of any New Guarantor incorporated in France (a "French Note Guarantor") are subject to the limitations set out in this Section 3.02.

(b) The obligations and liabilities of any French Note Guarantor under the Indenture and the Notes, and in particular under this Article III and Article X of the Indenture, shall not include any obligation or liability which, if incurred, would constitute the provision of financial assistance within the meaning of article L.225-216 of the French Commercial Code and/or would constitute a misuse of corporate assets within the meaning of article(s) L. 241-3 or L. 242-6 of the French Commercial Code or any other law or regulations having the same effect, as interpreted by French courts.

(c) The obligations and liabilities of any French Note Guarantor under this Article III and Article X of the Indenture for the Issuer's obligations under the Indenture and the Notes shall be limited, at any time, to an amount equal to the aggregate of all amounts made available under the Notes and the Indenture to the Issuer to the extent directly or indirectly on-lent to such French Note Guarantor and/or its direct and indirect Subsidiaries under intercompany loan agreements (excluding, for the avoidance of doubt, any cash-pooling arrangements or other cash management agreements, provided that the proceeds of the Notes shall not be used, in whole or in part, to finance, directly or indirectly, such cash pooling arrangements or other cash management agreements) and outstanding at the date a payment is to be made by such French Note Guarantor under this Article III and Article X of the Indenture, it being specified that any payment made by a French Note Guarantor under this Article III and Article X of the Indenture in respect of the obligations of the Issuer shall reduce *pro tanto* the outstanding amount of the intercompany loans due by such French Note Guarantor or its relevant direct or indirect Subsidiary under the intercompany loan agreements referred to above and that any repayment of the intercompany loans by the French Note Guarantor or its relevant direct or indirect Subsidiary shall reduce *pro tanto* the amount payable by the French Note Guarantor under this Article III and Article X of the Indenture.

(d) It is acknowledged that no French Note Guarantor is acting jointly and severally with the other Note Guarantors and no French Guarantor shall therefore be considered as "*co-débiteur solidaire*" as to its obligations pursuant to the guarantee given pursuant to this Article III and Article X of the Indenture.

Section 3.03 Swiss Guarantee Limitation.

(a) The obligations of any New Guarantor incorporated in Switzerland (a "Swiss Note Guarantor") are subject to the limitations set out in this Section 3.03.

(b) The obligations and liabilities of a Swiss Note Guarantor under the Indenture, the Notes or any other agreement, and in particular under this Article III and Article X of the Indenture, in relation to the obligations, undertakings, indemnities or liabilities of a Note Guarantor other than that Swiss Note Guarantor or any of its fully owned and controlled subsidiaries (the "Restricted Obligations") shall not include any obligation or liability which, if

incurred, would constitute the provision of financial assistance not permitted under the laws of Switzerland then in force and/or would constitute a misuse of corporate assets under Swiss law as interpreted by Swiss courts and shall be limited to the amount of that Swiss Note Guarantor's Free Reserves Available for Distribution at the time payment is requested, provided that such limitation is a requirement under applicable law (including any case law) at that point in time and that such limitation shall not free the Swiss Note Guarantor from its obligations in excess thereof, but merely postpone the performance date until such time as performance is permitted notwithstanding such limitation.

(c) For the purpose of this clause, "Free Reserves Available for Distribution" means an amount equal to the maximal amount in which the relevant Swiss Note Guarantor can make a dividend payment to its shareholder(s) (being the balance sheet profit and any freely disposable reserves available for this purpose, in each case in accordance with applicable Swiss law).

(d) As soon as possible after having been requested to discharge a Restricted Obligation, the Swiss Note Guarantor shall, if it cannot discharge the full amount of the Restricted Obligations, provide the Trustee with an interim statutory balance sheet audited by the statutory auditors of the Swiss Note Guarantor setting out the Free Reserves Available for Distribution and, immediately thereafter, pay the amount corresponding to the Free Reserves Available for Distribution to the Trustee (save to the extent provided below).

(e) In respect of the Restricted Obligations, the Swiss Note Guarantor shall:

(i) if and to the extent required by applicable law in force at the relevant time:

(A) subject to any applicable double taxation treaties, deduct Swiss withholding tax at the rate of 35 percent (or such other rate as is in force at that time) from any payment made by it;

(B) pay any such deduction to the Swiss Federal Tax Administration; and

(C) notify and provide evidence to the Trustee that the Swiss withholding tax has been paid to the Swiss Federal Tax Administration;

(ii) to the extent such deduction is made, not be required to make a gross-up, indemnify or otherwise hold harmless the Trustee or the Holders for the deduction of the Swiss withholding tax notwithstanding anything to the contrary contained in the Indenture, the Notes or any other agreement, unless grossing up is permitted under the laws of Switzerland then in force and provided that this should not in any way limit any obligations of any non-Swiss Note Guarantors under the Indenture, the Notes or any other agreement to indemnify the Trustee

or the Holders in respect of the deduction of the Swiss withholding tax. The Swiss Note Guarantor shall use all reasonable efforts to procure that any person which is entitled to a full or partial refund of any Swiss withholding tax paid pursuant to paragraph (a) above will, as soon as possible after the deduction of the Swiss withholding tax: (y) request a refund of the Swiss withholding tax under any applicable law (including double taxation treaties) and (z) pay to the Trustee upon receipt any amount so refunded.

(f) The Swiss Note Guarantor will take, and cause to be taken, all and any other action, including, without limitation, the passing of any shareholders' resolutions to approve any payment or other performance under the Indenture and the Notes and the receipt of any confirmations from the Swiss Note Guarantor's auditors, whether following a request to discharge a Restricted Obligation or which may be required as a matter of mandatory Swiss law in force at the time it is required to make a payment or perform other obligations under the Indenture, the Notes or any other agreement in order to allow a prompt payment or performance of other obligations under the Indenture or the Notes.

(g) If the enforcement of the Restricted Obligations would be limited due to the effects referred to in this Section 3.03 and if any asset of the Swiss Note Guarantor has a book value that is less than its market value (an " Undervalued Asset"), the Swiss Note Guarantor shall, to the extent permitted by applicable law and its accounting standards (i) write up the book value of such Undervalued Asset such that its balance sheet reflects a book value that is equal to the market value of such Undervalued Asset, and (ii) make reasonable efforts to realize the Undervalued Asset for a sum which is at least equal to the market value of such asset. Without prejudice to the rights of the Trustee and the Holders under the Indenture, the Notes or any other agreement, the Swiss Note Guarantor will only be required to realize an Undervalued Asset if such asset is not necessary for the Swiss Note Guarantor's business ( *nicht betriebsnotwendig*).

## ARTICLE IV

MISCELLANEOUS

Section 4.01. Effect of This Supplemental Indenture No. 1. This Supplemental Indenture No. 1 supplements the Indenture and shall be a part, and subject to all the terms, thereof. The Indenture, as supplemented and amended by this Supplemental Indenture No. 1, is in all respects ratified and confirmed, and the Indenture and this Supplemental Indenture No. 1 shall be read, taken and construed as one and the same instrument. All provisions included in this Supplemental Indenture No. 1 supersede any conflicting provisions included in the Indenture, unless not permitted by law.

Section 4.02 Governing Law. This Supplemental Indenture No. 1 shall be governed by, and construed in accordance with, the laws of the State of New York.

Section 4.03 Effect of Headings. The section headings herein are for convenience only and shall not affect the construction of this Supplemental Indenture No. 1.

Section 4.04 Counterparts. The parties may sign any number of copies of this Supplemental Indenture No. 1. Each signed copy shall be an original, but all of them shall represent the same agreement.

Section 4.05 The Trustee. The Trustee shall not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Supplemental Indenture No. 1 or for or in respect of the recitals contained herein, all of which are made solely by the Issuer and the Note Guarantors. In entering into this Supplemental Indenture No. 1, the Trustee shall be entitled to the benefit of every provision of the Indenture relating to the conduct or affecting the liability or affording protection to the Trustee whether or not elsewhere herein so provided. The Issuer and the Note Guarantors expressly reaffirm and confirm their obligations to indemnify the Trustee in connection with the Indenture and all the actions contemplated hereby, all in accordance with the terms of the Indenture.

[SIGNATURE PAGE TO FOLLOW IMMEDIATELY]

IN WITNESS WHEREOF, the parties have caused this Supplemental Indenture No. 1 to be duly executed as of the date first written above.

CEMEX España, S.A., acting through its Luxembourg branch, CEMEX España, S.A., Luxembourg Branch

By: /s/ José Antonio González Flores
Name: José Antonio González Flores
Title: Attorney-In-Fact

By: /s/ Héctor José Vela Dib
Name: Héctor José Vela Dib
Title: Attorney-In-Fact

CEMEX, S.A.B. de C.V., as Note Guarantor

By: /s/ José Antonio González Flores
Name: José Antonio González Flores
Title: Attorney-In-Fact

CEMEX México, S.A. de C.V., as Note Guarantor

By: /s/ José Antonio González Flores
Name: José Antonio González Flores
Title: Attorney-In-Fact

New Sunward Holding B.V., as Additional Note Guarantor

By: /s/ Héctor José Vela Dib
Name: Héctor José Vela Dib
Title: Attorney-In-Fact

CEMEX Research Group AG, as Note Guarantor

By: /s/ Francisco Javier García Ruiz de Morales
Name: Francisco Javier García Ruiz de Morales
Title: Attorney-In-Fact

CEMEX Shipping B.V., as Note Guarantor

By: /s/ Francisco Javier García Ruiz de Morales
Name: Francisco Javier García Ruiz de Morales
Title: Attorney-In-Fact

CEMEX Asia B.V., as Note Guarantor

By: /s/ Francisco Javier García Ruiz de Morales
Name: Francisco Javier García Ruiz de Morales
Title: Attorney-In-Fact

CEMEX France Gestion (S.A.S.), as Note Guarantor

By: /s/ Francisco Javier García Ruiz de Morales
Name: Francisco Javier García Ruiz de Morales
Title: Attorney-In-Fact

CEMEX UK, as Note Guarantor

By: /s/ Francisco Javier García Ruiz de Morales
Name: Francisco Javier García Ruiz de Morales
Title: Attorney-In-Fact

CEMEX Egyptian Investments B.V., as Note Guarantor

By: /s/ Francisco Javier García Ruiz de Morales
Name: Francisco Javier García Ruiz de Morales
Title: Attorney-In-Fact

THE BANK OF NEW YORK MELLON, as Trustee

By: /s/ Catherine F. Donohue

Name: Catherine F. Donohue

Title: Vice President

[Signature page to Supplemental Indenture No. 1 (9.875% U.S. Dollar-Denominated Senior Secured Notes Due 2019 and 9.875% Euro-Denominated Senior Secured Notes Due 2019)]

**SCHEDULE I**

EXISTING GUARANTORS

1. CEMEX, S.A.B. de C.V.
2. CEMEX México, S.A. de C.V.
3. New Sunward Holding B.V.

**SCHEDULE II**

NEW GUARANTORS

1. CEMEX Research Group AG
2. CEMEX Shipping B.V.
3. CEMEX Asia B.V.
4. CEMEX France Gestion (S.A.S.)
5. CEMEX UK
6. CEMEX Egyptian Investments B.V.

**Exhibit 4.30.2**

**SUPPLEMENTAL INDENTURE NO. 2**

SUPPLEMENTAL INDENTURE No. 2, dated as of March 25, 2013, among CEMEX España, S.A., a corporation ( *sociedad anónima*) organized under the laws of Spain, acting through its Luxembourg branch, CEMEX España, S.A., Luxembourg Branch (the " Issuer"), the existing guarantors under the Indenture (as defined below) listed on Schedule I hereto (collectively, the "Existing Guarantors"), the additional guarantors listed on Schedule II hereto (collectively, the "New Guarantors" and, together with the Existing Guarantors, the " Note Guarantors") and The Bank of New York Mellon, as trustee (the "Trustee").

**W I T N E S S E T H:**

**WHEREAS**, the Issuer, the Existing Guarantors and the Trustee previously have entered into an indenture, dated as of March 28, 2012, as supplemented by Supplemental Indenture No. 1 thereto, dated as of September 17, 2012, (as supplemented, the " Indenture"), providing for the issuance of the Issuer's 9.875% U.S. Dollar-Denominated Senior Secured Notes Due 2019 and 9.875% Euro-Denominated Senior Secured Notes Due 2019 (together, the "Notes");

**WHEREAS**, Section 9.1(a)(iv) of the Indenture provides that the Issuer, the Existing Guarantors and the Trustee may enter into a supplemental indenture without notice to or consent of any Holder to add guarantees with respect to the Notes;

**WHEREAS**, the Issuer desires to amend and supplement the Indenture as provided in Article II hereof to provide for the guarantee by the New Guarantors of the Issuer's Obligations under the Notes and the Indenture on the terms and conditions set forth herein;

**WHEREAS**, the Issuer and the Note Guarantors are authorized to execute and deliver this Supplemental Indenture No. 2;

**WHEREAS**, the Issuer has requested that the Trustee join in the execution of this Supplemental Indenture No. 2 pursuant to Section 9.6 of the Indenture; and

**WHEREAS**, all things necessary to make this Supplemental Indenture No. 2 a valid agreement of the parties and a valid supplement to the Indenture have been done.

**NOW, THEREFORE**, for and in consideration of the premises and the mutual covenants contained herein and in the Indenture and for other good and valuable consideration, the receipt and sufficiency of which are herein acknowledged, the Issuer, the Note Guarantors and the Trustee hereby agree, for the benefit of all Holders, as follows:

## ARTICLE I

DEFINITIONS

Section 1.01 Defined Terms. All capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Indenture, as supplemented and amended hereby. All definitions in the Indenture shall be read in a manner consistent with the terms of this Supplemental Indenture No. 2.

## ARTICLE II

NOTE GUARANTEES

Section 2.01 Agreement to Guarantee. Each New Guarantor hereby agrees, jointly and severally with the other Note Guarantors, irrevocably, fully and unconditionally, to guarantee the Obligations under the Indenture and the Notes on the terms and subject to the conditions set forth in Article X of the Indenture and to be bound by (and shall be entitled to the benefits of) all other applicable provisions of the Indenture as a Note Guarantor.

## ARTICLE III

MISCELLANEOUS

Section 3.01. Effect of This Supplemental Indenture No. 2. This Supplemental Indenture No. 2 supplements the Indenture and shall be a part, and subject to all the terms, thereof. The Indenture, as supplemented and amended by this Supplemental Indenture No. 2, is in all respects ratified and confirmed, and the Indenture and this Supplemental Indenture No. 2 shall be read, taken and construed as one and the same instrument. All provisions included in this Supplemental Indenture No. 2 supersede any conflicting provisions included in the Indenture, unless not permitted by law.

Section 3.02 Governing Law. This Supplemental Indenture No. 2 shall be governed by, and construed in accordance with, the laws of the State of New York.

Section 3.03 Effect of Headings. The section headings herein are for convenience only and shall not affect the construction of this Supplemental Indenture No. 2.

Section 3.04 Counterparts. The parties may sign any number of copies of this Supplemental Indenture No. 2. Each signed copy shall be an original, but all of them shall represent the same agreement.

Section 3.05 The Trustee. The Trustee shall not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Supplemental Indenture No. 2 or for or in respect of the recitals contained herein, all of which are made solely by the Issuer and the Note Guarantors. In entering into this Supplemental Indenture No. 2, the Trustee shall be entitled to the benefit of every provision of the Indenture relating to the conduct or affecting the

liability or affording protection to the Trustee whether or not elsewhere herein so provided. The Issuer and the Note Guarantors expressly reaffirm and confirm their obligations to indemnify the Trustee in connection with the Indenture and all the actions contemplated hereby, all in accordance with the terms of the Indenture.

[SIGNATURE PAGE TO FOLLOW IMMEDIATELY]

IN WITNESS WHEREOF, the parties have caused this Supplemental Indenture No. 2 to be duly executed as of the date first written above.

CEMEX España, S.A., acting through its Luxembourg branch, CEMEX España, S.A., Luxembourg Branch

By: /s/ Héctor José Vela Dib
Name: Héctor José Vela Dib
Title: Attorney-In-Fact

By: /s/ José Antonio González Flores
Name: José Antonio González Flores
Title: Attorney-In-Fact

CEMEX, S.A.B. de C.V., as Note Guarantor

By: /s/ Héctor José Vela Dib
Name: Héctor José Vela Dib
Title: Attorney-In-Fact

CEMEX México, S.A. de C.V., as Note Guarantor

By: /s/ Héctor José Vela Dib
Name: Héctor José Vela Dib
Title: Attorney-In-Fact

New Sunward Holding B.V., as Additional Note Guarantor

By: /s/ Héctor José Vela Dib
Name: Héctor José Vela Dib
Title: Attorney-In-Fact

CEMEX Research Group AG, as Note Guarantor

By: /s/ Héctor José Vela Dib
Name: Héctor José Vela Dib
Title: Attorney-In-Fact

CEMEX Shipping B.V., as Note Guarantor

By: /s/ Héctor José Vela Dib
Name: Héctor José Vela Dib
Title: Attorney-In-Fact

CEMEX Asia B.V., as Note Guarantor

By: /s/ Héctor José Vela Dib
Name: Héctor José Vela Dib
Title: Attorney-In-Fact

CEMEX France Gestion (S.A.S.), as Note Guarantor

By: /s/ Héctor José Vela Dib
Name: Héctor José Vela Dib
Title: Attorney-In-Fact

CEMEX UK, as Note Guarantor

By: /s/ Héctor José Vela Dib
Name: Héctor José Vela Dib
Title: Attorney-In-Fact

CEMEX Egyptian Investments B.V., as Note Guarantor

By: /s/ Héctor José Vela Dib
Name: Héctor José Vela Dib
Title: Attorney-In-Fact

CEMEX Corp., as Note Guarantor

By: /s/ Héctor José Vela Dib
Name: Héctor José Vela Dib
Title: Attorney-In-Fact

CEMEX Concretos, S.A. de C.V., as Note Guarantor

By: /s/ Héctor José Vela Dib
Name: Héctor José Vela Dib
Title: Attorney-In-Fact

Empresas Tolteca de México, S.A. de C.V., as Note Guarantor

By: /s/ Héctor José Vela Dib
Name: Héctor José Vela Dib
Title: Attorney-In-Fact

THE BANK OF NEW YORK MELLON, as Trustee

By: /s/ John T. Needham, Jr.
Name: John T. Needham, Jr.
Title: Vice President

[Signature page to Supplemental Indenture No. 2 (9.875% U.S. Dollar-Denominated Senior Secured Notes Due 2019 and 9.875% Euro-Denominated Senior Secured Notes Due 2019)]

**SCHEDULE I**

EXISTING GUARANTORS

1. CEMEX, S.A.B. de C.V.
2. CEMEX México, S.A. de C.V.
3. New Sunward Holding B.V.
4. CEMEX Research Group AG
5. CEMEX Shipping B.V.
6. CEMEX Asia B.V.
7. CEMEX France Gestion (S.A.S.)
8. CEMEX UK
9. CEMEX Egyptian Investments B.V.

**SCHEDULE II**

NEW GUARANTORS

1. CEMEX Corp.
2. CEMEX Concretos, S.A. de C.V.
3. Empresas Tolteca de México, S.A. de C.V.

**Exhibit 4.31**

**C L I F F O R D**
**C H A N C E L L P**

**CLEARY GOTTLIEB STEEN &**
**HAMILTON LLP**

**EXECUTION COPY**

FACILITIES AGREEMENT

for

CEMEX, S.A.B. DE C.V.
AND CERTAIN OF ITS SUBSIDIARIES

THE FINANCIAL INSTITUTIONS, NOTEHOLDERS AND OTHER ENTITIES NAMED HEREIN
AS ORIGINAL CREDITORS

AND

CITIBANK INTERNATIONAL PLC
ACTING AS AGENT

AND

WILMINGTON TRUST (LONDON) LIMITED
ACTING AS SECURITY AGENT

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FACILITIES AGREEMENT

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**CONTENTS**

**THIS AGREEMENT** is dated 17 September 2012 and made between:

(1) **CEMEX, S.A.B. de C.V.** (the "**Parent**");

(2) **THE SUBSIDIARIES** of the Parent listed in Part I of Schedule 1 ( *The Original Parties*) as borrowers or issuers (together with the Parent, the "**Original Borrowers**");

(3) **THE SUBSIDIARIES** of the Parent listed in Part I of Schedule 1 ( *The Original Parties*) as guarantors (together with the Parent, the "**Original Guarantors**");

(4) **THE SUBSIDIARIES** of the Parent listed in Part I of Schedule 1 ( *The Original Parties*) as security providers (the "**Original Security Providers**");

(5) **THE FINANCIAL INSTITUTIONS, NOTEHOLDERS AND OTHER ENTITIES** listed in Part II (*The Original Creditors*) of Schedule 1 (*The Original Parties*) as original creditors (the "**Original Creditors**");

(6) **CITIBANK INTERNATIONAL PLC** as agent of the Finance Parties (other than itself) (the "**Agent**"); and

(7) **WILMINGTON TRUST (LONDON) LIMITED** as security agent of the Secured Parties (the "**Security Agent**").

**IT IS AGREED** as follows:

## SECTION 1
## INTERPRETATION

### 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In this Agreement:

"**2009 Financing Agreement**" means the financing agreement dated 14 August 2009 (as amended on 1 December 2009, 18 March 2010, 25 October 2010 and 13 April 2011) and made between, amongst others, the Parent and certain of its Subsidiaries as original obligors, certain financial institutions and noteholders as Participating Creditors (as defined therein) and others, and (unless a contrary indication appears in this Agreement), refers to such agreement as further amended on or about the Effective Date pursuant to the 2009 Financing Agreement Amendment Agreement.

"**2009 Financing Agreement Amendment Agreement** " means the amendment and restatement agreement relating to the 2009 Financing Agreement dated on or about the date of this Agreement and made between, amongst others, the Parent and the Administrative Agent (as defined in the 2009 Financing Agreement).

"**2009 Financing Agreement Document**" means the 2009 Financing Agreement, the 2009 Financing Agreement Amendment Agreement and any other "Finance Document" as defined in the 2009 Financing Agreement.

"**2009 Financing Agreement Exposure**" means, at any time, an "Exposure" as defined in the 2009 Financing Agreement.

"**2009 Financing Agreement Termination Date**" means the "Termination Date" as defined in the 2009 Financing Agreement.

"**2014 Eurobonds**" means the €900,000,000 4.75% Eurobonds issued by CEMEX Finance Europe B.V. and guaranteed by CEMEX España dated 5 March 2007 (as amended from time to time).

"**2015 Floating Rate Notes**" means the $800,000,000 floating rate senior secured notes maturing on 30 September 2015 issued by the Parent.

"**2015 Subordinated Convertible Notes**" means the $715,000,000 4.875% subordinated optional convertible securities maturing on 15 March 2015 issued by the Parent.

"**2016 Senior Notes**" means the $1,750,000,000 9.5% senior secured notes maturing on 14 December 2016 issued by CEMEX Finance.

"**2016 Subordinated Convertible Notes**" means the $977,500,000 3.25% subordinated optional convertible securities maturing on 15 March 2016 issued by the Parent.

"**2017 CEMEX España Senior Notes**" means the €115,346,000 8.875% senior secured notes maturing on 12 May 2017 issued by CEMEX España.

"**2017 CEMEX Finance Senior Notes**" means the €350,000,000 9.625% senior secured notes maturing on 14 December 2017 issued by CEMEX Finance.

"**2018 Senior Notes**" means the $1,650,000,000 9.000% senior secured notes maturing on 11 January 2018 and issued by the Parent.

"**2019 EUR Senior Notes**" means the €179,219,000 9.875% senior secured notes maturing on 30 April 2019 and issued by CEMEX España.

"**2019 USD Senior Notes**" means the $703,861,000 9.875% senior secured notes maturing on 30 April 2019 and issued by CEMEX España.

"**2020 Senior Notes**" means the $1,192,996,000 9.25% senior secured notes maturing on 12 May 2020 and issued by CEMEX España.

"**Acceptable Bank**" means:

(a) a bank or financial institution which has a rating for its long-term unsecured and non credit-enhanced debt obligations of BBB or higher by S&P, BBB or higher by Fitch or Baa2 or higher by Moody's or a comparable rating from an internationally recognised credit rating agency;

(b) any other bank or financial institution in a jurisdiction in which a member of the Group conducts commercial operations where such member of the Group, in the ordinary course of trading, subscribes for certificates of deposit issued by such bank or financial institution; or

(c) any other bank or financial institution approved by the Agent.

"**Accession Letter**" means a document substantially in the form set out in Schedule 8 ( *Form of Accession Letter*).

"**Additional Cost Rate**" has the meaning given to it in Schedule 5 (*Mandatory Cost Formula*).

"**Additional Guarantor**" means a company that becomes an Additional Guarantor in accordance with Clause 27 ( *Changes to the Obligors*).

"**Additional Obligor**" means an Additional Guarantor or an Additional Security Provider.

"**Additional Security Provider**" means a company that becomes an Additional Security Provider in accordance with Clause 27 ( *Changes to the Obligors*).

"**Affidavit of Loss**" means an affidavit of loss in favour of a Borrower (or the Parent on its behalf) from a Creditor in relation to that Creditor's loss of the relevant pagaré, promissory note or Existing USPP Note issued pursuant to the 2009 Financing Agreement or the Existing USPP Note Agreement, as the case may be, substantially in the form set out in Schedule 20 ( *Form of Affidavit of Loss*).

"**Affiliate**" means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company.

"**Ancillary Agreement**" means the ancillary agreement dated on or about the date of this Agreement and made between, among others, the Original Obligors (except for the España Subsidiary Guarantors), certain financial institutions, noteholders and other entities as Extinguishing Creditors (as defined therein), and Citibank International plc as Exchange Agent and as Administrative Agent (each as defined therein).

"**Applicable GAAP**" means:

(a) in the case of the Parent, IFRS;

(b) in the case of CEMEX España, Spanish GAAP or, if adopted by CEMEX España in accordance with Clause 20.3 ( *Requirements as to financial statements*), IFRS; and

(c) in the case of any other Obligor, the generally accepted accounting principles applying to it in the country of its incorporation or in a jurisdiction agreed to by the Agent or, if adopted by the relevant Obligor, IFRS.

"**Asset Swap**" has the meaning given to such term in paragraph (t) of the definition of Permitted Disposal.

"**Assignment Agreement**" means an agreement substantially in the form set out in Schedule 7 ( *Form of Assignment Agreement*) or any other form agreed between the relevant assignor and assignee **provided that** if that other form does not contain the undertaking in the form set out in Schedule 7 (*Form of Assignment Agreement*) in respect of clause 14.6 of the Intercreditor Agreement, it shall not be a Creditor/Agent/Security Agent Accession Undertaking as defined in, and for the purposes of, the Intercreditor Agreement.

"**Authorisation**" means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration.

"**Authorised Signatory**" means, in relation to any Obligor, any person who is duly authorised and in respect of whom the Agent has received a certificate signed by a director or another Authorised Signatory of such Obligor setting out the name and signature of such person and confirming such person's authority to act.

"**Bancomext**" means Banco Nacional de Comercio Exterior, Sociedad Nacional de Crédito, Institución de Banca de Desarrollo.

"**Bancomext Facility**" means a facility agreement between the Parent, represented by Lic. René Delgadillo Galván, and Banco Nacional de Comercio Exterior, Sociedad Nacional de Crédito, Institución de Banca de Desarrollo, represented by Mr. Jorge Arturo Tovar Castro and Leonel Napoleón Vásquez Gómez with the appearance of Centro Distribuidor de Cemento S.A. de C.V., Empresas Tolteca de México, S.A. de C.V., Petrocemex S.A. de C.V. and Cemex México, represented by Lic. René Delgadillo Galván, dated as of 14 October 2008.

"**Banco Industrial de Guatemala Facility**" means a facility agreement between Global Cement, S.A. and Banco Industrial, S.A. dated as of 25 June 2009.

"**Banobras Facility**" means a revolving loan agreement ( *Contrato de Apertura de Crédito en Cuenta Corriente* ) between CEMEX Concretos as borrower, represented by Lic. Francisco Guillermo Gómez Tamayo and Lic. Eduardo Salaburu Llamas, and Banco Nacional de Obras y Servicios Públicos, Sociedad Nacional de Crédito, Institución de Banca de Desarrollo as lender, represented by Mr. Luis Daniel Robles Ferrer, in an aggregate principal amount equal to Mex$5,000,000,000.00, dated 22 April 2009, which was formalized by means of public deeds number 116,380 and 116,381 dated 22 April 2009, granted before Mr. José Angel Villalobos Magaña, notary public number 9 for Mexico, Federal District (as amended from time to time).

"**Base Currency**" means US dollars.

"**Base Currency Amount**" means:

(a) in relation to the amount of a Utilisation, a Commitment or an Outstanding Principal Amount under a Facility which is denominated in the Base Currency, the amount specified in relation to that Facility in Section B of Part II ( *The Original Creditors*) of Schedule 1 (*The Original Parties*);

(b) in relation to the amount of a Utilisation or (in each case, as at the Effective Date) a Commitment or an Outstanding Principal Amount under a Facility

which is not denominated in the Base Currency, the "Base Currency Amount" of that amount specified in relation to that Facility in Section B of Part II (*The Original Creditors*) of Schedule 1 (*The Original Parties*) (being that amount converted into the Base Currency at the exchange rate displayed on the appropriate Reuters screen at or about 11 a.m. on the reference date referred to in Section B of Part II ( *The Original Creditors*) of Schedule 1 (*The Original Parties*)) (and this paragraph (b) shall apply to determine the Base Currency Amount of any Commitment and Outstanding Principal Amount under a Facility which is not denominated in the Base Currency of a Creditor who becomes a Party pursuant to a Creditor Accession Letter, as if such amounts had been listed in Section B of Part II ( *The Original Creditors*) of Schedule 1 (*The Original Parties*) as at the date of this Agreement);

(c) in relation to any other amount denominated in the Base Currency, that amount;

(d) in relation to a Commitment or an Outstanding Principal Amount (in each case, at all times after the Effective Date (other than in relation to a Creditor Accession Letter where paragraph (b) above applies)) or any other amount denominated in a currency other than the Base Currency, that amount converted into the Base Currency at the exchange rate displayed on the appropriate Reuters screen at or about 11:00 a.m. (in the case of a conversion of an amount denominated in euros) or, as the case may be, the exchange rate published by the Mexican Central Bank (*Banco de Mexico*) in the Federal Official Gazette (*Diario Oficial de la Federación*) (in the case of a conversion of an amount denominated in Mexican pesos) in each case on the date which is five Business Days before that date on which a determination of such Base Currency Amount is required to be made under this Agreement (or if the agreed page is replaced or services cease to be available, the Agent may specify another page or service displaying the appropriate rate after consultation with the Parent and the Lenders); and

(e) in relation to any amount of 2009 Financing Agreement Exposures which is denominated in a currency other than the Base Currency, for the purposes of the calculation referred to in paragraph (a) of Clause 7.1 ( *Prepayment under 2009 Financing Agreement*), that amount converted into the Base Currency at the same exchange rate used, pursuant to this definition of "Base Currency Amount", to convert amounts of Outstanding Principal Amounts denominated in a currency other than the Base Currency into the Base Currency,

in the case of paragraphs (a) and (b), as adjusted to reflect any repayment, prepayment, consolidation or division of a Utilisation or an Outstanding Principal Amount (and, contemporaneously with any such repayment or prepayment, any corresponding cancellation of any Commitment) on the date of such repayment, prepayment, consolidated or division.

"**Borrower**" means an Original Borrower unless it has ceased to be a Borrower in accordance with Clause 27.2 ( *Resignation of a Borrower*).

"**Break Costs**" means the amount (if any) by which:

(a) the interest (excluding any Margin) which a Creditor (other than a USPP Noteholder) should have received for the period from the date of receipt of all or any part of its participation in a Loan, Derivatives Unwind Promissory Note or Unpaid Sum to the last day of the current Interest Period in respect of that Loan, Derivatives Unwind Promissory Note or Unpaid Sum, had the principal amount or Unpaid Sum received been paid on the last day of that Interest Period;

exceeds:

(b) the amount of interest which that Creditor would be able to obtain by placing an amount equal to the principal amount or Unpaid Sum received by it on deposit with a leading bank in the Relevant Interbank Market for a period starting on the Business Day following receipt or recovery and ending on the last day of the current Interest Period.

"**Business Day**" means a day (other than a Saturday or Sunday) on which banks are open for general business in London, Madrid, New York City, Amsterdam and Mexico City (in the case of Mexico City, if applicable, as specified by a governmental authority), and:

(a) (in relation to any date for payment or lending or purchase of, or the determination of an interest rate or rate of exchange in relation to, a currency other than euro) the principal financial centre of the country of that currency; or

(b) (in relation to any date for payment or lending or purchase of, or the determination of an interest rate or rate of exchange in relation to, euro) any TARGET Day.

"**Business Plan**" means the six year business plan of the Group contained within the FTI Report.

"**Caliza**" means CEMEX LATAM Holdings, S.A.

"**Caliza Capital Expenditure**" means Capital Expenditure permitted by paragraph (d) of Clause 21.2 ( *Financial condition*) to be invested in the Caliza Group.

"**Caliza Cash Maintenance Threshold**" means, for the purposes of the Caliza Group following the completion of the first Caliza Transaction (if so completed), $50,000,000.

"**Caliza Expansion Capital**" means (without double counting) any:

(a) Caliza Capital Expenditure;

(b) Caliza Joint Venture Investment; and

(c) amount of the consideration for an acquisition made under paragraph (k) of the definition of Permitted Acquisition.

"**Caliza Expansion Capital Permitted Limit**" means $350,000,000 (or its equivalent).

"**Caliza Gross Proceeds**" means the cash proceeds of a Caliza Transaction falling within paragraph (b) of the definition thereof.

"**Caliza Group**" means Caliza and its Subsidiaries for the time being.

"**Caliza Joint Venture**" has the meaning given to such term in paragraph (b) of the definition of Permitted Joint Venture.

"**Caliza Joint Venture Investment**" has the meaning given to such term in paragraph (b) of the definition of Permitted Joint Venture.

"**Caliza Offering Option**" has the meaning given to such term in paragraph (b) of the definition of Caliza Transaction.

"**Caliza Offering Option Amount**" means the amount that would be required in the event that a Caliza Offering Option is exercised in whole or in part, **provided that** such amount shall not exceed an amount equal to 13.1 per cent. of the relevant Caliza Gross Proceeds.

"**Caliza Offering Option Exercise Period**" has the meaning given to such term in paragraph (b) of the definition of Caliza Transaction.

"**Caliza Proceeds**" has the meaning given to such term in paragraph (a) of Clause 7.2 ( *Caliza Proceeds*).

"**Caliza Reorganisation**" means the reorganisation described in the presentation delivered as a condition precedent pursuant to paragraph 6(f) of Part 1 of Schedule 2 (*Conditions Precedent*).

"**Caliza Transaction**" means:

(a) a Disposal by a member of the Group of any shares in Caliza to a person who is not a member of the Group; or

(b) an IPO or other offering of shares in Caliza and including any put or other option entered into with one or more financial institutions in respect of any share lending, over-allotment or other similar arrangement in connection with an IPO or other offering of shares in Caliza **provided that** the exercise period for such put or other option shall be no longer than 30 days from the settlement date of the IPO or other offering of shares in Caliza (a "**Caliza Offering Option**" and such exercise period, the "**Caliza Offering Option Exercise Period**"),

(in either case) whether by way of a single transaction or a series of transactions and which does not breach Clause 22.18 ( *Disposals*) or Clause 22.32 (*Caliza*)**.**

"**Capital Lease**" has the meaning given to such term in Clause 21.1 ( *Financial definitions*).

"**Cash Collateral Release Amount**" means the amount of any cash collateral or margin posted by the Parent or any member of the Group as at the date of this Agreement in respect of an Excluded Position set forth in Annex 1 (*Excluded Positions*) of Schedule 17 (*Hedging Parameters*) which has been released to the Parent or any member of the Group upon the replacement of Permitted Security by a Permitted Put/Call Transaction in accordance with paragraph 3 of Schedule 17 (*Hedging Parameters*) or any cash amounts transferred to any member of the Group in conjunction with the entry into a Permitted Put/Call Transaction.

"**Cash Equivalent Investments**" means at any time:

(a) certificates of deposit maturing within one year after the relevant date of calculation and issued by an Acceptable Bank;

(b) any investment in marketable debt obligations issued or expressly guaranteed by the government of Mexico, the United States of America (or any state thereof (including any political subdivision of such state)), the United Kingdom, any member state of the European Economic Area or any Participating Member State or any member state of NAFTA (or any other jurisdiction in which a member of the Group conducts commercial operations if that member of the Group makes investments in such debt obligations in the ordinary course of its trading) or by an instrumentality or agency of any of them having an equivalent credit rating, maturing within one year after the relevant date of calculation and not convertible or exchangeable to any other security;

(c) commercial paper not convertible into or exchangeable for any other security:

  (i) for which a recognised trading market exists;

  (ii) issued by an issuer incorporated in Mexico, the United States of America (or any state thereof (including any political subdivision of such state)), the United Kingdom, any member state of the European Economic Area or any Participating Member State or any member state of NAFTA (or any other jurisdiction in which a member of the Group makes investments in such debt obligations in the ordinary course of trading);

  (iii) which matures within one year after the relevant date of calculation; and

  (iv) which has a credit rating of either A-1 or higher by S&P or F1 or higher by Fitch or P-1 or higher by Moody's, or, if no rating is available in respect of the commercial paper, the issuer of which has, in respect of its long-term unsecured and non-credit enhanced debt obligations, an equivalent rating;

(d) sterling bills of exchange eligible for rediscount at the Bank of England and accepted by an Acceptable Bank (or their dematerialised equivalent);

(e) any investment in money market funds which (i) have a credit rating of either A-1 or higher by S&P or F1 or higher by Fitch or P-1 or higher by Moody's, (ii) which invest substantially all their assets in securities of the types described in paragraphs (a) to (d) above and (f) and (g) below and (iii) can be turned into cash on not more than 30 days' notice; or

(f) any deposit issued by any of Nacional Financiera, S.N.C., Banco Nacional de Comercio Exterior, S.N.C., Banco Nacional de Obras y Sevicios Públicos, S.N.C. or any other development bank controlled by the Mexican government;

(g) any other debt instrument rated "investment grade" (or the local equivalent thereof according to local criteria in a country in which any member of the Group conducts commercial operations and in which local pensions are permitted by law to invest) with maturities of 12 months or less from the date of acquiring such investment;

(h) investments in mutual funds, managed by banks or financial institutions, with a local currency credit rating of at least MxAA by S&P or equivalent by any other reputable local rating agency, that invest principally in marketable direct obligations issued by the Mexican government, or issued by any agency or instrumentality thereof; and

(i) any other debt security, certificate of deposit, commercial paper, bill of exchange, investment in money market funds or material funds approved by the Majority Creditors,

in each case, to which any member of the Group is alone (or together with other members of the Group) beneficially entitled at that time and which is not issued or guaranteed by any member of the Group or subject to any Security (other than Security arising under the Transaction Security Documents).

"**Cash Maintenance Threshold**" means, in the case of the Financial Quarters ending on or about 31 March, 30 June and 30 September in any Financial Year, $625,000,000 and, in the case of the Financial Quarter ending on or about 31 December in any Financial Year, $725,000,000.

"**CEMEX Bogotá**" has the meaning given to such term in sub paragraph (i) of paragraph (a) of Clause 22.35 ( *Conditions subsequent*).

"**CEMEX Caracas**" means CEMEX Caracas Investments B.V., a company incorporated in the Netherlands with registration number 34121194.

"**CEMEX Caribe II**" has the meaning given to such term in sub paragraph (ii) of paragraph (a) of Clause 22.35 ( *Conditions subsequent*).

"**CEMEX Concretos**" means CEMEX Concretos, S.A. de C.V.

"**CEMEX España**" means CEMEX España, S.A.

"**CEMEX Finance**" means CEMEX Finance LLC (formerly known as CEMEX España Finance LLC).

"**CEMEX Materials**" means CEMEX Materials LLC.

"**CEMEX México**" means CEMEX México, S.A. de C.V.

"**Change of Control**" means that the beneficial ownership (within the meaning of Rule 13d-3 promulgated by the SEC under the Securities Exchange Act of 1934, as amended) of 20 per cent. or more in voting power of the outstanding voting stock of the Parent is acquired by any person.

"**Charged Property**" means all of the assets of the Security Providers which from time to time are, or are expressed to be, the subject of the Transaction Security.

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

"**Commitment**" means, at any time, in relation to a Creditor participating in:

(a) a Loan Facility, a Facility A Commitment, Facility B Commitment or Facility C Commitment (as the case may be);

(b) the Derivatives Unwind Promissory Note Facility, a Derivatives Unwind Promissory Note Facility Commitment; or

(c) the USPP Note Facility, a USPP Note Facility Commitment.

"**Compliance Certificate**" means a certificate substantially in the form set out in Schedule 10 ( *Form of Compliance Certificate*).

"**Confidential Information**" means all information relating to the Parent, any Obligor, the Group, the Finance Documents or a Facility of which a Finance Party becomes aware in its capacity as, or for the purpose of becoming, a Finance Party or which is received by a Finance Party in relation to, or for the purpose of becoming a Finance Party under, the Finance Documents or a Facility from either:

(a) any member of the Group or any of its advisers; or

(b) another Finance Party, if the information was obtained by that Finance Party directly or indirectly from any member of the Group or any of its advisers,

in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes information that:

(i) is or becomes public information other than as a direct or indirect result of any breach by that Finance Party of Clause 38 (*Confidentiality*); or

(ii) is identified in writing at the time of delivery as non-confidential by any member of the Group or any of its advisers; or

(iii) is known by that Finance Party before the date the information is disclosed to it in accordance with paragraphs (a) or (b) above or is

lawfully obtained by that Finance Party after that date, from a source which is, as far as that Finance Party is aware, unconnected with the Group and which, in either case, as far as that Finance Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

"**Confidentiality Undertaking**" means a confidentiality undertaking substantially in the form set out in Schedule 19 ( *Form of Confidentiality Undertaking*) or in any other form agreed between the Parent and the Agent.

"**Consolidated Leverage Ratio**" has the meaning given to such term in Clause 21.1 ( *Financial definitions*).

"**Contingent Instrument**" means any documentary credit (including all forms of letter of credit) or performance bond, advance payment, bank guarantee or similar instrument.

"**Conversion Rate**" means 1:1, as adjusted in accordance with the provisions of Article XII of the indenture dated as of 15 March 2011 among the Parent as issuer, The Bank of New York Mellon as trustee and The Bank of New York Mellon, S.A., Instituición de Banca Múltiple as Mexican trustee pursuant to which the US$690,000,000 3.75% subordinated optional convertible securities maturing on 15 March 2018 and issued by the Parent were issued (the "**Indenture**"). In calculating such adjustments, the Parent shall:

(a) disregard any provision of the Indenture providing that an otherwise applicable adjustment need not be made if holders of the notes issued thereunder may participate in the transaction that would otherwise have caused such adjustment;

(b) disregard any voluntary increase to the conversion rate pursuant to Section 12.05(b) of the Indenture and any temporary increase in the conversion rate pursuant to Section 12.12 of the Indenture; and

(c) make such adjustments to the dates upon which conversion rate adjustments are made as are, in the good faith judgment of the Parent's board of directors, appropriate to adjust for differences between the record date and ex-dividend date for any transaction triggering a conversion rate adjustment (so that such adjustments are made in coordination with the time at which trades referenced in determining the prices of American Depositary Share of the Parent for purposes of calculating the Trailing Closing Price begin to be priced on an "ex-dividend" basis).

"**Covenant Reset Date**" means the first date falling after the Effective Date on which both of the following conditions are met:

(a) the Consolidated Leverage Ratio for the two most recently completed Reference Periods in respect of which Compliance Certificates have been (or are required to have been) delivered under this Agreement was not greater than 3.50:1; and

(b) no Default is continuing.

"**Creditor**" means:

(a) any Original Creditor (including any person which becomes a Party pursuant to a Creditor Accession Letter); and

(b) any bank, financial institution, trust, fund or other entity which has become a Party as a Creditor in accordance with Clause 25 ( *Changes to the Creditors*),

which in each case has not ceased to be a Creditor in accordance with the terms of this Agreement and, for the avoidance of doubt, whether a Lender, a Derivatives Unwind Promissory Noteholder or a USPP Noteholder.

"**Creditor Accession Letter**" means an accession letter to this Agreement substantially in the form set out in Schedule 21 ( *Form of Creditor Accession Letter*).

"**Default**" means an Event of Default or any event or circumstance specified in Clause 24 ( *Events of Default*) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default.

"**Defaulting Creditor**" means any Creditor:

(a) which has rescinded or repudiated a Finance Document; or

(b) with respect to which an Insolvency Event has occurred and is continuing.

"**Delegate**" means any delegate, agent, attorney or co-trustee appointed by the Security Agent.

"**Derivatives Unwind Promissory Note**" means a Derivatives Unwind Promissory Note (Mexican Law) or a Derivatives Unwind Promissory Note (Dual Law).

"**Derivatives Unwind Promissory Note Commitment**" means a Derivatives Unwind Promissory Note Facility 1 Commitment, a Derivatives Unwind Promissory Note Facility 2 Commitment or a Derivatives Unwind Promissory Note Facility 3 Commitment.

"**Derivatives Unwind Promissory Note (Dual Law)**" means a new promissory note issued by the Parent under New York law and Mexican law substantially in the form of Part I of Schedule 4 (*Forms of Promissory Notes*) pursuant to Clause 4.4 (*Condition precedent to issue of promissory notes, enforcement and indemnification*) to evidence Financial Indebtedness under Derivatives Unwind Promissory Note Facility 1 or Derivatives Unwind Promissory Note Facility 2.

"**Derivatives Unwind Promissory Note (Mexican Law)**" means a new promissory note issued by the Parent under Mexican law substantially in the form of Part IV of Schedule 4 (*Forms of Promissory Notes*) pursuant to Clause 4.4 (*Condition precedent to issue of promissory notes, enforcement and indemnification*) to evidence Financial Indebtedness under Derivatives Unwind Promissory Note Facility 3.

"**Derivatives Unwind Promissory Note Facility**" means Derivatives Unwind Promissory Note Facility 1, Derivatives Unwind Promissory Note Facility 2 or Derivatives Unwind Promissory Note Facility 3.

"**Derivatives Unwind Promissory Note Facility 1**" means the promissory note facility made available under this Agreement as described in paragraph (b)(i) of Clause 2.1 (*The Facilities*).

"**Derivatives Unwind Promissory Note Facility 1 Commitment**" means:

(a) in relation to an Original Creditor, the amount in the Base Currency set opposite its name under the heading "Derivatives Unwind Promissory Note Facility 1 Commitment" in Part II of Schedule 1 (*The Original Parties*) and the amount of any other Derivatives Unwind Promissory Note Facility 1 Commitment transferred to it under this Agreement; and

(b) in relation to any other Creditor, the amount in the Base Currency of any Derivatives Unwind Promissory Note Facility 1 Commitment transferred to it under this Agreement,

to the extent not cancelled, reduced or transferred by it under this Agreement.

"**Derivatives Unwind Promissory Note Facility 1 Guarantor**" means CEMEX México.

"**Derivatives Unwind Promissory Note Facility 2**" means the promissory note facility made available under this Agreement as described in paragraph (b)(ii) of Clause 2.1 (*The Facilities*).

"**Derivatives Unwind Promissory Note Facility 2 Commitment**" means:

(a) in relation to an Original Creditor, the amount in the Base Currency set opposite its name under the heading "Derivatives Unwind Promissory Note Facility 2 Commitment" in Part II of Schedule 1 (*The Original Parties*) and the amount of any other Derivatives Unwind Promissory Note Facility 2 Commitment transferred to it under this Agreement; and

(b) in relation to any other Creditor, the amount in the Base Currency of any Derivatives Unwind Promissory Note Facility 2 Commitment transferred to it under this Agreement,

to the extent not cancelled, reduced or transferred by it under this Agreement.

"**Derivatives Unwind Promissory Note Facility 3**" means the promissory note facility made available under this Agreement as described in paragraph (b)(iii) of Clause 2.1 (*The Facilities*).

"**Derivatives Unwind Promissory Note Facility 3 Commitment**" means:

(a) in relation to an Original Creditor, the amount in Mexican pesos set opposite its name under the heading "Derivatives Unwind Promissory Note Facility 3 Commitment" in Part II of Schedule 1 (*The Original Parties*) and the amount of any other Derivatives Unwind Promissory Note Facility 3 Commitment transferred to it under this Agreement; and

(b) in relation to any other Creditor, the amount in Mexican pesos of any Derivatives Unwind Promissory Note Facility 3 Commitment transferred to it under this Agreement,

to the extent not cancelled, reduced or transferred by it under this Agreement.

"**Derivatives Unwind Promissory Noteholder**" means each Creditor which is a holder of a Derivatives Unwind Promissory Note.

"**Disposal**" has the meaning given to such term in paragraph (a) of Clause 7.3 ( *Disposal Proceeds*).

"**Disruption Event**" means either or both of:

(a) a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with the Facilities (or otherwise in order for the transactions contemplated by the Finance Documents to be carried out) which disruption is not caused by, and is beyond the control of, any of the Parties; or

(b) the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payments operations of a Party preventing that, or any other Party:

(i) from performing its payment obligations under the Finance Documents; or

(ii) from communicating with other Parties in accordance with the terms of the Finance Documents,

and which (in either such case) is not caused by, and is beyond the control of, the Party whose operations are disrupted.

"**Dutch Borrower**" means New Sunward Holding B.V.

"**Dutch Civil Code**" means the Dutch Civil code (*Burgerlijk Wetboek*).

"**Dutch FSA**" means the Dutch Financial Supervision Act ( *Wet op het financieel toezicht*) and the rules and regulations promulgated thereunder.

"**Dutch Obligor**" means an Obligor incorporated in The Netherlands.

"**Effective Date**" means the date on which the Agent has received all of the documents and evidence listed in Part I of Schedule 2 ( *Conditions Precedent*) in form and substance satisfactory to the Agent (acting reasonably).

"**Election Notice**" has the meaning given to such term in paragraph (b) of Clause 7.8 ( *Mandatory Prepayment and Segregated Accounts: other provisions*).

"**Employee Compensation Structured Note**" means the Mex$126,562,263.59 Nota Estructurada dated 17 April 2008 and issued by the Parent.

"**Empresas Tolteca**" means Empresas Tolteca de México, S.A. de C.V.

"**English Obligor**" means an Obligor incorporated in England and Wales.

"**Environmental Claim**" means any claim, proceeding or investigation by any person in respect of any Environmental Law or use of Hazardous Materials.

"**Environmental Law**" means any applicable law or regulation in any jurisdiction in which any member of the Group conducts business which relates to the pollution or protection of the environment or harm to or the protection of human health or the health of animals or plants.

"**Environmental Permits**" means any permit, licence, consent, approval and other authorisation and the filing of any notification, report or assessment required under any Environmental Law for the operation of the business of any member of the Group conducted on or from the properties owned or used by the relevant member of the Group.

"**ERISA**" means the U.S. Employee Retirement Income Security Act of 1974, as amended, and any successor statute thereto, as interpreted by the rules and regulations thereunder, all as the same may be in effect from time to time. References to sections of ERISA shall be construed also to refer to any successor sections.

"**ERISA Affiliate**" means an entity, whether or not incorporated, that is under common control with any Obligor within the meaning of Section 4001(a)(14) of ERISA, or is a member of a group that includes any Obligor and that is treated as a single employer under Section 414(b) or (c) of the Code.

"**España Subsidiary Guarantor**" means CEMEX Research Group AG, CEMEX Shipping B.V., CEMEX Asia B.V., CEMEX France Gestion (S.A.S.), CEMEX UK and CEMEX Egyptian Investments B.V.

"**EURIBOR**" means, in relation to any Loan in euro:

(a) the applicable Screen Rate; or

(b) (if no Screen Rate is available for the Interest Period of that Loan) the Reference Bank Rate,

as of the Specified Time on the Quotation Day for euro and for a period comparable to the Interest Period of that Loan and, if any such rate is below zero, EURIBOR will be deemed to be zero.

"**Event of Default**" means any event or circumstance specified as such in Clause 24 ( *Events of Default*).

"**Excess Cashflow**" has the meaning given to such term in Clause 21.1 ( *Financial definitions*).

"**Excluded Positions**" shall have the meaning ascribed thereto in Schedule 17 ( *Hedging Parameters*).

"**Excluded Proceeds**" means, as the case may be, Excluded Disposal Proceeds (as defined in paragraph (a) of Clause 7.3 ( *Disposal Proceeds*)), Excluded Debt Fundraising Proceeds (as defined in paragraph (a) of Clause 7.6 ( *Permitted Debt Fundraising Proceeds and Permitted Securitisation Prodeeds*)) or Excluded Equity Fundraising Proceeds (as defined in paragraph (a) of Clause 7.5 ( *Permitted Equity Fundraising Proceeds*)).

"**Executive Compensation Plan**" means any stock option plan, restricted stock plan or retirement plan which the Parent, any other Obligor or, as the case may be, Caliza, customarily provides to its employees, consultants and directors.

"**Existing Derivatives Unwind Promissory Note**" means a "Promissory Note" as defined in the 2009 Financing Agreement (prior to its amendment pursuant to the 2009 Financing Agreement Amendment Agreement) and as referred to in Section A of Part II (*The Original Creditors*) of Schedule 1 (*The Original Parties*).

"**Existing Exposure**" means, in relation to an Original Creditor, the amount set out in Section A of Part II ( *The Original Creditors*) of Schedule 1 (*The Original Parties*).

"**Existing Facility**" means, with respect to any Original Creditor, the facilities or, as the case may be, Existing Derivatives Unwind Promissory Note(s) or, as the case may be, Existing USPP Note(s), listed against its name in Section A of Part II ( *The Original Creditors*) of Schedule 1 (*The Original Parties*).

"**Existing Financing Agreement Creditor**" has the meaning given to such term in Clause 3.4 ( *Deemed Utilisation*).

"**Existing Financial Indebtedness**" means:

(a) the Financial Indebtedness described in Schedule 11 ( *Existing Financial Indebtedness*) (and, in the case of the Financial Indebtedness under the 2009 Financing Agreement, after giving effect to the Extinguishments);

(b) Financial Indebtedness under the Banobras Facility; and

(c) Financial Indebtedness under the New High Yield Notes,

**provided that** the principal amount of such Financial Indebtedness does not increase above the principal amount outstanding as at the Effective Date (except by the amount of any capitalised interest under any facility or instrument that provided for capitalisation of interest on those terms as at the date of this Agreement) less the amount of any repayments and prepayments made in respect of such Financial Indebtedness.

"**Existing High Yield Notes**" means the 2015 Floating Rate Notes, the 2016 Senior Notes, the 2017 CEMEX Finance Senior Notes, the 2017 CEMEX España Senior Notes, the 2018 Senior Notes, the 2019 USD Senior Notes, the 2019 EUR Senior Notes and the 2020 Senior Notes.

"**Existing Pre-2017 High Yield Notes**" means the 2015 Floating Rate Notes and the 2016 Senior Notes.

"**Existing Promissory Notes**" means:

(a) an Existing Derivatives Unwind Promissory Note; and

(b) a promissory note or pagaré issued to an Original Creditor under an Existing Facility which is a syndicated facility or a bilateral facility in accordance with its terms.

"**Existing Subordinated Convertible Notes**" means the 2015 Subordinated Convertible Notes and the 2016 Subordinated Convertible Notes.

"**Existing Transaction Security**" means the "Transaction Security" as defined in the 2009 Financing Agreement (prior to its amendment pursuant to the 2009 Financing Agreement Amendment Agreement).

"**Existing USPP Note**" means a note issued under the Existing USPP Note Agreement.

"**Existing USPP Note Agreement**" means the consolidated amended and restated note purchase agreements dated 14 August 2009 and made between CEMEX Finance as obligor and CEMEX España as guarantor and certain USPP Noteholders.

"**Existing USPP Note Guarantee**" means the consolidated amended and restated note guarantee dated 14 August 2009 by CEMEX España in favour of the USPP Noteholders.

"**Extinguishments**" has the meaning given to such term in the Ancillary Agreement.

"**Facility**" means a Loan Facility, a Derivatives Unwind Promissory Note Facility or the USPP Note Facility.

"**Facility A Commitment**" means a Facility A1 Commitment, a Facility A2 Commitment, a Facility A3 Commitment, a Facility A4 Commitment, a Facility A5 Commitment, a Facility A6 Commitment, a Facility A7 Commitment or a Facility A8 Commitment.

"**Facility A Loan**" means a Facility A1 Loan, a Facility A2 Loan, a Facility A3 Loan, a Facility A4 Loan, a Facility A5 Loan, a Facility A6 Loan, a Facility A7 Loan or a Facility A8 Loan.

"**Facility A1**" means the term loan facility made available under this Agreement as described in paragraph (a)(i)(A) of Clause 2.1 ( *The Facilities*).

"**Facility A1 Borrower**" means the Parent.

"**Facility A1 Commitment**" means:

(a) in relation to an Original Creditor, the amount in the Base Currency set opposite its name under the heading " **Facility A1 Commitment**" in Section B of Part II of Schedule 1 (*The Original Parties*) and the amount of any other Facility A1 Commitment transferred to it under this Agreement; and

(b) in relation to any other Creditor, the amount in the Base Currency of any Facility A1 Commitment transferred to it under this Agreement,

to the extent not cancelled, reduced or transferred by it under this Agreement.

"**Facility A1 Guarantor**" means each of CEMEX México and Empresas Tolteca.

"**Facility A1 Loan**" means a loan deemed to be made under Facility A1 or the principal amount outstanding for the time being of that loan.

"**Facility A2**" means the term loan facility made available under this Agreement as described in paragraph (a)(i)(B) of Clause 2.1 ( *The Facilities*).

"**Facility A2 Borrower**" means the Parent.

"**Facility A2 Commitment**" means:

(a) in relation to an Original Creditor, the amount in the Base Currency set opposite its name under the heading " **Facility A2 Commitment**" in Section B of Part II of Schedule 1 (*The Original Parties*) and the amount of any other Facility A2 Commitment transferred to it under this Agreement; and

(b) in relation to any other Creditor, the amount in the Base Currency of any Facility A2 Commitment transferred to it under this Agreement,

to the extent not cancelled, reduced or transferred by it under this Agreement.

"**Facility A2 Guarantor**" means each of CEMEX México and CEMEX Concretos.

"**Facility A2 Loan**" means a loan deemed to be made under Facility A2 or the principal amount outstanding for the time being of that loan.

"**Facility A3**" means the term loan facility made available under this Agreement as described in paragraph (a)(i)(C) of Clause 2.1 ( *The Facilities*).

"**Facility A3 Borrower**" means the Parent.

"**Facility A3 Commitment**" means:

(a) in relation to an Original Creditor, the amount in the Base Currency set opposite its name under the heading " **Facility A3 Commitment**" in Section B of Part II of Schedule 1 (*The Original Parties*) and the amount of any other Facility A3 Commitment transferred to it under this Agreement; and

(b) in relation to any other Creditor, the amount in the Base Currency of any Facility A3 Commitment transferred to it under this Agreement,

to the extent not cancelled, reduced or transferred by it under this Agreement.

"**Facility A3 Guarantor**" means CEMEX México.

"**Facility A3 Loan**" means a loan deemed to be made under Facility A3 or the principal amount outstanding for the time being of that loan.

"**Facility A4**" means the term loan facility made available under this Agreement as described in paragraph (a)(i)(D) of Clause 2.1 ( *The Facilities*).

"**Facility A4 Borrower**" means CEMEX España.

"**Facility A4 Commitment**" means:

(a) in relation to an Original Creditor, the amount in the Base Currency set opposite its name under the heading " **Facility A4 Commitment**" in Section B of Part II of Schedule 1 (*The Original Parties*) and the amount of any other Facility A4 Commitment transferred to it under this Agreement; and

(b) in relation to any other Creditor, the amount in the Base Currency of any Facility A4 Commitment transferred to it under this Agreement,

to the extent not cancelled, reduced or transferred by it under this Agreement.

"**Facility A4 Loan**" means a loan deemed to be made under Facility A4 or the principal amount outstanding for the time being of that loan.

"**Facility A5**" means the term loan facility made available under this Agreement as described in paragraph (a)(i)(E) of Clause 2.1 ( *The Facilities*).

"**Facility A5 Borrower**" means CEMEX España.

"**Facility A5 Commitment**" means:

(a) in relation to an Original Creditor, the amount in the Base Currency set opposite its name under the heading " **Facility A5 Commitment**" in Section B of Part II of Schedule 1 (*The Original Parties*) and the amount of any other Facility A5 Commitment transferred to it under this Agreement; and

(b) in relation to any other Creditor, the amount in the Base Currency of any Facility A5 Commitment transferred to it under this Agreement,

to the extent not cancelled, reduced or transferred by it under this Agreement.

"**Facility A5 Guarantor**" means CEMEX, Inc.

"**Facility A5 Loan**" means a loan deemed to be made under Facility A5 or the principal amount outstanding for the time being of that loan.

"**Facility A6**" means the term loan facility made available under this Agreement as described in paragraph (a)(i)(F) of Clause 2.1 ( *The Facilities*).

"**Facility A6 Borrower**" means New Sunward Holding B.V.

"**Facility A6 Commitment**" means:

(a) in relation to an Original Creditor, the amount in the Base Currency set opposite its name under the heading " **Facility A6 Commitment**" in Section B of Part II of Schedule 1 (*The Original Parties*) and the amount of any other Facility A6 Commitment transferred to it under this Agreement; and

(b) in relation to any other Creditor, the amount in the Base Currency of any Facility A6 Commitment transferred to it under this Agreement,

to the extent not cancelled, reduced or transferred by it under this Agreement.

"**Facility A6 Guarantor**" means each of the Parent, CEMEX México and Empresas Tolteca.

"**Facility A6 Loan**" means a loan deemed to be made under Facility A6 or the principal amount outstanding for the time being of that loan.

"**Facility A7**" means the term loan facility made available under this Agreement as described in paragraph (a)(i)(G) of Clause 2.1 ( *The Facilities*).

"**Facility A7 Borrower**" means New Sunward Holding B.V.

"**Facility A7 Commitment**" means:

(a) in relation to an Original Creditor, the amount in the Base Currency set opposite its name under the heading " **Facility A7 Commitment**" in Section B of Part II of Schedule 1 (*The Original Parties*) and the amount of any other Facility A7 Commitment transferred to it under this Agreement; and

(b) in relation to any other Creditor, the amount in the Base Currency of any Facility A7 Commitment transferred to it under this Agreement,

to the extent not cancelled, reduced or transferred by it under this Agreement.

"**Facility A7 Guarantor**" means each of the Parent and CEMEX México.

"**Facility A7 Loan**" means a loan deemed to be made under Facility A7 or the principal amount outstanding for the time being of that loan.

"**Facility A8**" means the term loan facility made available under this Agreement as described in paragraph (a)(i)(H) of Clause 2.1 ( *The Facilities*).

"**Facility A8 Borrower**" means CEMEX Materials.

"**Facility A8 Commitment**" means:

(a) in relation to an Original Creditor, the amount in the Base Currency set opposite its name under the heading " **Facility A8 Commitment**" in Section B of Part II of Schedule 1 (*The Original Parties*) and the amount of any other Facility A8 Commitment transferred to it under this Agreement; and

(b) in relation to any other Creditor, the amount in the Base Currency of any Facility A8 Commitment transferred to it under this Agreement,

to the extent not cancelled, reduced or transferred by it under this Agreement.

"**Facility A8 Guarantor**" means CEMEX España and each España Subsidiary Guarantor.

"**Facility A8 Loan**" means a loan deemed to be made under Facility A8 or the principal amount outstanding for the time being of that loan.

"**Facility B Borrower**" means CEMEX España.

"**Facility B Commitment**" means a Facility B1 Commitment or a Facility B2 Commitment.

"**Facility B Loan**" means a Facility B1 Loan or a Facility B2 Loan.

"**Facility B1**" means the term loan facility made available under this Agreement as described in paragraph (a)(ii)(A) of Clause 2.1 ( *The Facilities*).

"**Facility B1 Commitment**" means:

(a) in relation to an Original Creditor, the amount in euro set opposite its name under the heading "Facility B1 Commitment" in Section B of Part II of Schedule 1 (*The Original Parties*) and the amount of any other Facility B1 Commitment transferred to it under this Agreement; and

(b) in relation to any other Creditor, the amount in euro of any Facility B1 Commitment transferred to it under this Agreement,

to the extent not cancelled, reduced or transferred by it under this Agreement.

"**Facility B1 Loan**" means a loan deemed to be made under Facility B1 or the principal amount outstanding for the time being of that loan.

"**Facility B2**" means the term loan facility made available under this Agreement as described in paragraph (a)(ii)(B) of Clause 2.1 ( *The Facilities*).

"**Facility B2 Commitment**" means:

(a) in relation to an Original Creditor, the amount in euro set opposite its name under the heading "Facility B2 Commitment" in Section B of Part II of Schedule 1 (*The Original Parties*) and the amount of any other Facility B2 Commitment transferred to it under this Agreement; and

(b) in relation to any other Creditor, the amount in euro of any Facility B2 Commitment transferred to it under this Agreement,

to the extent not cancelled, reduced or transferred by it under this Agreement.

"**Facility B2 Guarantor**" means CEMEX, Inc.

"**Facility B2 Loan**" means a loan deemed to be made under Facility B2 or the principal amount outstanding for the time being of that loan.

"**Facility C**" means the term loan facility made available under this Agreement as described in paragraph (a)(iii) of Clause 2.1 ( *The Facilities*).

"**Facility C Borrower**" means the Parent.

"**Facility C Commitment**" means:

(a) in relation to an Original Creditor, the amount in Mexican pesos set opposite its name under the heading "Facility C Commitment" in Section B of Part II of Schedule 1 (*The Original Parties*) and the amount of any other Facility C Commitment transferred to it under this Agreement; and

(b) in relation to any other Creditor, the amount in Mexican pesos of any Facility C Commitment transferred to it under this Agreement,

to the extent not cancelled, reduced or transferred by it under this Agreement.

"**Facility C Guarantor**" means each of CEMEX México and CEMEX Concretos.

"**Facility C Loan**" means a loan deemed to be made under Facility C or the principal amount outstanding for the time being of that loan.

"**Facility Office**" means:

(a) in respect of a Creditor, the office or offices notified by that Creditor to the Agent in writing on or before the date it becomes a Creditor (or, following that date, by not less than five Business Days' written notice) as the office or offices through which it will perform its obligations under this Agreement; or

(b) in respect of any other Finance Party, the office in the jurisdiction in which it is resident for tax purposes.

"**FATCA**" means:

(a) sections 1471 to 1474 of the US Internal Revenue Code of 1986 or any associated regulations or other official guidance;

(b) any treaty, law, regulation or other official guidance enacted in any jurisdiction relating to paragraph (a) above; or

(c) any agreement relating to paragraphs (a) or (b) of this definition with the Internal Revenue Service of the United States of America, the United States government or any governmental or taxation authority in any other jurisdiction.

"**FATCA Application Date**" means:

(a) in relation to a payment which has a US source for US tax purposes, 1 January 2014;

(b) except as provided in (a) of this definition, in relation to a payment in respect of an obligation pursuant to which some or all of the payments under the Finance Documents are or would be US source payments for US tax purposes, 1 January 2015; or

(c) in relation to a payment made by a FATCA FFI, 1 January 2017,

or, in each case, such other date from which such payment becomes subject to FATCA as a result of any change in FATCA.

"**FATCA Compliant Party**" means a Party payments to whom do not require a FATCA Deduction.

"**FATCA Deduction**" means a deduction or withholding from a payment under a Finance Document pursuant to FATCA.

"**FATCA FFI**" means any foreign financial institution as defined in section 1471(d)(4) of the US Internal Revenue Code of 1986 which, if any Finance Party is not a FATCA Compliant Party, could be required to make a FATCA Deduction.

"**FATCA Payment**" means either:

(a) the increase in a payment made by an Obligor to a Finance Party under Clause 13.8 ( *FATCA Deduction and gross-up by Obligor*) or paragraph (b) of Clause 13.9 (*FATCA Deduction by a Finance Party*); or

(b) a payment under paragraph (d) of Clause 13.9 ( *FATCA Deduction by a Finance Party*).

"**Fee Letter**" means any letter or letters dated on or about the date of this Agreement between the Agent and the Parent or the Security Agent and the Parent setting out any of the fees referred to in Clause 12 ( *Fees*).

"**Finance Document**" means this Agreement, the USPP Note Agreement, the USPP Note Guarantee, any USPP Note, any Promissory Note, any Accession Letter, any Compliance Certificate, any Fee Letter, the Intercreditor Agreement, any Resignation Letter, any Selection Notice, any Transaction Security Document, any Creditor Accession Letter and any other document designated as a "Finance Document" by the Agent and the Parent.

"**Finance Party**" means the Agent, the Security Agent or a Creditor.

"**Financial Indebtedness**" means any indebtedness for or in respect of:

(a) moneys borrowed and debit balances at banks or other financial institutions;

(b) any acceptance under any acceptance credit or bill discounting facility (or dematerialised equivalent);

(c) any amount raised pursuant to a note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument (including, without limitation, any perpetual bonds);

(d) the amount of any liability in respect of any lease or hire purchase contract which would (in accordance with Applicable GAAP of the Parent) be treated as a finance or capital lease;

(e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis and meet any requirement for de-recognition under Applicable GAAP of the Parent);

(f) any Treasury Transaction (and, when calculating the value of that Treasury Transaction, only the mark-to-market value (or, if any actual amount is due as a result of the termination or close-out of that Treasury Transaction, that amount) shall be taken into account);

(g) any counter-indemnity obligation in respect of a guarantee, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution;

(h) any amount raised by the issue of redeemable shares which are redeemable (other than at the option of the issuer) before the Termination Date or are otherwise classified as borrowings under Applicable GAAP of the Parent;

(i) any amount of any liability under an advance or deferred purchase agreement if (i) one of the primary reasons behind entering into the agreement is to raise finance or to finance the acquisition or construction of the asset or service in question or (ii) the agreement is in respect of the supply of assets or services and payment is due more than 60 days after the date of supply;

(j) any arrangement pursuant to which an asset sold or otherwise disposed of by that person may be re-acquired by a member of the Group (whether following the exercise of an option or otherwise) and any Inventory Financing;

(k) any amount raised under any other transaction (including any forward sale or purchase, sale and sale back or sale and leaseback agreement) having the commercial effect of a borrowing or otherwise classified as borrowings under Applicable GAAP of the Parent; and

(l) the amount of any liability in respect of any guarantee for any of the items referred to in paragraphs (a) to (k) above.

"**Financial Quarter**" has the meaning given to such term in Clause 21.1 ( *Financial definitions*).

"**Financial Year**" has the meaning given to such term in Clause 21.1 ( *Financial definitions*).

"**Fitch**" means Fitch Ratings Limited or any successor thereto from time to time.

"**French Guarantor**" or "**French Obligor**" means a Guarantor or other Obligor incorporated in France.

"**FTI Report**" means the report dated 12 March 2012 by FTI Consulting Canada, ULC. relating to the Group and addressed to and/or capable of being relied upon by the Finance Parties.

"**Group**" means the Parent and each of its Subsidiaries for the time being.

"**Group Structure Chart**" means the structure chart delivered to the Agent under paragraph 6(a) of Part I of Schedule 2 ( *Conditions Precedent*).

"**Guarantors**" means the Original Guarantors and any Additional Guarantor other than any Original Guarantor or Additional Guarantor which has ceased to be a Guarantor pursuant to Clause 27.4 ( *Resignation of a Guarantor)* and/or sub paragraph (iii) of paragraph (c) of Clause 37.2 (*Exceptions*) and has not subsequently become an Additional Guarantor pursuant to Clause 27.3 ( *Additional Guarantors and Additional Security Providers*) and "**Guarantor**" means any of them.

"**Hazardous Materials**" means (a) radioactive materials, asbestos-containing materials, polychlorinated biphenyls, radon gas and (b) any other chemicals, materials or substances designated, classified or regulated as hazardous or toxic or as a pollutant or contaminant under any applicable Environmental Law.

"**Holding Company**" means, in relation to a company or corporation, any other company or corporation in respect of which it is a Subsidiary.

"**IFRS**" means international accounting standards within the meaning of IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements.

"**Impaired Agent**" means the Agent at any time when:

(a) it has failed to make (or has notified a Party that it will not make) a payment required to be made by it under the Finance Documents by the due date for payment;

(b) the Agent otherwise rescinds or repudiates a Finance Document;

(c) (if the Agent is also a Creditor) it is a Defaulting Creditor under paragraph (a) of the definition of "Defaulting Creditor"; or

(d) an Insolvency Event has occurred and is continuing with respect to the Agent,

unless, in the case of paragraph (a) above:

(i) its failure to pay is caused by:

(A) administrative or technical error; or

(B) a Disruption Event; and

payment is made within three Business Days of its due date; or

(ii) the Agent is disputing in good faith whether it is contractually obliged to make the payment in question.

"**IMSS**" means the Mexican Social Security Institute (*Instituto Mexicano del Seguro Social*).

"**Incentive Amortisation Threshold**" has the meaning given to such term in paragraph (a) of Clause 12.2 ( *Additional Amortisation Fee*).

"**INFONAVIT**" means the Mexican Workers' Housing Fund Institute (*Instituto del Fondo Nacional de la Vivienda para los Trabajadores*).

"**Initial Termination Date**" means 14 February 2017.

"**Insolvency Event**" in relation to a Finance Party means that the Finance Party:

(a) is dissolved (other than pursuant to a consolidation, amalgamation or merger);

(b) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;

(c) makes a general assignment, arrangement or composition with or for the benefit of its creditors;

(d) institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organisation or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation by it or such regulator, supervisor or similar official;

(e) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition is instituted or presented by a person or entity not described in paragraph (d) above and:

(i) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation; or

(ii) is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof;

(f) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);

(g) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets;

(h) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter;

(i) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in paragraphs (a) to (h) above; or

(j) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

"**Insolvency Proceedings**" means any of the matters described in Clause 24.7 ( *Insolvency proceedings*).

"**Intellectual Property**" means:

(a) any patents, trademarks, service marks, designs, business names, copyrights, design rights, data-base rights, inventions, knowhow and other intellectual property rights and interests, whether registered or unregistered; and

(b) the benefit of all applications and rights to use such assets of each member of the Group.

"**Intercreditor Agreement**" means the intercreditor agreement dated on or about the date of this Agreement and made between, among others, the Parent, Wilmington Trust (London) Limited as Security Agent, Citibank International PLC as Agent, the Creditors and any other creditors of the Group that may accede to it from time to time in accordance with its terms.

"**Interest Period**" means, in relation to a Utilisation, each period determined in accordance with Clause 10 ( *Interest Periods*) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 9.2 ( *Default interest*).

"**Inventory Financing**" means a financing arrangement pursuant to which a member of the Group sells inventory to a bank or other institution (or a special purpose vehicle or partnership incorporated or established by or on behalf of such bank or other institution or an Affiliate of such bank or other institution) and has an obligation to repurchase such inventory to the extent that it is not sold to a third party within a specified period.

"**IPO**" means an initial public offering of the ordinary share capital (or equivalent) of Caliza and the admission of such share capital to listing and/or trading on any recognised investment exchange or market, taking into account any relevant laws.

"**Joint Venture**" means any joint venture entity, whether a company, unincorporated firm, undertaking, association, joint venture or partnership or any other entity.

"**Joint Venture Investment**" has the meaning given to such term in sub-paragraph (c)(ii) of the definition of Permitted Joint Venture.

"**Legal Opinions**" means the legal opinions delivered to the Agent pursuant to paragraph 5 of Part I of Schedule 2 ( *Conditions Precedent*) or in relation to any Additional Guarantors or Additional Security Providers.

"**Legal Reservations**" means:

(a) the principle that equitable remedies may be granted or refused at the discretion of a court and the limitation of enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors;

(b) the time barring of claims under the Limitation Act 1980 and the Foreign Limitation Periods Act 1984, the possibility that an undertaking to assume liability for or indemnify a person against non-payment of UK stamp duty may be void and defences of set-off or counterclaim;

(c) similar principles, rights and defences under the laws of any Relevant Jurisdiction; and

(d) any other matters which are set out as qualifications or reservations as to matters of law in the Legal Opinions.

"**Lender**" means a Creditor with a Commitment under a Loan Facility.

"**LIBOR**" means, in relation to any Loan:

(a) the applicable Screen Rate; or

(b) (if no Screen Rate is available for the currency or Interest Period of that Loan) the Reference Bank Rate,

as of the Specified Time on the Quotation Day for the currency of that Loan and a period comparable to the Interest Period of that Loan and, if any such rate is below zero, LIBOR will be deemed to be zero.

"**Loan**" means a Facility A Loan, a Facility B Loan or a Facility C Loan.

"**Loan Facility**" means Facility A1, Facility A2, Facility A3, Facility A4, Facility A5, Facility A6, Facility A7, Facility A8, Facility B1, Facility B2 or Facility C (as applicable).

"**Loan Facility Promissory Note**" means a promissory note described in Clause 4.3 ( *Promissory Notes under Loan Facilities* ).

"**Majority Creditors**" means a Creditor or Creditors the Base Currency Amounts of whose Commitments aggregate 66 2/3 per cent. or more of the Base Currency Amounts of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated 66 2/3 per cent. or more of the Base Currency Amounts of the Total Commitments immediately prior to that reduction).

"**Mandatory Cost**" means the percentage rate per annum calculated by the Agent in accordance with Schedule 5 ( *Mandatory Cost Formula* ).

"**Margin**" means, in relation to any Loan, Derivatives Unwind Promissory Note or Unpaid Sum, 4.50 per cent. per annum, subject to the following:

(a) prior to the date on which the Base Currency Amount of the aggregate Outstanding Principal Amounts has been reduced by an aggregate amount equal to at least $1,500,000,000 (compared to the Base Currency Amount of the aggregate Outstanding Principal Amounts as at the Effective Date), the Margin shall be 5.25 per cent. per annum;

(b) from (and including) the date on which the Base Currency Amount of the aggregate Outstanding Principal Amounts has been reduced by an aggregate amount equal to at least $1,500,000,000 (compared to the Base Currency Amount of the aggregate Outstanding Principal Amounts as at the Effective Date) to (and excluding) the date on which the Base Currency Amount of the aggregate Outstanding Principal Amounts has been reduced by an aggregate amount equal to at least $2,000,000,000 (compared to the Base Currency Amount of the aggregate Outstanding Principal Amounts as at the Effective Date), the Margin shall be 5.00 per cent. per annum; and

(c) from (and including) the date on which the Base Currency Amount of the aggregate Outstanding Principal Amounts has been reduced by an aggregate amount equal to at least $2,000,000,000 (compared to the Base Currency Amount of the aggregate Outstanding Principal Amounts as at the Effective Date), the Margin shall be 4.50 per cent. per annum.

However:

(i) the increase in the Margin for a Loan or a Derivatives Unwind Promissory Note pursuant to paragraph (a) above shall take immediate effect on the Effective Date;

(ii) any decrease in the Margin for a Loan or a Derivatives Unwind Promissory Note pursuant to paragraph (b) or (c) above shall take effect on the date (the "**reset date**") which is the first day of the next Interest Period for that Loan or, as the case may be, Derivatives Unwind Promissory Note following the date of the relevant reduction of the Outstanding Principal Amounts under paragraphs (b) or (c) above; and

(ii) while an Event of Default is continuing, the Margin for each Loan, Derivatives Unwind Promissory Note or Unpaid Sum shall be 5.25 per cent. per annum.

"**Marketable Securities**" means securities (whether equity, debt or other securities) which are listed on a stock exchange or for which a trading market exists (whether on market or over the counter) but excluding: (a) shares in any member of the Group (other than, following completion of the first Caliza Transaction falling within paragraph (b) of the definition thereof (if so completed), shares in Caliza held other than by a member of the Group) and (b) any shares in Axtel, S.A.B. de C.V.

"**Material Adverse Effect**" means a material adverse effect on:

(a) the business, property, assets, condition (financial or otherwise) or operations of the Group, taken as a whole; or

(b) the rights or remedies of any Finance Party under the Finance Documents; or

(c) the ability of any Obligor to perform its obligations under the Finance Documents or the validity or enforceability, effectiveness or ranking of any of the Transaction Security granted or purported to be granted under or pursuant to any of the Finance Documents.

"**Material Operating Subsidiary**" means a Material Subsidiary other than a member of the Group that is a Material Subsidiary solely by virtue of its being a Holding Company of a Material Subsidiary or Obligor.

"**Material Subsidiary**" means, as at the date of this Agreement those companies set out in Schedule 16 ( *Material Subsidiaries*) and after the date of this Agreement, any other Subsidiary of the Parent which:

(a) has total gross assets representing 5 per cent. or more of the total consolidated assets of the Group;

(b) has revenues representing 5 per cent. or more of the consolidated turnover of the Group; and/or

(c) has earnings before interest, tax, depreciation and amortisation calculated on the same basis as EBITDA, representing 5 per cent. or more of the consolidated EBITDA of the Group,

in each case calculated on a consolidated basis (without duplication) and any Holding Company of any such Subsidiary or of an Obligor.

Compliance with the conditions set out in paragraphs (a) to (c) shall be determined by reference to the most recent Compliance Certificate supplied by the Parent and/or the latest audited financial statements of that Subsidiary (if available) and the latest audited consolidated financial statements of the Group, but if a Subsidiary has been acquired since the date as at which the latest audited consolidated financial statements of the Group were prepared, the financial statements shall be adjusted in order to take into account the acquisition of that Subsidiary (that adjustment being certified by the Group's auditors as representing an accurate reflection of each of the respective revised total assets and turnover of the Group).

A report by the auditors of the Parent (or, as the case may be, any other internationally recognised accounting firm that is approved by the Agent) that a Subsidiary is a Material Subsidiary shall, in the absence of manifest error, be conclusive and binding on all Parties.

"**Mexico**" means the United Mexican States.

"**Month**" means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that:

(a) if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day; and

(b) if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month.

The above rules will only apply to the last Month of any period. " **Monthly**" shall be construed accordingly.

"**Month End Cash in Hand**" means the cash in hand of the Parent on a consolidated basis (excluding, after the completion of the first Caliza Transaction (if so completed), an amount equal to the lower of (a) cash in hand of the Caliza Group (excluding any Caliza Offering Option Amount) and (b) the Caliza Cash Maintenance Threshold) as at the last Business Day of the month ending immediately prior to the day on which any Relevant Proceeds or an amount of Excess Cashflow (as the case may be) are, as the case may be, deposited in a Segregated Account or prepaid (or would have been required to be so deposited or prepaid if such Relevant Proceeds were not Excluded Proceeds or if such amount of Excess Cashflow were not required to be applied in accordance with Clause 7.4 ( *Excess Cashflow*)), with such amount being set out in a notice signed by an Authorised Signatory of the Parent and delivered to the Agent at the same time as the making of any final instalment of any amount of Relevant Proceeds or Excess Cashflow required to be applied under Clauses 7.2 ( *Caliza Proceeds*), 7.3 (*Disposal Proceeds*), 7.4 (*Excess Cashflow*), 7.5 (*Permitted Equity Fundraising Proceeds*) or 7.6 (*Permitted Debt Fundraising Proceeds and Permitted Securitisation Proceeds* ). For the avoidance of doubt, the cash in hand of the Parent shall not include (i) any amounts of Relevant Proceeds (including Caliza Proceeds) or Excess Cashflow (A) standing to the credit of, or to be applied in accordance with this Agreement to, a Reserve or in a Segregated Account (in each case) for the period in which they are being held by the Parent pending application in accordance with the terms of this Agreement or (B) which are, pursuant to Clause 7 ( *Mandatory Prepayment and Segregated Accounts*), capable of being applied in prepayment of any Financial Indebtedness or (ii) any Caliza Offering Option Amount.

"**Moody's**" means Moody's Investor Services Limited or any successor to its ratings business.

"**Multiemployer Plan**" means a "multiemployer plan" as defined in Section 4001(a)(3) of ERISA that is subject to Title IV of ERISA to which any Obligor or any ERISA Affiliate is making contributions or has an obligation to make contributions.

"**New High Yield Notes**" means the $500,000,000 9.50% senior secured notes maturing on 15 June 2018 to be issued by the Parent.

"**New High Yield Notes Indenture**" means the indenture dated on or about the date of this Agreement pursuant to which the New High Yield Notes will be issued.

"**New High Yield Notes Documents**" means the New High Yield Notes Indenture and any related documents.

"**New Creditor**" has the meaning given to that term in Clause 25 ( *Changes to the Creditors*).

"**Non-Consenting Creditor**" has the meaning given to that term in Clause 37.4 ( *Replacement of Creditor*).

"**Non-US Pension Plan**" means any defined benefit plan, fund (including, without limitation, any superannuation fund) or other similar program established or maintained outside the United States by any Obligor or any of its Subsidiaries, primarily for the benefit of employees of such Obligor or any such Subsidiary residing outside the United States, which plan, fund or other similar program provides, or results in, retirement income, a deferral of income in contemplation of retirement, and which plan, fund or program is not a Pension Plan or Multiemployer Plan and is not otherwise subject to ERISA or the Code.

"**Obligors**" means the Borrowers, the Guarantors and the Security Providers and " **Obligor**" means any of them.

"**Original Financial Statements**" means:

(a) in relation to the Parent, its audited unconsolidated and consolidated financial statements for its Financial Year ended 31 December 2011 accompanied by an audit opinion of KPMG Cárdenas Dosal, S.C.;

(b) in relation to CEMEX España, its audited consolidated financial statements for its financial year ended 31 December 2011; and

(c) in relation to any other Borrower or Guarantor, its most recent annual financial statements (audited, if available).

"**Original Obligor**" means an Original Borrower, an Original Guarantor or an Original Security Provider.

"**Outlook**" means a rating outlook of the Parent with regard to the Parent's economic and/or fundamental business condition, as assigned by a Rating Agency.

"**Outstanding Principal Amount**" means, at any time:

(a) in relation to a Lender under a Loan Facility, that Lender's participation in Loans under the relevant Facility at that time (in the case of Loan Facilities referred to in Clause 4.3 (*Promissory Notes under Loan Facilities*), being the principal amount owed to that Lender under its Loan Facility Promissory Note);

(b) in relation to a Creditor holding a Derivatives Unwind Promissory Note, the principal amount owed to that Creditor under its Derivatives Unwind Promissory Note at that time; and

(c) in relation to a USPP Noteholder, the principal amount owed to that USPP Noteholder under its USPP Note at that time.

"**Participating Member State**" means any member state of the European Union that has the euro as its lawful currency in accordance with legislation of the European Union relating to Economic and Monetary Union.

"**Party**" means a party to this Agreement.

"**PBGC**" means the Pension Benefit Guaranty Corporation referred to and defined in ERISA.

"**Pension Plan**" means a "pension plan," as such term is defined in Section 3(2) of ERISA, which is subject to Title IV of ERISA (other than a multiemployer plan as defined in Section 4001(a)(3) of ERISA), and with respect to which any Obligor or any ERISA Affiliate is an "employer" as defined in Section 3(5) of ERISA.

"**Permitted Acquisition**" means:

(a) an acquisition by a member of the Group of an asset sold, leased, transferred or otherwise disposed of by another member of the Group in circumstances constituting a Permitted Disposal;

(b) an acquisition of shares or securities pursuant to a Permitted Share Issue;

(c) an acquisition of cash or securities which are Cash Equivalent Investments;

(d) the incorporation of a company which on incorporation becomes a member of the Group or which is a special purpose vehicle, whether a member of the Group or not;

(e) an acquisition that constitutes a Permitted Joint Venture;

(f) an acquisition that constitutes a Permitted PPP Investment;

(g) an acquisition of assets and, if applicable, cash, in exchange for other assets and, if applicable, cash, of equal or higher value **provided that**: (i) the cash element of any such acquisition must not be more than 20 per cent. of the aggregate consideration for the acquisition; and (ii) the maximum aggregate market value of the assets acquired pursuant to all such transactions must not be more than $100,000,000 (or its equivalent in any other currency) in any Financial Year;

(h) any acquisition of shares of the Parent or any acquisition of shares of Caliza pursuant to an obligation in respect of any Executive Compensation Plan of the Parent or, as the case may be, of Caliza;

(i) any other acquisition consented to by the Agent acting on the instructions of the Majority Creditors;

(j) an acquisition of shares in the Parent to the extent that a member of the Group has an obligation to deliver such shares to any holder(s) of convertible securities falling within paragraph (f)(i) of the definition of Permitted Financial Indebtedness pursuant to the terms of such convertible securities;

(k) any acquisition of assets or of a company, of shares, securities or a business or undertaking (or, in each case, any interest in any of them) by a member of the Caliza Group following completion of the first Caliza Transaction (if so completed) **provided that** the aggregate amount of the consideration for such acquisitions does not at any time (when aggregated with all other amounts of Caliza Expansion Capital then incurred) exceed the Caliza Expansion Capital Permitted Limit;

(l) an acquisition occurring to implement the Caliza Reorganisation;

(m) any acquisition constituting a Reconstruction permitted pursuant to Clause 22.7 ( *Merger*); and

(n) any other acquisition of a company, of shares, securities or a business or undertaking (or, in each case, any interest in any of them) **provided that** the aggregate amount of the consideration for such acquisitions (when aggregated with (i) the aggregate amount of Joint Venture Investment falling within paragraph (c)(ii) of the definition of Permitted Joint Venture, and (ii) the aggregate amount of the market value of Asset Swaps falling within paragraph (t) of the definition of Permitted Disposal, in each case, in that Financial Year) does not exceed $250,000,000 (or its equivalent in any other currencies) in any Financial Year, and **provided further that**:

(i) if an asset is acquired by a member of the Group pursuant to this paragraph (n); and

(ii) such asset is the subject of a Disposal by the Group within 12 Months of the date of completion of its acquisition,

the unutilised portion of the amount referred to above in respect of that Financial Year shall be increased by an amount equal to the lower of (A) the amount of the consideration originally paid by the relevant member of the Group which acquired such asset and (B) the amount of the Disposal Proceeds received for such Disposal **provided that** such Disposal Proceeds are applied in accordance with Clause 7 ( *Mandatory Prepayment and Segregated Accounts*) during that Financial Year;

"**Permitted Debt Purchase Transaction**" means, in relation to a person, a transaction where such person purchases by way of assignment or transfer any Commitment or amount outstanding under this Agreement.

"**Permitted Disposal**" means any sale, lease, licence, transfer or other disposal which, except in the case of Disposals as between members of the Group, is on arm's length terms:

(a) of trading stock or cash made by any member of the Group in the ordinary course of trading of the disposing entity;

(b) (other than, following completion of the first Caliza Transaction (if so completed), a Disposal by a member of the Group which is not a member of the Caliza Group to a member of the Caliza Group, which shall be subject to paragraph (j) below) of any asset by a member of the Group (the "**Disposing Company**") to another member of the Group (the "**Acquiring Company**"), but if:

(i) the Disposing Company is a Borrower or a Guarantor, the Acquiring Company must also be (or, as the case may be, become) a Borrower or a Guarantor (subject to any applicable guarantee limitations);

(ii) the Disposing Company had given Transaction Security over the asset, the Acquiring Company must give equivalent Transaction Security over that asset (and, if the Acquiring Company is not already a Security Provider, it must accede to this Agreement as an Additional Security Provider); and

(iii) the Disposing Company is a Guarantor, the Acquiring Company must be a Guarantor guaranteeing at all times an amount no less than that guaranteed by the Disposing Company (subject to any applicable guarantee limitations),

**provided that** the conditions set out in paragraphs (i) and (iii) above shall only apply (A) to a Disposal of shares if such Disposal would result in the Acquiring Company becoming a Material Subsidiary, or (B) to a Disposal of other assets if all or substantially all of the assets of the Disposing Company are being disposed of;

(c) of obsolete or redundant vehicles, machinery, parts and equipment in the ordinary course of trading;

(d) of cash or Cash Equivalent Investments for cash or in exchange for other Cash Equivalent Investments;

(e) constituted by a licence of Intellectual Property in the ordinary course of trading;

(f) to a Joint Venture, to the extent permitted by Clause 22.17 (*Joint ventures*);

(g) arising as a result of any Permitted Security;

(h) which is a Permitted PPP Investment;

(i) of shares in Caliza pursuant to a Caliza Transaction;

(j) following completion of the first Caliza Transaction (if so completed), by a member of the Group which is not a member of the Caliza Group to a member of the Caliza Group (other than a Disposal of shares which are subject to the Transaction Security, unless the acquiring member of the Caliza Group grants equivalent Transaction Security over such shares) **provided that** the aggregate fair market value of all assets disposed of pursuant to this paragraph (j) does not exceed $50,000,000 (or its equivalent in other currencies) in any Financial Year (when aggregated with the aggregate fair market value of all share issuances falling within paragraph (g) of the definition of Permitted Share Issue) **provided further that** if, in any Financial Year the aggregate fair market value of all assets disposed of pursuant to this paragraph (j) and all shares issued pursuant to paragraph (g) of the definition of Permitted Share Issue is less than $50,000,000 (or its equivalent in other currencies) (the difference being referred to as the "**Unused Basket Amount**"), then in the following Financial Year the maximum amount available to the Group under this paragraph (j) shall be increased by such Unused Basket Amount and the amount (if any) of any Unused Basket Amount attributable to any previous Financial Year(s) which remains unspent;

(k) of any shares in a member of the Group (**provided that** all such shares in that entity owned by a member of the Group are the subject of the Disposal) or of any other asset, in each case on arm's length terms and for full market value where:

(i) no less than 85 per cent. of the consideration for the Disposal is payable to the Group in cash or Marketable Securities paid or received by a member of the Group at completion of the Disposal (**provided that** where a portion of that 85 per cent. is comprised of Marketable Securities, those Marketable Securities must be disposed of for cash to a person that is not a member of the Group within 90 days of completion);

(ii) if the aggregate consideration for the Disposal (when aggregated with the consideration for any related Disposals) is equal to 5 per cent. or more of the value of consolidated assets of the Group, the Parent has delivered to the Agent a certificate signed by an Authorised Signatory confirming that, on a *pro forma* basis, assuming that the Disposal had been completed and the proceeds had been applied in accordance with Clause 7 (*Mandatory Prepayment and Segregated Accounts*) immediately prior to the first day of the most recent Reference Period for which a Compliance Certificate has been or is required to have been delivered under this Agreement, the Parent would have been in compliance with the financial covenants in paragraphs (a) and (b) of Clause 21.2 (*Financial condition*) as at the last day of the most recent Reference Period for which a Compliance Certificate has been or is required to have been delivered under this Agreement; and

(iii) the Disposal Proceeds received by members of the Group are applied (to the extent required) in accordance with Clause 7 (*Mandatory Prepayment and Segregated Accounts*);

(l) of any asset compulsorily acquired by a governmental authority **provided that** the Disposal Proceeds received by members of the Group are applied (to the extent required) in accordance with Clause 7 ( *Mandatory Prepayment and Segregated Accounts*);

(m) of any receivables disposed of pursuant to a factoring or similar receivables financing arrangement that is otherwise permitted under this Agreement (including, for the avoidance of doubt, the Banobras Facility or, as the case may be, a Replacement Banobras Facility);

(n) of any inventory disposed of pursuant to an Inventory Financing or similar arrangement that is otherwise permitted under this Agreement;

(o) of any plant or equipment disposed of pursuant to a sale and lease-back arrangement that is otherwise permitted under this Agreement;

(p) of receivables disposed of pursuant to a Permitted Securitisation;

(q) of land or buildings arising as a result of lease or licence in the ordinary course of its trading;

(r) of any shares of the Parent or, as the case may be and subject to Clause 22.32 ( *Caliza*), Caliza, pursuant to an obligation in respect of any Executive Compensation Plan;

(s) of shares, common equity securities in the Parent or reference property in connection with the same to the extent that a member of the Group has an obligation to deliver such shares, common equity securities or reference property to any holder(s) of convertible or exchangeable securities falling within paragraph (f)(i) of the definition of Permitted Financial Indebtedness pursuant to the terms of such convertible or exchangeable securities or to any counterparty pursuant to the terms of any Permitted Put/Call Transaction;

(t) of assets and, if applicable, cash in exchange for other assets and, if applicable, cash, of equal or higher value (an " **Asset Swap**") **provided that**: (i) the cash element of any such Disposal must not be more than 20 per cent. of the aggregate consideration for the Disposal; and (ii) the maximum aggregate market value of all assets disposed of in such transactions (when aggregated with (x) the aggregate amount of the consideration for acquisitions falling within paragraph (n) of the definition of Permitted Acquisition and (y) the aggregate amount of Joint Venture Investment falling within paragraph (c)(ii) of the definition of Permitted Joint Venture, in each case, in that Financial Year) must not be more than $250,000,000 (or its equivalent) in any Financial Year;

(u) occurring to implement the Caliza Reorganisation;

(v) forming part of a Reconstruction permitted pursuant to Clause 22.7 ( *Merger*); or

(w) otherwise approved by the Agent acting on the instructions of the Majority Creditors.

"**Permitted Distribution**" means the declaration, making or payment of a dividend, charge, fee or other distribution (or interest on any unpaid dividend, charge, fee or other distribution):

(a) on or in respect of share capital to the Parent or any of its Subsidiaries; or

(b) that is:

(i) a recapitalisation of earnings on or in respect of the share capital of the Parent (or any class of its share capital) pursuant to which additional share capital of the Parent or the right to subscribe for additional share capital is issued to the existing shareholders of the Parent on a *pro rata* basis;

(ii) by way of the issuance of common equity securities of the Parent or the right to subscribe for such common equity securities to the existing shareholders of the Parent on a *pro rata* basis; or

(iii) following completion of the first Caliza Transaction (if so completed), by way of the issuance of common equity securities of Caliza or the right to subscribe for such common equity securities to the existing shareholders of Caliza on a *pro rata* basis,

**provided that**, for the avoidance of doubt, no cash or other asset of any member of the Group (or any interest in any such cash or asset) is paid or otherwise transferred or assigned to any person that is not a member of the Group in connection with such distribution or interest; or

(c) that is a payment of interest (at a time at which no Default is continuing) on any perpetual debt securities issued by the Parent or New Sunward Holding Financial Ventures B.V. or otherwise permitted by this Agreement;

(d) to any minority shareholders of any Subsidiary of the Parent:

(i) *pro rata* to its holding in such Subsidiary and **provided that** all other shareholders of the relevant Subsidiary receive their equivalent *pro rata* share in any such dividend, charge, fee, distribution or interest payment at the same time; or

(ii) (in the case of minority shareholders of Assiut Cement Company in the Financial Years ending 31 December 2012 and 31 December 2013 only) on any basis (whether *pro rata* to its holding in such Subsidiary or otherwise), **provided that** the maximum aggregate amount distributed under this sub paragraph (ii) must not exceed $45,000,000 (or its equivalent) as at the time such Permitted Distributions are made.

"**Permitted Financial Indebtedness**" means Financial Indebtedness:

(a) incurred or arising under the Finance Documents;

(b) that is Existing Financial Indebtedness;

(c) owed to a member of the Group;

(d) that constitutes a Permitted Securitisation;

(e) arising under Capital Leases, factoring arrangements, Inventory Financing arrangements or export credit facilities or any similar arrangements for the purchase of equipment (**provided that** any Security granted in relation to any such facility relates solely to equipment, the purchase of which was financed under such facility) or pursuant to sale and lease-back transactions **provided that**:

(i) the maximum aggregate Financial Indebtedness of members of the Group under such transactions as at the Effective Date does not exceed $280,000,000 (and **provided that** no amount of Financial Indebtedness permitted under this sub paragraph (i) may be reborrowed once repaid); and

(ii) the maximum aggregate Financial Indebtedness of members of the Group under such transactions (excluding any amounts under any transactions referred to in sub paragraph (i) above) does not exceed $350,000,000 at any time (and any amount of Financial Indebtedness permitted under this sub paragraph (ii) which has been repaid may be reborrowed or replaced whether pursuant to the terms of the arrangement constituting such Financial Indebtedness when originally advanced or otherwise);

(f) arising:

(i) pursuant to an issuance of bonds, notes or other debt securities, or of convertible or exchangeable securities by:

(A) in the case of bonds, notes or other debt securities or convertible or exchangeable securities (or other equity-like instruments which are treated as Financial Indebtedness) issued to refinance or replace Existing Financial Indebtedness falling within Schedule 11 (*Existing Financial Indebtedness*) or to refinance or replace Permitted Refinancing Indebtedness falling within paragraph (a) or (c) of the definition thereof, one or more Obligors (other than CEMEX Materials and CEMEX, Inc.) and/or the same member of the Group (including, where applicable, CEMEX Materials and CEMEX, Inc.) that issued the relevant Existing Financial Indebtedness that is being refinanced or replaced (whether acting as co-issuers or otherwise but, for the avoidance of doubt, with several liability only); or

(B) in the case of bonds, notes or other debt securities or convertible or exchangeable securities (or other equity-like instruments which are treated as Financial Indebtedness) issued so as to be applied in repayment or prepayment of the Facilities or in repayment or prepayment of Permitted Refinancing Indebtedness falling within paragraph (b) or (c) of the definition thereof, one or more Obligors (other than CEMEX Materials and CEMEX, Inc.) whether acting as co-issuers or otherwise,

(and, for the avoidance of doubt, such securities may be issued with an original issue discount) on the capital markets in each case subscribed or paid for in full in cash on issue (unless such securities are exchanged on issue for other securities that constitute Existing Financial Indebtedness falling within paragraph (a) of the definition thereof on issue) **provided that** (other than (x) any conversion into common equity securities of the Parent or (y) in the case of a refinancing by Bancomext of the Bancomext Facility) no principal repayments are scheduled (and no call options can be exercised) in respect thereof until after the later of (1) the Initial Termination Date and (2) (in the case of an issuance to refinance or replace Existing Financial Indebtedness other than the Facilities) after the final maturity date of that Existing Financial Indebtedness;

(ii) under a loan facility in respect of which the only borrowers are:

(A) in the case of loan facilities entered into to refinance or replace Existing Financial Indebtedness falling within Schedule 11 (*Existing Financial Indebtedness*) or to refinance or replace Permitted Refinancing Indebtedness falling within paragraph (a) or (c) of the definition thereof, one or more Obligors (other than CEMEX Materials and CEMEX, Inc.) and/or the same member of the Group (including, where applicable, CEMEX Materials and CEMEX, Inc.) that borrowed the relevant Financial Indebtedness that is being refinanced or replaced, (whether acting as joint or multiple borrowers but for the avoidance of doubt, with several liability only); or

(B) in the case of loan facilities entered into so as to refinance or replace the Facilities or Permitted Refinancing Indebtedness falling within paragraph (b) or (c) of the definition thereof, one or more Obligors (other than CEMEX Materials and CEMEX, Inc.) whether acting as joint or multiple borrowers,

**provided that** (other than in the case of a refinancing by Bancomext of the Bancomext Facility) no principal repayments are scheduled (and no mandatory prepayment obligations arise save as a result of unlawfulness affecting a creditor in respect of such loan facility) in respect thereof until after the Initial Termination Date,

and further **provided that**:

(1) the terms applicable to such issuance under paragraph (f)(i) (excluding pricing, but including, without limitation, as to prepayments, representations, covenants, events of default, guarantees and security) taken as a whole are no more restrictive or onerous than the terms applicable to the Facilities, any of the Existing High Yield Notes and any of the Existing Subordinated Convertible Notes, whichever is the more restrictive or onerous with respect to a particular term and the terms applicable to such incurrence under paragraph (f)(ii) (excluding pricing, but including, without limitation, as to prepayments, representations, covenants, events of default, guarantees and security) are no more restrictive or onerous than the terms applicable to the Facilities, any of the Existing High Yield Notes or any of the Existing Subordinated Convertible Notes, whichever is the more restrictive or onerous with respect to a particular term;

(2) the proceeds of such issuance or incurrence are applied (to the extent required) in accordance with Clause 7 ( *Mandatory Prepayment and Segregated Accounts*);

(3) if proceeds of such issuance or incurrence are, to the extent required under this Agreement, being used to replace or refinance (aa) the Facilities, (bb) (in whole or part) Existing High Yield Notes which share in the Transaction Security, (cc) (in whole or part) the 2014 Eurobonds, (dd) any other Existing Financial Indebtedness (other than the Existing Subordinated Convertible Notes, the Bancomext Facility or the Banco Industrial de Guatemala Facility), (ee) any Permitted Refinancing Indebtedness applied to replace or refinance any of the Financial Indebtedness falling within (aa) to (dd) above or any refinancing or replacement thereof, such Financial Indebtedness issued or incurred shall be entitled to share in the Transaction Security in accordance with (and on the terms of) the Intercreditor Agreement;

(4) any issuance under paragraph (f)(i) or (f)(ii) above which refinances or replaces any Permitted Refinancing Indebtedness which is subordinated to the Facilities must be so subordinated; and

(5) any issuance under paragraph (f)(i) above which refinances or replaces Subordinated Optional Convertible Securities must constitute an issuance of Subordinated Optional Convertible Securities;

(g) that constitutes a Permitted Liquidity Facility;

(h) that becomes Financial Indebtedness solely as a result of any change in Applicable GAAP of the Parent after the date of this Agreement and that existed prior to the date of such change in Applicable GAAP of the Parent (or that replaces, and is on substantially the same terms as, such Financial Indebtedness);

(i) of any person acquired by a member of the Group pursuant to an acquisition falling within paragraph (e) of the definition of Permitted Acquisition **provided that**: (i) such Financial Indebtedness existed prior to the date of the acquisition and was not incurred, increased or extended in contemplation of, or since, the acquisition; and (ii) the aggregate amount of any such Financial Indebtedness of members of the Group does not exceed $100,000,000 at any time;

(j) under Treasury Transactions entered into in accordance with Clause 22.26 ( *Treasury Transactions*);

(k) incurred pursuant to or in connection with any cash pooling or other cash management agreements in place with a bank or financial institution, but only to the extent of offsetting credit balances of the Parent or its Subsidiaries pursuant to such cash pooling or other cash management arrangement;

(l) constituting Financial Indebtedness for taxes levied, assessments due and other governmental charges required to be paid as a matter of law or regulation in the ordinary course of trading;

(m) that constitutes a Permitted Joint Venture;

(n) that constitutes Financial Indebtedness permitted to be incurred pursuant to a Permitted PPP Investment;

(o) that constitutes a Permitted Working Capital Facility;

(p) (following completion of the first Caliza Transaction (if so completed)) incurred by a member of the Caliza Group for the purposes of financing Caliza Expansion Capital in the amount of the Caliza Expansion Capital to be incurred ( **provided that** the aggregate of all such Caliza Expansion Capital may not exceed the Caliza Expansion Capital Permitted Limit at any time);

(q) arising under the New High Yield Notes Documents;

(r) arising under any refinancing or replacement of the Banobras Facility (or a refinancing or replacement of any such refinancing or replacement) by a facility which is (i) with a development bank controlled by the Mexican Government or (ii) with any other financial institution to finance public works or infrastructure assets **provided that** the principal amount of such Financial Indebtedness does not increase above Mex$5,000,000,000 (except by the amount of any capitalised interest, to the extent the Banobras Facility provided for capitalisation of interest on those terms as at the date of this Agreement) (a "**Replacement Banobras Facility**"); and

(s) approved by the Agent acting on the instructions of the Majority Creditors.

"**Permitted Fundraising**" means:

(a) any issuance of equity securities by the Parent paid for in full in cash on issue (and, for the avoidance of doubt, such securities may be issued with an original issue discount) and not redeemable on or prior to the Initial Termination Date and where such issue does not lead to a Change of Control;

(b) any issuance of equity-linked securities issued by any member of the Group that are linked solely to, and result only in the issuance of, equity securities of the Parent otherwise entitled to be issued under this definition (and that do not, for the avoidance of doubt, result in the issuance of any equity securities by such member of the Group) and that are paid for in full in cash on issue (and, for the avoidance of doubt, such securities may be issued with an original issue discount) and where such issue does not lead to a Change of Control ( **provided that** such securities do not provide for the payment of interest in cash and are not redeemable on or prior to the Initial Termination Date); and

(c) any incurrence of Financial Indebtedness falling within paragraph (f) of the definition of Permitted Financial Indebtedness.

"**Permitted Guarantee**" means:

(a) any guarantee existing on the date of this Agreement with those guaranteeing Financial Indebtedness above an amount of $10,000,000 (or its equivalent) (other than Financial Indebtedness described in paragraphs (i) and (j) of the definition thereof) being listed in Schedule 13 ( *Existing Guarantees*);

(b) any guarantee forming part of the obligations comprised in the Finance Documents;

(c) the endorsement of negotiable instruments in the ordinary course of trade but excluding an *aval*;

(d) any performance guarantee or Contingent Instrument guaranteeing performance by a member of the Group under any contract entered into in the ordinary course of trade;

(e) any guarantee of a Joint Venture to the extent permitted by Clause 22.17 (*Joint ventures*);

(f) any guarantee (including an *aval*) of Financial Indebtedness falling within the following paragraphs of the definition of Permitted Financial Indebtedness:

(i) paragraph (a);

(ii) paragraph (b) (other than Existing Financial Indebtedness under the Bancomext Facility, the Banobras Facility, the Banco Industrial de Guatemala Facility or under the Existing Subordinated Convertible Notes);

(iii) paragraphs (c) or (e);

(iv) paragraph (f) (so long as: (A) the Financial Indebtedness refinanced from the proceeds of such Permitted Financial Indebtedness was Existing Financial Indebtedness (other than Existing Financial Indebtedness under the Bancomext Facility, the Banobras Facility, the

Banco Industrial de Guatemala Facility or under the Existing Subordinated Convertible Notes); (B) the Financial Indebtedness refinanced from the proceeds of such Permitted Financial Indebtedness was issued, borrowed or guaranteed by the relevant guarantor; (C) such Permitted Financial Indebtedness that is guaranteed is applied, to the extent applicable, in accordance with Clause 7 (*Mandatory Prepayment and Segregated Accounts*) to repay Creditors or, as the case may be, placed in a Segregated Account; or (D) if the Permitted Financial Indebtedness that is guaranteed is used, to the extent permitted under this Agreement, to refinance the 2014 Eurobonds, only the Guarantors provide such guarantees); or

(v) paragraph (g) or any of paragraphs (j) to (m);

(g) any guarantee given in respect of the netting or set-off arrangements permitted pursuant to paragraph (B) of the definition of Permitted Security;

(h) any indemnity given to professional advisers on customary terms as part of the terms of their engagement;

(i) any indemnity given on customary terms in connection with a Permitted Disposal or a Permitted Acquisition (but not, for the avoidance of doubt, a guarantee of Financial Indebtedness), in each case in a maximum amount not exceeding the cash consideration received by members of the Group for that Disposal or, as the case may be, paid by members of the Group for that acquisition (except in the case of environmental, employment or tax indemnities given in connection with a Permitted Acquisition or Permitted Disposal);

(j) any guarantee consented to by the Agent acting on behalf of the Majority Creditors;

(k) any guarantee given by a member of the Group in favour of another member of the Group (including a guarantee given by a member of the Caliza Group in favour of another member of the Caliza Group but excluding, following completion of the first Caliza Transaction (if so completed), a guarantee given by a member of the Group which is not a member of the Caliza Group in favour of a member of the Caliza Group) other than:

(i) a guarantee given by a member of the Group in favour of another member of the Group that is an issuer, borrower or guarantor of:

(A) any Financial Indebtedness falling within the definition of Existing Financial Indebtedness; or

(B) any Financial Indebtedness falling within paragraph (f) of the definition of Permitted Financial Indebtedness that is not used to repay or prepay the Facilities,

where such guarantee provides direct or indirect support for such person's obligations in respect of such Financial Indebtedness

(**provided that** for the avoidance of doubt, other guarantees given by a member of the Group in favour of the relevant issuer, borrower or guarantor will not be restricted under this paragraph (i));

(ii) a guarantee given by a member of the Group in favour of another member of the Group that provides direct or indirect support for Financial Indebtedness falling within paragraphs (h) (other than where such guarantee was granted prior to the date of the relevant change in Applicable GAAP of the Parent) or (i) of the definition of Permitted Financial Indebtedness;

(iii) a guarantee given by an Obligor in favour of CEMEX, Inc. or CEMEX Materials that, in each case, provides direct or indirect support for such company's obligations under the Facilities;

(iv) a guarantee given by a member of the Group in favour of another member of the Group that is the issuer (or equivalent) under any Permitted Securitisation, other than any indemnities that are customary in the context of such a transaction carried out on a non-recourse basis or on a basis where recovery is limited solely to the collection of the relevant receivables ( **provided that** for the avoidance of doubt, other guarantees given by a member of the Group in favour of the relevant issuer (or equivalent) will not be restricted under this paragraph (iv));

(l) any guarantee given by a member of the Group following completion of the first Caliza Transaction (if so completed) in respect of obligations of a member of the Caliza Group under Financial Indebtedness permitted to be incurred under paragraph (p) of the definition of Permitted Financial Indebtedness; and

(m) any other guarantee given by a member of the Group (i) in respect of a Permitted Working Capital Facility or (ii) in favour of a bank or financial institution in respect of obligations of that bank or financial institution to a third party that does not fall within paragraph (d) above **provided that** at any time the aggregate principal amount guaranteed by all such guarantees then outstanding under (i) and (ii) above does not exceed $500,000,000 (and **provided further that** any performance bonds, banker's acceptances or guarantee, bonding, documentary or stand-by letter of credit facilities shall only be counted towards such limit to the extent that such performance bond, banker's acceptance, guarantee, bonding, documentary or stand-by letter of credit facility constitutes Debt).

"**Permitted Joint Venture**" means any investment in any Joint Venture where:

(a) such investment exists or a member of the Group is contractually committed to such investment at the date of this Agreement and, if the value of the Group's investment in such Joint Venture is $50,000,000 or greater (as shown in the Original Financial Statements of the Parent) is detailed in Schedule 14 (*Permitted Joint Ventures*); or

(b) such investment is made by a member of the Caliza Group following the completion of the first Caliza Transaction (if so completed) to finance a Joint Venture entered into by a member of the Caliza Group (a "**Caliza Joint Venture**") and:

(i) either the investment has been consented to by the Agent acting on the instructions of the Majority Creditors or the Caliza Joint Venture is engaged in a business substantially the same as that carried on by any member of the Caliza Group; and

(ii) the aggregate of:

(A) all amounts subscribed for shares in, lent to, or invested in all such Caliza Joint Ventures by any member of the Group;

(B) the contingent liabilities of any member of the Group under any guarantee given in respect of the liabilities of any such Caliza Joint Venture; and

(C) the market value of any assets transferred by any member of the Group to any such Caliza Joint Venture;

minus

(D) an amount up to, but not exceeding, the Caliza Expansion Capital Permitted Limit (or its equivalent) that represents all cash amounts received by any member of the Caliza Group (i) relating to dividends, repayment of loans or distributions of any other nature in respect of any such Joint Ventures and (ii) as a result of or in relation to any disposals of shares, interests or participations, divestments, capital reductions or any similar decreases of interest in any such Joint Ventures ( **provided that** such cash amounts may only be deducted under this sub paragraph (ii)(D) to the extent not already deducted under sub paragraph (ii)(D) of paragraph (c) below),

(such amount being the "**Caliza Joint Venture Investment**") does not at any time (when aggregated with all other amounts of Caliza Expansion Capital then incurred) exceed the Caliza Expansion Capital Permitted Limit; or

(c) such investment is made after the date of this Agreement and:

(i) either the investment has been consented to by the Agent acting on the instructions of the Majority Creditors or the Joint Venture is engaged in a business substantially the same as that carried on by the Group; and

(ii) in any Financial Year of the Parent, the aggregate of:

(A) all amounts subscribed for shares in, lent to, or invested in all such Joint Ventures by any member of the Group;

(B) the contingent liabilities of any member of the Group under any guarantee given in respect of the liabilities of any such Joint Venture; and

(C) the market value of any assets transferred by any member of the Group to any such Joint Venture;

minus

(D) an amount up to, but not exceeding, $250,000,000 (or its equivalent) in any Financial Year that represents all cash amounts received by any member of the Group (aa) relating to dividends, repayment of loans or distributions of any other nature in respect of any such Joint Ventures in that Financial Year and (bb) as a result of or in relation to any disposals of shares, interests or participations, divestments, capital reductions or any similar decreases of interest in any such Joint Ventures in that Financial Year,

does not (when aggregated with (i) the aggregate amount of the consideration for acquisitions falling within paragraph (n) of the definition of Permitted Acquisition and (ii) the aggregate amount of Asset Swaps falling within paragraph (t) of the definition of Permitted Disposal, in each case, in that Financial Year) exceed $250,000,000 (or its equivalent in other currencies) or such greater amount as the Agent (acting on the instructions of the Majority Creditors) may agree (such amount being the " **Joint Venture Investment**").

"**Permitted Liquidity Facilities**" means a loan facility or facilities made available to the Parent **provided that** the aggregate principal amount of utilised and unutilised commitments under such facilities must not exceed $400,000,000 (or its equivalent in any other currency) at any time.

"**Permitted Loan**" means:

(a) any trade credit extended by any member of the Group to its customers on normal commercial terms and in the ordinary course of its trading activities;

(b) Financial Indebtedness which is referred to in the definition of, or otherwise constitutes, Permitted Financial Indebtedness (except under paragraph (d) of that definition);

(c) a loan made to a Joint Venture to the extent permitted under Clause 22.17 (*Joint ventures*);

(d) a loan which constitutes a Permitted PPP Investment;

(e) a loan made by a member of the Group to another member of the Group;

(f) deferred consideration in relation to Disposals falling within paragraph (h) of the definition of Permitted Disposal;

(g) a loan made by a member of the Group to an employee or director of any member of the Group if the amount of that loan when aggregated with the amount of all loans to employees and directors by members of the Group does not exceed $15,000,000 (or its equivalent) at any time;

(h) any loan consented to by the Agent acting on the instructions of the Majority Creditors;

(i) a loan arising as a result of an advance payment of Capital Expenditure made in the ordinary course of trading where such Capital Expenditure is permitted under this Agreement;

(j) any credit extended by way of receipt by a member of the Group of promissory notes in exchange for supplying materials or services for use in Mexican public works projects as long as the aggregate principal amount of the Financial Indebtedness under such loan(s) does not exceed $100,000,000 (or its equivalent) at any time; and

(k) any other loan(s) as long as the aggregate principal amount of the Financial Indebtedness under any such loan(s) does not exceed $250,000,000 (or its equivalent) at any time.

"**Permitted Payment**" means:

(a) a scheduled principal repayment or redemption of any Existing Financial Indebtedness (but not, for the avoidance of doubt, any prepayment or early redemption of any such Existing Financial Indebtedness save as described in paragraphs (b) to (e) below);

(b) subject, to the extent applicable, to compliance with Clause 7 ( *Mandatory Prepayment and Segregated Accounts*), a principal prepayment or early redemption (including, for the avoidance of doubt, any break costs, make whole amount or other prepayment penalty (howsoever described)) in respect of Financial Indebtedness falling within (i) the definition of Existing Financial Indebtedness from the proceeds of a Permitted Fundraising falling within paragraph (f)(i) of the definition of Permitted Financial Indebtedness, or (ii) paragraph (b) of the definition of Permitted Financial Indebtedness to the extent it relates to Short Term Certificados Bursatiles;

(c) subject, to the extent applicable, to compliance with Clause 7 ( *Mandatory Prepayment and Segregated Accounts*), a principal prepayment or early redemption (including, for the avoidance of doubt, any break costs, make whole amount or other prepayment penalty (howsoever described)) in respect of (i) Financial Indebtedness falling within the definition of Existing Financial Indebtedness from the proceeds of a Permitted Fundraising falling within paragraph (f)(ii) of the definition of Permitted Financial Indebtedness or (ii) the Bancomext Facility (or any refinancings thereof);

(d) a principal repayment or redemption required under the terms of the Employee Compensation Structured Note, the Banobras Facility or, as the case may be, a Replacement Banobras Facility, the Bancomext Facility or, as the case may be, any refinancings of the Bancomext Facility;

(e) a principal prepayment or early redemption (including, for the avoidance of doubt, any break costs, make whole amount or other prepayment penalty (howsoever described)) in respect of Financial Indebtedness falling within paragraph (e) of the definition of Permitted Financial Indebtedness from the proceeds of a refinancing or replacement facility or facilities falling within that paragraph (e);

(f) any prepayment (including, for the avoidance of doubt, any break costs, make whole amount or other prepayment penalty (howsoever described)) of Existing Financial Indebtedness or Permitted Financial Indebtedness arising under paragraph (f)(i) or (f)(ii) of the definition thereof as a result of (x) a change of control or (y) unlawfulness affecting a Creditor, in each case in respect of such Existing Financial Indebtedness or such Permitted Financial Indebtedness;

(g) a cash payment made using proceeds of Permitted Refinancing Indebtedness or otherwise in accordance with Clause 7 ( *Mandatory prepayment and Segregated Accounts*) by a member of the Group to a creditor in respect of Existing Financial Indebtedness under the 2014 Eurobonds, any Existing Subordinated Convertible Notes or any Existing Pre-2017 High Yield Notes pursuant to a cash tender offer for the purchase or repurchase thereof as contemplated by sub paragraphs (ii) to (vi) of paragraph (a) of Clause 5.1 ( *Spring Back Dates*);

(h) any payment (including, for the avoidance of doubt, any break costs, make whole amount or other prepayment penalty (howsoever described)) of Financial Indebtedness of the Group permitted to be made pursuant to Clause 7 ( *Mandatory Prepayment and Segregated Accounts*) with amounts not otherwise required to be applied in prepayment of the Outstanding Principal Amounts;

(i) any payment of fees and expenses incurred in connection with Permitted Financial Indebtedness,

including, in each case, any payment, prepayment or redemption pursuant to a Permitted Guarantee given in respect of such Financial Indebtedness.

"**Permitted PPP Investment**" means any subscription for shares in, loan or transfer of assets to or other investment in, a PPP Vehicle participating in a PPP Project where:

(a) the aggregate of (without double counting):

(i) all amounts subscribed for shares in, lent to, or otherwise invested in all such PPP Vehicles by any member of the Group (whether, in the case of subscription for shares, as a majority or a minority shareholder);

(ii) the market value of any assets transferred by any member of the Group to any such PPP Vehicle;

(iii) (if a member of the Group owns, directly or indirectly, 50 per cent. or more of the share capital of a PPP Vehicle) the amount of Financial Indebtedness incurred by that PPP Vehicle from sources outside of the Group,

(such aggregate amount being the "**PPP Investment**") does not at the time of any such PPP Investment exceed:

(A) $300,000,000 (or its equivalent) (the "**Permitted PPP Investment Basket**"); or

(B) if the Banobras Facility or, as the case may be, a Replacement Banobras Facility, has been utilised in an amount exceeding $150,000,000 (or its equivalent) an amount equal to:

(1) the Permitted PPP Investment Basket; *less*

(2) an amount equal to the amount by which such utilisation of the Banobras Facility or, as the case may be, a Replacement Banobras Facility, exceeds $150,000,000 (or its equivalent) ( **except** where the Parent has elected to apply that amount in whole or part to reduce the Permitted Working Capital Basket and, if applied in part, any remaining amount shall be deducted from the Permitted PPP Investment Basket in accordance with this sub paragraph (2)),

and, for the avoidance of doubt, the Parent shall apply an amount equal to the amount by which such utilisation of the Banobras Facility or, as the case may be, a Replacement Banobras Facility, exceeds $150,000,000 (or its equivalent) to reduce, at its option, the Permitted PPP Investment Basket and/or the Permitted Working Capital Basket; or

(C) such greater amount as the Agent (acting on the instructions of the Majority Creditors) may agree;

(b) the PPP Investment (including any transfer of assets by a member of the Group to the relevant PPP Vehicle) and any related transactions are made in accordance with Clause 22.12 ( *Transactions with Affiliates*) (and, if any PPP Vehicle is not an Affiliate of a member of the Group, it shall be deemed to be an Affiliate for the purposes of this paragraph (b) and paragraph (d) below);

(c) no asset of any member of the Group will be the subject of Security or Quasi-Security to secure the obligations of a PPP Vehicle, other than (i) assets of the relevant PPP Vehicle (including, without limitation, receivables of that PPP Vehicle) and (ii) the share capital (or other interest) owned by any member of the Group in that PPP Vehicle (the "**Permitted PPP Security**"); and

(d) no member of the Group will have any liability to any PPP Vehicle or to third parties in connection with the PPP Investment or the PPP Vehicle except for (i) any Permitted PPP Security; and (ii) transactions for the supply of goods and services between a member of the Group and the PPP Vehicle made in compliance with Clause 22.12 (*Transactions with Affiliates*).

"**Permitted PPP Investment Basket**" has the meaning given to such term in paragraph (a) of the definition of Permitted PPP Investment.

"**Permitted PPP Security**" has the meaning given to it in paragraph (c) of the definition of Permitted PPP Investment.

"**Permitted Put/Call Transaction**" has the meaning given to it in paragraph (d) of paragraph 1 of Schedule 17 ( *Hedging Parameters*).

"**Permitted Refinancing Indebtedness**" means Financial Indebtedness which is Permitted Financial Indebtedness falling within paragraph (f) of the definition thereof issued or incurred to:

(a) refinance or replace Existing Financial Indebtedness falling within Schedule 11 ( *Existing Financial Indebtedness*);

(b) repay, prepay, refinance or replace the Facilities; or

(c) refinance or replace Permitted Financial Indebtedness falling within paragraph (f) of the definition thereof which has been applied towards the purposes described in paragraph (a) and (b) above or to refinance or replace any such subsequently issued or incurred Financial Indebtedness or any further refinancings or replacements.

"**Permitted Reorganisation**" means:

(a) the Caliza Reorganisation; and

(b) other than a reorganisation that would not be permitted under Clause 22.33 ( *Restriction on transfer of Material Operating Subsidiaries* ), any intra-Group reorganisation involving an Obligor consented to by the Agent (acting on the instructions of the Majority Creditors),

**provided that** upon completion of each step in the Permitted Reorganisation the requirements of Clause 22.27 ( *Transaction Security*) are satisfied.

"**Permitted Securitisations**" means a transaction or series of related transactions providing for the securitisation of receivables and related assets by the Parent or its Subsidiaries, including a sale at a discount, **provided that** (i) such receivables have been transferred, directly or indirectly, by the originator thereof to a person that is not a member of the Group in a manner that satisfies the requirements for an absolute conveyance (or, where the originator is organised in Mexico, a true sale), and not merely a pledge, under the laws and regulations of the jurisdiction in which such originator is organised; and (ii) except for customary representations, warranties, covenants and indemnities, such sale, transfer or other securitisation is carried out on a non-recourse basis or on a basis where recovery is limited solely to the collection of

the relevant receivables (other than where such recourse or recovery is required pursuant to Article 122a of the Capital Requirements Directive of the European Parliament and of the Council of the European Union (as introduced by Directive 2009/111/EC of 16 September 2009, amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC) (as further amended from time to time) and any relevant implementing legislation or pursuant to any analogous laws or regulations in any jurisdiction (the "**Relevant Legislation**")).

"**Permitted Security**" has the meaning given to such term in Clause 22.5 *(Negative Pledge*).

"**Permitted Share Issue**" means:

(a) a Permitted Fundraising falling within paragraphs (a) or (b) of the definition thereof;

(b) (other than, following completion of the first Caliza Transaction (if so completed), an issue of shares by a member of the Group that is not a member of the Caliza Group to a member of the Caliza Group) an issue of shares by a member of the Group which is a Subsidiary of the Parent to another member of the Group (and, where the member of the Group has a minority shareholder, to that minority shareholder on a *pro rata* basis) where (if the existing shares of the Subsidiary are the subject of the Transaction Security) the newly-issued shares also become subject to the Transaction Security on the same terms;

(c) an issue of shares by the Parent to comply with an obligation in respect of any Executive Compensation Plan of the Parent;

(d) an issue of common equity securities of the Parent either (i) by the Parent or (ii) to any member of the Group where the Parent or that member of the Group has an obligation to deliver such shares to a counterparty pursuant to the terms of any Permitted Put/Call Transaction or an obligation to deliver such shares to the holder(s) of convertible or exchangeable securities falling within paragraph (f)(i) of the definition of Permitted Financial Indebtedness pursuant to the terms and conditions of such convertible or exchangeable securities;

(e) an issue of shares by Caliza to comply with an obligation in respect of any Executive Compensation Plan of Caliza;

(f) an issue of shares by Caliza to implement the Caliza Reorganisation or pursuant to a Caliza Transaction; and

(g) (following completion of the first Caliza Transaction (if so completed)) an issue of shares by a member of the Group (other than a member of the Group whose shares are subject to the Transaction Security, unless the newly-issued shares also become subject to the Transaction Security on the same terms) that is not a member of the Caliza Group to a member of the Caliza Group, **provided that** the aggregate fair market value of all shares issued pursuant to this paragraph (g) does not exceed $50,000,000 (or its equivalent) in any Financial Year (when aggregated with the aggregate fair market value of asset disposals falling within paragraph (j) of the definition of Permitted Disposal)

**provided further that** if, in any Financial Year the aggregate fair market value of all shares issued pursuant to this paragraph (g) and all assets disposed of pursuant to paragraph (j) of the definition of Permitted Disposal is less than $50,000,000 (or its equivalent) (the difference being referred to as the "**Unused Basket Amount**"), then in the following Financial Year the maximum amount available to the Group under this paragraph (g) shall be increased by such Unused Basket Amount and the amount (if any) of any Unused Basket Amount attributable to any previous Financial Year(s) which remains unspent.

"**Permitted Transaction**" means:

(a) any disposal required, Financial Indebtedness incurred, guarantee, indemnity or Security given, or other transaction arising, under the Finance Documents;

(b) the solvent liquidation or reorganisation of any member of the Group which is not an Obligor so long as any payments or assets distributed as a result of such liquidation or reorganisation are distributed to other members of the Group (and, where the member of the Group has a minority shareholder, to that minority shareholder on a *pro rata* basis);

(c) any Permitted Reorganisation; and

(d) transactions (other than (i) any sale, lease, license, transfer or other disposal and (ii) the granting or creation of Security or the incurring or permitting to subsist of Financial Indebtedness) conducted in the ordinary course of trading on arm's length terms.

"**Permitted Treasury Transaction**" has the meaning given to that term in Schedule 17 ( *Hedging Parameters*).

"**Permitted Working Capital Facility**" means Financial Indebtedness of one or more members of the Group under loan facilities, overdraft facilities, performance bonds, banker's acceptances, guarantee, bonding, documentary or stand-by letter of credit facilities, commercial paper, insurance premium financing and, in each case, other similar facilities or accommodation (in any case) for the financing of working capital of the Group or such members of the Group in an aggregate amount (subject to Clause 7.7 ( *Cash Replenishment Restrictions*)) of no more than $620,000,000 (or its equivalent) (the "**Permitted Working Capital Basket**") **provided that**:

(a) in the event that the Banobras Facility or, as the case may be, a Replacement Banobras Facility, is utilised in an amount less than or equal to $150,000,000 (or its equivalent), the Permitted Working Capital Basket shall be reduced by an amount equal to the amount so utilised under the Banobras Facility or, as the case may be, a Replacement Banobras Facility (but, for the avoidance of doubt, not exceeding $150,000,000); and

(b) in the event that the Banobras Facility or, as the case may be, a Replacement Banobras Facility, is utilised in an amount exceeding $150,000,000 (or its equivalent) then (in respect of the first $150,000,000 utilised thereunder, having first applied the reduction in the Permitted Working Capital Facility

Basket as required by paragraph (a) above), the Permitted Working Capital Basket shall be further reduced by an amount equal to the amount by which such utilisation of the Banobras Facility or, as the case may be, a Replacement Banobras Facility, exceeds $150,000,000 (or its equivalent) (**except** where the Parent has elected to apply that amount in whole or part to reduce the Permitted PPP Investment Basket and, if applied in part, any remaining amount shall be applied to further reduce the Permitted Working Capital Basket in accordance with this paragraph (b) (and, for the avoidance of doubt, the Parent shall apply an amount equal to the amount by which such utilisation of the Banobras Facility or, as the case may be, a Replacement Banobras Facility, exceeds $150,000,000 (or its equivalent) to reduce, at its option, the Permitted PPP Investment Basket and/or the Permitted Working Capital Basket)); and

(c) the Permitted Working Capital Basket shall only limit any such performance bond, banker's acceptance, guarantee, bonding, documentary or stand-by letter of credit facility to the extent that such performance bond, banker's acceptance, guarantee, bonding, documentary or stand-by letter of credit facility constitutes Debt.

"**Permitted Working Capital Basket**" has the meaning given to that term in the definition of Permitted Working Capital Facility.

"**PPP Investment**" has the meaning given to that term in the definition of Permitted PPP Investment.

"**PPP Project**" means an infrastructure development project in Mexico under the terms of the Private/Public Partnership Law ( *Ley de Asociaciones Público-Privadas*) at a federal or state level, or any similar project in another jurisdiction under the terms of equivalent legislation in that jurisdiction.

"**PPP Vehicle**" means a special purpose vehicle participating in PPP Projects.

"**Process Agent**" means CEMEX UK at its registered address being, as at the date of this Agreement, CEMEX House, Coldharbour Lane, Thorpe, Egham, Surrey TW20 8TD and with fax number (+44) 01932 568933, Attn: The Secretary.

"**Promissory Note**" means:

(a) a Derivatives Unwind Promissory Note; or

(b) a Loan Facility Promissory Note.

"**Protected Party**" means a Finance Party which is or will be subject to any liability or required to make any payment for or on account of Tax in relation to a sum received or receivable (or any sum deemed for the purposes of Tax to be received or receivable) under a Finance Document.

"**Qualifying Finance Party**" has the meaning given to that term in Clause 13 ( *Tax gross-up and indemnities*).

"**Quasi-Security**" has the meaning given to that term in Clause 22.5 (*Negative pledge*).

"**Quotation Day**" means, in relation to any period for which an interest rate is to be determined:

(a) (if the currency is sterling) the first day of that period;

(b) (if the currency is euro) two TARGET Days before the first day of that period; or

(c) (for any other currency) two Business Days before the first day of that period,

unless market practice differs in the Relevant Interbank Market for a currency, in which case the Quotation Day for that currency will be determined by the Agent in accordance with market practice in the Relevant Interbank Market (and if quotations would normally be given by leading banks in the Relevant Interbank Market on more than one day, the Quotation Day will be the last of those days).

"**Rating**" means at any time the solicited long term credit rating or the senior implied rating of the Parent or an issue of securities of or guaranteed by the Parent, where the rating is based primarily on the senior unsecured credit risk of the Parent and/or, in the case of the senior implied rating, on the characteristics of any particular issue, assigned by a Rating Agency.

"**Rating Agency**" means S&P, Moody's or Fitch.

"**Receiver**" means a receiver or receiver and manager or administrative receiver of the whole or any part of the Charged Properties.

"**Reference Bank Rate**" means the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Agent at its request by the Reference Banks:

(a) in relation to LIBOR, as the rate at which the relevant Reference Bank could borrow funds in the London interbank market; or

(b) in relation to EURIBOR, as the rate at which the relevant Reference Bank could borrow funds in the European interbank market,

in the relevant currency and for the relevant period, were it to do so by asking for and then accepting interbank offers for deposits in reasonable market size in that currency and for that period.

"**Reference Banks**" means:

(a) for the period from the date of this Agreement, until 6 October 2012 or such other date on which Circular 8/1990 from the Bank of Spain on transparency of transactions and protection of clientele is replaced by Circular 5/2012 of 27 June from the Bank of Spain on transparency of banking services and responsibility in the granting of loans (such date, if not 6 October 2012, to be notified in writing by the Parent to the Agent) (the "**Reference Bank Replacement Date**"), in relation to LIBOR and Mandatory Cost, the principal London office of Rabobank and US Bancorp and, in relation to EURIBOR, the principal London offices of Rabobank and Natixis; and

(b) from (and including) the Reference Bank Replacement Date, in relation to LIBOR and Mandatory Cost, the principal London offices of BNP Paribas, HSBC Bank plc, ING Bank N.V. and J.P. Morgan and, in relation to EURIBOR, the principal London offices of BNP Paribas, HSBC Bank plc and ING Bank N.V.,

or, in each case, such other banks as may be appointed by the Agent in consultation with the Parent.

"**Reference Period**" has the meaning given to that term in Clause 21.1 (*Financial definitions*).

"**Related Fund**" in relation to a fund (the "**first fund**"), means a fund which is managed or advised by the same investment manager or investment adviser as the first fund or, if it is managed by a different investment manager or adviser, a fund whose investment manager or investment adviser is an Affiliate of the investment manager or investment adviser of the first fund.

"**Relevant Interbank Market**" means in relation to euro, the European interbank market and, in relation to any other currency, the London interbank market.

"**Relevant Jurisdiction**" means, in relation to an Obligor:

(a) its jurisdiction of incorporation or formation;

(b) any jurisdiction where any asset subject to or intended to be subject to the Transaction Security to be created by it is situated;

(c) any jurisdiction where it conducts its business; and

(d) the jurisdiction whose laws govern the perfection of any of the Transaction Security Documents entered into by it.

"**Relevant Legislation**" has the meaning given to such term in the definition of Permitted Securitisations.

"**Relevant Proceeds**" means, as the case may be, Caliza Proceeds, Disposal Proceeds, Permitted Equity Fundraising Proceeds, Permitted Debt Fundraising Proceeds and Permitted Securitisation Proceeds.

"**Repayment Date**" means each of the dates specified in paragraph (a) of Clause 5.2 (*Repayment*) as Repayment Dates.

"**Repayment Instalment**" has the meaning given to such term in Clause 5.2 (*Repayment*).

"**Repeating Representations**" means each of the representations set out in Clauses 19.2 (*Status*) to Clause 19.6 (*Validity and admissibility in evidence*) and paragraphs (a) and (b) of Clause 19.12 (*Financial statements*).

"**Replacement Banobras Facility**" has the meaning given to such term in paragraph (r) of the definition of Permitted Financial Indebtedness.

"**Representative**" means any delegate, agent, manager, administrator, nominee, Irish law examiner, attorney, trustee or custodian.

"**Reserve**" means any reserve created as permitted by Clause 7 ( *Mandatory Prepayment and Segregated Accounts*) by the Parent or any of its Subsidiaries (and placed in an account held with a Creditor) for the purpose of holding any amount of any Relevant Proceeds or Excess Cashflow that, as set out in writing in an Election Notice, is to be applied to repay, prepay, redeem, refinance, purchase or repurchase, as the case may be, the 2014 Eurobonds, the 2009 Financing Agreement Exposures, the Existing Pre-2017 High Yield Notes, the Existing Subordinated Convertible Notes or (if permitted by Clause 7 (*Mandatory Prepayment and Segregated Accounts*)) any other Financial Indebtedness.

"**Resignation Letter**" means a document substantially in the form set out in Part I of Schedule 9 ( *Form of Resignation Letter*).

"**Responsible Officer**" means the Chief Financial Officer and/or Chief Controlling Officer of the Parent or a person holding equivalent status (or higher).

"**Restricted Debt Purchase Transaction**" means, in relation to a person, a transaction where such person enters into any sub-participation in respect of, or enters into any other agreement or arrangement having an economic effect substantially similar to a sub-participation in respect of, any Commitment or amount outstanding under this Agreement.

"**SAR**" means the Mexican Retirement Savings System ( *Sistema de Ahorro para el Retiro*).

"**S&P**" means Standard & Poor's Rating Services, a division of The McGraw-Hill Companies, Inc., or any successor thereto from time to time.

"**Screen Rate**" means:

(a) in relation to LIBOR, the British Bankers' Association Interest Settlement Rate for the relevant currency and period; and

(b) in relation to EURIBOR, the percentage rate per annum determined by the Banking Federation of the European Union for the relevant period,

displayed on the appropriate page of the Reuters screen. If the agreed page is replaced or service ceases to be available, the Agent may specify another page or service displaying the appropriate rate after consultation with the Parent and the Creditors.

"**SEC**" means the U.S. Securities Exchange Commission and any successor thereto.

"**Secured Parties**" means each Finance Party from time to time party to this Agreement and any Receiver or Delegate.

"**Security**" means a mortgage, charge, pledge, lien, security trust or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

"**Security Providers**" means the Original Security Providers and any Additional Security Provider other than any Original Security Provider or Additional Security Provider which has ceased to be a Security Provider pursuant to Clause 27.5 ( *Resignation of a Security Provider*) and has not subsequently become an Additional Security Provider pursuant to Clause 27.3 ( *Additional Guarantors and Additional Security Providers* ), and "Security Provider" means any of them.

"**Segregated Account**" means any interest-bearing single or multi-currency account operated in accordance with Clause 7.9 ( *Segregated Accounts and Reserves*):

(a) held by the Parent with a Creditor;

(b) identified in a letter between the Parent and the Agent as a Segregated Account; and

(c) from which no withdrawals may be made by any members of the Group except as contemplated by this Agreement (save that this shall not restrict transfers between Segregated Accounts at any time in connection with any foreign currency exchange),

as the same may be redesignated, substituted or replaced from time to time.

"**Selection Notice**" means a notice substantially in the form set out Schedule 3 ( *Selection Notice*) given in accordance with Clause 10 (*Interest Periods*) in relation to a Facility.

"**Short-Term Certificados Bursatiles**" means any securities with a term of not more than 12 months issued by the Parent in the Mexican capital markets with the approval of the Mexican National Banking and Securities Commission ( *Comisión Nacional Bancaria y de Valores*) and listed on the Mexican Stock Exchange (*Bolsa Mexicana de Valores*).

"**Shortfall**" means the amount by which the Month End Cash in Hand is less than the Cash Maintenance Threshold.

"**Spain**" means the Kingdom of Spain.

"**Spanish GAAP**" means the Spanish General Accounting Plan ( *Plan general de contabilidad*) approved by Royal Decree 1514/2007 as in effect from time to time and consistent with those used in the preparation of the most recent audited financial statements referred to in Clause 20.1 ( *Financial statements*).

"**Spanish Public Document**" means any obligation in an *Escritura Pública* or *poliza intervenida*.

"**Specific Facility Guarantor**" means a Facility A1 Guarantor, a Facility A2 Guarantor, a Facility A3 Guarantor, a Facility A5 Guarantor, a Facility A6 Guarantor, a Facility A7 Guarantor, a Facility A8 Guarantor, a Facility B2 Guarantor, a Facility C Guarantor, a Derivatives Unwind Promissory Note Facility 1 Guarantor or a USPP Note Guarantor.

"**Specific Guaranteed Facility**" means:

(a) in the case of a Facility A1 Guarantor, Facility A1;

(b) in the case of a Facility A2 Guarantor, Facility A2;

(c) in the case of a Facility A3 Guarantor, Facility A3;

(d) in the case of a Facility A5 Guarantor, Facility A5;

(e) in the case of a Facility A6 Guarantor, Facility A6;

(f) in the case of a Facility A7 Guarantor, Facility A7;

(g) in the case of a Facility A8 Guarantor, Facility A8;

(h) in the case of a Facility B2 Guarantor, Facility B2;

(i) in the case of a Facility C Guarantor, Facility C;

(j) in the case of a Derivatives Unwind Promissory Notes Facility 1 Guarantor, Derivatives Unwind Promissory Notes Facility 1; and

(k) in the case of a USPP Note Guarantor, the USPP Note Facility.

"**Specified Time**" means a time determined in accordance with Schedule 18 ( *Timetables*).

"**Structuring Banks**" means Banco Bilbao Vizcaya Argentaria, S.A., Banco Santander, S.A., BNP Paribas, Bank of America Merrill Lynch, Citigroup Global Markets, Inc., HSBC Bank plc, J. P. Morgan Chase Bank N.A. and The Royal Bank of Scotland plc.

"**Structuring Bank Documents**" means the appointment letter entered into on 13 March 2012 (as amended on 29 June 2012) between the Parent, CEMEX España and the Structuring Banks and the fee letter entered into on 29 June 2012 between the Parent, CEMEX España and the Structuring Banks.

"**Subordinated Optional Convertible Securities**" means:

(a) the Existing Subordinated Convertible Notes; and

(b) any Financial Indebtedness incurred by any member of the Group meeting the requirements of paragraph (f)(i) of the definition of Permitted Financial Indebtedness (including that no principal repayments are scheduled (and no call options can be exercised) until after the later of (i) the Initial Termination Date and (ii) (in the case of an issuance to refinance or replace Existing Financial Indebtedness other than the Facilities) after the final maturity date of that Existing Financial Indebtedness) which may, for the avoidance of doubt,

include a fundraising the proceeds of which are applied in accordance with Clause 7.6 ( *Permitted Debt Fundraising Proceeds and Permitted Securitisation Proceeds*) the terms of which provide that such indebtedness is capable of optional conversion into equity securities of the Parent and that repayment of principal and accrued but unpaid interest thereon is subordinated (under terms customary for an issuance of such Financial Indebtedness) to all senior Financial Indebtedness of the Parent (including, but not limited to, all Outstanding Principal Amounts) except for: (A) indebtedness that states, or is issued under a deed, indenture, agreement or other instrument that states, that it is subordinated to or ranks equally with any Subordinated Optional Convertible Securities and (B) indebtedness between or among members of the Group.

"**Subsidiary**" means in relation to any company, partnership or corporation, a company, partnership or corporation:

(a) which is controlled, directly or indirectly, by the first mentioned company, partnership or corporation;

(b) in the case of a company or corporation, more than half the issued share capital of which is beneficially owned, directly or indirectly by the first mentioned company, partnership or corporation; or

(c) which is a Subsidiary of another Subsidiary of the first mentioned company, partnership or corporation, and for this purpose,

a company or corporation shall be treated as being controlled by another if that other company or corporation is able to direct its affairs and/or to control the composition of its board of directors or equivalent body.

"**Super Majority Creditors**" means, at any time, a Creditor or Creditors the Base Currency Amounts of whose Commitments aggregate 85 per cent. or more of the Base Currency Amounts of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated 85 per cent. or more of the Base Currency Amounts of the Total Commitments immediately prior to that reduction).

"**Swiss Obligor**" means an Obligor incorporated in Switzerland.

"**TARGET2**" means the Trans-European Automated Real-time Gross Settlement Express Transfer payment system, which utilises a single shared platform and which was launched on 19 November 2007.

"**TARGET Day**" means any day on which TARGET2 is open for the settlement of payments in euro.

"**Tax**" means any tax, levy, impost, duty or other charge, deduction or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

"**Termination Date**" means the Initial Termination Date or, if applicable, such earlier date as determined by Clause 5.1 ( *Spring Back Dates*).

"**Third Party Disposal**" has the meaning given to such term in Clause 27 ( *Changes to the Obligors*).

"**TIIE**" means, for each Interest Period with respect to Loans in Mexican pesos, the Mexican Benchmark Interbank Rate ( *Tasa de Interés Interbancaria de Equilibrio*) (i) for a period of 28 days or 91 days, as applicable to the relevant Interest Period, or (ii) such other period so published as is most nearly equal to the relevant Interest Period, as determined by the Agent, as quoted by the Mexican Central Bank ( *Banco de Mexico*) and published in the Federal Official Gazette (*Diario Oficial de la Federación*) on the first day of the relevant Interest Period or, if such day is not a Business Day, on the immediately preceding Business Day; **provided that** in the event the TIIE shall cease to be published, "**TIIE**" shall mean any rate specified by the Mexican Central Bank ( *Banco de Mexico*) as the substitute rate therefor. If, for any Interest Period the Mexican Central Bank (*Banco de Mexico*) does not publish or ceases to publish, as the case may be, in the Federal Official Gazette ( *Diario Oficial de la Federación*) the TIIE or any substitute rate therefor, the Agent shall notify the Parent and shall instead determine an alternate rate as of the date on which the TIIE or the substitute rate therefor ceased to be published and until such date on which the TIIE or a substitute rate is published or republished, by calculating the arithmetic mean (rounded upward to the nearest five decimal places) of the quotations advised to the Agent at approximately 12 noon, Mexico City time, on the first day of such Interest Period of the mid-market cost of funds for Pesos for a period of 28 days, 91 days or such other period as is most nearly equal to the relevant Interest Period, as applicable, by the Mexico City offices of 3 major banks in the Mexican interbank market selected by the Agent in its sole discretion; provided that if fewer than 2 quotations are provided, the rate will be determined by the Agent using a representative rate.

"**Total Commitments**" means the aggregate of the Total Facility A Commitments, the Total Facility B Commitments, the Total Facility C Commitments, the Total Derivatives Unwind Promissory Note Facility Commitments and the Total USPP Note Facility Commitments, the Base Currency Amount of which is $6,155,195,056.33 as at the reference date referred to in Section B of Part II ( *The Original Creditors*) of Schedule 1 (*The Original Parties*).

"**Total Derivatives Unwind Promissory Note Facility Commitments**" means the aggregate of the Total Derivatives Unwind Promissory Note Facility 1 Commitments, the Total Derivatives Unwind Promissory Note Facility 2 Commitments and the Total Derivatives Unwind Promissory Note Facility 3 Commitments the Base Currency Amount of which is $200,163,918.72 at the date of this Agreement.

"**Total Derivatives Unwind Promissory Note Facility 1 Commitments**" means the aggregate of the Derivatives Unwind Promissory Note Facility 1 Commitments (being $32,082,690.99 at the date of this Agreement.

"**Total Derivatives Unwind Promissory Note Facility 2 Commitments**" means the aggregate of the Derivatives Unwind Promissory Note Facility 2 Commitments (being $140,218,366.82 at the date of this Agreement.

"**Total Derivatives Unwind Promissory Note Facility 3 Commitments**" means the aggregate of the Derivatives Unwind Promissory Note Facility 3 Commitments (being

Mex$362,520,896.98 at the date of this Agreement with a Base Currency Amount as set out in Section B of Part II ( *The Original Creditors*) of Schedule 1 (*The Original Parties*) as at the reference date referred to therein).

"**Total Facility A Commitments**" means the aggregate of the Total Facility A1 Commitments, the Total Facility A2 Commitments, the Total Facility A3 Commitments, the Total Facility A4 Commitments, the Total Facility A5 Commitments, the Total Facility A6 Commitments, the Total Facility A7 Commitments and the Total Facility A8 Commitments, being $4,268,867,269.91 at the date of this Agreement.

"**Total Facility A1 Commitments**" means the aggregate of the Facility A1 Commitments, being $764,294,279.16 at the date of this Agreement.

"**Total Facility A2 Commitments**" means the aggregate of the Facility A2 Commitments, being $214,506,251.88 at the date of this Agreement.

"**Total Facility A3 Commitments**" means the aggregate of the Facility A3 Commitments, being $245,150,000.03 at the date of this Agreement.

"**Total Facility A4 Commitments**" means the aggregate of the Facility A4 Commitments, being $1,985,629,839.27 at the date of this Agreement.

"**Total Facility A5 Commitments**" means the aggregate of the Facility A5 Commitments, being $302,760,250.06 at the date of this Agreement.

"**Total Facility A6 Commitments**" means the aggregate of the Facility A6 Commitments, being $143,932,568.85 at the date of this Agreement.

"**Total Facility A7 Commitments**" means the aggregate of the Facility A7 Commitments, being $510,856,830.63 at the date of this Agreement.

"**Total Facility A8 Commitments**" means the aggregate of the Facility A8 Commitments, being $101,737,250.03 at the date of this Agreement.

"**Total Facility B Commitments**" means the aggregate of the Total Facility B1 Commitments and the Total Facility B2 Commitments, being €1,096,429,696.15 at the date of this Agreement (with a Base Currency Amount as set out in Section B of Part II ( *The Original Creditors*) of Schedule 1 (*The Original Parties*) as at the reference date referred to therein).

"**Total Facility B1 Commitments**" means the aggregate of the Facility B1 Commitments, being €808,378,446.11 at the date of this Agreement (with a Base Currency Amount as set out in Section B of Part II ( *The Original Creditors*) of Schedule 1 (*The Original Parties*) as at the reference date referred to therein).

"**Total Facility B2 Commitments**" means the aggregate of the Facility B2 Commitments, being €288,051,250.04 at the date of this Agreement (with a Base Currency Amount as set out in Section B of Part II ( *The Original Creditors*) of Schedule 1 (*The Original Parties*) as at the reference date referred to therein).

"**Total Facility C Commitments**" means the aggregate of the Facility C Commitments, being Mex$2,340,340,631.21 at the date of this Agreement (with a Base Currency Amount as set out in Section B of Part II *(The Original Creditors*) of Schedule 1 *(The Original Parties*) as at the reference date referred to therein).

"**Total USPP Note Facility Commitments**" means the aggregate of the USPP Note Facility Commitments, being $106,586,333.79 at the date of this Agreement.

"**Trailing Closing Price**" means, on any relevant date, the arithmetic average of the volume weighted average price of an American Depositary Share of the Parent on each relevant date included in the preceding period of 90 days, as displayed under the heading "Bloomberg VWAP" on Bloomberg page "CX US <equity> VAP" (or any successor thereto) or, if such price is not so reported on such date for any reason, or is not available or is erroneous, such price shall be calculated using a substantially similar volume weighted method.

"**Trailing Closing Price Adjustments**" has the meaning given to such term in paragraph (g) of Clause 12.2 ( *Additional Amortisation Fee*).

"**Transaction Security**" means the Security created or expressed to be created in favour of the Security Agent pursuant to the Transaction Security Documents.

"**Transaction Security Documents**" means each of the documents listed as being a Transaction Security Document in paragraph 2(g) of Part I of Schedule 2 (*Conditions Precedent*) and any document required to be delivered to the Agent under paragraph 3(d) of Part II of Schedule 2 ( *Conditions Precedent*) together with any other document entered into by any Obligor creating or expressed to create any Security over all or any part of its assets in respect of the obligations of any of the Obligors under any of the Finance Documents (and any other "Debt Documents" as defined in the Intercreditor Agreement).

"**Transfer Certificate**" means a certificate substantially in the form set out in Schedule 6 ( *Form of Transfer Certificate*) or any other form agreed between the Agent and the Parent.

"**Transfer Date**" means, in relation to an assignment or a transfer, the later of:

(a) the proposed Transfer Date specified in the relevant Assignment Agreement or Transfer Certificate; and

(b) the date on which the Agent executes the relevant Assignment Agreement or Transfer Certificate.

"**Treasury Transactions**" means any derivatives transaction (i) that is a rate swap transaction, swap option, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, credit protection transaction, credit swap, credit default swap, credit default option, total return swap, credit spread transaction, repurchase transaction, reverse repurchase transaction, buy/sell-back transaction, securities

lending transaction, weather index transaction or forward purchase or sale of a security, commodity or other financial instrument or interest (including any option with respect to any of these transactions), (ii) that is a type of transaction that is similar to any transaction referred to in clause (i) above that is currently, or in the future becomes, recurrently entered into in the financial markets and that is a forward, swap, future, option or other derivative (including one or more spot transactions that are equivalent to any of the foregoing) on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, economic indices or measures of economic risk or value, or other benchmarks against which payments or deliveries are to be made or (iii) that is a combination of these transactions, it being understood that any Executive Compensation Plan permitted by this Agreement and any Caliza Offering Option are not Treasury Transactions.

"**Unpaid Sum**" means any sum due and payable but unpaid by an Obligor under the Finance Documents.

"**Unused Basket Amount**" has the meaning given to such term in paragraph (j) of the definition of Permitted Disposal or paragraph (g) of the definition of Permitted Share Issue.

"**U.S.**", "**US**" or "**United States**" means the United States of America.

"**USPP Note**" means a note issued under the USPP Note Agreement.

"**USPP Note Agreement**" means the note purchase agreement dated on or about the date of this Agreement by and among the USPP Note Borrower, as issuer, CEMEX España, as guarantor and the USPP Noteholders identified therein, and pursuant to which the USPP Note Borrower will issue, and the USPP Noteholders will purchase, USPP Notes on the Effective Date.

"**USPP Note Borrower**" means CEMEX Finance.

"**USPP Note Facility Commitment**" means:

(a) in relation to an Original Creditor, the amount in the Base Currency set opposite its name under the heading "USPP Note Facility Commitment" in Part II of Schedule 1 (*The Original Parties*) and the amount of any other USPP Note Facility Commitment acquired by it in accordance with Section 13.2 of the USPP Note Agreement; and

(b) in relation to any other Creditor, the amount in the Base Currency of any USPP Note Facility Commitment acquired by it in accordance with Section 13.2 of the USPP Note Agreement,

to the extent not cancelled, reduced or transferred by it in accordance with this Agreement or, as applicable, the USPP Note Agreement.

"**USPP Note Facility**" means the USPP Note Facility and the USPP Note Facility.

"**USPP Note Facility**" means the facility made available under this Agreement as described in paragraph (c) of Clause 2.1 ( *The Facilities*).

"**USPP Note Guarantee**" means the note guarantee granted by CEMEX España in favour of the USPP Noteholders on or about the date of this Agreement.

"**USPP Note Guarantor**" means CEMEX España and each España Subsidiary Guarantor.

"**USPP Noteholders**" means the holders from time to time of the notes issued, with effect from the Effective Date, under the USPP Note Agreement.

"**Utilisation**" means a Loan, the issue of a Derivatives Unwind Promissory Note or the purchase of a USPP Note.

"**Utilisation Date**" means the date of a Utilisation pursuant to Clause 3 ( *Utilisation of the Facilities*), being the date on which the relevant Loan is deemed to be made or the relevant Derivatives Unwind Promissory Note or USPP Note is to be deemed issued or purchased (as applicable).

"**VAT**" means value added tax as provided for in the Value Added Tax Act 1994 and any other tax of a similar nature.

1.2 **Construction**

(a) Unless a contrary indication appears a reference in this Agreement to:

(i) the "**Agent**", any "**Secured Party**", the "**Security Agent**", any "**Finance Party**", any "**Creditor**", any "**Obligor**" or any "**Party**" shall be construed so as to include its successors in title, permitted assigns and permitted transferees and, in the case of the Security Agent, any person for the time being appointed as Security Agent or Security Agents in accordance with the Finance Documents;

(ii) "**assets**" includes present and future properties, revenues and rights of every description;

(iii) the "**European interbank market**" means the interbank market for euro operating in Participating Member States;

(iv) a "**Finance Document**" or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended or novated;

(v) the "**first Caliza Transaction**" means the first Caliza Transaction to occur following the date of this Agreement;

(vi) "**indebtedness**" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;

(vii) a "**participation**" of a Creditor means:

(A) in relation to a Lender and a Loan, the amount of such Loan which such Lender has made or is to make available and

thereafter that part of the Loan which is owed to such Lender (in the case of Loan Facilities referred to in Clause 4.3 (*Promissory Notes under Loan Facilities*), being the principal amount owed to that Lender under its Loan Facilities Promissory Note);

(B) in relation to a Derivatives Unwind Promissory Noteholder and a Derivatives Unwind Promissory Note, the principal amount owed to that Creditor under that Derivatives Unwind Promissory Note; and

(C) in relation to a USPP Noteholder and a USPP Note, the principal amount owed to that USPP Noteholder under that USPP Note;

(viii) a "**person**" includes any person, firm, company, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) of two or more of the foregoing;

(ix) a "**regulation**" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law but, if not having the force of law, with which persons who are subject thereto are accustomed to comply) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;

(x) the "**winding-up**", "**dissolution**", "**administration**" or "**reorganisation**" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings (such as, in Mexico, a *concurso mercantil* or *quiebra* and in Spain, any *situación concursal*) under the laws and regulations of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganisation, bankruptcy, dissolution, administration, examinership in Ireland, arrangement, adjustment, protection or relief of debtors;

(xi) a provision of law is a reference to that provision as amended or re-enacted without material modification;

(xii) a time of day is a reference to London time; and

(xiii) a reference to a clause, paragraph or schedule, unless the context otherwise requires, is a reference to a clause, a paragraph of or a schedule to this Agreement.

(b) "**guarantee**" means (other than in Clause 18 (*Guarantee and indemnity*) and unless otherwise stated) any guarantee, *aval*, *obligado solidario*, letter of credit, bond, indemnity, counter-indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or

assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness.

(c) where it relates to a Dutch entity, a reference to:

(i) necessary action to authorise, where applicable, includes without limitation:

(A) any action required to comply with the Dutch Works Council Act ( *Wet op de ondernemingsraden*); and

(B) obtaining unconditional positive advice (*advies*) from each competent works council.

(ii) a winding-up, administration or dissolution includes a Dutch entity being:

(A) declared bankrupt (*failliet verklaard*); and

(B) dissolved (*ontbonden*);

(iii) a moratorium includes *surséance van betaling* and granted a moratorium includes *surséance verleend*;

(iv) a trustee in bankruptcy includes a *curator*;

(v) an administrator includes a *bewindvoerder*;

(vi) a receiver or an administrative receiver does not include a *curator* or *bewindvoerder*; and

(vii) an attachment includes a *beslag*; and

(d) where it relates to a French entity, a reference to:

(i) "**acting in concert**" has the meaning given in article L. 233-10 of the French Commercial Code;

(ii) "**control**" has the meaning given in article L. 233-3 of the French Commercial Code;

(iii) "**financial assistance**" has the meaning given in article L. 225-216 of the French Commercial Code;

(iv) "**gross negligence**" means "*faute lourde*";

(v) a "**guarantee**" includes any "*cautionnement*", "*aval*" and any "*garantie*" which is independent from the debt to which it relates;

(vi) "**merger**" includes any "*fusion*" implemented in accordance with articles L. 236-1 to L. 236-24 of the French Commercial Code;

(vii) a "**reconstruction**" includes, in relation to any company, any contribution of part of its business in consideration of shares ( *apport partiel d'actifs*) and any demerger (*scission*) implemented in accordance with articles L. 236-1 of the French Commercial Code;

(viii) a "**security interest**" includes any type of security (*sûreté réelle*), transfer or assignment by way of security and *fiducie-sûreté*;

(ix) "**wilful misconduct**" means "*dol*".

(e) Section, Clause and Schedule headings are for ease of reference only.

(f) Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.

(g) Unless otherwise provided for in this Agreement, for the purposes of determining whether a material adverse change or material adverse effect has occurred, the date from which the change or effect is assessed will be the date of this Agreement.

(h) A Default (including an Event of Default) is "**continuing**" if it has not been remedied or waived but, for the avoidance of doubt, no breach of any of the financial covenants set out in Clause 21 ( *Financial Covenants*) shall be capable of being, or be deemed to be, remedied by virtue of the fact that upon any subsequent testing of such covenants pursuant to Clause 21 ( *Financial Covenants*), there is no breach thereof.

1.3 **Currency Symbols and Definitions**

"**£**" and "**sterling**" denote lawful currency of the United Kingdom, "**€**", "**EUR**" and "**euro**" means the single currency unit of the Participating Member States, "**US$**", "**$**" and "**dollars**" denote lawful currency of the United States of America, "**¥**", "**JPY**" and "**yen**" denote lawful currency of Japan, "**Mexican pesos**", "**Mex$**", "**MXP$**" and "**pesos**" denotes the lawful currency of Mexico and "**UDI**" denotes the Mexican Unidad de Inversion.

1.4 **Creditors**

Each Creditor will be regarded, for the purposes of this Agreement, as acting in a different capacity in respect of its Commitment under each Facility in which it has a Commitment and may (in the case of a Creditor other than a USPP Noteholder), for the avoidance of doubt, have a different Facility Office in each such capacity.

1.5 **Third party rights**

(a) Unless expressly provided to the contrary in a Finance Document, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the "**Third Parties Act**") to enforce or enjoy the benefit of any term of any Finance Document.

(b) Clause 28.20 (*Role of FTI Consulting Canada, ULC*) is for the benefit of FTI Consulting Canada, ULC and FTI Consulting Canada, ULC (although not a party to this Agreement) is entitled to rely on and enforce such clause on behalf of itself and its employees and officers under the Third Parties Act.

(c) The provisions of this Agreement relating to the Structuring Banks are for the benefit of the Structuring Banks and each Structuring Bank is entitled to rely on and enforce such clause on behalf of itself and its employees and officers under the Third Parties Act.

(d) Notwithstanding any term of any Finance Document, the consent of any person who is not a Party is not required to rescind or vary any Finance Document at any time.

1.6 **This Agreement prevails**

To the maximum extent permitted by law:

(a) in the event of any inconsistency or conflict between the Intercreditor Agreement and any other Finance Document, the Intercreditor Agreement will prevail; and

(b) in the event of any inconsistency or conflict between this Agreement and any other Finance Document (other than the Intercreditor Agreement) the terms of this Agreement will prevail.

## SECTION 2
## THE FACILITIES

2. **THE FACILITIES**

2.1 **The Facilities**

(a) Subject to the terms of this Agreement, the Creditors make available:

(i) a Base Currency term loan facility in an aggregate amount equal to the Total Facility A Commitments divided into the following sub tranches:

(A) to the Facility A1 Borrower, a Base Currency term loan facility in an aggregate amount equal to the Total Facility A1 Commitments;

(B) to the Facility A2 Borrower, a Base Currency term loan facility in an aggregate amount equal to the Total Facility A2 Commitments;

(C) to the Facility A3 Borrower, a Base Currency term loan facility in an aggregate amount equal to the Total Facility A3 Commitments;

(D) to the Facility A4 Borrower, a Base Currency term loan facility in an aggregate amount equal to the Total Facility A4 Commitments;

(E) to the Facility A5 Borrower, a Base Currency term loan facility in an aggregate amount equal to the Total Facility A5 Commitments;

(F) to the Facility A6 Borrower, a Base Currency term loan facility in an aggregate amount equal to the Total Facility A6 Commitments;

(G) to the Facility A7 Borrower, a Base Currency term loan facility in an aggregate amount equal to the Total Facility A7 Commitments;

(H) to the Facility A8 Borrower, a Base Currency term loan facility in an aggregate amount equal to the Total Facility A8 Commitments;

(ii) to the Facility B Borrower, a euro term loan facility in an aggregate amount equal to the Total Facility B Commitments divided into the following sub tranches:

(A) a euro term loan facility in an aggregate amount equal to the Total Facility B1 Commitments; and

(B) a euro term loan facility in an aggregate amount equal to the Total Facility B2 Commitments; and

(iii) to the Facility C Borrower, a Mexican peso term loan facility in an aggregate amount equal to the Total Facility C Commitments.

(b) Subject to the terms of this Agreement, the Derivatives Unwind Promissory Noteholders make available to the Parent a promissory note facility in an aggregate amount equal to the Total Derivatives Unwind Promissory Note Facility Commitments divided into the following sub facilities:

(i) a Base Currency facility in an aggregate amount equal to the Total Derivatives Unwind Promissory Note Facility 1 Commitments;

(ii) a Base Currency facility in an aggregate amount equal to the Total Derivatives Unwind Promissory Note Facility 2 Commitments; and

(iii) a Mexican peso facility in an aggregate amount equal to the Total Derivatives Unwind Promissory Note Facility 3 Commitments,

in respect of which each of them will, on the Effective Date, receive a Derivatives Unwind Promissory Note (Dual Law) or, as the case may be, a Derivatives Unwind Promissory Note (Mexican Law).

(c) Subject to the terms of this Agreement and to the terms of the USPP Note Agreement, the USPP Noteholders make available to the USPP Note Borrower a private placement facility in an aggregate amount equal to the Total USPP Note Facility Commitments, which is evidenced by the deemed sale and purchase of the USPP Notes under the USPP Note Agreement and in respect of which each of them will, on the Effective Date, receive a USPP Note thereunder.

2.2 **USPP Note Agreement and Derivatives Unwind Promissory Notes**

(a) The Parent confirms (and each USPP Noteholder acknowledges) that all Existing USPP Notes held by the USPP Noteholders have, as at the Effective Date, been cancelled in connection with the Extinguishments.

(b) The Parent confirms (and each Creditor under a Derivatives Unwind Promissory Note Facility acknowledges) that all Existing Derivatives Unwind Promissory Notes held by such Creditors have, as at the Effective Date, been cancelled in connection with the Extinguishments.

(c) Subject, in the case of the USPP Noteholders, to section 12.2 of the USPP Note Agreement, no Creditor which is a holder of a pagaré, promissory note, Derivatives Unwind Promissory Note or USPP Note shall:

(i) make any demand for, or take any proceedings or steps to enforce payment or discharge of, any fees, expenses or other exposure or liability to it under or in respect of that pagaré, promissory note, Derivatives Unwind Promissory Note or, as the case may be, USPP Note by relying on that pagaré, promissory note, Derivatives Unwind Promissory Note or USPP Note;

(ii) initiate or threaten to initiate any Insolvency Proceedings against any member of the Group by relying on that pagaré, promissory note, Derivatives Unwind Promissory Note or USPP Note; or

(iii) attach or seek to attach any asset of any member of the Group by relying on that pagaré, promissory note, Derivatives Unwind Promissory Note or USPP Note.

2.3 **Finance Parties' rights and obligations**

(a) The obligations of each Finance Party under the Finance Documents are several. Failure by a Finance Party to perform its obligations under the Finance Documents does not affect the obligations of any other Party under the Finance Documents. No Finance Party is responsible for the obligations of any other Finance Party under the Finance Documents.

(b) Except as otherwise stated in the Finance Documents, the rights of each Finance Party under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents and owed to a Finance Party from an Obligor (other than a Security Provider which is not also a Borrower or Guarantor) shall be a separate and independent debt.

(c) A Finance Party may, except as otherwise stated in the Finance Documents, separately enforce its rights under the Finance Documents.

## 3. UTILISATION OF THE FACILITIES

3.1 **Utilisation**

(a) The Utilisation of the Facilities shall be made by way of a deemed utilisation pursuant to Clause 3.4 ( *Deemed Utilisation*) which shall occur contemporaneously with a unilateral, irrevocable and unconditional discharge of the Existing Exposures of the Existing Financing Agreement Creditors on the Effective Date by such Existing Financing Agreement Creditors and without the need for any member of the Group to deliver a utilisation request.

(b) A Facility may only be utilised on the Effective Date, and only if all of the Facilities are utilised in full on the Effective Date.

3.2 **Monitoring**

No Finance Party is bound to monitor or verify the application of any amount borrowed pursuant to this Agreement.

3.3 **Further conditions precedent**

Subject to the occurrence of the Effective Date, the Creditors will only be obliged to comply with Clause 3.4 ( *Deemed Utilisation*) in relation to a Utilisation, if on the Effective Date:

(a) no Default is continuing or would result from the proposed Utilisation; and

(b) all the representations and warranties in Clause 19 ( *Representations*) to be made by each Obligor are true in all material respects.

3.4 **Deemed Utilisation**

In respect of the Utilisation of each Facility (and subject to the conditions of this Agreement), each Creditor which has, on the date of this Agreement, an Existing Exposure, shall be deemed, on the Effective Date and simultaneously with the Extinguishments referred to (and as defined in) the Ancillary Agreement, to make its participation in each Utilisation under each Facility in respect of which it has a Commitment available by the Utilisation Date through its Facility Office (each such Creditor, an "**Existing Financing Agreement Creditor**") and the Borrowers under each such Facility shall be deemed to owe to that Creditor an amount equal to its participation in the amount referred to in Clause 4.1 ( *Amount of Utilisation*) in each such Utilisation; **provided that**, with respect to the USPP Note Facility, each Utilisation shall occur when such Existing Financing Agreement Creditor is deemed to purchase its USPP Notes under the USPP Note Agreement, and any Utilisation for the purposes hereof shall be a synthetic Utilisation for the purposes of calculating Outstanding Principal Amounts and the rights and obligations of the USPP Noteholders under this Agreement and the other Finance Documents (other than the USPP Note Agreement and the USPP Note Guarantee).

3.5 **Maximum number of Utilisations**

(a) The number of Loans under each Loan Facility as at the Effective Date shall be as set out in Section B of Part II ( *The Original Creditors*) of Schedule 1 (*The Original Parties*).

(b) A Borrower (or the Parent) may not request that a Facility A1 Loan be divided if, as a result of the proposed division, 11 or more Facility A1 Loans would be outstanding.

(c) A Borrower (or the Parent) may not request that a Facility A2 Loan be divided if, as a result of the proposed division, 11 or more Facility A2 Loans would be outstanding.

(d) A Borrower (or the Parent) may not request that a Facility A3 Loan be divided if, as a result of the proposed division, 11 or more Facility A3 Loans would be outstanding.

(e) A Borrower (or the Parent) may not request that a Facility A4 Loan be divided if, as a result of the proposed division, 11 or more Facility A4 Loans would be outstanding.

(f) A Borrower (or the Parent) may not request that a Facility A5 Loan be divided if, as a result of the proposed division, 11 or more Facility A5 Loans would be outstanding.

(g) A Borrower (or the Parent) may not request that a Facility A6 Loan be divided if, as a result of the proposed division, 11 or more Facility A6 Loans would be outstanding.

(h) A Borrower (or the Parent) may not request that a Facility A7 Loan be divided if, as a result of the proposed division, 11 or more Facility A7 Loans would be outstanding.

(i) A Borrower (or the Parent) may not request that a Facility A8 Loan be divided if, as a result of the proposed division, 11 or more Facility A8 Loans would be outstanding.

(j) A Borrower (or the Parent) may not request that a Facility B1 Loan be divided if, as a result of the proposed division, 11 or more Facility B1 Loans would be outstanding.

(k) A Borrower (or the Parent) may not request that a Facility B2 Loan be divided if, as a result of the proposed division, 11 or more Facility B2 Loans would be outstanding.

(l) A Borrower (or the Parent) may not request that a Facility C Loan be divided if, as a result of the proposed division, 11 or more Facility C Loans would be outstanding.

## SECTION 3
## UTILISATION

4. **UTILISATION**

4.1 **Amount of Utilisation**

The amount of the proposed Utilisation for each Facility (and, in relation to any Facility, the amount of the participation of each Creditor thereunder) shall be the amount set out for that Facility (and, with respect to a Creditor, the amount of participation set out against the name of that Creditor) in Section B of Part II (*The Original Creditors*) of Schedule 1 (*The Original Parties*).

4.2 **Currency and amount**

The currency of a Utilisation must be:

(a) in relation to Facility A, Derivatives Unwind Promissory Note Facility 1, Derivatives Unwind Promissory Note Facility 2 and the USPP Note Facility, the Base Currency;

(b) in relation to Facility B, Euro; and

(c) in relation to Facility C and Derivatives Unwind Promissory Note Facility 3, Mexican pesos.

4.3 **Promissory notes under Loan Facilities**

(a) Each Loan made by a Lender under Facility A1, Facility A2 and Facility A3 shall be evidenced by a promissory note issued by the relevant Borrower governed by New York and Mexican law and substantially in the form set out in Part I of Schedule 4 ( *Forms of Promissory Notes*).

(b) Each Loan made by a Lender under Facility A6 shall, on the request of that Lender, be evidenced by a promissory note issued by the Facility A6 Borrower governed by English law on or before the date falling 10 Business Days after any such request substantially in the form set out in Part II of Schedule 4 (*Forms of Promissory Notes*).

(c) Each Loan made by a Lender under Facility A7 shall be evidenced by a promissory note issued by the Facility A7 Borrower governed by New York law and substantially in the form set out in Part III of Schedule 4 ( *Forms of Promissory Notes*).

(d) Each Loan made by a Lender under Facility C shall be evidenced by a promissory note issued by the Facility C Borrower governed by Mexican law substantially in the form set out in Part IV of Schedule 4 ( *Forms of Promissory Notes*).

4.4 **Condition precedent to issue of promissory notes, enforcement and indemnification**

(a) Except in the case of the Facility A6 Borrower following a request by a Lender under Facility A6 in accordance with paragraph (b) of Clause 4.3 (*Promissory notes under Loan Facilities*), a Borrower shall only be obliged to issue a pagaré, promissory note, Derivatives Unwind Promissory Note or USPP Note to a Creditor upon receipt by such Borrower (or the Parent on its behalf) of the pagaré, promissory note or Existing Derivatives Unwind Promissory Note issued or transferred to such Creditor with respect to its Existing Exposures under the 2009 Financing Agreement, or an Existing USPP Note issued or transferred to such Creditor pursuant to the Existing USPP Note Agreement or, in each case, an Affidavit of Loss. For the avoidance of doubt, no Borrower shall be required to deliver a pagaré, promissory note or Derivatives Unwind Promissory Note which is required, in accordance with the form set out in the relevant part of Schedule 4 ( *Forms of Promissory Notes*), to be accompanied by a side letter to a Creditor until such Creditor has provided to the applicable Borrower an executed copy of the applicable side letter corresponding to such pagare, promissory note or Derivatives Unwind Promissory Note substantially in the form set out in the relevant part of Schedule 4 ( *Forms of Promissory Notes*).

(b) Each Creditor undertakes not to take any Enforcement Action (as defined in the Intercreditor Agreement or, as the case may be, the Intercreditor Agreement (as defined in the 2009 Financing Agreement)) under, or in respect of, any pagaré, promissory note or Existing Derivatives Unwind Promissory Note issued or transferred to such Creditor with respect to its Existing Exposures under the 2009 Financing Agreement, or any Existing USPP Note issued or transferred to such Creditor pursuant to the Existing USPP Note Agreement.

(c) Each Creditor to whom a pagaré, promissory note or Existing Derivatives Unwind Promissory Note has been delivered with respect to its Existing Exposures under the 2009 Financing Agreement, or to whom an Existing USPP Note has been delivered pursuant to the Existing USPP Note Agreement, hereby agrees to indemnify and hold harmless the relevant Obligor and each of its successors and assigns, of and from any loss, damage or claim resulting from that Creditor's loss, misplacement or transfer of such pagaré, promissory note or Existing Derivatives Unwind Promissory Note delivered with respect to its Existing Exposures under the 2009 Financing Agreement or Existing USPP Note delivered under the Existing USPP Note Agreement. Any third party referred to in this paragraph (c) may rely on this Clause 4.4.

(d) For the avoidance of doubt, no Creditor may claim under a pagaré, promissory note, Derivatives Unwind Promissory Note or USPP Note separately from this Agreement.

## SECTION 4
## REPAYMENT, PREPAYMENT AND CANCELLATION

### 5. REPAYMENT

### 5.1 Spring Back Dates

(a) In the event of any of the circumstances set out in sub paragraphs (i) to (vi) below occurring, the Initial Termination Date shall be replaced by the relevant Termination Date set out in the relevant sub paragraph below (each a "**Spring Back Date**"):

(i) 14 February 2014 if, on or prior to 31 March 2013 (or, with the prior consent of the Majority Creditors, such later date falling no more than 90 days thereafter as the Parent may request), the Borrowers have not reduced the Base Currency Amount of the aggregate Outstanding Principal Amounts under this Agreement by an aggregate amount equal to at least $1,000,000,000 compared to the Base Currency Amount of the aggregate Outstanding Principal Amounts under this Agreement as at the Effective Date;

(ii) 5 March 2014 if, by such date, 100 per cent. of the 2014 Eurobonds have not been redeemed or extended to a maturity date falling after 31 December 2017 or purchased, repurchased or refinanced as permitted by this Agreement;

(iii) 15 March 2015 if, by such date, 100 per cent. of the 2015 Subordinated Convertible Notes have not been redeemed, converted into equity or extended to a maturity date falling after 31 December 2017 or purchased, repurchased or refinanced as permitted by this Agreement;

(iv) 30 September 2015 if, by such date, 100 per cent. of the 2015 Floating Rate Notes have not been redeemed or extended to a maturity date falling after 31 December 2017 or purchased, repurchased or refinanced as permitted by this Agreement;

(v) 15 March 2016 if, by such date, 100 per cent. of the 2016 Subordinated Convertible Notes have not been redeemed, converted into equity or extended to a maturity date falling after 31 December 2017 or purchased, repurchased or refinanced as permitted by this Agreement; and

(vi) 14 December 2016 if, by such date, 100 per cent. of the 2016 Senior Notes have not been redeemed or extended to a maturity date falling after 31 December 2017 or purchased, repurchased or refinanced as permitted by this Agreement,

**provided that** once a Spring Back Date in any of the above sub paragraphs has applied (and the Initial Termination Date has been replaced in accordance with the above), none of the subsequent sub paragraphs will result in a later Spring Back Date occurring.

(b) Promptly following a redemption, refinancing, extension, purchase, repurchase or conversion (as the case may be) of the Existing Financial Indebtedness referred to in sub paragraphs (ii) to (vi) of paragraph (a) above on the terms contemplated therein (and in any event no later than the relevant Spring Back Date in each case), the Parent shall deliver to the Agent written confirmation that such redemption, refinancing, extension, purchase, repurchase or conversion (as the case may be) has occurred.

(c) In the event that a Spring Back Date applies in accordance with paragraph (a) above, the amortisation schedule contained in paragraph (a) of Clause 5.2 (*Repayment*) shall be adjusted as follows:

(i) any Repayment Date falling after the applicable Spring Back Date (and the Repayment Instalment due on that Repayment Date) shall be deleted; and

(ii) the balance of the aggregate Outstanding Principal Amounts shall be paid on the Termination Date (as adjusted to the applicable Spring Back Date in accordance with paragraph (a) above).

5.2 **Repayment**

(a) Subject to paragraph (c) of Clause 5.1 (*Spring Back Dates*) above, the Borrowers shall repay the Base Currency Amount of the aggregate Outstanding Principal Amounts in instalments by repaying on each Repayment Date an amount which reduces the Base Currency Amount of the outstanding aggregate Outstanding Principal Amounts by an amount equivalent to that which is set out opposite that Repayment Date below (each such amount, a "**Repayment Instalment**"):

| Repayment Date | Repayment Instalment ($) |
|---|---|
| 14 February 2014 | 500,000,000 |
| 30 June 2016 | 250,000,000 |
| 31 December 2016 | 250,000,000 |
| Termination Date | Balance |

(b) The Borrowers may not reborrow any part of a Facility which is repaid.

(c) All repayments made pursuant to this Clause 5.2 will reduce the Outstanding Principal Amounts of the Creditors across all Facilities as at the date of the repayment rateably.

5.3 **Effect of prepayment on scheduled repayments**

(a) If the Base Currency Amount of any of the Outstanding Principal Amounts are prepaid in accordance with Clause 6.4 ( *Right of repayment in relation to a single Creditor*) or Clause 6.1 (*Illegality*) then the amount of the Repayment Instalment for each Repayment Date falling after that prepayment will reduce *pro rata* by the amount of the Outstanding Principal Amounts prepaid.

(b) If the Base Currency Amount of any of the Outstanding Principal Amounts are prepaid in accordance with Clause 6.2 ( *Voluntary prepayment*) then:

(i) for all prepayments under that Clause 6.2 ( *Voluntary prepayment*) until the aggregate amount applied in prepayment under this Agreement is equal to or exceeds $1,000,000,000 (or its equivalent), the amount of the Repayment Instalment for each Repayment Date falling after that prepayment will reduce in inverse chronological order by the amount of the Outstanding Principal Amounts prepaid; and

(ii) thereafter, such prepayment shall be applied in reduction of such Repayment Instalments as the Parent may elect,

(and, for the avoidance of doubt, this paragraph (b) shall not apply to any prepayment made pursuant to Clause 7 ( *Mandatory Prepayment and Segregated Accounts*)).

(c) If any of the Outstanding Principal Amounts are prepaid in accordance with Clause 7 ( *Mandatory Prepayment and Segregated Accounts*) then:

(i) for all prepayments under that Clause 7 (*Mandatory Prepayment and Segregated Accounts*) until the aggregate amount applied in prepayment is equal to or exceeds $1,000,000,000 (or its equivalent), the amount of the Repayment Instalment for each Repayment Date falling after that prepayment will reduce in inverse chronological order by the amount of the Outstanding Principal Amounts prepaid; and

(ii) thereafter, the amount of the Repayment Instalment for each Repayment Date falling after that prepayment will reduce in chronological order by the amount of the Outstanding Principal Amounts prepaid.

## 6. ILLEGALITY AND VOLUNTARY PREPAYMENT

### 6.1 Illegality

(a) If, at any time, it is or will become unlawful in any applicable jurisdiction for a Creditor to perform any of its obligations as contemplated by the Finance Documents or to fund, issue or maintain its participation in any Utilisation:

(i) that Creditor shall promptly notify the Agent upon becoming aware of that event;

(ii) subject to Clause 37.4 (*Replacement of Creditor*), upon the Agent notifying the Parent, the Commitment(s) of that Creditor under the relevant Facilities will be immediately cancelled; and

(iii) subject to Clause 37.4 (*Replacement of Creditor*), each Borrower shall repay that Creditor's participation in Utilisations made to that Borrower

on the last day of the Interest Period for each such Utilisation occurring after the Agent has notified the Parent or, if earlier, the date specified by the Creditor in the notice delivered to the Agent (being no earlier than the last day of any applicable grace period permitted by law).

(b) For the avoidance of doubt, this Clause 6.1 shall not apply to a USPP Noteholder and any reference in this Agreement to this Clause 6.1 in respect of a USPP Note shall have no effect.

6.2 **Voluntary prepayment**

Subject to Clause 6.3 (*Proportionate prepayment*), a Borrower to which a Utilisation has been made may, if it or the Parent gives the Agent not less than 5 Business Days' (or such shorter period as the Majority Creditors and the Agent may agree) prior notice, prepay the whole or any part of that Utilisation (but if in part, being an amount that reduces the Base Currency Amount of that Utilisation by a minimum amount equal to $20,000,000).

6.3 **Proportionate prepayment**

Any prepayment under Clause 6.2 (*Voluntary prepayment*) must reduce the Base Currency Amounts of the Outstanding Principal Amounts across all of the Facilities as at the date of the prepayment rateably (and will reduce the Repayment Instalments in the order elected by the Parent in accordance with paragraph (b) of Clause 5.3 (*Effect of prepayment on scheduled repayments*)).

6.4 **Right of repayment in relation to a single Creditor**

(a) If:

(i) any sum payable to any Creditor by an Obligor is required to be increased under paragraph (c) of Clause 13.2 *(Tax gross-up*), Clause 13.8 (*FATCA Deduction and gross-up by Obligor*) or Clause 13.9 (*FATCA Deduction by a Finance Party*); or

(ii) any Creditor claims, or gives notice that it intends to claim, indemnification from the Parent or an Obligor under Clause 13.3 ( *Tax indemnity*) or Clause 14 (*Increased costs*),

the Parent may (provided that no Default has occurred and is continuing), whilst the circumstance giving rise to the requirement for that increase or indemnification continues, give the Agent notice of its intention to procure the repayment of that Creditor's participation in the Utilisations.

(b) On the last day of each Interest Period which ends after the Parent has given notice under paragraph (a) above in relation to a Creditor (or, if earlier, the date specified by the Parent in that notice), each Borrower to which a Utilisation is outstanding shall repay that Creditor's participation in that Utilisation together with all interest and other amounts accrued under the Finance Documents.

## 7. MANDATORY PREPAYMENT AND SEGREGATED ACCOUNTS

### 7.1 Prepayment under 2009 Financing Agreement

(a) Until such time as the Base Currency Amount of the aggregate Outstanding Principal Amounts has been reduced by an aggregate amount equal to at least $1,500,000,000 (compared to the Base Currency Amount of the aggregate Outstanding Principal Amounts as at the Effective Date), the Parent shall ensure that, contemporaneously with and as a condition to the making of any prepayment of any 2009 Financing Agreement Exposures (other than any scheduled amortisation payment made in accordance with the 2009 Financing Agreement or a repayment on the 2009 Financing Agreement Termination Date but including, for the avoidance of doubt, any prepayment of the 2009 Financing Agreement Exposures contemplated under this Clause 7 (*Mandatory Prepayment and Segregated Accounts*)), the Borrowers prepay the Outstanding Principal Amounts under this Agreement in such an amount in order that the 2009 Financing Agreement Exposures and the Outstanding Principal Amounts under this Agreement are prepaid proportionately (as calculated by reference to the aggregate Base Currency Amount of 2009 Financing Agreement Exposures and Outstanding Principal Amounts under this Agreement immediately prior to such prepayment).

(b) The prepayment of the Outstanding Principal Amounts referred to in paragraph (a) above shall be applied to the Outstanding Principal Amounts across all Facilities as at the date of the prepayment rateably (and will reduce the Repayment Instalments in the order set out in Clause 5.3 (*Effect of prepayment on scheduled repayments*)).

### 7.2 Caliza Proceeds

(a) For the purposes of this Clause 7 (*Mandatory Prepayment and Segregated Accounts*):

"**Caliza Proceeds**" means the cash proceeds (subject to the proviso below, excluding the Caliza Offering Option Amount) received by any member of the Group from the Caliza Transaction, after deducting:

(i) any reasonable fees and expenses which are incurred by any member(s) of the Group with respect to the Caliza Transaction to persons who are not members of the Group; and

(ii) any Tax incurred and required to be paid by any member of the Group in connection with the Caliza Transaction (as reasonably determined by the relevant member(s) of the Group on the basis of rates existing at the time of the Caliza Transaction and taking account of any available credit, deduction or allowance),

**provided that** at the end of the Caliza Offering Option Exercise Period, any Caliza Offering Option Amount previously excluded from Caliza Proceeds and not utilised pursuant to any exercise of a Caliza Offering Option shall constitute Caliza Proceeds.

(b) Subject to paragraph (c) below, the Parent shall ensure that the Borrowers prepay the Base Currency Amount of the Outstanding Principal Amounts in an amount equal to (or if required by Clause 7.9 ( *Segregated Accounts and Reserves*), deposit into a Segregated Account an amount equal to) the amount of any Caliza Proceeds promptly upon (and in any event within 30 days of) receipt of those proceeds in the order contemplated by paragraph (c) below.

(c) A prepayment in respect of Caliza Proceeds shall be applied:

(i) first, as to an amount (if any) of Caliza Proceeds such that the Base Currency Amount of the aggregate Outstanding Principal Amounts has been reduced by an aggregate amount equal to at least $1,000,000,000 (compared to the Base Currency Amount of the aggregate Outstanding Principal Amounts as at the Effective Date), in prepayment of the Outstanding Principal Amounts across all Facilities as at the date of the prepayment rateably (and reducing the Repayment Instalments in the order set out in Clause 5.3 ( *Effect of prepayment on scheduled repayments*));

(ii) secondly, (after application of amounts pursuant to sub paragraph (i) above) at the Parent's option, to replenish the cash in hand position of the Parent (in a maximum amount equal to the then amount of any Shortfall at that time); and

thereafter, any remaining Caliza Proceeds shall be treated as Disposal Proceeds (but without excluding any applicable Excluded Disposal Proceeds and, to the extent reasonable fees and expenses and Tax incurred have been deducted pursuant to paragraphs (i) and (ii) of the definition of Caliza Proceeds, with no deduction of the same) and applied in accordance with the relevant provisions of Clause 7.3 ( *Disposal Proceeds*).

(d) For the avoidance of doubt but without prejudice to any obligation of any Obligor to make a payment under this Agreement, there shall be no obligation under the Finance Documents on any member of the Group to enter into any Caliza Transaction.

7.3 **Disposal Proceeds**

(a) For the purposes of this Clause 7 (*Mandatory Prepayment and Segregated Accounts*):

"**Disposal**" means a sale, lease, licence, transfer, loan or other disposal by a person of any asset (including shares in any Subsidiary or other company), undertaking or business (whether by a voluntary or involuntary single transaction or series of transactions).

"**Disposal Proceeds**" means:

(i) the cash consideration received by any member of the Group (including any amount received from a person who is not a member of the Group in repayment of intercompany debt save to the extent that the creditor in respect of the intercompany debt is obliged to repay that amount to the purchaser at or about completion of the Disposal) for any Disposal;

(ii) any proceeds of any Disposal received in the form of Marketable Securities that are required to be disposed of for cash (after deducting reasonable expenses incurred by the party disposing of those Marketable Securities to persons other than members of the Group) pursuant to the criteria set out at paragraph (k) of the definition of Permitted Disposal; and

(iii) any proceeds of any Disposal received in any other form to the extent disposed of or otherwise converted into cash within 90 days of receipt,

but excluding any Excluded Disposal Proceeds and, in every case, after deducting:

(A) any reasonable fees and expenses which are incurred by the disposing party of such assets with respect to that Disposal to persons who are not members of the Group; and

(B) any Tax incurred and required to be paid by the disposing party in connection with that Disposal (as reasonably determined by the disposing party on the basis of rates existing at the time of the disposal and taking account of any available credit, deduction or allowance);

"**Excluded Disposal Proceeds**" means the proceeds of any Disposal of:

(i) inventory or trade receivables in the ordinary course of trading of the disposing entity;

(ii) assets pursuant to a Permitted Securitisation programme existing as at the date of this Agreement (or any rollover or extension of such a Permitted Securitisation);

(iii) any asset from any member of the Group to another member of the Group on arm's length terms and for fair market or book value;

(iv) any assets the consideration for which (when aggregated with the consideration for any related Disposals) is less than $10,000,000 (or its equivalent in any other currency);

(v) assets leased or licensed to any director, officer or employee of any member of the Group in connection with and as part of the ordinary course of the service or employment arrangements of the Group;

(vi) Marketable Securities (other than Marketable Securities received as consideration for a Disposal as envisaged in paragraphs (ii) and (iii) of the definition of Disposal Proceeds);

(vii) any cash or other assets arising out of or in connection with any Permitted Put/Call Transaction, including, but not limited to, any settlement, disposal, transfer, assignment, close-out or other termination of such Permitted Put/Call Transaction;

(viii) shares in Caliza pursuant to the Caliza Transaction or in a Group member pursuant to the Caliza Reorganisation (except for any amounts of Caliza Proceeds which, following application in accordance with the waterfall in sub paragraphs (i) and (ii) of paragraph (c) of Clause 7.2 (*Caliza Proceeds*), are treated as Disposal Proceeds);

(ix) any:

(A) assets, undertakings or businesses of the Caliza Group;

(B) Caliza Proceeds arising from a transaction falling within paragraph (b) of the definition of Caliza Transaction;

(C) any other cash proceeds of any Permitted Equity Fundraising by Caliza or any member of the Caliza Group

**provided that**, in each case, the Caliza Group may deduct from such proceeds an amount up to the lower of cash in hand of the Caliza Group (excluding any Caliza Offering Option Amount) and the Caliza Cash Maintenance Threshold and, once an amount in aggregate equal to the lower of cash in hand of the Caliza Group (excluding any Caliza Offering Option Amount) and the Caliza Cash Maintenance Threshold has been so deducted, any remaining proceeds shall not be treated as Excluded Disposal Proceeds but shall be treated as Disposal Proceeds.

(b) Subject to the requirements of Clause 7.9 (*Segregated Accounts and Reserves*), the Parent shall ensure that, at the times contemplated by paragraph (e) of Clause 7.8 (*Mandatory Prepayment and Segregated Accounts: other provisions*) the Borrowers apply an amount equal to the amount of any Disposal Proceeds (**provided that** the obligation to, as the case may be, deposit into a Segregated Account or prepay such amounts shall only apply on each occasion that the aggregate amount of any Disposal Proceeds received (whether from a single Disposal or a series of Disposals) is equal to or greater than $50,000,000) in prepayment of the Base Currency Amount of the Outstanding Principal Amounts under this Agreement or otherwise as provided by paragraphs (d) and (e) below (and, in each case, in the order of application contemplated by paragraphs (d) and (e) below).

(c) In the case of a Disposal of all of the shares in a Borrower (or the Holding Company of a Borrower), the Parent shall ensure that:

(i) unless otherwise agreed to in writing by the relevant Borrower and the relevant Creditors that a prepayment is not required to be made, upon completion of the Disposal, the Facilities in respect of which that Borrower is the borrower or issuer (or the Holding Company is a holding company of that Borrower) shall be prepaid in full using the Disposal Proceeds and, for the avoidance of doubt, such prepayment shall first be applied in respect of the Outstanding Principal Amounts

under the relevant Facilities and, subject to paragraph (ii) below, not be required to be applied to reduce the Base Currency Amount of the Outstanding Principal Amounts across all the Facilities as at the date of prepayment rateably (but reducing the Repayment Instalments in the order set out in Clause 5.3 (*Effect of prepayment on scheduled repayments*));

(ii) any Disposal Proceeds arising from the Disposal that are not required to be applied under paragraph (i) above shall be applied in accordance with paragraph (b) above.

(d) During the period from and including the date of this Agreement until such time as the Base Currency Amount of the aggregate Outstanding Principal Amounts has been reduced by an aggregate amount equal to at least $1,500,000,000 (compared to the Base Currency Amount of the aggregate Outstanding Principal Amounts as at the Effective Date), amounts of Disposal Proceeds required to be applied by paragraph (b) above shall be applied in the following order:

(i) first, if the Parent so elects in an Election Notice, to replenish the cash in hand position of the Parent by deducting and retaining from such proceeds a maximum amount equal to the amount of any Shortfall at that time; and

(ii) secondly, after the application of amounts pursuant to sub paragraph (i) above:

(A) in prepayment of the Base Currency Amount of the Outstanding Principal Amounts across all Facilities as at the date of the prepayment rateably (and reducing the Repayment Instalments in the order set out in Clause 5.3 ( *Effect of prepayment on scheduled repayments*)); and/or

(B) subject to compliance with Clause 7.1 (*Prepayment under 2009 Financing Agreement*), in prepayment or to make (but not to be held in a Reserve for) scheduled repayments of the 2009 Financing Agreement Exposures as at the date of the prepayment rateably (and reducing any applicable repayment instalments in the order set out in the 2009 Financing Agreement),

(and the Parent may, in an Election Notice, elect between (A) and (B) above (or a combination thereof)).

(e) From such time as the Base Currency Amount of the aggregate Outstanding Principal Amounts has been reduced by an aggregate amount equal to at least $1,500,000,000 (compared to the Base Currency Amount of the aggregate Outstanding Principal Amounts as at the Effective Date), amounts of Disposal Proceeds required to be applied by paragraph (b) above shall be applied in the following order:

(i) first, if the Parent so elects in an Election Notice, to replenish the cash in hand position of the Parent by deducting and retaining from such proceeds a maximum amount equal to the amount of any Shortfall at that time);

(ii) secondly (and until such time as sub paragraphs (iii) and (iv) below apply), after application of the amounts pursuant to sub paragraph (i) above:

(A) in prepayment of:

(1) the Base Currency Amount of the Outstanding Principal Amounts across all Facilities as at the date of the prepayment rateably (and reducing the Repayment Instalments in the order set out in Clause 5.3 ( *Effect of prepayment on scheduled repayments*)); and/or

(2) the 2009 Financing Agreement Exposures as at the date of the prepayment rateably (and will reduce any applicable repayment instalments in the order set out in the 2009 Financing Agreement), or to be held in a Reserve for making scheduled repayments of the 2009 Financing Agreement Exposures; and/or

(B) to purchase or redeem (whether at maturity or otherwise) the 2014 Eurobonds in whole or part, or to be held in a Reserve for the repayment of all outstanding amounts under the 2014 Eurobonds in full,

(and the Parent may, in an Election Notice, elect between (A)(1), (A)(2) and (B) above (or a combination thereof));

(iii) then, from such time as:

(A) the 2009 Financing Agreement Exposures have been repaid in full (or an amount equal to the amount required to repay the 2009 Financing Agreement Exposures in full is standing to the balance of a Reserve); and

(B) the 2014 Eurobonds have been purchased or redeemed (whether at maturity or otherwise) in full (or an amount equal to the amount required to repay all amounts outstanding under the 2014 Eurobonds in full is standing to the balance of a Reserve),

and for so long as the Existing Pre-2017 High Yield Notes and Existing Subordinated Convertible Notes have not been converted (in the case of the Existing Subordinated Convertible Notes), retired, prepaid, redeemed (whether at maturity or otherwise) or repurchased (or for so long as the amount standing to the balance of a Reserve is less than the amount required to repay all amounts outstanding under the Existing Pre-2017 High Yield Notes at their respective maturities and all amounts outstanding under the Existing Subordinated Convertible Notes in full), amounts of Disposal Proceeds required to be applied by paragraph (b) above shall be applied in the following order:

(1) in an amount equal to at least 35 per cent. of such proceeds, in prepayment of the Base Currency Amount of the Outstanding Principal Amounts across all Facilities as at the date of the prepayment rateably (and reducing the Repayment Instalments in the order set out in Clause 5.3 ( *Effect of prepayment on scheduled repayments* )); and

(2) in an amount up to 65 per cent. of such proceeds, to retire, prepay, redeem (whether at maturity or otherwise) or repurchase the Existing Pre-2017 High Yield Notes in whole or part (or to be held in a Reserve for repayment in full);

(iv) then, from such time as:

(A) the 2009 Financing Agreement Exposures have been repaid in full (or an amount equal to the amount required to repay the 2009 Financing Agreement Exposures in full is standing to the balance of a Reserve);

(B) the 2014 Eurobonds have been purchased or redeemed (whether at maturity or otherwise) in full (or an amount equal to the amount required to repay all amounts outstanding under the 2014 Eurobonds in full is standing to the balance of a Reserve); and

(C) the Existing Pre-2017 High Yield Notes and Existing Subordinated Convertible Notes have been converted (in the case of the Existing Subordinated Convertible Notes), retired, prepaid, redeemed (whether at maturity or otherwise) or repurchased or repurchased in full (or an amount equal to the amount required for repayment of all amounts outstanding under the Existing Pre-2017 High Yield Notes at their respective maturities and for repayment of all amounts outstanding under the Existing Subordinated Convertible Notes in full is standing to the balance of a Reserve),

amounts of Disposal Proceeds required to be applied by paragraph (b) above shall be applied in the following order:

(1) in an amount equal to at least 50 per cent. of such proceeds, in prepayment of the Base Currency Amount of the Outstanding Principal Amounts across all Facilities as at the date of the prepayment rateably (and reducing the Repayment Instalments in the order set out in Clause 5.3 ( *Effect of prepayment on scheduled repayments*)); and

(2) in an amount up to 50 per cent. of such proceeds, to retire, prepay or redeem (whether at maturity or otherwise) any Financial Indebtedness (including Financial Indebtedness with a maturity date falling after 31 December 2017) at the option of the Parent.

7.4 **Excess Cashflow**

(a) Subject to the requirements of Clause 7.9 ( *Segregated Accounts and Reserves*), the Parent shall ensure that, at the times contemplated by paragraph (e) of Clause 7.8 (*Mandatory Prepayment Segregated Accounts: other provisions*) the Borrowers apply the amount equal to Excess Cashflow for any Financial Quarter of the Parent in prepayment of the Base Currency Amount of the Outstanding Principal Amounts under this Agreement or otherwise as provided in paragraphs (b) and (c) below (and, in each case, in the order of application contemplated by paragraphs (b) and (c) below).

(b) During the period from and including the date of this Agreement until such time as the Base Currency Amount of the aggregate Outstanding Principal Amounts has been reduced by an aggregate amount equal to at least $1,500,000,000 (compared to the Base Currency Amount of the aggregate Outstanding Principal Amounts as at the Effective Date), amounts of Excess Cashflow required to be applied by paragraph (a) above shall be applied in the following order:

(i) first, if the Parent so elects in an Election Notice, to replenish the cash in hand position of the Parent by deducting and retaining from such Excess Cashflow a maximum amount equal to the amount of any Shortfall at that time; and

(ii) secondly, after application of amounts pursuant to sub paragraph (i) above:

(A) in prepayment of the Base Currency Amount of the Outstanding Principal Amounts across all Facilities as at the date of the prepayment rateably (and reducing the Repayment Instalments in the order set out in Clause 5.3 ( *Effect of prepayment on scheduled repayments*)); and/or

(B) subject to compliance with Clause 7.1 ( *Prepayment under 2009 Financing Agreement*), in prepayment or to make (but not to be held in a Reserve for) scheduled repayments of the 2009 Financing Agreement Exposures as at the date of the prepayment rateably (and reducing any applicable repayment instalments in the order set out in the 2009 Financing Agreement),

(and the Parent may, in an Election Notice, elect between (A) and (B) above (or a combination thereof)).

(c) From such time as the Base Currency Amount of the aggregate Outstanding Principal Amounts has been reduced by an aggregate amount equal to at least $1,500,000,000 (compared to the Base Currency Amount of the aggregate Outstanding Principal Amounts as at the Effective Date), amounts of Excess Cashflow required to be applied by paragraph (a) above shall be applied in the following order:

(i) first, if the Parent so elects in an Election Notice, to replenish the cash in hand position of the Parent by deducting and retaining from such Excess Cashflow a maximum amount equal to the amount of any Shortfall at that time;

(ii) secondly (until such time as sub paragraphs (iii) and (iv) below apply), after application of amounts pursuant to sub paragraph (i) above:

(A) in prepayment of:

(1) the Base Currency Amount of the Outstanding Principal Amounts across all Facilities as at the date of the prepayment rateably (and reducing the Repayment Instalments in the order set out in Clause 5.3 ( *Effect of prepayment on scheduled repayments*)); and/or

(2) the 2009 Financing Agreement Exposures as at the date of the prepayment rateably (and reducing any applicable repayment instalments in the order set out in the 2009 Financing Agreement), or to be held in a Reserve for making scheduled repayments of the 2009 Financing Agreement Exposures; and/or

(B) to purchase or redeem (whether at maturity or otherwise) the 2014 Eurobonds in whole or part, or to be held in a Reserve for the repayment of all amounts outstanding under the 2014 Eurobonds in full,

(and the Parent may, in an Election Notice, elect between (A)(1), (A)(2) and (B) above (or a combination thereof));

(iii) then, from such time as:

(A) the 2009 Financing Agreement Exposures have been repaid in full (or an amount equal to the amount required to repay the 2009 Financing Agreement Exposures in full is standing to the balance of a Reserve); and

(B) the 2014 Eurobonds have been purchased or redeemed (whether at maturity or otherwise) in full (or an amount equal to the amount required to repay all amounts outstanding under the 2014 Eurobonds in full is standing to the balance of a Reserve),

and for so long as the Existing Pre-2017 High Yield Notes and Existing Subordinated Convertible Notes have not been converted (in the case of the Existing Subordinated Convertible Notes), retired, prepaid, redeemed (whether at maturity or otherwise) or repurchased (or for so long as the amount standing to the balance of a Reserve is less than the amount required to repay all amounts outstanding under the Existing Pre-2017 High Yield Notes at their respective maturities and all amounts outstanding under the Existing Subordinated Convertible Notes in full), amounts of Excess Cashflow required to be applied by paragraph (a) above shall be applied in the following order:

(1) in an amount equal to at least 35 per cent. of such Excess Cashflow, in prepayment of the Base Currency Amount of the Outstanding Principal Amounts across all Facilities as at the date of the prepayment rateably (and reducing the Repayment Instalments in the order set out in Clause 5.3 ( *Effect of prepayment on scheduled repayments*)); and

(2) in an amount up to 65 per cent. of such Excess Cashflow, to retire, prepay, redeem (whether at maturity or otherwise) or repurchase the Existing Pre-2017 High Yield Notes in whole or part (or to be held in a Reserve for repayment in full) at the Parent's option;

(iv) then, from such time as:

(A) the 2009 Financing Agreement Exposures have been repaid in full (or an amount equal to the amount required to repay the 2009 Financing Agreement Exposures in full is standing to the balance of a Reserve);

(B) the 2014 Eurobonds have been purchased or redeemed (whether at maturity or otherwise) in full (or an amount equal to the amount required to repay all amounts outstanding under the 2014 Eurobonds in full is standing to the balance of a Reserve); and

(C) the Existing Pre-2017 High Yield Notes and Existing Subordinated Convertible Notes have been converted (in the case of the Existing Subordinated Convertible Notes), retired, prepaid, redeemed (whether at maturity or otherwise) or repurchased in full (or an amount equal to the amount required for repayment of all amounts outstanding under the Existing Pre-2017 High Yield Notes at their respective maturities and for repayment of all amounts outstanding under the Existing Subordinated Convertible Notes in full is standing to the balance of a Reserve),

amounts of Excess Cashflow required to be applied by paragraph (a) above shall be applied in the following order:

(1) in an amount equal to at least 35 per cent. of such Excess Cashflow, in prepayment of the Base Currency Amount of the Outstanding Principal Amounts across all Facilities as at the date of the prepayment rateably (and reducing the Repayment Instalments in the order set out in Clause 5.3 ( *Effect of prepayment on scheduled repayments and reductions*)); and

(2) at the option of the Parent, in an amount up to 65 per cent. of such Excess Cashflow, to retire, prepay or redeem (whether at maturity or otherwise) any Financial Indebtedness and/or to purchase or repurchase any such Financial Indebtedness on the open market or otherwise (and whether at a discount or otherwise) (or, in each case to be held in a Reserve for application towards the same purpose and, in each case, in whole or part), and/or to finance any investment or expenditure permitted by this Agreement.

7.5 **Permitted Equity Fundraising Proceeds**

(a) For the purposes of this Clause 7 (*Mandatory Prepayment and Segregated Accounts*):

"**Excluded Equity Fundraising Proceeds**" means:

(i) any Caliza Proceeds applied pursuant to Clause 7.2 ( *Caliza Proceeds*) or Clause 7.3 (*Disposal Proceeds*);

(ii) the proceeds received by a member of the Group from a member of the Group in respect of any transaction between members of the Group;

(iii) a Permitted Fundraising for the purposes of issuing shares as required on any settlement, disposal, transfer, assignment, close-out or other termination of a Permitted Put/Call Transaction;

(iv) for the avoidance of doubt, any Relevant Convertible/Exchangeable Obligations Proceeds; and

(v) for the avoidance of doubt, any issuance of shares by a member of the Group in order to redeem or retire any equity-like instruments issued by a member of the Group (to the extent permitted under this Agreement).

"**Permitted Equity Fundraising**" means a Permitted Fundraising falling within paragraphs (a) or (b) of the definition of Permitted Fundraising.

"**Permitted Equity Fundraising Proceeds**" means the cash proceeds received by any member of the Group from a Permitted Equity Fundraising other than Excluded Equity Fundraising Proceeds and after deducting:

(i) any reasonable fees and expenses which are incurred by the relevant member(s) of the Group with respect to that Permitted Equity Fundraising owing to persons who are not members of the Group; and

(ii) any Tax incurred and required to be paid by the relevant member(s) of the Group with respect to that Permitted Equity Fundraising (as reasonably determined by the relevant member(s) of the Group on the basis of rates existing at the time and taking account of any available credit, deduction or allowance).

"**Relevant Convertible/Exchangeable Obligations Proceeds**" means the cash proceeds received by any member of the Group from an issuance of Relevant Convertible/Exchangeable Obligations after deducting:

(i) any reasonable fees and expenses which are incurred by the relevant member(s) of the Group with respect to that issuance of Relevant Convertible/Exchangeable Obligations (including with respect to any related Permitted Put/Call Transaction) owing to persons who are not members of the Group; and

(ii) any Tax incurred and required to be paid by the relevant member(s) of the Group with respect to that issuance of Relevant Convertible/Exchangeable Obligations or with respect to any related Permitted Put/Call Transaction (as reasonably determined by the relevant member(s) of the Group on the basis of rates existing at the time and taking account of any available credit, deduction or allowance).

(b) Subject to the requirements of Clause 7.9 (*Segregated Accounts and Reserves*), the Parent shall ensure that, at the times contemplated by paragraph (e) of Clause 7.8 (*Mandatory Prepayment Segregated Accounts: other provisions*), the Borrowers apply an amount equal to the amount of Permitted Equity Fundraising Proceeds in prepayment of the Base Currency Amount of the Outstanding Principal Amounts under this Agreement or otherwise as provided in paragraphs (c) and (d) below (and, in each case, in the order of application contemplated by paragraphs (c) and (d) below).

(c) During the period from and including the date of this Agreement until such time as the Base Currency Amount of the aggregate Outstanding Principal Amounts has been reduced by an aggregate amount equal to at least $1,500,000,000 (compared to the Base Currency Amount of the aggregate Outstanding Principal Amounts as at the Effective Date), amounts of Permitted Equity Fundraising Proceeds required to be applied by paragraph (b) above shall be applied in the following order:

(i) first, if the Parent so elects in an Election Notice, to replenish the cash in hand position of the Parent by deducting and retaining from such proceeds a maximum amount equal to the amount of any Shortfall at that time; and

(ii) secondly, after application of amounts pursuant to sub paragraph (i) above:

(A) in prepayment of the Base Currency Amount of the Outstanding Principal Amounts across all Facilities as at the date of the prepayment rateably (and reducing the Repayment Instalments in the order set out in Clause 5.3 ( *Effect of prepayment on scheduled repayments*)); and/or

(B) subject to compliance with Clause 7.1 (*Prepayment under 2009 Financing Agreement*), in prepayment or to make (but not to be held in a Reserve for) scheduled repayments of the 2009 Financing Agreement Exposures as at the date of the prepayment rateably (and reducing any applicable repayment instalments in the order set out in the 2009 Financing Agreement),

(and the Parent may, in an Election Notice, elect between (A) and (B) above (or a combination thereof)).

(d) From such time as the Base Currency Amount of the aggregate Outstanding Principal Amounts has been reduced by an aggregate amount equal to at least $1,500,000,000 (compared to the Base Currency Amount of the aggregate Outstanding Principal Amounts as at the Effective Date), amounts of Permitted Equity Fundraising Proceeds required to be applied by paragraph (a) above shall be applied in the following order:

(i) first, if the Parent so elects in an Election Notice, to replenish the cash in hand position of the Parent by deducting and retaining from such proceeds a maximum amount equal to the amount of any Shortfall at that time;

(ii) secondly (until such time as paragraph (iii) below applies), after application of amounts pursuant to sub paragraph (i):

(A) in prepayment of the Base Currency Amount of the Outstanding Principal Amounts across all Facilities as at the date of the prepayment rateably (and reducing the Repayment Instalments in the order set out in Clause 5.3 ( *Effect of prepayment on scheduled repayments*));

(B) in prepayment of the 2009 Financing Agreement Exposures as at the date of the prepayment rateably (and reducing any applicable repayment instalments in the order set out in the 2009 Financing Agreement), or to be held in a Reserve for the repayment of the 2009 Financing Agreement Exposures in full;

(C) to exchange for, purchase, redeem (whether at maturity or otherwise) the Existing Subordinated Convertible Notes in whole or part, or to be held in a Reserve for the repayment of all amounts outstanding thereunder in full;

(D) to retire, prepay, redeem (whether at maturity or otherwise) or repurchase the Existing Pre-2017 High Yield Notes in whole or part, or to be held in a Reserve for the repayment of all amounts outstanding thereunder in full; and/or

(E) to purchase or redeem (whether at maturity or otherwise) the 2014 Eurobonds in whole or part, or to be held in a Reserve for the repayment of all amounts outstanding under the 2014 Eurobonds in full,

(and the Parent may, in an Election Notice, elect between (A), (B), (C), (D) and (E) above (or a combination thereof)); and

(iii) then, from such time as the Existing Subordinated Convertible Notes have been converted, redeemed, extended and/or refinanced in full, at the option of the Parent, to retire, prepay or redeem (whether at maturity or otherwise) any Financial Indebtedness and/or to purchase or repurchase any such Financial Indebtedness on the open market or otherwise (and whether at a discount or otherwise) (or in each case to be held in a Reserve for application towards the same purpose and, in each case, in whole or part), and/or to finance any investment or expenditure permitted by this Agreement.

7.6 **Permitted Debt Fundraising Proceeds and Permitted Securitisation Proceeds**

(a) For the purposes of this Clause 7 *(Mandatory Prepayment and Segregated Accounts)*:

"**Excluded Debt Fundraising Proceeds**" means the proceeds of:

(i) a Permitted Fundraising falling within paragraph (f)(i) of the definition of Permitted Financial Indebtedness entered into for the purpose of refinancing or extending the maturity of Existing Financial Indebtedness or any Permitted Refinancing Indebtedness (and, in the case of a refinancing, where the proceeds (less any reasonable fees and expenses incurred by the Group with respect to that refinancing) that would, but for this paragraph (i), constitute "Permitted Fundraising

Proceeds", are actually applied for such purpose as soon as reasonably practicable (and in any event within 120 days) following receipt of those proceeds by any member of the Group and, until the date of such application, are held in a Reserve for such purposes);

(ii) a Permitted Fundraising falling within paragraph (f)(ii) of the definition of Permitted Financial Indebtedness entered into for the purpose of refinancing or extending the maturity of Existing Financial Indebtedness or other Permitted Financial Indebtedness as contemplated by the definition thereof (and, in the case of a refinancing, where the proceeds (less any reasonable fees and expenses incurred by the Group with respect to that refinancing) that would, but for this paragraph (ii), constitute "Permitted Fundraising Proceeds", are actually applied for such purpose as soon as reasonably practicable (and in any event within 120 days) following receipt of those proceeds by any member of the Group and, until the date of such application, are held in a Reserve for such purposes);

(iii) any transaction between members of the Group;

(iv) Permitted Securitisations;

(v) a Permitted Fundraising falling within paragraph (b) of that definition;

(vi) any Relevant Convertible/Exchangeable Obligations Proceeds to the extent applied in payment of any premiums arising under or related to any Permitted Put/Call Transaction; and

(vii) a Permitted Fundraising arising out of or in connection with any Permitted Put/Call Transaction, including, but not limited to, any settlement, disposal, transfer, assignment, close-out or other termination of such Permitted Put/Call Transaction.

"**Permitted Debt Fundraising**" means a Permitted Fundraising falling within paragraph (c) of the definition of Permitted Fundraising.

"**Permitted Debt Fundraising Proceeds**" means the cash proceeds received by any member of the Group from a Permitted Debt Fundraising other than Excluded Debt Fundraising Proceeds after deducting:

(i) any reasonable fees and expenses which are incurred by the relevant member(s) of the Group with respect to that Permitted Debt Fundraising owing to persons who are not members of the Group; and

(ii) any Tax incurred and required to be paid by the relevant member(s) of the Group with respect to that Permitted Debt Fundraising (as reasonably determined by the relevant member(s) of the Group on the basis of rates existing at the time and taking account of any available credit, deduction or allowance).

"**Permitted Securitisation Proceeds**" means the cash consideration received by any member of the Group (including any amount received in repayment of

intercompany debt) in each case after the date of this Agreement from any Permitted Securitisation (other than any consideration received from (x) a Permitted Securitisation under a programme which exists on the date of this Agreement; or (y) any rollover or extension of such a Permitted Securitisation or a Permitted Securitisation between members of the Group, in each case in an amount which (when aggregated with the commitments under all other Permitted Securitisations) is not greater than the commitments under all Permitted Securitisations as at the original date of the 2009 Financing Agreement) after deducting:

(i) any reasonable fees and expenses which are incurred by the relevant member(s) of the Group with respect to that Permitted Securitisation owing to persons who are not members of the Group; and

(ii) any Tax incurred and required to be paid by the relevant member(s) of the Group with respect to that Permitted Securitisation (as reasonably determined by the relevant member(s) of the Group on the basis of rates existing at the time and taking account of any available credit, deduction or allowance).

(b) Subject to the requirements of Clause 7.9 (*Segregated Accounts and Reserves*), the Parent shall ensure that, at the times contemplated by paragraph (e) of Clause 7.8 (*Mandatory Prepayment Segregated Accounts: other provisions*) below, the Borrowers apply an amount equal to the amount of Permitted Debt Fundraising Proceeds and the amount of Permitted Securitisation Proceeds in prepayment of the Base Currency Amount of the Outstanding Principal Amounts under this Agreement or otherwise as directed (and, in each case, in the order of application contemplated) by paragraphs (c) and (d) below.

(c) During the period from and including the date of this Agreement until such time as the Base Currency Amount of the aggregate Outstanding Principal Amounts has been reduced by an aggregate amount equal to at least $1,500,000,000 (compared to the Base Currency Amount of the aggregate Outstanding Principal Amounts as at the Effective Date) amounts of Permitted Debt Fundraising Proceeds and Permitted Securitisation Proceeds required to be applied by paragraph (b) above shall be applied:

(i) first, subject to compliance with Clause 7.7 (*Cash replenishment restrictions*), if the Parent so elects in an Election Notice, to replenish the cash in hand position on the Parent by deducting and retaining from such proceeds a maximum amount equal to the amount of any Shortfall at that time;

(ii) secondly, after application of amounts pursuant to sub paragraph (i) above:

(A) in prepayment of the Base Currency Amount of the Outstanding Principal Amounts across all Facilities as at the date of the prepayment rateably (and reducing the Repayment Instalments in the order set out in Clause 5.3 ( *Effect of prepayment on scheduled repayments*)); or

(B) subject to compliance with Clause 7.1 (*Prepayment under 2009 Financing Agreement*), in prepayment or to make (but not to be held in a Reserve for) scheduled repayments of the 2009 Financing Agreement Exposures as at the date of the prepayment rateably (and reducing any applicable repayment instalments in the order set out in the 2009 Financing Agreement),

(and the Parent may, in an Election Notice, elect between (A) and (B) above (or a combination thereof)).

(d) From such time as the Base Currency Amount of the aggregate Outstanding Principal Amounts has been reduced by an aggregate amount equal to at least $1,500,000,000 (compared to the Base Currency Amount of the aggregate Outstanding Principal Amounts as at the Effective Date) amounts of Permitted Debt Fundraising Proceeds and Permitted Securitisation Proceeds required to be applied by paragraph (b) above shall be applied:

(i) first, subject to compliance with Clause 7.7 (*Cash replenishment restrictions*), if the Parent so elects in an Election Notice, to replenish the cash in hand position on the Parent by deducting and retaining from such proceeds a maximum amount equal to the amount of any Shortfall at that time; and

(ii) secondly (until such time as sub paragraphs (iii) and (iv) apply), after application of amounts pursuant to sub paragraph (i) above:

(A) in prepayment of:

(1) the Base Currency Amount of the Outstanding Principal Amounts across all Facilities as at the date of the prepayment rateably (and reducing the Repayment Instalments in the order set out in Clause 5.3 ( *Effect of prepayment on scheduled repayments*)); and/or

(2) the 2009 Financing Agreement Exposures as at the date of the prepayment rateably (and reducing any applicable repayment instalments in the order set out in the 2009 Financing Agreement), or to be held in a Reserve for making scheduled repayment of the 2009 Financing Agreement Exposures; and/or

(B) to purchase or redeem (whether at maturity or otherwise) the 2014 Eurobonds in whole or part, or to be held in a Reserve for the repayment of all amounts outstanding under the 2014 Eurobonds in full, (and the Parent may, in an Election Notice, elect between (A)(1), (A)(2) and (B) above (or a combination thereof));

(iii) then, from such time as:

(A) the 2009 Financing Agreement Exposures have been repaid in full (or an amount equal to the amount required to repay the 2009 Financing Agreement Exposures in full is standing to the balance of a Reserve); and

(B) the 2014 Eurobonds have been purchased or redeemed (whether at maturity or otherwise) in full (or an amount equal to the amount required to repay all amounts outstanding under the 2014 Eurobonds in full is standing to the balance of a Reserve);

and for so long as the Existing Pre-2017 High Yield Notes and the Existing Subordinated Convertible Notes have not been converted (in the case of the Existing Subordinated Convertible Notes), retired, prepaid, redeemed (whether at maturity or otherwise) or repurchased (or for so long as the amount standing to the balance of a Reserve is less than the amount required to repay all amounts outstanding under the Existing Pre-2017 High Yield Notes at their respective maturities and all amounts outstanding under the Existing Subordinated Convertible Notes in full), amounts of Permitted Debt Fundraising Proceeds and Permitted Securitisation Proceeds required to be applied by paragraph (b) above shall be applied in the following order:

(1) in an amount equal to at least 35 per cent. of such proceeds, in prepayment of the Base Currency Amount of the Outstanding Principal Amounts across all Facilities as at the date of the prepayment rateably (and reducing the Repayment Instalments in the order set out in Clause 5.3 ( *Effect of prepayment on scheduled repayments* )); and

(2) at the Parent's option, in an amount up to 65 per cent. of such proceeds, to retire, prepay, redeem (whether at maturity or otherwise) or repurchase the Existing Pre-2017 High Yield Notes in whole or part (or to be held in a Reserve for repayment in full);

(iv) then, from such time as:

(A) the 2009 Financing Agreement Exposures have been repaid in full (or an amount equal to the amount required to repay the 2009 Financing Agreement Exposures in full is standing to the balance of a Reserve);

(B) the 2014 Eurobonds have been purchased or redeemed (whether at maturity or otherwise) in full (or an amount equal

to the amount required to repay all amounts outstanding under the 2014 Eurobonds in full is standing to the balance of a Reserve); and

(C) the Existing Pre-2017 High Yield Notes and Existing Subordinated Convertible Notes have been converted (in the case of the Existing Subordinated Convertible Notes), retired, prepaid, redeemed (whether at maturity or otherwise or repurchased) or repurchased in full (or an amount equal to the amount required for repayment of all amounts outstanding under the Existing Pre-2017 High Yield Notes at their respective maturities and for repayment of all amounts outstanding under the Existing Subordinated Convertible Notes in full is standing to the balance of a Reserve),

amounts of Permitted Debt Fundraising Proceeds and Permitted Securitisation Proceeds required to be applied by paragraph (b) above shall be applied in the following order:

(1) in an amount equal to at least 50 per cent. of such proceeds, in prepayment of the Base Currency Amount of the Outstanding Principal Amounts across all Facilities as at the date of the prepayment rateably (and reducing the Repayment Instalments in the order set out in Clause 5.3 ( *Effect of prepayment on scheduled repayments* )); and

(2) in an amount up to 50 per cent. of such proceeds, to retire, prepay or redeem (whether at maturity or otherwise) any Financial Indebtedness at the option of the Parent.

7.7 **Cash replenishment restrictions**

(a) In this Clause 7.7, "**Equally Secured Debt Proceeds**" means any Permitted Debt Fundraising Proceeds and Permitted Securitisation Proceeds arising from Financial Indebtedness which is secured by the Transaction Security (such Financial Indebtedness, " **Equally Secured Debt**").

(b) During the period from and including the date of this Agreement until such time as the Base Currency Amount of the aggregate Outstanding Principal Amounts has been reduced by an aggregate amount equal to at least $1,000,000,000 (compared to the Base Currency Amount of the aggregate Outstanding Principal Amounts as at the Effective Date) (the " **$1 Billion Amortisation**"):

(i) (subject to sub paragraph (ii) below) Equally Secured Debt Proceeds shall only be applied to prepay other Equally Secured Debt; and

(ii) the Parent may apply Equally Secured Debt Proceeds to replenish the cash in hand position of the Parent by deducting and retaining from

such proceeds a maximum amount equal to the amount of any Shortfall at that time and **provided that** the aggregate amount so applied under this paragraph (b) shall not exceed the lower of:

(A) $350,000,000 (or its equivalent in other currencies); and

(B) the aggregate limit set out in the definition of Permitted Working Capital Facilities *less* the aggregate outstanding amount of Permitted Working Capital Facilities then incurred,

(such lower amount, the "**Initial Cash Replenishment Basket**") and **further provided that**:

(1) the aggregate limit set out in the definition of Permitted Working Capital Facilities shall be reduced by the amount of the Initial Cash Replenishment Basket that has been utilised in accordance with sub paragraph (i) above; and

(2) the Parent shall not be permitted to reutilise any utilised portion of the Initial Cash Replenishment Basket.

(c) From such time as the $1 Billion Amortisation has been paid by the Parent, the Parent may apply Equally Secured Debt Proceeds to replenish the cash in hand position of the Parent by deducting and retaining from such proceeds a maximum amount equal to the amount of any Shortfall at that time **provided that** the aggregate amount of Equally Secured Debt Proceeds so applied under this paragraph (c) shall not, at any time, exceed $1,000,000,000 (the "**Subsequent Cash Replenishment Basket**") and subject to the following:

(i) where the Subsequent Cash Replenishment Basket has been utilised in accordance with the above, such utilisation shall be deemed reduced (and the Subsequent Cash Replenishment Basket may be reutilised) by a maximum amount equal to the aggregate amount of any Caliza Proceeds, Excess Cashflow, Permitted Equity Fundraising Proceeds and (in respect of Subordinated Optional Convertible Securities or similar equity-like instruments issued (in each case) by the Parent, only) Permitted Debt Fundraising Proceeds (but not, for the avoidance of doubt, with Disposal Proceeds or other Equally Secured Debt Proceeds) which have been applied to reduce Equally Secured Debt (an "**Equally Secured Debt Reduction**");

(ii) if the $1 Billion Amortisation has been achieved (in whole or part) by way of mandatory prepayments of Outstanding Principal Amounts with Equally Secured Debt Proceeds pursuant to Clause 7.6 *(Permitted Debt Fundraising Proceeds and Permitted Securitisation Proceeds*), the available amount of the Subsequent Cash Replenishment Basket shall be reduced by the amount of such Equally Secured Debt Proceeds so applied in prepayment **provided that** in the event of an Equally Secured Debt Reduction as described in sub paragraph (i) above, the available amount of the Subsequent Cash Replenishment Basket shall be reinstated in an amount up to the amount of such Equally Secured Debt Proceeds so applied in prepayment of Equally Secured Debt; and

(iii) the available amount of the Subsequent Cash Replenishment Basket shall be reduced by (A) any commitments under a Permitted Liquidity Facility at any time (whether utilised or unutilised and including any amounts committed prior to payment of the $1 Billion Amortisation by the Parent and which remain committed) and (B) any amount by which the Initial Cash Replenishment Basket has been utilised (the "**Initial Cash Replenishment Basket Utilisation**") in accordance with paragraph (b)(ii) above **provided that** in the event of an Equally Secured Debt Reduction as described in sub paragraph (ii) above, the available amount of the Subsequent Cash Replenishment Basket shall be reinstated in an amount up to the Initial Cash Replenishment Basket Utilisation.

(d) After the $1 Billion Amortisation has been received by the Agent, the aggregate limit set out in the definition of Permitted Working Capital Facilities, if reduced pursuant to sub paragraph (ii)(B) of paragraph (b) above, shall be reinstated in full.

7.8 **Mandatory prepayments and Segregated Accounts: other provisions**

(a) Notwithstanding any other provision of this Clause 7, if any amounts of Relevant Proceeds or Excess Cashflow are permitted to be applied by the Parent or any member of the Group for any purpose other than the prepayment of the Outstanding Principal Amounts under this Agreement or, as the case may be, the deposit into a Segregated Account pursuant to Clause 7.9 ( *Segregated Accounts and Reserves*), and such amounts are not so applied (including by being held in a Reserve) or deposited into a Segregated Account within 12 Months of the date of receipt thereof by a member of the Group, then those amounts not so applied or deposited shall be applied in prepayment of the Base Currency Amount of the Outstanding Principal Amounts of the Creditors or, as the case may be, deposited in a Segregated Account, as soon as reasonably practicable (and, in any event, within 10 Business Days) following the date falling 12 Months from the date of their receipt.

(b) The Parent shall make any election required under this Clause 7 by written notice to the Agent within 30 days of receipt of the Relevant Proceeds or, in the case of Excess Cashflow, of delivery pursuant to Clause 20.1 ( *Financial statements*) of the consolidated financial statements of the Parent for the relevant Financial Quarter of the Parent (such notice given in accordance with this paragraph (b), an " **Election Notice**").

(c) If, following receipt of Relevant Proceeds or, in the case of Excess Cashflow, following delivery pursuant to Clause 20.1 ( *Financial statements*) of the consolidated financial statements of the Parent for the relevant Financial Quarter of the Parent, the relevant provisions of (as appropriate) Clauses 7.3 (*Disposal Proceeds*), 7.4 (*Excess Cashflow*), 7.5 (*Permitted Equity Fundraising Proceeds*) or 7.6 (*Permitted Debt Fundraising Proceeds and Permitted Securitisation Proceeds*) provide for an election by the Parent to

determine the application of those Relevant Proceeds or Excess Cashflow, but the Parent does not deliver an Election Notice in accordance with paragraph (b) above, such Relevant Proceeds or, as the case may be, Excess Cashflow, shall be applied in prepayment of the Base Currency Amount of the Outstanding Principal Amounts across all Facilities as at the date of the prepayment rateably (and will reduce the Repayment Instalments in the order set out in Clause 5.3 ( *Effect of prepayment on scheduled repayments*) or, if Clause 7.9 (*Segregated Accounts and Reserves*) applies, deposited into a Segregated Account).

(d) The Parent shall ensure that:

(i) amounts standing to the credit of any Reserve are applied in repayment, prepayment or redemption of, or to refinance, repurchase or purchase, the relevant Financial Indebtedness for which (as elected by the Parent in the relevant Election Notice) such amounts have been reserved or otherwise applied in prepayment of the Base Currency Amount of the Outstanding Principal Amounts under this Agreement; and

(ii) if the amounts referred to in sub paragraph (i) above have not been applied to repay, prepay, redeem, refinance, repurchase or purchase the relevant Financial Indebtedness for which (as elected by the Parent in the relevant Election Notice) such amounts have been reserved on or before the applicable maturity date of such Financial Indebtedness (or have not otherwise been applied, on or prior to that date, in prepayment of the Base Currency Amount of the Outstanding Principal Amounts under this Agreement), then such amounts shall be applied in prepayment of the Base Currency Amount of the Outstanding Principal Amounts across all Facilities as at the date of such prepayment rateably (and reducing the Repayment Instalments in the order set out in Clause 5.3 ( *Effect of prepayment on scheduled repayments*)).

(e) Unless the Parent has made an election under paragraph (f) below, the Parent shall ensure that Outstanding Principal Amounts under the Facilities shall be prepaid or, if required by Clause 7.9 (*Segregated Accounts and Reserves*), amounts of Relevant Proceeds or Excess Cashflow shall be deposited in a Segregated Account, at the following times:

(i) in the case of any prepayment or deposit relating to the amounts of Caliza Proceeds, Disposal Proceeds, Permitted Debt Fundraising Proceeds, Permitted Equity Fundraising Proceeds or Permitted Securitisation Proceeds:

(A) (unless one of paragraphs (B) or (C) applies) promptly upon (and in any event within 30 days of) receipt of those proceeds;

(B) in the case of proceeds falling within limbs (ii) or (iii) of the definition of Disposal Proceeds, promptly upon (and in any event within 30 days of) receipt of any cash arising from those Disposal Proceeds); and

(C) in the case of proceeds which, upon the expiry of the Caliza Offering Option Exercise Period, have become Caliza Proceeds pursuant to the proviso in the definition thereof, promptly following (and in any event within 30 days of) the expiry date of the Caliza Offering Option Exercise Period; and

(ii) in the case of any prepayment or deposit relating to an amount of Excess Cashflow, within 30 days of delivery pursuant to Clause 20.1 (*Financial statements*) of the consolidated financial statements of the Parent for the relevant Financial Quarter of the Parent.

(f) Subject to paragraph (g) below, the Parent may elect that any prepayment under Clause 7 ( *Mandatory Prepayment and Segregated Accounts*) be applied in prepayment of the Base Currency Amount of the Outstanding Principal Amounts on the earlier of:

(i) the last day of the first Interest Period to end following the date of receipt of the Relevant Proceeds or (in the case of Excess Cashflow) the date of delivery pursuant to Clause 20.1 (*Financial statements*) of the consolidated financial statements of the Parent for the relevant Financial Quarter; and

(ii) the date falling 30 days after receipt of the Relevant Proceeds or (in the case of Excess Cashflow) after delivery pursuant to Clause 20.1 (*Financial statements*) of the consolidated financial statements of the Parent for the relevant Financial Quarter,

and, if the Parent makes that election, then a proportion of the Outstanding Principal Amounts equal to the amount of the relevant prepayment will be due and payable on the last day of its Interest Period.

(g) If the Parent has made an election under paragraph (f) above but a Default has occurred and is continuing, that election shall no longer apply and a proportion of the Outstanding Principal Amounts in respect of which the election was made equal to the amount of the relevant prepayment shall be immediately due and payable.

7.9 **Segregated Accounts and Reserves**

(a) Prior to the repayment in full of all 2009 Financing Agreement Exposures, the Parent shall ensure that:

(i) all amounts of Relevant Proceeds and Excess Cashflow which would otherwise have been required to be applied in prepayment of the Facilities pursuant to Clauses 7.2 ( *Caliza Proceeds*), 7.3 (*Disposal Proceeds*), 7.4 (*Excess Cashflow*), 7.5 (*Permitted Equity Fundraising Proceeds*) or 7.6 (*Permitted Debt Fundraising Proceeds and Permitted Securitisation Proceeds* ) (but, for the avoidance of doubt, no amounts of Relevant Proceeds or Excess Cashflow which are to be applied pursuant to this Clause 7 in prepayment of other Financial Indebtedness or for any other purpose); and

(ii) at the option of the Parent, any Caliza Offering Option Amount,

are deposited into a Segregated Account at the times set out in paragraph (e) of Clause 7.8 ( *Mandatory prepayments and Segregated Accounts: other provisions*) prior to the prepayment thereof in accordance with this Clause 7 (or, in the case of any Caliza Offering Option Amount, the application thereof in settlement of a Caliza Offering Option in accordance with sub paragraph (ii) of paragraph (b) below) by the Parent.

(b) Amounts may be withdrawn by the Parent from a Segregated Account at any time and from time to time applied:

(i) in prepayment of the Facilities in accordance with this Clause 7 or, as the case may be, Clause 6.2 ( *Voluntary prepayment*); or

(ii) in settlement of any Caliza Offering Option to the extent of (and in an aggregate amount not exceeding) any relevant Caliza Offering Option Amount.

(c) Promptly upon (and in any event within 30 days of) the date on which all 2009 Financing Agreement Exposures have been repaid in full, the Parent shall apply all amounts of Relevant Proceeds and Excess Cashflow standing to the credit of each Segregated Account in prepayment of the Base Currency Amount of the Outstanding Principal Amounts (and no further amounts of any such Relevant Proceeds or Excess Cashflow shall be required to be deposited in a Segregated Account) **provided that**, if at such time, the Caliza Offering Option Exercise Period has not expired, any Caliza Offering Option Amount not utilised in settlement of a Caliza Offering Option and which becomes Caliza Proceeds upon the expiry of the Caliza Offering Option Exercise Period shall be applied by the Parent in prepayment of the Base Currency Amount of the Outstanding Principal Amounts within 30 days of the expiry date of the Caliza Offering Option Exercise Period.

(d) Prior to the repayment or prepayment in full of the 2009 Financing Agreement Exposures (or an amount equal to the amount required to repay the 2009 Financing Agreement Exposures in full is standing to the Balance of a Reserve), the Parent shall provide the Creditors (through the Agent):

(i) on a monthly basis, a certificate setting out:

(A) the balance standing to the credit of each Segregated Account and a breakdown of that balance by categories of Relevant Proceeds and Excess Cashflow; and

(B) the amounts held in all Reserves (with a breakdown of that balance by categories of Relevant Proceeds and Excess Cashflow), specifying the Financial Indebtedness to which such reserved amounts are to be applied; and

(ii) at least 5 Business Days prior to withdrawing an amount standing to the credit of any Segregated Account, a certificate confirming that such

amount is to be applied in prepayment of the Facilities in accordance with (as appropriate) Clauses 7.2 ( *Caliza Proceeds*), 7.3 (*Disposal Proceeds*), 7.4 (*Excess Cashflow*), 7.5 (*Permitted Equity Fundraising Proceeds*) or 7.6 (*Permitted Debt Fundraising Proceeds and Permitted Securitisation Proceeds*) (**provided that** this sub paragraph (ii) shall not apply to any withdrawal of monies from a Segregated Account for the purposes referred to in sub paragraph (ii) of paragraph (b) above).

(e) Each Creditor with which a Segregated Account is held acknowledges and agrees that (i) interest shall accrue at normal commercial rates on amounts credited to those accounts and that the account holder shall be entitled to receive and retain such interest (which shall be paid in accordance with the mandate relating to such account), and (ii) it shall have no ability to restrict the access of the Parent to the funds standing to the credit of any Segregated Account.

## 8. RESTRICTIONS

### 8.1 Notices of Prepayment

Any notice of prepayment, authorisation or other election given by any Party under Clause 6 ( *Illegality and voluntary prepayment*) or Clause 7 (*Mandatory prepayment and Segregated Accounts*) shall (subject to the terms of those Clauses) be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.

### 8.2 Interest and other amounts

Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and, subject to any Break Costs, without premium or penalty.

### 8.3 No reborrowing of Facilities

No Borrower may reborrow any part of a Facility which is prepaid.

### 8.4 Prepayment in accordance with Agreement

No Borrower shall repay or prepay all or any part of the Outstanding Principal Amounts except at the times and in the manner expressly provided for in this Agreement.

### 8.5 No reinstatement of Commitments

No amount of the Total Commitments cancelled under this Agreement following a repayment or prepayment of an Outstanding Principal Amount may be subsequently reinstated.

### 8.6 Agent's receipt of Notices

If the Agent receives a notice under Clause 6 ( *Illegality and voluntary prepayment*) or an election under paragraph (b) of Clause 7.8 ( *Mandatory prepayments and Segregated Accounts: other provisions*), it shall promptly forward a copy of that notice or election to either the Parent or the affected Creditor, as appropriate.

8.7 **Effect of Repayment and Prepayment on Commitments**

If all or part of a Utilisation under a Facility is repaid or prepaid, an amount of the Commitments (equal to the Base Currency Amount of the amount of the Utilisation which is repaid or prepaid) in respect of that Facility will be deemed to be cancelled on the date of repayment or prepayment. Any cancellation under this Clause 8.7 shall, except in the case of a repayment made pursuant to Clause 6.1 ( *Illegality*) or Clause 6.4 (*Right of repayment in relation to a single Creditor*), reduce the Commitments of the Creditors rateably under that Facility.

**SECTION 5**
**COSTS OF UTILISATION**

## 9. INTEREST

### 9.1 Calculation and payment of interest

(a) The rate of interest on each Loan for each Interest Period is the percentage rate per annum which is the aggregate of the applicable:

(i) Margin;

(ii) LIBOR or, in relation to any Loan in euro, EURIBOR or, in relation to any Loan in Mexican peso, TIIE; and

(iii) (other than in respect of a Loan Facility Promissory Note) Mandatory Cost, if any,

and the Borrower to which a Loan has been made shall pay accrued interest on that Loan on the last day of each Interest Period (and, if the Interest Period is longer than six Months, on the dates falling at six Monthly intervals after the first day of the Interest Period).

(b) Under each Derivatives Unwind Promissory Note, the rate of interest on the Outstanding Principal Amounts under that Derivatives Unwind Promissory Note is the percentage rate per annum which is the aggregate of the applicable:

(i) Margin; and

(ii) LIBOR or, in relation to any Derivatives Unwind Promissory Note in Mexican peso, TIIE,

and the Borrower which has issued a Derivatives Unwind Promissory Note shall pay accrued interest on that Derivatives Unwind Promissory Note to the relevant Derivatives Unwind Promissory Noteholder on the last day of the applicable Interest Period (and, if the Interest Period is longer than six Months, on the dates falling at six Monthly intervals after the first day of the Interest Period).

(c) Under the USPP Note Agreement, the rate of interest shall be the rate set forth therein **(provided that** this rate will be subject to adjustment by the same amount and at the same times as adjustments are made to the Margin from time to time under the definition of Margin (as such term is defined at the date of this Agreement) or otherwise in accordance with Clause 37 ( *Amendments and waivers*)) and the USPP Note Facility Borrower shall pay accrued interest to each USPP Noteholder on the fifteenth day of the last month of each Financial Quarter or such shorter period as required by paragraph (e) of Clause 10.1 ( *Selection of Interest Periods*) or, as the case may be, as is selected by the relevant Borrower (or the Parent on its behalf) pursuant to Clause 10.1 ( *Selection of Interest Periods*), and shall be payable in the manner and on the timing as more particularly set forth in the USPP Note Agreement.

9.2 **Default interest**

(a) If an Obligor fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject to paragraph (b) below, is 2.00 per cent. higher than the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted a Loan or other amount outstanding in the currency of the overdue amount under the relevant Facility for successive Interest Periods, each of a duration selected by the Agent (acting reasonably). Any interest accruing under this Clause 9.2 shall be immediately payable by the Obligor on demand by the Agent.

(b) If any overdue amount consists of all or part of a Loan or other amount outstanding which became due on a day which was not the last day of an Interest Period relating to that Loan or other amount outstanding:

(i) the first Interest Period for that overdue amount shall have a duration equal to the unexpired portion of the current Interest Period relating to that Loan or other amount outstanding; and

(ii) the rate of interest applying to the overdue amount during that first Interest Period shall be 2.00 per cent. higher than the rate which would have applied if the overdue amount had not become due.

(c) Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.

9.3 **Notification of rates of interest under Loan Facilities**

In respect of each Loan Facility, the Agent shall promptly notify the Lenders and the relevant Borrower (or the Parent) of the determination of a rate of interest under this Agreement.

## 10. INTEREST PERIODS

10.1 **Selection of Interest Periods**

(a) Except as set out in paragraph (e) below, a Borrower (or the Parent on behalf of a Borrower) may select an Interest Period for a Utilisation or, in the case of the USPP Notes, for the applicable USPP Note Facility, in a Selection Notice.

(b) Each Selection Notice for a Utilisation or, in the case of the USPP Notes, for the applicable USPP Note Facility, is irrevocable and must (except as set out in paragraph (e) below) be delivered to the Agent by the Borrower (or the Parent on behalf of the Borrower) to which that Utilisation was made not later than the Specified Time.

(c) If a Borrower (or the Parent) fails to deliver a Selection Notice to the Agent in accordance with paragraph (b) above, the relevant Interest Period will be one Month.

(d) Subject to this Clause 10, a Borrower (or the Parent) may select an Interest Period of one Month, three Months or (except for Facilities denominated in Mexican pesos) six Months or such period of less than one Month, three Months or (except for Facilities denominated in Mexican pesos) six Months which ends on a Repayment Date (or any other period agreed between the Parent and the Agent (acting on the instructions of all the Creditors in relation to the relevant Utilisation or, in the case of the USPP Notes, the applicable USPP Note Facility)).

(e) The initial Interest Period for each Utilisation deemed to be made on the Effective Date (or, in the case of the USPP Notes, for the applicable USPP Note Facility from the Effective Date), shall commence on the Effective Date and terminate on the fifteenth day of the Month falling after the Month in which the Effective Date occurs and no Borrower (or the Parent on its behalf) shall be required to deliver a Selection Notice for any such initial Interest Period.

(f) An Interest Period for a Utilisation or, in the case of the USPP Notes, for the applicable USPP Note Facility, shall not extend beyond the Termination Date applicable to its Facility.

(g) Each Interest Period for a Utilisation or, in the case of the USPP Notes, for the applicable USPP Note Facility, shall start on the Utilisation Date or (if already made) on the last day of its preceding Interest Period.

10.2 **Non-Business Days**

If an Interest Period would otherwise end on a day which is not a Business Day, that Interest Period will instead end on the next Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not).

10.3 **Consolidation and division of Loans**

(a) Subject to paragraph (b) below, if two or more Interest Periods:

(i) relate to Loans made to the same Borrower under the same Facility; and

(ii) end on the same date,

those Loans will, unless that Borrower (or the Parent on its behalf) specifies to the contrary in the Selection Notice for the next Interest Period, be consolidated into, and treated as, a single Loan under the relevant Facility on the last day of the Interest Period.

(b) Subject to Clause 3.5 (*Maximum number of Utilisations*), and Clause 4.2 (*Currency and amount*) if a Borrower (or the Parent on its behalf) requests in a Selection Notice that a Loan be divided into two or more Loans under the same Facility, that Loan will, on the last day of its Interest Period, be so divided with Base Currency Amounts specified in that Selection Notice, having an aggregate Base Currency Amount equal to the Base Currency Amount of the Loan immediately before its division.

## 11. CHANGES TO THE CALCULATION OF INTEREST

### 11.1 Absence of quotations

(a) Subject to Clause 11.2 (*Market disruption*) if LIBOR or, if applicable, EURIBOR, is to be determined by reference to the Reference Banks but a Reference Bank does not supply a quotation by the Specified Time on the Quotation Day, the applicable LIBOR or EURIBOR shall be determined on the basis of the quotations of the remaining Reference Banks.

(b) Subject to Clause 11.2 (*Market disruption*), the procedure applicable in the absence of a quotation for TIIE being supplied to the Agent (as contemplated by the definition thereof) shall be determined as set out in such definition of TIIE.

### 11.2 Market disruption

(a) If a Market Disruption Event occurs in relation to a Loan or a Derivatives Unwind Promissory Note for any Interest Period, then the rate of interest on each Creditor's share of that Loan or that Derivatives Unwind Promissory Note for the Interest Period shall be the percentage rate per annum which is the sum of:

(i) the Margin;

(ii) the rate notified to the Agent by that Creditor as soon as practicable and in any event by close of business on the date falling five Business Days after the Quotation Day (or, if earlier, on the date falling five Business Days prior to the date on which interest is due to be paid in respect of that Interest Period), to be that which expresses as a percentage rate per annum the cost to that Creditor of funding its participation in that Loan or that Derivatives Unwind Promissory Note from whatever source it may reasonably select; and

(iii) (other than in respect of Promissory Notes) the Mandatory Cost, if any, applicable to that Creditor's participation in the Loan.

(b) If:

(i) the percentage rate per annum notified by a Creditor pursuant to paragraph (a)(ii) above is less than LIBOR or, in relation to any Loan in euro, EURIBOR or, in relation to any Loan or Derivatives Unwind Promissory Note in Mexican pesos, TIIE; or

(ii) a Creditor has not notified the Agent of a percentage rate per annum pursuant to paragraph (a)(ii) above,

the cost to that Creditor of funding its participation in that Loan or that Promissory Note for that Interest Period shall be deemed, for the purposes of paragraph (a) above, to be LIBOR or, in relation to a Loan in euro, EURIBOR or, in relation to a Loan or Derivatives Unwind Promissory Note in Mexican pesos, TIIE.

(c) In this Agreement:

"**Market Disruption Event**" means:

(i) at or about noon on the Quotation Day for the relevant Interest Period the Screen Rate is not available and none or only one of the Reference Banks supplies a rate to the Agent to determine LIBOR or, if applicable, EURIBOR (or, if applicable, at or about 1 p.m. Mexico City time on the Quotation Day for the relevant Interest Period, the rate referred to in the definition of TIIE is not available and none or only one of the banks referred to in the definition of TIIE supplies a rate to the Agent to determine TIIE), for the relevant currency and Interest Period; or

(ii) before close of business in London (or, in the case of a Loan or a Facility denominated in Mexican pesos, before close of business in Mexico City) on the Quotation Day for the relevant Interest Period, the Agent receives notifications from a Creditor or Creditors (whose participations in a Loan or whose Commitments under the relevant Facility under which a Derivatives Unwind Promissory Note has been issued, exceed 35 per cent. of that Loan or the aggregate amount of Commitments under such Facility) that the cost to it of funding its participation in that Loan or, as the case may be, that Derivatives Unwind Promissory Note, from whatever source it may reasonably select would be in excess of LIBOR or, if applicable, EURIBOR or, if applicable, TIIE.

11.3 **Alternative basis of interest or funding**

(a) If a Market Disruption Event occurs and the Agent or the Parent so requires, the Agent and the Parent shall enter into negotiations (for a period of not more than thirty days) with a view to agreeing a substitute basis for determining the rate of interest.

(b) Any alternative basis agreed pursuant to paragraph (a) above shall, with the prior consent of all the Lenders and the Parent, be binding on all Parties.

11.4 **Break Costs**

(a) Each Borrower shall, within three Business Days of demand by a Creditor (other than a USPP Noteholder), pay to that Creditor its Break Costs attributable to all or any part of a Loan, Derivatives Unwind Promissory Note or Unpaid Sum being paid by that Borrower on a day other than the last day of an Interest Period for that Loan, Derivatives Unwind Promissory Note or Unpaid Sum.

(b) Each Creditor to whom paragraph (a) above applies shall, as soon as reasonably practicable after a demand by the Agent, provide a certificate confirming the amount of its Break Costs for any Interest Period in which they accrue.

12. **FEES**

12.1 **Exchange fee**

On the Effective Date, the Parent shall pay (or procure to be paid) to the Agent for the account of the Creditors, an exchange fee in an amount equal to 0.80 per cent. flat on the Commitment of each Creditor as at the Effective Date.

12.2 **Additional Amortisation Fee**

(a) In the event that, on any date after 1 April 2015, the Trailing Closing Price exceeds $14.50 (the " **Incentive Amortisation Threshold**") (as adjusted by the Trailing Closing Price Adjustments), (the "**Trigger Date**"), the Parent shall pay (or procure to be paid) to the Agent for the account of the Creditors a fee (the "**Additional Amortisation Fee**") in cash in an amount of 0.50 per cent. of the amount of each Creditor's Commitments as at each relevant date for payment as set out in paragraph (b) below (each a " **Payment Date**").

(b) Subject to paragraphs (c) and (d) below, the Additional Amortisation Fee shall be payable:

(i) on the date falling 120 days after the Trigger Date (such date, the " **First Payment Date**"); and

(ii) on the last day of each successive period of 90 days ending after the First Payment Date until such date on which the Base Currency Amount of the aggregate Outstanding Principal Amounts has been reduced by an aggregate amount equal to at least $3,000,000,000 compared to the Base Currency Amount of the Outstanding Principal Amounts as at the Effective Date (such date, the " **$3 Billion Amortisation Date**") (**provided that**, if the $3 Billion Amortisation Date occurs before the last day of a Financial Quarter, the amount of the Additional Amortisation Fee due to the Creditors for that Financial Quarter shall be a *pro rata* amount for the period from (and including) the first day of that Financial Quarter to (and including) the $3 Billion Amortisation Date).

(c) Subject to the proviso in sub paragraph (ii) of paragraph (b) above, in the event that the $3 Billion Amortisation Date occurs prior to a Payment Date, no Additional Amortisation Fee shall be payable on that Payment Date or on any subsequent Payment Date.

(d) In the event that, prior to a Payment Date, the Base Currency Amount of the aggregate Outstanding Principal Amounts has been reduced by an aggregate amount equal to or greater than $2,000,000,000 (but less than $3,000,000,000) compared to the Base Currency Amount of the Outstanding Principal Amounts as at the Effective Date, the Additional Amortisation Fee payable on that Payment Date shall be calculated as follows:

*(1 – R/B)*r*

where "**R**" is the amount over $2,000,000,000 by which the Base Currency Amount of the aggregate Outstanding Principal Amounts as at that Payment Date has been reduced compared to the Base Currency Amount of the aggregate Outstanding Principal Amounts as at the Effective Date, "**B**" is $1,000,000,000 and "**r**" is 0.50 per cent.

(e) The Parent may, at its option (and on a single occasion only), elect to delay one Payment Date by up to 30 days by delivering a notice to the Agent (no less than five Business Days' prior to such Payment Date) signed by an Authorised Signatory and certifying that the Parent expects the $3 Billion Amortisation Date to occur during such 30 day period, together with such reasonably detailed supporting materials as may be requested by the Agent (acting reasonably).

(f) Pursuant to paragraph (c) of Clause 20.2 ( *Compliance Certificate*), the Parent shall certify whether or not the Trigger Date (as defined in paragraph (a) above) has occurred on a quarterly basis.

(g) On or prior to the corresponding record date for an event that would lead to a change in the Conversion Rate, the Parent will provide the Agent with written notice (an "**Amortisation Threshold Adjustment Notice**"), setting out in reasonable detail the adjustment to the Conversion Rate resulting from such event. The new "**Incentive Amortisation Threshold**" will be the result of dividing (i) the then current Incentive Amortisation Threshold by (ii) the result of dividing (x) the Conversion Rate after giving effect to the event reflected in the Amortisation Threshold Adjustment Notice by (y) the Conversion Rate before giving effect to the event reflected in the Amortisation Threshold Adjustment Notice (the "**Trailing Closing Price Adjustments**").

12.3 **Agency fee**

The Parent shall pay to the Agent (for its own account) an agency fee in the amount and at the times agreed in a Fee Letter.

12.4 **Security Agent fee**

The Parent shall pay to the Security Agent (for its own account) the Security Agent fee in the amount and at the times agreed in a Fee Letter.

## SECTION 6
## ADDITIONAL PAYMENT OBLIGATIONS

13. **TAX GROSS-UP AND INDEMNITIES**

13.1 **Definitions**

In this Agreement:

"**IRS**" means the United States Internal Revenue Service.

"**Mexican Qualifying Finance Party**" means:

(a) any *institución de banca múltiple* established under the laws of Mexico and authorized to engage in the business of banking in Mexico by any of the Ministry of Finance and Public Credit (*Secretaría de Hacienda y Crédito Público*) or the National Banking and Securities Commission (*Comisión Nacional Bancaria y de Valores*) or a foreign financial institution registered with the *Servicio de Administración Tributaria* of Mexico for tax purposes (a "**Registered Financial Institution in Mexico**"); or

(b) a Mexican Treaty Finance Party.

"**Mexican Treaty Finance Party**" means any person, of any nature, that qualifies as a resident, for tax purposes, of any jurisdiction with which Mexico has entered into a treaty for the avoidance of double taxation, which is in effect.

"**Qualifying Finance Party**" means, as the case may be, a Mexican Qualifying Finance Party, a Spanish Qualifying Finance Party or a US Qualifying Finance Party.

"**Qualifying State**" means a member state of the European Union (other than Spain).

"**Spanish Domestic Finance Party**" means:

(a) any Spanish resident credit entity registered in the Special Registries of The Bank of Spain as mentioned in paragraph (c) of Article 59 of Corporate Income Tax Regulations approved by Royal Decree 1777/2004 of 30 July (*Real Decreto 1777/2004 de 30 de julio*);

(b) a permanent establishment of a non-Spanish resident financial entity as mentioned in the second paragraph of Article 8.1 of Non-Resident Income Tax Regulations approved by Royal Decree 1776/2004 of 30 July (*Real Decreto 1776/2004 de 30 julio*); or

(c) a securitisation fund (*fondo de titulización*) referred to in paragraph (k) of Section 59 of Royal Decree 1777/2004 of 30 July (*Real Decreto 1776/2004 de 30 julio*) approving the Corporate Income Tax Regulations.

"**Spanish Qualifying Finance Party**" means a Finance Party which is beneficially entitled to interest payable to that Finance Party in respect of an advance under a Finance Document and is:

(a) a legal person or entity (including, for the avoidance of doubt, any securitisation fund) habitually resident for taxation purposes in a Qualifying State which is not acting through a territory considered as a tax haven pursuant to Spanish laws and regulations or through a permanent establishment located in Spain or outside a Qualifying State; or

(b) a Spanish Treaty Finance Party; or

(c) a Spanish Domestic Finance Party.

"**Spanish Obligor**" means an Obligor which is tax resident in Spain.

"**Spanish Treaty Finance Party**" means a legal person or entity (including, for the avoidance of doubt, any securitisation fund) which, as a result of any applicable double taxation treaty ratified by Spain, is entitled to receive any payments made by an Obligor to such legal person or entity hereunder without any deduction or withholding for or on account of Tax.

"**Tax Credit**" means a credit against, relief or remission for, or repayment of, any Tax.

"**Tax Deduction**" means a deduction or withholding for or on account of Tax from a payment under a Finance Document.

"**Tax Payment**" means either the increase in a payment made by an Obligor to a Finance Party under Clause 13.2 ( *Tax gross-up*) or a payment under Clause 13.3 (*Tax indemnity*).

"**US Domestic Finance Party**" means (a) any person that is a "United States Person" as defined in Section 7701(a)(30) of the Code and has provided a duly completed copy of IRS Form W-9 or (b) any person that is subject to U.S. federal income tax on "effectively connected income" under Section 871(b) of the Code and has provided a duly completed copy of IRS Form W-8ECI.

"**US Qualifying Finance Party**" means:

(a) any person that is claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code and has provided (i) a certificate to the effect that such person is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of any of the Obligors within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code and (ii) a duly completed copy of IRS Form W-8BEN;

(b) any US Domestic Finance Party; or

(c) a US Treaty Finance Party.

"**US Treaty Finance Party**" means any person who is entitled to the benefits of an income tax treaty to which the United States is a party with respect to payments under any Finance Document and has provided a duly completed copy of IRS Form W-8BEN establishing such entitlement.

Unless a contrary indication appears, in this Clause 13 a reference to " **determines**" or "**determined**" means a determination made in the absolute discretion of the person making the determination.

13.2 **Tax gross-up**

(a) Each Obligor shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.

(b) The Parent shall promptly upon becoming aware that an Obligor must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction, if a Tax Deduction was applicable on the date of this Agreement or would have been notified to the Agent following the date of this Agreement as contemplated by this Clause 13.2) under the Finance Documents notify the Agent accordingly. Similarly, a Finance Party shall notify the Agent on becoming so aware in respect of a payment payable to that Finance Party. If the Agent receives such notification from a Finance Party it shall notify the Parent and that Obligor.

(c) Subject to paragraph (d), if a Tax Deduction is required by law to be made by an Obligor under the Finance Documents, the amount of the payment due from that Obligor shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required and will provide to the Agent, upon request, evidence of the payment of the applicable Taxes.

(d) Paragraph (c) above shall not apply to any payment made by an Obligor to any Creditor which became a party to the 2009 Financing Agreement prior to the Effective Date as a "New Participating Creditor" (as defined therein) and had agreed with the Parent in writing prior to the date of this Agreement that, if a Tax Deduction was required by law to be made by an "Obligor" under (and as defined in) the 2009 Financing Agreement in respect of any payment to such Creditor, then such Creditor would have no claim for any increase in that payment to an amount which (after making the relevant Tax Deduction) would leave an amount equal to the payment which would have been due if no Tax Deduction had been required to be made (and is thus subject to a specific rate of withholding with respect to payments made to such Creditor, which specific rate of withholding shall continue to apply to payments to that Creditor under the Finance Documents).

(e) A payment by a Spanish Obligor shall not be increased under paragraph (c) above by reason of a Tax Deduction on account of Tax imposed by Spain if, on the date on which the payment falls due:

(i) the payment could have been made to the relevant Finance Party without a Tax Deduction if the Finance Party had been a Spanish

Qualifying Finance Party, but on that date that Finance Party is not or has ceased to be a Qualifying Finance Party other than as a result of any change after the date it became a Finance Party under this Agreement in (or in the interpretation, administration, or application of) any law or treaty, or any published practice or concession of any relevant taxing authority; or

(ii) the relevant Finance Party is a Spanish Treaty Finance Party and the Spanish Obligor making the payment is able to demonstrate that the payment could have been made to the Finance Party without any Tax Deduction if the Finance Party had complied with its obligations under paragraph (f) below.

(f)

(i) In relation to any exemption from or application of a rate lower than that of general application pursuant to any legislation in Spain or any double taxation treaty, or pursuant to any other cause relating to residence status, any Spanish Qualifying Finance Party which is not a Spanish Domestic Finance Party shall supply to CEMEX España, through the Agent, prior to the first interest payment date under this Agreement with a certificate of residence issued by the pertinent fiscal administration, accrediting such Spanish Qualifying Finance Party as resident for Tax purposes in a Qualifying State or, as the case may be, accrediting such Finance Party as resident for Tax purposes in a state which has signed and ratified a double taxation treaty with Spain.

(ii) As such certificates referred to in sub paragraph (i) above are, at the date hereof, valid only for a period of one year, each such Finance Party will be required to so supply a further such certificate upon expiry of the previous certificate in relation to any further payment of interest.

(iii) If any Finance Party which has supplied a certificate under sub paragraph (i) above becomes aware that any information contained in that certificate is not correct in all material respects throughout the period for which that certificate is valid, it shall, as soon as practicable, supply the Agent with details of that matter, following which the Agent shall supply those details to CEMEX España, and, if appropriate, that Finance Party shall promptly supply a new certificate pursuant to paragraph (i) above.

(g) A payment by a Mexican Obligor shall not be increased under paragraph (c) above by reason of a Tax Deduction on account of Tax imposed by Mexico if, on the date on which the payment falls due, the payment could have been made to the relevant Finance Party without a Tax Deduction, or subject to a Tax Deduction at a reduced rate, if the Finance Party had been a Mexican Qualifying Finance Party, but on that date that Finance Party is not or has ceased to be a Mexican Qualifying Finance Party, other than (i) as a result of any change after the date it became a Finance Party under this Agreement in (or in the interpretation, administration, or application of) any law or treaty, or any published practice or concession of any relevant taxing authority or (ii) if

the relevant Finance Party has ceased to be a Registered Financial Institution in Mexico, after having filed the required information, for tax purposes for reasons not attributable to such Finance Party **provided that**:

(i) in respect of a Finance Party which is an assignee or transferee of an Original Creditor, payments under paragraph (c) above shall not exceed the amounts payable under such paragraph (c) to that Original Creditor; and

(ii) in respect of a Mexican Qualifying Finance Party that satisfies the definition of Mexican Treaty Finance Party but which is not a Registered Financial Institution in Mexico, the maximum percentage in respect of which amounts under paragraph (c) shall be paid is 4.90 per cent.

(h) A payment by a US Obligor shall not be increased under paragraph (c) above by reason of a Tax Deduction on account of Tax imposed by the United States of America if, on the date on which the payment falls due, the payment could have been made to the relevant Finance Party without a Tax Deduction if the Finance Party had been a US Qualifying Finance Party, but on that date that Finance Party is not or has ceased to be a US Qualifying Finance Party other than as a result of any change after the date it became a Finance Party under this Agreement in (or in the interpretation, administration, or application of) any law or treaty, or any published practice or concession of any relevant taxing authority.

(i) If an Obligor is required to make a Tax Deduction, that Obligor shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.

(j) Within thirty days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Obligor making that Tax Deduction shall deliver to the Agent for the Finance Party entitled to the payment an original receipt (or certified copy thereof) or if unavailable such other evidence as is reasonably satisfactory to that Finance Party that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

13.3 **Tax indemnity**

(a) The Parent shall (within three Business Days of demand by the Agent) pay to a Protected Party an amount equal to the loss, liability or cost which that Protected Party determines will be or has been (directly or indirectly) suffered for or on account of Tax by that Protected Party in respect of a Finance Document.

(b) Paragraph (a) above shall not apply:

(i) with respect to any Tax assessed on a Finance Party:

(A) under the law of the jurisdiction in which that Finance Party is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Finance Party is treated as resident for tax purposes; or

(B) under the law of the jurisdiction in which that Finance Party's Facility Office is located in respect of amounts received or receivable in that jurisdiction,

if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by that Finance Party; or

(ii) to the extent a loss, liability or cost:

(A) is compensated for by an increased payment under Clause 13.2 ( *Tax gross-up*); or

(B) would have been compensated for by an increased payment under Clause 13.2 ( *Tax gross-up*) but was not so compensated solely because one of the exclusions in paragraph (d) or paragraph (g) of Clause 13.2 ( *Tax gross-up*) applied.

(c) A Protected Party making, or intending to make a claim under paragraph (a) above shall promptly notify the Agent of the event which will give, or has given, rise to the claim, following which the Agent shall notify the Parent.

(d) A Protected Party shall, on receiving a payment from an Obligor under this Clause 13.3, notify the Agent.

13.4 **Tax Credit**

If an Obligor makes a Tax Payment and the relevant Finance Party determines that:

(a) a Tax Credit is attributable either to an increased payment of which that Tax Payment forms part or to that Tax Payment; and

(b) that Finance Party has obtained, utilised and retained that Tax Credit,

the Finance Party shall pay an amount to the Obligor which that Finance Party determines will leave it (after that payment) in the same after-Tax position as it would have been in had the Tax Payment not been required to be made by the Obligor.

13.5 **Creditor Status Confirmation (Spain)**

(a) Each Original Creditor which is a Creditor under a Facility in respect of which the Borrower is CEMEX España (other than any such Creditor that has entered into an agreement with the Borrower prior to the date of this Agreement to be

subject to a specific rate of withholding with respect to payments made to such Creditor as described in paragraph (d) of Clause 13.2 ( *Tax gross-up*)) confirms that it is a Spanish Qualifying Finance Party.

(b) Each Creditor which becomes a Party to this Agreement after the date of this Agreement shall indicate, in the Transfer Certificate or Assignment Agreement which it executes on becoming a Party, and for the benefit of the Agent and without liability to any Obligor, which of the following categories it falls in:

(i) not a Spanish Qualifying Finance Party;

(ii) a Spanish Qualifying Finance Party (other than a Spanish Treaty Finance Party); or

(iii) a Spanish Treaty Finance Party.

(c) If a New Creditor fails to indicate its status in accordance with this Clause 13.5 then such New Creditor shall be treated for the purposes of this Agreement (including by each Obligor) as if it is not a Spanish Qualifying Finance Party until such time as it notifies the Agent which category applies (and the Agent, upon receipt of such notification, shall inform the Parent). For the avoidance of doubt, a Transfer Certificate or Assignment Agreement shall not be invalidated by any failure of a Creditor to comply with this Clause 13.5.

13.6 **Creditor Status Confirmation (Mexico)**

(a) Each Original Creditor which is a Creditor under a Facility in respect of which the Borrower is the Parent (other than any such Creditor that has entered into an agreement with the Borrower prior to the date of this Agreement to be subject to a specific rate of withholding with respect to payments made to such Creditor as described in paragraph (d) of Clause 13.2 ( *Tax gross-up*)) confirms that it is a Mexican Qualifying Finance Party.

(b) Each Creditor which becomes a Party to this Agreement after the date of this Agreement shall indicate, in the Transfer Certificate or Assignment Agreement which it executes on becoming a Party, and for the benefit of the Agent and without liability to any Obligor, which of the following categories it falls in:

(i) not a Mexican Qualifying Finance Party;

(ii) a Mexican Qualifying Finance Party (other than a Mexican Treaty Finance Party); or

(iii) a Mexican Treaty Finance Party.

(c) If a New Creditor fails to indicate its status in accordance with this Clause 13.6 then such New Creditor shall be treated for the purposes of this Agreement (including by each Obligor) as if it is not a Mexican Qualifying Finance Party until such time as it notifies the Agent which category applies (and the Agent, upon receipt of such notification, shall inform the Parent). For

the avoidance of doubt, a Transfer Certificate or Assignment Agreement shall not be invalidated by any failure of a Finance Party to comply with this Clause 13.6.

13.7 **Creditor Status Confirmation (US)**

(a) Each Original Creditor which is a Creditor under a Facility in respect of which the Borrower is CEMEX Materials or CEMEX Finance (other than any such Creditor that has entered into an agreement with the Borrower prior to the date of this Agreement to be subject to a specific rate of withholding with respect to payments made to such Creditor as described in paragraph (d) of Clause 13.2 ( *Tax gross-up*)) confirms that it is a US Qualifying Finance Party.

(b) Each Creditor which becomes a Party to this Agreement after the date of this Agreement shall indicate, in the Transfer Certificate or Assignment Agreement which it executes on becoming a Party, and for the benefit of the Agent and without liability to any Obligor, which of the following categories it falls in:

(i) not a US Qualifying Finance Party;

(ii) a US Qualifying Finance Party (other than a US Treaty Finance Party); or

(iii) a US Treaty Finance Party.

(c) If a New Creditor fails to indicate its status in accordance with this Clause 13.7 then such New Creditor shall be treated for the purposes of this Agreement (including by each Obligor) as if it is not a US Qualifying Finance Party until such time as it notifies the Agent which category applies (and the Agent, upon receipt of such notification, shall inform the Parent). For the avoidance of doubt, a Transfer Certificate or Assignment Agreement shall not be invalidated by any failure of a Creditor to comply with this Clause 13.7.

13.8 **FATCA Deduction and gross-up by Obligor**

(a) If an Obligor is required to make a FATCA Deduction that Obligor shall make that FATCA Deduction and any payment required in connection with that FATCA Deduction within the time allowed and in the minimum amount required by FATCA.

(b) If any FATCA Deduction is required by FATCA to be made by an Obligor, the amount of the payment due from that Obligor shall be increased to an amount which (after making any FATCA Deduction) leaves an amount equal to the payment which would have been due if no FATCA Deduction had been required.

(c) The Parent shall promptly upon becoming aware that an Obligor must make a FATCA Deduction (or that there is any change in the rate or the basis of a FATCA Deduction) notify the Agent accordingly. Similarly, a Lender shall notify the Agent on becoming so aware in respect of a payment payable to that Lender. If the Agent receives such notification from a Lender it shall notify the Parent and that Obligor.

(d) Within thirty days of making either a FATCA Deduction or any payment required in connection with that FATCA Deduction, the Obligor making that FATCA Deduction shall deliver to the Agent for the Finance Party entitled to the payment evidence reasonably satisfactory to that Finance Party that the FATCA Deduction has been made or (as applicable) any appropriate payment paid to the relevant governmental or taxation authority.

13.9 **FATCA Deduction by a Finance Party**

(a) Each Finance Party may make any FATCA Deduction it is required by FATCA to make, and any payment required in connection with that FATCA Deduction, and no Finance Party shall be required to increase any payment in respect of which it makes such a FATCA Deduction.

(b) If the Agent is required to make a FATCA Deduction in respect of a payment to a Finance Party under Clause 31.2 ( *Distributions by the Agent*) which relates to a payment by an Obligor, the amount of the payment due from that Obligor shall be increased to an amount which, when that amount is payable by the Agent (after making any such FATCA Deduction and any payment required in connection with that FATCA Deduction), leaves an amount equal to the payment which would have been due by the Agent if no FATCA Deduction had been required.

(c) The Agent shall promptly upon becoming aware that it must make a FATCA Deduction in respect of a payment to a Finance Party under Clause 31.2 (*Distributions by the Agent*) which relates to a payment by an Obligor (or that there is any change in the rate or the basis of such FATCA Deduction) notify the Parent, the relevant Obligor and the relevant Finance Party.

(d) The Parent shall (within three Business Days of demand by the Agent) pay to a Finance Party an amount equal to the loss, liability or cost which that Finance Party determines will be or has been (directly or indirectly) suffered by that Finance Party as a result of another Finance Party making a FATCA Deduction in respect of a payment due to it under a Finance Document. This paragraph shall not apply to the extent a loss, liability or cost is compensated for by an increased payment under paragraph (b) above.

(e) A Finance Party making, or intending to make, a claim under paragraph (d) above shall promptly notify the Agent of the FATCA Deduction which will give, or has given, rise to the claim, following which the Agent shall notify the Parent.

(f) A Finance Party shall, on receiving a payment from an Obligor under paragraph (d) above, notify the Agent.

13.10 **Stamp taxes**

The Parent shall pay and, within five Business Days of demand, indemnify each Secured Party against any cost, loss or liability that Secured Party incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Finance Document.

13.11 **Value added tax**

(a) All consideration expressed to be payable under a Finance Document by any Party to a Finance Party shall be deemed to be exclusive of any VAT. If VAT is chargeable on any supply made by any Finance Party to any party in connection with a Finance Document, that Party shall pay to the Finance Party (in addition to and at the same time as paying the consideration) an amount equal to the amount of the VAT and such Finance Party shall promptly provide an appropriate VAT invoice to such Party.

(b) Where a Finance Document requires any Party to reimburse a Finance Party for any costs or expenses, that Party shall also at the same time pay and indemnify that Finance Party against all VAT incurred by the Finance Party in respect of the costs or expenses to the extent that the Finance party reasonably determines that it is not entitled to credit or repayment of the VAT.

13.12 **No double-recovery**

(a) Subject to paragraph (b) below, the obligations of the Obligors in this Clause 13 with respect to the USPP Noteholders are in addition to any other provisions relating to tax gross-up and indemnities in the USPP Note Agreement.

(b) No Finance Party may recover more than once under the Finance Documents for any cost, loss or liability in respect of which it has a claim under this Clause 13, Clause 14 (*Increased Costs*) or Clause 15 (*Other Indemnities*).

13.13 **French Obligors**

All payments to be made under this Agreement by an Obligor resident or established in France shall be made to an account opened in a financial institution situated in a State or territory other than a non cooperative State or territory ( *Etat ou territoire non coopératif*) within the meaning of Article 238-0 A of the French tax code (*code général des impôts*).

14. **INCREASED COSTS**

14.1 **Increased costs**

(a) Subject to Clause 14.3 (*Exceptions*) the Parent shall, within three Business Days of a demand by the Agent, pay for the account of a Finance Party the amount of any Increased Costs incurred by that Finance Party or any of its Affiliates as a result of:

(i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation after the date of this Agreement; or

(ii) compliance with any law or regulation made after the date of this Agreement; or

(iii) the implementation or application of, or compliance with, (A) the Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111-203 (signed into law July 21, 2010)) and all requests, rules, guidelines or directives thereunder or issued in connection therewith or (B) Basel III or any law or regulation that implements or applies Basel III.

(b) In this Agreement:

(i) "**Increased Costs**" means:

(A) a reduction in the rate of return from a Facility or on a Finance Party's (or its Affiliate's) overall capital;

(B) an additional or increased cost; or

(C) a reduction of any amount due and payable under any Finance Document,

which is incurred or suffered by a Finance Party or any of its Affiliates to the extent that it is attributable to that Finance Party having entered into its Commitment or funding or performing its obligations under any Finance Document; and

(ii) "**Basel III**" means:

(A) the agreements on capital requirements, a leverage ratio and liquidity standards contained in "Basel III: A global regulatory framework for more resilient banks and banking systems", "Basel III: International framework for liquidity risk measurement, standards and monitoring" and "Guidance for national authorities operating the countercyclical capital buffer" published by the Basel Committee on Banking Supervision in December 2010, each as amended, supplemented or restated; and

(B) any further guidance or standards published by the Basel Committee on Banking Supervision relating to "Basel III".

14.2 **Increased cost claims**

(a) A Finance Party intending to make a claim pursuant to Clause 14.1 ( *Increased costs*) shall notify the Agent of the event giving rise to the claim, following which the Agent shall promptly notify the Parent.

(b) Each Finance Party shall, as soon as practicable after a demand by the Agent, provide a certificate confirming the amount of its Increased Costs and setting out the calculation of the amount in reasonable detail.

14.3 **Exceptions**

(a) Clause 14.1 (*Increased costs*) does not apply to the extent any Increased Cost is:

(i) attributable to a Tax Deduction required by law to be made by an Obligor;

(ii) compensated for by Clause 13.3 (*Tax indemnity*) (or would have been compensated for under Clause 13.3 ( *Tax indemnity*) but was not so compensated solely because any of the exclusions in paragraph (b) of Clause 13.3 ( *Tax indemnity*) applied);

(iii) compensated for by the payment of the Mandatory Cost;

(iv) attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation; or

(v) attributable to the implementation of or compliance with the "International Convergence of Capital Measurements and Capital Standards - a Revised Framework" published by the Basel Committee on Banking Supervision in June 2004 in the form existing on the date of this Agreement ("**Basel II**") or any other law or regulation that implements Basel II (whether such implementation or compliance is by a government, governmental regulator, Finance Party or an Affiliate thereof) but, for the avoidance of doubt and without prejudice to Clause 14.1 (*Increased Costs*) so that this exception does not apply to costs attributable to the implementation or application or compliance with Basel III or any law or regulation that implements or applies Basel III **provided that** the relevant Finance Party claiming for any Increased Cost relating to the implementation or application of or compliance with Basel III (each, a "**Basel III Cost**") and the Parent shall negotiate in good faith for a period not exceeding 30 days following receipt by the Parent of notice from the Agent of a claim from such Finance Party to pay such Basel III Cost (the " **Negotiation Period**"), with a view to identifying and agreeing the amount of such Basel III Cost to be paid by the Parent. If such mutually satisfactory arrangements are agreed within such Negotiation Period, these

arrangements will be binding on the Parent and the relevant Finance Party. If no such mutually satisfactory arrangements are agreed by the expiry of the Negotiation Period, then the Parent shall within 15 days from the expiry of the Negotiation Period, pay the amount of such Basel III Costs (whether or not such amount has been agreed), it being acknowledged that such payment obligation is without prejudice to the Parent's right to replace or repay and cancel that Finance Party's participation in the Utilisations in accordance with Clause 6.4 (*Right of repayment in relation to a single Creditor*).

(b) In this Clause 14.3 reference to a "**Tax Deduction**" has the same meaning given to the term in Clause 1.1 (*Definitions*).

## 15. OTHER INDEMNITIES

### 15.1 Currency indemnity

(a) If any sum due from an Obligor under the Finance Documents (a "**Sum**"), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the "**First Currency**") in which that Sum is payable into another currency (the "**Second Currency**") for the purpose of:

(i) making or filing a claim or proof against that Obligor; or

(ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

that Obligor shall as an independent obligation, within three Business Days of demand, indemnify each Secured Party to whom that Sum is due against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

(b) Each Obligor waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency or currency unit other than that in which it is expressed to be payable.

### 15.2 Other indemnities

(a) The Parent shall (or shall procure that an Obligor will), within three Business Days of demand, indemnify each Secured Party against any cost, loss or liability incurred by it as a result of:

(i) the occurrence of any Event of Default;

(ii) a failure by an Obligor to pay any amount due under a Finance Document on its due date, including without limitation, any cost, loss or liability arising as a result of Clause 30 (*Sharing among the Finance Parties*);

(iii) funding, or making arrangements to fund, its participation in a Utilisation but not made by reason of the operation of any one or more of the provisions of the Finance Documents (other than by reason of default or negligence by that Finance Party alone); or

(iv) a Utilisation (or part thereof) not being prepaid in accordance with a notice of prepayment given by a Borrower or the Parent.

(b) The Parent will indemnify and hold harmless each Finance Party and its Affiliates and each of their and their Affiliates' respective directors, officers, employees, agents, advisors and representatives (each being an " **Indemnified Person**") from and against any and all claims, damages, losses, liabilities, costs, legal expenses and other expenses (all together " **Losses**") which have been incurred by or awarded against any Indemnified Person, in each case arising out of or in connection with any claim, investigation, litigation or proceeding (or the preparation of any defence with respect thereto) commenced or threatened by any person other than itself, its respective directors, officers, employees, agents, advisors or representatives in relation to any of the Finance Documents (or in connection with the execution and/or notarisation of any Finance Document) except to the extent such Losses or claims result from such Indemnified Person's negligence or misconduct or a breach of any term of any Finance Document by that Indemnified Person. There shall be no double recovery by or on behalf of any Indemnified Person under this Agreement or any other agreement entered into by such Indemnified Person and any member of the Group in relation to the financing or refinancing of the 2009 Financing Agreement. Any third party referred to in this paragraph (b) may rely on this Clause 15.2.

15.3 **Indemnity to the Agent**

The Parent shall promptly indemnify the Agent against any cost, loss or liability incurred by the Agent (acting reasonably) as a result of:

(a) investigating any event which it reasonably believes is a Default; or

(b) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised.

## 16. MITIGATION BY THE FINANCE PARTIES

16.1 **Mitigation**

(a) Each Finance Party shall, in consultation with the Parent, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 6.1 ( *Illegality*), Clause 13 (*Tax gross-up and indemnities*), Clause 14 (*Increased Costs*) or Clause 15 (*Other indemnities*) including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.

(b) Paragraph (a) above does not in any way limit the obligations of any Obligor under the Finance Documents.

16.2 **Limitation of liability**

(a) The Parent shall promptly indemnify each Finance Party for all costs and expenses reasonably incurred by that Finance Party as a result of steps taken by it under Clause 16.1 (*Mitigation*) after consultation with the Parent.

(b) A Finance Party is not obliged to take any steps under Clause 16.1 ( *Mitigation*) if, in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it.

## 17. COSTS AND EXPENSES

17.1 **Transaction expenses**

The Parent shall promptly on demand pay (or procure to be paid) the Agent and the Security Agent the amount of all costs and expenses (including legal fees) reasonably incurred by any of them (and, in the case of the Security Agent, by any Receiver or Delegate) in connection with the negotiation, preparation, printing, execution and perfection of:

(a) this Agreement and any other documents referred to in this Agreement and the Transaction Security; and

(b) any other Finance Documents executed after the date of this Agreement.

17.2 **Amendment costs**

If an Obligor requests an amendment, waiver or consent, the Parent shall, within three Business Days of demand, reimburse (or procure to be reimbursed) each of the Agent and the Security Agent for the amount of all costs and expenses (including legal fees) reasonably incurred by the Agent and the Security Agent (and, in the case of the Security Agent, by any Receiver or Delegate) in responding to, evaluating, negotiating or complying with that request or requirement.

17.3 **Security Agent's ongoing costs**

(a) In the event of (i) a Default or (ii) the Security Agent considering it necessary or expedient or (iii) the Security Agent being requested by an Obligor or the Majority Creditors to undertake duties which the Security Agent and the Parent agree to be of an exceptional nature and/or outside the scope of the normal duties of the Security Agent under the Finance Documents, the Parent shall pay to the Security Agent any additional remuneration that may be agreed between them.

(b) If the Security Agent and the Parent fail to agree upon the nature of the duties or upon any additional remuneration, that dispute shall be determined by an investment bank (acting as an expert and not as an arbitrator) selected by the Security Agent and approved by the Parent or, failing approval, nominated (on the application of the Security Agent) by the President for the time being of

the Law Society of England and Wales (the costs of the nomination and of the investment bank being payable by the Parent) and the determination of any investment bank shall be final and binding upon the parties to this Agreement.

17.4 **Enforcement and preservation costs**

The Parent shall, within three Business Days of demand, pay (or procure to be paid) to each Secured Party the amount of all costs and expenses (including legal fees) incurred by it in connection with the enforcement of or the preservation of any rights under any Finance Document and the Transaction Security and any proceedings instituted by or against the Security Agent as a consequence of taking or holding the Transaction Security or enforcing these rights.

17.5 **Costs and expenses provisions**

The obligations of the Parent in this Clause 17 with respect to the USPP Noteholders are in addition to any other provisions relating to costs and expenses in the USPP Note Agreement (provided that no USPP Noteholder may recover more than once under the Finance Documents for the same portion of any cost and expense).

## SECTION 7
## GUARANTEE

### 18. GUARANTEE AND INDEMNITY

#### 18.1 Guarantee and indemnity – Specific Guaranteed Facilities

Each Specific Facility Guarantor irrevocably and unconditionally jointly and severally:

(a) guarantees to each Finance Party under its Specific Guaranteed Facility punctual performance by each other Obligor of that Obligor's obligations under the Finance Documents with respect to the Specific Guaranteed Facility of that Specific Facility Guarantor;

(b) undertakes with each Finance Party under its Specific Guaranteed Facility that whenever an Obligor does not pay any amount when due under or in connection with any Finance Document with respect to the Specific Guaranteed Facility of that Specific Facility Guarantor, it shall immediately on demand pay that amount as if it were the principal obligor; and

(c) agrees with each Finance Party under its Specific Guaranteed Facility that if any obligation guaranteed by it pursuant to this Clause 18.1 is or becomes unenforceable, invalid or illegal or is otherwise discharged by the operation of clause 8.2 ( *Distressed Disposals*) of the Intercreditor Agreement, it will, as an independent and primary obligation, indemnify that Finance Party immediately on demand against any cost, loss or liability it incurs as a result of an Obligor not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under any Finance Document on the date when it would have been due. The amount payable by a Specific Facility Guarantor under this indemnity will not exceed the amount it would have had to pay under this Clause 18 with respect to this Clause 18.1 if the amount claimed had been recoverable on the basis of a guarantee.

#### 18.2 Guarantee and indemnity – all Finance Documents

Each Guarantor (other than CEMEX, Inc.) irrevocably and unconditionally jointly and severally:

(a) guarantees to each Finance Party punctual performance by each other Obligor of that Obligor's obligations under the Finance Documents;

(b) undertakes with each Finance Party that whenever an Obligor does not pay any amount when due under or in connection with any Finance Document, it shall immediately on demand pay that amount as if it were the principal obligor; and

(c) agrees with each Finance Party that if any obligation guaranteed by it pursuant to this Clause 18 is or becomes unenforceable, invalid or illegal or is otherwise discharged by the operation of clause 8.2 ( *Distressed Disposals*) of the Intercreditor Agreement, it will, as an independent and primary obligation,

indemnify that Finance Party immediately on demand against any cost, loss or liability it incurs as a result of an Obligor not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under any Finance Document on the date when it would have been due. The amount payable by a Guarantor under this indemnity will not exceed the amount it would have had to pay under this Clause 18 if the amount claimed had been recoverable on the basis of a guarantee.

18.3 **Rights to recovery among Finance Parties**

In the case of each Guarantor which is a Specific Facility Guarantor, the rights of each Finance Party to receive recoveries from that Guarantor under its Specific Guaranteed Facilities pursuant to Clause 18.1 ( *Guarantee and indemnity – Specific Guaranteed Facilities* ) shall, for the purposes of clause 10.2 (*Order of application – Debt Claim Recoveries*) of the Intercreditor Agreement and as more particularly set out therein, rank prior to the rights of the Finance Parties to receive recoveries from that Guarantor under the Finance Documents generally pursuant to Clause 18.2 ( *Guarantee and indemnity – all Finance Documents* ).

18.4 **Continuing Guarantee**

Each guarantee is a continuing guarantee and will extend to the ultimate balance of sums payable by each Obligor under the Finance Documents, regardless of any intermediate payment or discharge in whole or in part.

18.5 **Reinstatement**

If any discharge, release or arrangement (whether in respect of the obligations of any Obligor or any security for those obligations or otherwise) is made by a Finance Party in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration, Irish law examinership or otherwise, then the liability of each Guarantor under this Clause 18 will continue or be reinstated as if the discharge, release of arrangement had not occurred.

18.6 **Waiver of defences**

(a) The obligations of each Guarantor (other than, except with respect to Clause 18.1 ( *Guarantee and indemnity – Specific Guaranteed Facilities*), CEMEX, Inc.) under this Clause 18 will not be affected by an act, omission, matter or thing which, but for this Clause 18, would reduce, release or prejudice any of its obligations under this Clause 18 (without limitation and whether or not known to it or any Finance Party) including:

(i) any time, waiver or consent granted to, or composition with, any other Obligor or other person;

(ii) the release of any other Obligor or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;

(iii) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any other Obligor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;

(iv) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any other Obligor or any other person;

(v) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of a Finance Document or any other document or security including, without limitation, any change in the purpose of, any extension of or increase in any facility or the addition of any new facility under any Finance Document or other document or security;

(vi) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security;

(vii) any insolvency, *concurso mercantil* or similar proceedings;

(viii) the existence of any claim, set-off or other right which any of the Guarantors may have at any time against any Obligor, the Agent, any Creditor or any other person, whether in connection with this transaction or with any unrelated transaction;

(ix) any provision of applicable law or regulation purporting to prohibit the payment by any Obligor of any amount payable by any Obligor under any Finance Document or the payment, observance, fulfilment or performance of any other obligations to the Creditors, the Agent now or in future existing under or in connection with the Finance Documents, whether direct or indirect, absolute or contingent, due or to become due;

(x) any change in the name, purposes, business, capital stock (including the ownership thereof) or constitution of any Obligor; or

(xi) any other act or omission to act or delay of any kind by any Obligor, the Agent, the Creditors or any other person or any other circumstance whatsoever which might otherwise constitute a legal or equitable discharge of or defense to any Guarantor's obligations hereunder.

(b) To the extent permitted by applicable law and notwithstanding any contrary principles under the laws of any other jurisdiction, each of the Guarantors (other than, except with respect to Clause 18.1 ( *Guarantee and indemnity – Specific Guaranteed Facilities* ), CEMEX, Inc.) hereby waives any and all defences to which it may be entitled, whether at common law, in equity or by statute which limits the liability of, or exonerates, guarantors or which may

conflict with the terms of this Clause 18 including failure of consideration, breach of warranty, statute of frauds, merger or consolidation of any Obligor, statute of limitations, accord and satisfaction and usury. Without limiting the generality of the foregoing, each of the Guarantors (other than, except with respect to Clause 18.1 ( *Guarantee and indemnity – Specific Guaranteed Facilities* ), CEMEX, Inc.) consents that, without notice to such Guarantor and without the necessity for additional endorsement or consent by such Guarantor, and without impairing or affecting in any way the liability of such Guarantor hereunder, the Agent and the Creditors may at any time and from time to time, upon or without any terms or conditions and in whole or in part:

(i) change the manner, place or terms of payment of, and/or change or extend the time or payment of, renew or alter, any of the Guarantors' obligations under the Finance Documents, any security therefor, or any liability incurred directly or indirectly in respect thereof, and this Clause 18 shall apply to such obligations as so changed, extended, renewed or altered;

(ii) exercise or refrain from exercising any rights against any Obligor or others (including the Guarantors) or otherwise act or refrain from acting;

(iii) settle or compromise any such obligations, any security therefor or any liability (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof, and may subordinate the payment of all or any part thereof to the payment of any such liability (whether due or not) of any Obligor to creditors of any Obligor other than the Agent and the Creditors and Guarantors;

(iv) apply any sums by whomsoever paid or howsoever realised, other than payments of the Guarantors of such obligations, to any liability or liabilities of any Obligor under the Finance Documents or any instruments or agreements referred to herein or therein, to the Agent and the Creditors regardless of which of such liability or liabilities of any Obligor under the Finance Documents or any instruments or agreements referred to herein or therein remain unpaid;

(v) consent to or waive any breach of, or any act, omission or default under such obligations or any of the instruments or agreements referred to in this Agreement and the other Finance Documents, or otherwise amend, modify or supplement such obligations or any of such instruments or agreements, including the Finance Documents; and/or

(vi) request or accept other support of such obligations or take and hold any security for the payment of such obligations, or allow the release, impairment, surrender, exchange, substitution, compromise, settlement, rescission or subordination thereof.

(c) Each Guarantor incorporated in Mexico expressly waives, irrevocably and unconditionally:

(i) any right to require any Finance Party first proceed against, initiate any actions before a court or any other judge or authority, or enforce any other rights or security or claim payment from any Obligor or any other person, before claiming any amounts due from such Guarantor incorporated in Mexico hereunder;

(ii) any right to which it may be entitled to have the assets of any Borrower, any other Obligor or any other person first be used, applied or depleted as payment of the Obligor's obligations hereunder, prior to any amount being claimed from or paid by any Guarantor incorporated in Mexico hereunder;

(iii) any right to which it may be entitled to have claims against it, or assets to be used or applied as payment, divided among different Guarantors; and

(iv) the benefits of *orden*, *excusión*, *división*, *quita* and *espera* and any right specified in Articles 2814, 2815, 2817, 2818, 2819, 2820, 2821, 2822, 2823, 2826, 2829, 2837, 2840, 2845, 2846, 2847 and any other related or applicable Articles that are not explicitly set forth herein because of the Guarantor's knowledge thereof, of the *Código Civil Federal* of Mexico and the *Código Civil* of each State of the Mexican Republic and the Federal District of Mexico.

18.7 **Immediate recourse**

(a) Each Guarantor (other than, except with respect to Clause 18.1 ( *Guarantee and indemnity – Specific Guaranteed Facilities* ), CEMEX, Inc.) waives any right it may have of first requiring any Finance Party (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from a Guarantor under this Clause 18. This waiver applies irrespective of any law or regulation or any provision of a Finance Document to the contrary.

(b) Each Guarantor also waives any right to be sued jointly with other Guarantors and to share liability resulting from any claim against it.

18.8 **Appropriations**

Until all amounts which may be or become payable by any Obligor under or in connection with the Finance Documents have been irrevocably paid in full, each Finance Party (or any trustee or agent on its behalf) may:

(a) refrain from applying or enforcing any other monies, security or rights held or received by that Finance Party (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and no Guarantor shall be entitled to the benefit of the same; and

(b) hold in an interest-bearing suspense account any monies received from a Guarantor or on account of such Guarantor's liability under this Clause 18,

**provided that** the operation of this Clause 18.8 shall not be deemed to create any Security.

18.9 **Deferral of Guarantors' rights**

Until all amounts which may be or become payable by any Obligor under or in connection with the Finance Documents have been irrevocably paid in full and unless the Agent otherwise directs, no Guarantor will exercise any rights which it may have by reason of performance by it of its obligations under the Finance Documents or by reason of any amount being payable, or liability arising, under this Clause 18:

(a) to be indemnified by any other Obligor;

(b) to claim any contribution from any other guarantor of any other Obligor's obligations under the Finance Documents;

(c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Finance Parties under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by any Finance Party;

(d) to bring legal or other proceedings for an order requiring any Obligor to make any payment, or perform any obligation, in respect of which any Guarantor has given a guarantee, undertaking or indemnity under, as the case may be, Clause 18.1 ( *Guarantee and indemnity – Specific Guaranteed Facilities*) or Clause 18.2 (*Guarantee and indemnity – all Finance Documents* );

(e) to exercise any right of set-off against any Obligor; and/or

(f) to claim or provide as a creditor of any Obligor in competition with any Finance Party.

18.10 **Additional security**

Each guarantee is in addition to and is not in any way prejudiced by any other guarantee or security now or subsequently held by any Finance Party.

18.11 **General limitation on guaranty**

In any action or proceeding involving any applicable corporate law, or any applicable bankruptcy, insolvency, reorganisation, *concurso mercantil, quiebra* or other law affecting the rights of creditors generally, if the obligations of any Guarantor (other than CEMEX, Inc.) under this Clause 18 would otherwise be held or determined to be void, invalid or unenforceable, or subordinated to the claims of any other creditors, on account of the amount of its liability under this Clause 18, then, notwithstanding any other provision hereof to the contrary, the amount of such liability shall, without any further action by such Guarantor, any Creditor, the Agent or any other person to the greatest extent permitted under applicable law, be automatically limited and reduced to the highest amount that is valid and enforceable and not subordinated to the claims of other creditors as determined in such action or proceeding.

18.12 **Bankruptcy and Related Matters**

(a) So long as any of the obligations under the Finance Documents are outstanding, each of the Guarantors shall not (unless required to do so by law or regulation), without the prior written consent of the Majority Creditors, commence or join with any other person in commencing any bankruptcy, liquidation, reorganisation, *concurso mercantil, quiebra* or insolvency proceedings of, or against, any Obligor.

(b) If acceleration of the time for payment of any amount payable by Parent under the Finance Documents is stayed upon the insolvency, bankruptcy, reorganisation, *concurso mercantil*, *quiebra* or any similar event of any Obligor or otherwise, all such amounts otherwise subject to acceleration under the terms of this Agreement shall nonetheless be payable by the Guarantors hereunder forthwith on demand by the Agent made at the request of the Creditors.

(c) The obligations of each of the Guarantors under this Clause 18 shall not be reduced, limited, impaired, discharged, deferred suspended or terminated by any proceeding or action, voluntary or involuntary, involving the bankruptcy, insolvency, *concurso mercantil, quiebra*, receivership, reorganisation, marshalling of assets, assignment for the benefit of creditors, readjustment, liquidation or arrangement of any Obligor or similar proceedings or actions or by any defense which any Obligor may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding or action. Without limiting the generality of the foregoing, the Guarantors' liability shall extend to all amounts and obligations under the Finance Documents and would be owed by any Obligor but for the fact that they are unenforceable or not allowable due to the existence of any such proceeding or action.

(d) Each of the Guarantors (other than CEMEX, Inc., except in relation to Clause 18.1 ( *Guarantee and indemnity – Specific Guaranteed Facilities*)) acknowledges and agrees that any interest on any portion of the obligations under the Finance Documents which accrues after the commencement of any proceeding or action referred to above in paragraph (c) of this Clause 18.12 (or, if interest on any portion of such obligations ceases to accrue by operation of law by reason of the commencement of said proceeding or action, such interest as would have accrued on such portion of such obligations if said proceedings or actions had not been commenced) shall be included in such obligations, it being the intention of the Guarantors, the Agent, and the Creditors that such obligations which are to be guaranteed by the Guarantors (other than CEMEX, Inc., except in relation to Clause 18.1 ( *Guarantee and indemnity – Specific Guaranteed Facilities* )) pursuant to this Clause 18 shall be determined without regard to any rule of law or order which may relieve any Obligor of any portion of such obligations. The Guarantors will take no action to prevent any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or similar person from paying the Agent,

or allowing the claim of the Agent, for the benefit of the Agent, and the Creditors, in respect of any such interest accruing after the date of which such proceeding is commenced, except to the extent any such interest shall already have been paid by the Guarantors.

(e) Notwithstanding anything to the contrary contained herein, if all or any portion of the obligations under the Finance Documents are paid by or on behalf of any Obligor, the obligations of the Guarantors hereunder shall continue and remain in full force and effect or be reinstated, as the case may be, in the event that all or any part of such payment(s) are rescinded or recovered, directly or indirectly, from the Agent and/or the Creditors as a preference, preferential transfer, fraudulent transfer or otherwise, and any such payments which are so rescinded or recovered shall constitute obligations under the Finance Documents for all purpose under this Clause 18, to the extent permitted by applicable law.

18.13 **Dutch guarantee limitation**

Notwithstanding any other provision of this Clause 18 ( *Guarantee and indemnity*) the guarantees, indemnities and other obligations of any Dutch Obligor expressed to be assumed in this Clause 18 ( *Guarantee and indemnity*) shall be deemed not to be assumed by such Dutch Obligor to the extent that the same would constitute unlawful financial assistance within the meaning of Article 2:207c or 2:98c Dutch Civil Code or any other applicable financial assistance rules under any rules under any relevant jurisdiction (the " **Prohibition**") and the provisions of this Agreement and the other Finance Documents shall be construed accordingly. For the avoidance of doubt, it is expressly acknowledged that the relevant Dutch Obligors will continue to guarantee all such obligations which, if included, do not constitute a violation of the Prohibition.

18.14 **Spanish guarantee limitation**

Notwithstanding any other provision of this Clause 18 ( *Guarantee and indemnity*) the guarantees, indemnities and other obligations of any Obligor incorporated in Spain expressed to be assumed in this Clause 18 ( *Guarantee and indemnity*) shall be deemed not to be assumed by such Obligor incorporated in Spain to the extent that the same would constitute the provision of financial assistance within the meaning of either Article 150.1 of the 2010 Spanish Corporations Act (*Ley de Sociedades de Capital*) (in the case of a Spanish Obligor which is a *sociedad anónima*), or Article 143.2 of the 2010 Spanish Corporations Act (*Ley de Sociedades de Capital*) (in the case of a Spanish Obligor which is a *sociedad limitada*).

18.15 **Swiss guarantee limitation**

(a) The obligations and liabilities of an Obligor incorporated in Switzerland (the " **Swiss Obligor**") under this Agreement in relation to the obligations, undertakings, indemnities or liabilities of an Obligor other than that Swiss Obligor or any of its fully owned and controlled subsidiaries (the "**Restricted Obligations**") shall be limited to the amount of that Swiss Obligor's Free Reserves Available for Distribution at the time payment is requested, **provided that** such limitation is a requirement under applicable law (including any case law) at that point in time and that such limitation shall not

free the Swiss Obligor from its obligations in excess thereof, but merely postpone the performance date until such time as performance is permitted notwithstanding such limitation.

(b) For the purpose of this Clause, "**Free Reserves Available for Distribution**" means an amount equal to the maximal amount in which the relevant Swiss Obligor can make a dividend payment to its shareholder(s) (being the balance sheet profit and any freely disposable reserves available for this purpose, in each case in accordance with applicable Swiss law).

(c) As soon as possible after having been requested to discharge a Restricted Obligation, the Swiss Obligor shall, if it cannot discharge the full amount of the Restricted Obligations, provide the Security Agent with an interim statutory balance sheet audited by the statutory auditors of the Swiss Obligor setting out the Free Reserves Available for Distribution and, immediately thereafter, pay the amount corresponding to the Free Reserves Available for Distribution to the Security Agent (save to the extent provided below).

(d) In respect of the Restricted Obligations, the Swiss Obligor shall:

(i) if and to the extent required by applicable law in force at the relevant time:

(A) subject to any applicable double taxation treaties, deduct Swiss withholding tax at the rate of 35 per cent. (or such other rate as is in force at that time) from any payment made by it;

(B) pay any such deduction to the Swiss Federal Tax Administration; and

(C) notify and provide evidence to the Security Agent that the Swiss withholding tax has been paid to the Swiss Federal Tax Administration; and

(ii) to the extent such deduction is made, not be required to make a gross-up, indemnify or otherwise hold harmless the Finance Parties for the deduction of the Swiss withholding tax notwithstanding anything to the contrary contained in the Finance Documents, unless grossing up is permitted under the laws of Switzerland then in force and **provided that** this should not in any way limit any obligations of any non-Swiss Obligors under the Finance Documents to indemnify the Finance Parties in respect of the deduction of the Swiss withholding tax, including, without limitation, in accordance with Clause 13 of this Agreement ( *Tax gross-up and indemnities*). The Swiss Obligor shall use all reasonable efforts to procure that any person which is entitled to a full or partial refund of any Swiss withholding tax paid pursuant to paragraph (a) above will, as soon as possible after the deduction of the Swiss withholding tax: (y) request a refund of the Swiss withholding tax under any applicable law (including double taxation treaties) and (z) pay to the Security Agent upon receipt any amount so refunded.

(e) The Swiss Obligor will take, and cause to be taken, all and any other action, including, without limitation, the passing of any shareholders' resolutions to approve any payment or other performance under the Finance Documents and the receipt of any confirmations from the Swiss Obligor's auditors, whether following a request to discharge a Restricted Obligation or which may be required as a matter of mandatory Swiss law in force at the time it is required to make a payment or perform other obligations under the Finance Documents in order to allow a prompt payment or performance of other obligations under the Finance Documents.

(f) If the enforcement of the Restricted Obligations would be limited due to the effects referred to in this Clause 18 and if any asset of the Swiss Obligor has a book value that is less than its market value (an "**Undervalued Asset**"), the Swiss Obligor shall, to the extent permitted by applicable law and its Accounting Standards (i) write up the book value of such Undervalued Asset such that its balance sheet reflects a book value that is equal to the market value of such Undervalued Asset, and (ii) make reasonable efforts to realise the Undervalued Asset for a sum which is at least equal to the market value of such asset. Without prejudice to the rights of the Security Agent under the Finance Documents, the Swiss Obligor will only be required to realise an Undervalued Asset if such asset is not necessary for the Swiss Obligor's business ( *nicht betriebsnotwendig*).

18.16 **French guarantee limitation**

(a) The obligations and liabilities under the Finance Documents of any Guarantor incorporated in France (a " **French Guarantor**") are subject to the limitations set out in this Clause 18.16.

(b) The obligations and liabilities of any French Guarantor under the Finance Documents and in particular under this Clause 18 ( *Guarantee and Indemnity*) shall not include any obligation or liability which, if incurred, would constitute the provisions of financial assistance within the meaning of article L.255-216 of the French Commercial Code and/or would constitute a misuse of corporate assets within the meaning of article L. 241-3, L. 242-6 or L. 244-1 of the French Commercial Code or any other law or regulations having the same effect, as interpreted by French courts.

(c) The obligations and liabilities of any French Guarantor under this Clause 18 ( *Guarantee and Indemnity*) for the obligations under the Finance Documents of any other Obligor which is not a Subsidiary of such French Guarantor shall be limited, at any time, to an amount equal to the aggregate of all amounts directly or indirectly borrowed under this Agreement by such other Obligor to the extent directly or indirectly on-lent to such French Guarantor under intercompany loan agreements (excluding, for the avoidance of doubt, any cash-pooling arrangements or other cash management agreements, provided that no Facility made available to a Borrower under this Agreement shall finance, directly or indirectly, such cash pooling arrangements or other cash

management agreements) and outstanding at the date a payment is to be made by such French Guarantor under this Clause 18 ( *Guarantee and Indemnity*), it being specified that any payment made by a French Guarantor under this Clause 18 ( *Guarantee and Indemnity*) in respect of the obligations of such Obligor shall reduce pro tanto the outstanding amount of the intercompany loans due by such French Guarantor under the intercompany loan agreements referred to above and that any repayment of the intercompany loans by the French Guarantor shall reduce pro tanto the amount payable by it under this Clause 18 ( *Guarantee and Indemnity*).

(d) The obligations and liabilities of any French Guarantor under this Clause 18 ( *Guarantee and Indemnity*) for the obligations under the Finance Documents of any Obligor which is its Subsidiary shall not be limited and shall therefore cover all amounts due by such Obligor under this Agreement as Borrower and/or as Guarantor. However, where such Subsidiary is itself a Guarantor which guarantees the obligations of a member of the Group which is not a Subsidiary of the relevant French Guarantor, the amounts payable by the relevant French Guarantor under this paragraph (d) in respect of the obligations of this Subsidiary as Guarantor, shall be limited as set out in paragraph (c) above.

(e) It is acknowledged that no French Guarantor is acting jointly and severally with the other Guarantors and no French Guarantor shall therefore be considered as "co-débiteur solidaire" as to its obligations pursuant to the guarantee given pursuant to this Clause 18 ( *Guarantee and Indemnity*).

(f) In the event that there is any inconsistency between the provisions of this Clause 18.16 and any other provision in this Agreement or any other Finance Documents (each of which shall be expressly subject thereto), the provisions of this Clause 18.16 shall prevail.

(g) For the purpose of paragraphs (b), (c) and (d) above, "Subsidiary" means, in relation to any company, another company which is controlled by it within the meaning of article L. 233-3 of the French Commercial Code.

## SECTION 8
## REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT

### 19. REPRESENTATIONS

Each Obligor makes the representations and warranties set out in this Clause 19 to each Finance Party except that:

(a) no representation or warranty is made by a Security Provider that is not also a Borrower or a Guarantor in respect of the representations and warranties set out in Clauses 19.10 (*No default*) to 20.1 (*Financial statements*), 19.14 (*No proceedings pending or threatened*) to 19.18 (*Environmental Claims*), 19.21 (*Accuracy of Existing Financial Indebtedness*), 19.22 (*Group Structure Chart*) and 19.25 (*Governmental Regulations*) to 19.28 (*Pension, Welfare and other Similar Plans*); and

(b) no representation or warranty is made by CEMEX Materials or CEMEX, Inc. in respect of the representations and warranties set out in Clauses 19.11 (*No misleading information*), 19.16 (*Material Adverse Change*) to 19.18 (*Environmental Claims*), 19.21 (*Accuracy of Existing Financial Indebtedness*) to 19.25 (*Governmental Regulations*) or 19.27 (*Treasury Transactions*).

19.2 **Status**

(a) It is a corporation or limited liability company, duly organised and validly existing under the laws and regulations of its jurisdiction of incorporation or formation other than (i) in the case of CEMEX International Finance Company which is a private company duly incorporated with unlimited liability under the laws and regulations of Ireland and (ii) CEMEX UK which is a private company duly incorporated with unlimited liability under the laws and regulations of England and Wales.

(b) It has the power to own its assets and carry on its business as it is being conducted.

19.3 **Binding obligations**

Subject to the Legal Reservations:

(a) the obligations expressed to be assumed by it in each Finance Document are legal, valid, binding and enforceable obligations; and

(b) (without limiting the generality of paragraph (a) above) each Transaction Security Document to which it is a party creates the Security which that Transaction Security Document purports to create and that Security is valid and effective.

19.4 **Non-conflict with other obligations**

The entry into and performance by it (or, in the case of paragraph (c) below, any Obligor) of, and the transactions contemplated by, the Finance Documents and the granting of the Transaction Security do not and will not conflict with:

(a) any law or regulation applicable to it or any judgment or other administrative or judicial order affecting it or binding upon it or any of its assets (including in respect of CEMEX International Finance Company, section 60 of the Companies Act, 1963);

(b) its constitutional documents;

(c) the Finance Documents or any documentation relating to any publicly-issued securities binding upon it; or

(d) any agreement or instrument binding upon it or any of its assets, in a manner or to an extent which would have or would be reasonably likely to have a Material Adverse Effect.

19.5 **Power and authority**

It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Finance Documents to which it is a party and the transactions contemplated by those Finance Documents.

19.6 **Validity and admissibility in evidence**

All Authorisations required or desirable:

(a) to enable it lawfully to enter into, exercise its rights and comply with its obligations under the Finance Documents to which it is a party; and

(b) to make the Finance Documents to which it is a party admissible in evidence in its jurisdiction of incorporation,

have been obtained or effected and are in full force and effect.

19.7 **Governing law, choice of forum and enforcement**

Subject to the Legal Reservations:

(a) the choice of governing law of each Finance Document to which it is a party in the jurisdiction of the governing law of that Finance Document, will be recognised and enforced in its jurisdiction of incorporation;

(b) the choice of the English courts set forth in this Agreement is a valid and enforceable choice of forum under any other applicable law; and

(c) any judgment obtained in relation to a Finance Document to which it is a party in the jurisdiction of the governing law of that Finance Document will be recognised and enforced in its jurisdiction of incorporation.

19.8 **Tax**

(a) No Borrower is required under the laws and regulations of its jurisdiction of incorporation to make any deduction for or on account of Tax from any payment it may make under any Finance Document to any Creditor (other than as disclosed prior to the date of this Agreement).

(b) In respect of the Dutch Obligors only, no notice under Article 36 Tax Collection Act ( *Invorderingswet 1990*) has been given prior to the date of this Agreement.

19.9 **No filing or stamp taxes**

(a) Subject to the Legal Reservations, no order, permission, consent, approval, license, authorisation, registration or validation of, or notice to, or filing with, or exemption by, any governmental authority or third party is required to authorise, or is required in connection with, the execution, delivery and performance by each Obligor of the Finance Documents or the taking of any action contemplated thereby.

(b) Under the laws and regulations of its jurisdiction of incorporation it is not necessary that any stamp, registration or similar tax be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents except any tax or fee which is referred to in any Legal Opinion and which will be paid promptly after the date of the relevant Finance Document.

(c) Each Finance Document is in proper legal form under the law of the jurisdiction of organisation of each Obligor for the enforcement thereof against each such Obligor under the law of its respective jurisdiction of organisation. To ensure the legality, validity, enforceability or admissibility in evidence of any Finance Document in such jurisdiction, it is not necessary that any Finance Document be filed or recorded with any governmental authority in such jurisdiction (other than in the case of CEMEX International Finance Company, where the Transaction Security created by it as referred to in paragraph 2(g) of Part I, Schedule 2 ( *Conditions Precedent*) shall be registered at the Companies Registration Office in Ireland within 21 days of the creation thereof) or that any stamp or similar tax be paid on or in respect of any Finance Document, unless such stamp or similar taxes have been paid by the relevant Borrower **provided that** in the event that any legal proceedings are brought to the courts of Mexico or Spain, a Spanish translation of the documents required in such proceedings prepared by a court-approved translator (or, in the case of the courts of Spain, an authorised sworn translator), would have to be approved by the court after the defendant had been given an opportunity to be heard with respect to the accuracy of the translation, and proceedings would thereafter be based upon the translated documents.

(d) It is not necessary (i) in order for the Agent or any Creditor to enforce any right or remedies under the Finance Documents, or (ii) solely by reason of the execution, delivery and performance of any Finance Document by the Agent

or any Creditor, that the Agent or such Creditor be licensed or qualified with any governmental authority or be entitled to carry on business, in each case in the jurisdiction of organisation of the applicable Obligors.

19.10 **No default**

(a) No Default or Event of Default is continuing or might reasonably be expected to result from the making of any Utilisation.

(b) No other event or circumstance is outstanding which constitutes a default under any other agreement or instrument which is binding on it or any of its Subsidiaries or to which its (or its Subsidiaries') assets are subject which would have or would be reasonably likely to have a Material Adverse Effect.

19.11 **No misleading information**

(a) Any factual information provided in writing by or on behalf of a member of the Group to FTI Consulting Canada, ULC in connection with the FTI Report was true and accurate in all material respects as at the date the information is expressed to be given.

(b) The Business Plan has been prepared in accordance with Applicable GAAP as applied to the Original Financial Statements of the Parent, and the financial projections contained in the Business Plan have been prepared on the basis of recent historical information and on the basis of assumptions which the Chief Financial Officer of the Parent considers reasonable.

(c) Any financial projection or forecast provided in writing by or on behalf of a member of the Group to FTI Consulting Canada, ULC in connection with the FTI Report or contained in the Business Plan has been prepared on the basis of recent historical information and on the basis of reasonable assumptions and was fair (as at the date of the relevant report or document containing the projection or forecast) and arrived at after careful consideration.

(d) The expressions of opinion or intention provided in writing by or on behalf of an Obligor for the purposes of the FTI Report or the Business Plan were made after careful consideration and (as at the date of the relevant report or document containing the expression of opinion or intention) were fair and based on reasonable grounds.

(e) No event or circumstance has occurred or arisen and no information has been omitted from the Business Plan and no information has been given or withheld that results in the information, assumptions, forecasts or projections provided by or on behalf of a member of the Group to FTI Consulting Canada, ULC for the purposes of preparation of the FTI Report or contained in the Business Plan being untrue or misleading in any material respect.

(f) All written information provided by or on behalf of any member of the Group to a Finance Party or FTI Consulting Canada, ULC in connection with the transaction contemplated by the Finance Documents was true, complete and accurate in all material respects as at the date it was provided and was not misleading in any material respect as at such date.

19.12 **Financial statements**

(a) Its Original Financial Statements were prepared in accordance with Applicable GAAP (save as disclosed therein) consistently applied and are complete and accurate in all material respects.

(b) Its Original Financial Statements fairly represent its financial condition and operations during the relevant financial year unless expressly disclosed to the Agent in writing prior to the date of this Agreement.

(c) For the purposes of any repetition of the representations contained in paragraphs (a) and (b) of this Clause 19.12 (pursuant to Clause 19.29 (*Times at which representations are made*)) the representations will be made in respect of the latest consolidated (or if, in the case of a Borrower or a Guarantor other than the Parent or CEMEX España, consolidated financial statements are not available, unconsolidated) financial statements of each Borrower and Guarantor instead of the Original Financial Statements.

19.13 **Ranking**

(a) Its payment obligations under the Finance Documents rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law or regulation applying to companies generally.

(b) The Transaction Security has or will have the ranking in priority which it is expressed to have in the Transaction Security Documents and it is not subject to any prior ranking or *pari passu* ranking Security.

(c) Each Finance Document constitutes a direct, unconditional and unsubordinated obligation of each Obligor which is a party to such Finance Document.

19.14 **No proceedings pending or threatened**

Except as disclosed in Schedule 15 (*Proceedings Pending or Threatened*), no litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency which:

(a) are likely to be adversely determined and which, if so determined, would be reasonably likely to have a Material Adverse Effect; or

(b) purport to affect the legality, validity or enforceability of any of the obligations under the Finance Documents,

have been started or threatened against it or, in the case of the Parent, any Obligor or Material Subsidiary.

19.15 **No winding-up**

No legal proceedings or other procedures or steps have been taken or, to the Parent's knowledge after reasonable enquiry, are being threatened, in relation to the winding-up, dissolution, administration or reorganisation of any Obligor or Material Subsidiary (other than a solvent liquidation or reorganisation of any Material Subsidiary which is not an Obligor).

19.16 **Material Adverse Change**

There has been no material adverse change in the Parent's business, condition (financial or otherwise), operations, performance or assets taken as a whole (or the business, consolidated condition (financial or otherwise) operations, performance or the assets generally of the Group taken as a whole) since its Original Financial Statements save as disclosed in the Business Plan, the FTI Report or by publicly available information filed with the SEC.

19.17 **Environmental compliance**

Each member of the Group has performed and observed in all material respects all Environmental Law, Environmental Permits and all other material covenants, conditions, restrictions or agreements directly or indirectly concerned with any contamination, pollution or waste or the release or discharge of any toxic or hazardous substance in connection with any real property which is or was at any time owned, leased or occupied by any member of the Group or on which any member of the Group has conducted any activity where failure to do so might reasonably be expected to have a Material Adverse Effect.

19.18 **Environmental Claims**

No Environmental Claim has been commenced or (to the best of its knowledge and belief) is threatened against any member of the Group where that claim would be reasonably likely, if determined against that member of the Group, to have a Material Adverse Effect.

19.19 **No Immunity**

In any proceedings taken in its jurisdiction of incorporation in relation to any Finance Document, it will not be entitled to claim for itself or any of its assets immunity from suit, execution, attachment (prior to judgment or in aid of execution) or other legal process.

19.20 **Private and commercial acts**

Its execution of the Finance Documents constitutes, and its exercise of its rights and performance of its obligations hereunder will constitute, private and commercial acts done and performed for private and commercial purposes.

19.21 **Accuracy of Existing Financial Indebtedness**

The list of Existing Financial Indebtedness contained in Schedule 11 ( *Existing Financial Indebtedness* ) is, in all material respects, a true, complete and accurate list of all the Group's existing Financial Indebtedness in respect of (a) the 2009 Financing Agreement, Bancomext Facility and the Banco Industrial de Guatemala Facility and (b) public debt instruments (other than the New High Yield Notes), in each case as at the date of this Agreement.

19.22 **Group Structure Chart**

The Group Structure Chart is true, complete and accurate in all material respects.

19.23 **Legal and beneficial ownership**

It and each of its Subsidiaries is the sole legal and beneficial owner of the respective assets over which it purports to grant Transaction Security.

19.24 **Shares**

(a) The shares of any member of the Group which are or, as the case may be, will be, subject to the Transaction Security are fully paid and not subject to any option to purchase or similar rights. The constitutional documents of companies whose shares are subject to the Transaction Security do not and could not restrict or inhibit any transfer of those shares on creation or enforcement of the Transaction Security. There are no agreements in force which provide for the issue or allotment of, or grant any person the right to call for the issue or allotment of, any share or loan capital of any Obligor or Material Subsidiary (including any option or right of pre-emption or conversion) other than pre-emptive rights (i) arising under applicable law in favour of shareholders generally; and (ii) arising under any obligation in respect of any Executive Compensation Plan.

(b) Under the Transaction Security Documents, Transaction Security is, or as the case may be, will be, granted over all the issued share capital in each member of the Group whose shares are subject to the Transaction Security except:

(i) in the case of CEMEX España:

(A) 0.2444% of the issued share capital, being shares owned by CEMEX España; and

(B) 0.1164% of the issued share capital, being shares owned by persons that are not members of the Group;

(ii) in the case of CEMEX TRADEMARKS HOLDING Ltd., 0.4326% of the issued share capital, being shares owned by CEMEX, Inc.;

(iii) in the case of each Mexican company whose shares are the subject of Transaction Security (except in the case of CEMEX México), the single share held by a minority shareholder that is a member of the Group; and

(iv) in the case of CEMEX México, 0.1245% of the issued share capital, being shares owned by CEMEX, Inc.

19.25 **Governmental Regulations**

Each of the Borrowers is not controlled by, an "**investment company**" within the meaning of the United States Investment Company Act of 1940, as amended.

19.26 **Taxes**

(a) It has filed all material tax returns which are required to be filed by it and has paid all taxes due pursuant to such returns or pursuant to any material assessment received by it, except where the same may be contested in good faith by appropriate proceedings and as to which such Obligor maintains reserves to the extent it is required to do so by law or pursuant to Applicable GAAP. The charges, accruals and reserves on the books of each Obligor in respect of taxes or other governmental charges are, in the opinion of the Parent, adequate.

(b) Except for taxes imposed by way of withholding on interest, fees and commissions paid to non-residents of the jurisdiction of organisation of any Borrower, there is no tax (other than taxes on, or measured by, income or profits), levy, impost, deduction, charge or withholding imposed, levied, charged, assessed or made by the jurisdiction of organisation of any Borrower or any political subdivision or taxing authority thereof or therein either (i) on or by virtue of the execution of delivery of this Agreement or (ii) on any payment to be made by any Borrower pursuant to this Agreement. It is permitted to pay any additional amounts payable pursuant to Clause 13 ( *Tax gross-up and indemnities*) or Clause 13.10 (*Stamp Taxes*).

19.27 **Treasury Transactions**

The Parent represents and warrants that, as of the Effective Date, neither it nor any member of the Group is party to any Treasury Transaction other than an "**Excluded Position**", a "**Permitted Intercompany Treasury Transaction**", a "**Permitted Compensation Plan Hedging Transaction**" or a "**Permitted Non-Bank Commodity Contract**" (each as defined in Schedule 17 (*Hedging Parameters*).

19.28 **Pension, Welfare and other Similar Plans**

Neither it nor, to its knowledge, any ERISA Affiliate has taken any steps to terminate any Pension Plan or any Multiemployer Plan or has failed to make any contribution with respect to any Pension Plan or any Multiemployer Plan sufficient to give rise to a Security under Section 303(k) of ERISA. No condition exists or event or transaction has occurred with respect to any Pension Plan, any Non-US Pension Plan or any Multiemployer Plan which has resulted in or which would reasonably be expected to result in the incurrence by the Obligor or any of its ERISA Affiliates of any liability, fine or penalty (other than liabilities incurred in the ordinary course of maintaining the applicable plan), which would have or be reasonably likely to have a Material Adverse Effect. Neither it nor any of its Subsidiaries has any contingent liability with respect to any post-retirement benefit under any employee welfare benefit plan (as

defined in Section 3(1) of ERISA) which would reasonably be expected to have a Material Adverse Effect, other than liability for continuation coverage described in Part 6 of Title I of ERISA. Except as would not have or be reasonably likely to have a Material Adverse Effect, each applicable Borrower is in compliance with and has duly and in a timely manner paid any amounts due to IMSS, INFONAVIT, pursuant to SAR laws, or as required under any mandatory retirement fund laws.

19.29 **Times at which representations are made**

(a) All the representations and warranties in this Clause 19 are made to each Finance Party on the Effective Date.

(b) The Repeating Representations are deemed to be made by each Obligor to each Finance Party on the first day of each Interest Period.

(c) The Repeating Representations are deemed to be made by each Additional Guarantor to each Finance Party on the day on which it becomes an Additional Guarantor.

(d) Each representation or warranty deemed to be made after the date of this Agreement shall be made by reference to the facts and circumstances existing at the date the representation or warranty is made.

## 20. INFORMATION UNDERTAKINGS

The undertakings in this Clause 20 remain in force from the Effective Date for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

20.1 **Financial statements**

The Parent shall supply to the Agent (for distribution to the Creditors):

(a) as soon as the same become available, but in any event within 120 days after the end of each of the Parent's Financial Years, a copy of the annual audit report for such Financial Year for the Parent and its Subsidiaries containing consolidated and consolidating balance sheets of the Parent and its Subsidiaries, as of the end of such Financial Year and consolidated statements of income and cash flows of the Parent and its Subsidiaries, for such Financial Year, in each case accompanied by an opinion acceptable to the Majority Creditors (acting reasonably) by KPMG Cardenas Dosal, S.C. or other independent public accountants of recognised standing acceptable to the Majority Creditors, together with (i) a certificate of such accounting firm to the Creditors stating that in the course of the regular audit of the business of the Parent and its Subsidiaries, which audit was conducted by such accounting firm in accordance with Applicable GAAP of the Parent, such accounting firm has obtained no knowledge that a Default or Event of Default has occurred and is continuing, or if, in the opinion of such accounting firm a Default or Event of Default has occurred and is continuing, a statement as to the nature thereof; and (ii) a certificate of a Responsible Officer of Parent stating that no Default or Event of Default has occurred and is continuing or, if a Default or

Event of Default has occurred and is continuing, a statement as to the nature thereof and the action that the Parent has taken and proposes to take with respect thereto;

(b) as soon as the same become available, but in any event within 120 days after the end of each of the Parent's Financial Years, the Parent's audited unconsolidated financial statements for that Financial Year;

(c) as soon as the same become available, but in any event within 180 days after the end of each of CEMEX España's financial years, CEMEX España's audited consolidated and unconsolidated financial statements for that financial year;

(d) as soon as the same become available, but in any event within 180 days after the end of each financial year of each Obligor (other than CEMEX España, the Parent and each Security Provider), such Obligor's audited consolidated (to the extent available) and unconsolidated financial statements for that financial year;

(e) as soon as the same become available, but in any event within 90 days after the end of the first half of each of CEMEX España's financial years, CEMEX España's consolidated financial statements for that period;

(f) as soon as the same become available, but in any event within 60 days after the end of each of the first three Financial Quarters of each of the Parent's Financial Years, consolidated balance sheets of the Parent and its Subsidiaries, as of the end of such quarter and consolidated statements of income and cash flows of the Parent and its Subsidiaries for the period commencing at the end of the previous Financial Year and ending with the end of such Financial Quarter, duly certified (subject to year-end audit adjustments) by a Responsible Officer of the Parent as having been prepared in accordance with Applicable GAAP of the Parent and together with a certificate of a Responsible Officer of the Parent, as to compliance with the terms of this Agreement and stating that no Default or Event of Default has occurred and is continuing or, if a Default or Event of Default has occurred and is continuing, the nature thereof and the action that the Parent has taken and proposes to take with respect thereto;

(g) as soon as the same become available, but in any event within 90 days after the end of each of the first three quarterly periods of each of the financial years of each Obligor (other than the Parent, CEMEX España and each Security Provider), its unconsolidated financial statements for that period; and

(h) as soon as the same become available, but in any event within 30 days of the end of each calendar month, monthly financial management accounts for the Parent for such month (including: (i) cumulative accounts for the Parent's Financial Year to date, and (ii) a comparison to the Business Plan) and any other financial information of a non-confidential nature submitted to its board of directors.

20.2 **Compliance Certificate**

(a) The Parent shall supply to the Agent (for distribution to the Creditors), with each set of consolidated financial statements delivered pursuant to paragraph (a) of Clause 20.1 (*Financial statements*) above and each set of consolidated financial statements delivered pursuant to paragraph (f) of Clause 20.1 (*Financial statements*) for a Financial Quarter ending on or about 30 June, a Compliance Certificate setting out (in reasonable detail) computations as to compliance with Clause 21 ( *Financial Covenants*) as at the date at which those financial statements were drawn up.

(b) Each Compliance Certificate shall be signed by two Responsible Officers of the Parent and, if required to be delivered with the consolidated financial statements delivered pursuant to paragraph (a) of Clause 20.1 ( *Financial statements*), the Parent shall provide to the Agent (for distribution to the Creditors), by no later than 180 days after the end of the relevant Financial Year, a letter (in a form approved by the Agent) from the Parent's auditors or any other internationally recognised accounting firm confirming that the numbers used in the Compliance Certificate calculations have been correctly extracted from the consolidated financial statements of the Parent.

(c) The Parent shall supply to the Agent (for distribution to the Creditors), with each set of consolidated financial statements delivered under paragraphs (a) and (f) of Clause 20.1 (*Financial statements*) in respect of Financial Quarters of the Parent, a certificate signed by an Authorised Signatory of the Parent:

(i) (for each Financial Quarter of the Parent) setting out (in reasonable detail) computations as to Excess Cashflow for the relevant Financial Quarter of the Parent; and

(ii) (for each Financial Quarter of the Parent ending after 1 April 2015 until (and including) the Financial Quarter in which the $3 Billion Amortisation Date (as defined in paragraph (b)(ii) of Clause 12.2 ( *Additional Amortisation Fee*)) occurs, confirming whether or not the Trigger Date (as defined in paragraph (a) of Clause 12.2 (*Additional Amortisation Fee*)) has occurred.

20.3 **Requirements as to financial statements**

(a) Each set of financial statements delivered by the Parent pursuant to Clause 20.1 ( *Financial statements*) shall be certified by a Responsible Officer of the relevant company as fairly representing its financial condition as at the date at which those financial statements were drawn up.

(b) The audited consolidated accounts of the Parent and CEMEX España and each other set of financial statements described pursuant to Clause 20.1 (*Financial statements*) which the relevant member of the Group ordinarily produces in English shall be provided in English.

(c) The Parent shall procure that each set of financial statements delivered pursuant to Clause 20.1 ( *Financial statements*) is prepared using Applicable

GAAP and accounting practices and financial reference periods consistent with those applied to the preparation of the Original Financial Statements for that Obligor unless: (i) in the case of CEMEX España, it notifies the Agent that it has adopted IFRS in which case CEMEX España shall be entitled to deliver financial statements prepared in accordance with IFRS; or (ii) in the case of any other Obligor, in relation to any set of financial statements, it notifies the Agent that there has been a change in Applicable GAAP, or the accounting practices or reference periods and, unless amendments are agreed in accordance with paragraph (d) of this Clause 20.3, its auditors deliver to the Agent:

(i) a description of any change necessary for those financial statements to reflect the Applicable GAAP, accounting practices and reference periods upon which that Obligor's Original Financial Statements were prepared; and

(ii) sufficient information, in form and substance as may be reasonably required by the Agent, to enable the Creditors to determine whether Clause 21 (*Financial covenants*) has been complied with, to determine the amount of any prepayments to be made under paragraph (a) of Clause 7.4 (*Excess Cashflow*) and to make an accurate comparison between the financial position indicated in those financial statements and that Obligor's Original Financial Statements.

Any reference in this Agreement to those financial statements shall be construed as a reference to those financial statements as adjusted to reflect the basis upon which the Original Financial Statements for that Obligor were prepared.

(d) If a relevant Obligor (other than CEMEX España) adopts IFRS or, unless the procedure in paragraph (c) above is utilised, there are changes to Applicable GAAP, or the accounting practices or reference periods, the relevant Obligor and the Agent (acting on the instructions of the Majority Creditors) shall, at the relevant Obligor's request, negotiate in good faith with a view to agreeing such amendments to the financial covenants in Clause 21 (*Financial Covenants*) and the definitions used therein as may be necessary to ensure that the criteria for evaluating the Group's financial condition grant to the Creditors protection equivalent to that which would have been enjoyed by them had the relevant Obligor not adopted IFRS or there had not been a change in Applicable GAAP, or the accounting practices or reference periods (subject to compliance with paragraph (b) above). Any amendments agreed will take effect on the date agreed between the Agent and the relevant Obligor subject to the consent of the Majority Creditors. If no such agreement is reached within 90 days of the relevant Obligor's request, the relevant Obligor will remain subject to the obligation to deliver the information specified in paragraph (b) of this Clause 20.3 and the financial covenants in Clause 21 (*Financial covenants*) and the financial ratios to calculate the Margin shall be based on the information delivered.

20.4 **Liquidity forecast**

No later than the thirtieth day in each calendar month, the Parent shall supply to the Agent (in sufficient copies for all the Creditors, if the Agent so requests) an updated thirteen week management cashflow forecast (beginning on the first day of such calendar month) substantially in the form delivered to the Agent as a condition precedent under paragraph 6(d) of Part I of Schedule 2 ( *Conditions Precedent*).

20.5 **Caliza Group**

The Parent shall supply to the Agent (for distribution to the Creditors):

(a) prior to the completion of the first Caliza Transaction (if to be so completed), copies of all documents filed with the relevant authorities in any jurisdiction in which any share capital of Caliza is to be admitted to listing and/or trading (to the extent legally possible and to the extent such documents are in the public domain) in connection with the first Caliza Transaction (including, but not limited to, any such documents filed prior to the date of this Agreement); and

(b) following completion of the first Caliza Transaction (if so completed):

(i) copies of documents (if any) dispatched by Caliza to its shareholders (or any class of them) or its creditors generally at the same time as they are dispatched;

(ii) within five days after the same are sent, all financial statements and reports that Caliza sends to holders of any class of its Financial Indebtedness,

it being acknowledged by the Parties, without prejudice to any obligation of any Obligor to make a payment under this Agreement, that a Caliza Transaction may never occur.

20.6 **Information: miscellaneous**

The Parent shall supply to the Agent (for distribution to the Creditors):

(a) all documents dispatched by the Parent to its shareholders (or any class of them) or its creditors generally at the same time as they are dispatched;

(b) within five days after the same are sent, copies of all financial statements and reports that the Parent sends to the holders of any class of its debt securities;

(c) promptly upon becoming aware of them, the details of any litigation, arbitration, administrative proceedings or enforcement proceedings and any material tax related event or assessment which are current, or which, to the Parent's knowledge after reasonable enquiry, are being threatened or are pending and are likely to be adversely determined against any member of the Group which, in the reasonable opinion of the Parent, are not spurious or vexatious, and which might, if adversely determined, have a Material Adverse Effect;

(d) promptly, such further information as the Security Agent may reasonably require about the Charged Property and compliance of the Obligors with the terms of any Transaction Security Documents;

(e) promptly, such further information regarding the financial condition, assets and business of any Obligor or member of the Group as the Agent (or any Creditor through the Agent) may reasonably request (including, but not limited to, information on Ratings, if such credit rating has not been publicly announced) other than any information the disclosure of which would result in a breach of any applicable law or regulation or confidentiality agreement entered into in good faith **provided that** the Parent shall use reasonable efforts to be released from any such confidentiality agreement;

(f) promptly upon becoming aware of them, the details of any Environmental Claim which is current, threatened or pending against any member of the Group which is referred to in Clause 22.11 (*Environmental Claims*) which are not spurious or vexatious, which are likely to be adversely determined against any member of the Group and which could reasonably be expected, if adversely determined, to have a Material Adverse Effect;

(g) on the same date on which the liquidity forecast is provided pursuant to Clause 20.4 ( *Liquidity forecast*), an updated list of the details of the Existing Financial Indebtedness in substantially the same format as Schedule 11 ( *Existing Financial Indebtedness*) and an updated list of Excluded Positions, in substantially the same format as Annex 1 ( *Excluded Positions*) to Schedule 17 (*Hedging Parameters*), in each case certified by an Authorised Signatory as being true, complete and up to date as at the last day of the most recently completed calendar month;

(h) on the same date on which the liquidity forecast is provided pursuant to Clause 20.4 ( *Liquidity forecast*) for each calendar month, details of the Group's mark-to-market exposures under Treasury Transactions as at the last day of the most recently completed calendar month (including type of derivative, brief description of the risk hedged and amount of collateral posted (if any)) and any material amendment, modification or termination of a Treasury Transaction during such calendar month; and

(i) on a monthly basis, prior to the repayment or repayment in full of the 2009 Financing Agreement Exposures (or prior to the date on which an amount equal to the amount required to repay the 2009 Financing Agreement Exposures in full is standing to the balance of a Reserve) the certificate referred to in paragraph (d)(i) of Clause 7.9 ( *Segregated Accounts and Reserves*).

20.7 **Notification of Default**

(a) Each Obligor shall notify the Agent of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence (unless that Obligor is aware that a notification has already been provided by another Obligor).

(b) Promptly upon a request by the Agent, the Parent shall supply to the Agent a certificate signed by an Authorised Signatory on its behalf certifying that no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).

20.8 **"Know your client" checks**

(a) Each Obligor shall promptly upon the request of the Agent or any Creditor, and each Creditor shall promptly upon the request of the Agent, supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Creditor) or any Creditor (for itself or on behalf of any prospective New Creditor) in order for the Agent, such Creditor or any prospective New Creditor to carry out and be satisfied with the results of all necessary "know your client" or other checks, such as the checks required by the US Patriot Act (Title III of Pub. L. 107-55 (signed into law on 26 October 2001)) in relation to the identity of any person that it is required by law to carry out in relation to the transactions contemplated in the Finance Documents. For the avoidance of doubt, a Creditor will have no obligation towards the Agent to evidence that it has complied with any "know your client" or similar checks in relation to the Obligors.

(b) The Parent shall, by not less than five Business Days' written notice to the Agent, notify the Agent (which shall promptly notify the Creditors) of its intention to request that one of its Subsidiaries becomes an Additional Guarantor or Additional Security Provider pursuant to Clause 27 (*Changes to the Obligors*).

(c) Following the giving of any notice pursuant to paragraph (b) above, the Parent shall promptly upon the request of the Agent or any Creditor supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Creditor) or any Creditor (for itself or on behalf of any prospective New Creditor) in order for the Agent, such Creditor or any prospective New Creditor to carry out and be satisfied with the results of all necessary "know your client" or other checks in relation to the identity of any person that it is required by law to carry out in relation to the accession of such Additional Guarantor or Additional Security Provider to this Agreement.

20.9 **Appointment of financial adviser**

(a) If, following receipt of any information requested under paragraph (e) of Clause 20.6 ( *Information: miscellaneous*), the Majority Creditors so elect, they may, after consultation with the Parent, appoint a financial adviser to provide them with advice in relation to such information (and the Parent will pay (or procure to be paid) the documented and properly incurred costs associated with any such financial adviser's appointment).

(b) The Parent shall, within three Business Days of demand, pay (or procure to be paid) to each Creditor in respect of whom the financial adviser appointed under paragraph (a) is appointed, the amount of all documented and properly incurred costs and expenses incurred by it in connection with the appointment and role of any financial adviser appointed in accordance with paragraph (a).

20.10 **Permitted Liquidity Facilities**

The Parent shall notify the Agent, on or before the date on which the next succeeding liquidity forecast is provided under Clause 20.4 ( *Liquidity forecast*) of:

(a) the details of the borrower(s), lender(s) and amount of the utilised and unutilised commitments under such facility and of any guarantees or Security granted in connection with such facility since the last such notification; and

(b) any change in any of the details referred to in paragraph (a) above since the last such notification,

and shall certify in each such notification that the relevant facility constitutes a Permitted Liquidity Facility for the purposes of this Agreement.

20.11 **FATCA Information**

(a) Subject to paragraph (b) below, each Party shall, within 10 Business Days of a reasonable request by another Party:

(i) confirm to that other Party whether it is:

(A) a FATCA Compliant Party; or

(B) not a FATCA Compliant Party; and

(ii) supply to that other Party such forms, documentation and other information relating to its status under FATCA or its applicable passthru rate as that other Party reasonably requests for the purposes of that other Party's compliance with FATCA.

(b) Paragraph (a) above shall not oblige any Finance Party to do anything which would or might in its reasonable opinion constitute a breach of:

(i) any law or regulation;

(ii) any policy of that Finance Party;

(iii) any fiduciary duty; or

(iv) any duty of confidentiality.

(c) If a Party fails to confirm its status or to supply forms, documentation or other information requested in accordance with paragraph (a) above, then such Party shall be treated for the purposes of this Agreement as if it is not a FATCA Compliant Party until such time as it provides confirmation of its status and any forms, documentation or other information required in order to verify its status for the purposes of FATCA.

20.12 **Confirmation as to public information**

The Parent will, by notice in writing to the Agent at the same time as any information is delivered to the Agent under the Finance Documents, confirm whether that information is publicly available information or not and any Creditor that is unable to receive non-publicly available information will be able to elect, by making a declaration on the Designated Website (as defined in paragraph (a) of Clause 33.9 ( *Use of websites*)) in accordance with the terms set out therein, not to receive any information confirmed by the Parent to be non-publicly available information.

## 21. FINANCIAL COVENANTS

### 21.1 Financial definitions

In this Agreement:

"**Capital Expenditure**" means any expenditure or obligation in respect of expenditure which, in accordance with Applicable GAAP of the Parent, is treated as capital expenditure (and including the capital element of any expenditure or obligation incurred in connection with a Capital Lease).

"**Capital Lease**" means, as to any person, the obligations of such person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of the Parent under Applicable GAAP of the Parent (excluding any operating lease which is or becomes classified and accounted for as, or in an equivalent manner to, a capital lease on a balance sheet of the Parent pursuant to any change in Applicable GAAP after the date of this Agreement) and, for the purposes of this Agreement, the amount of such obligations at any time shall be the capitalised amount thereof at such time determined in accordance with Applicable GAAP of the Parent.

"**Capital Stock**" means any and all shares, interests, participations or other equivalents (however designed) of capital stock of a corporation, any and all equivalent ownership interests in a person (other than a corporation) and any and all warrants, rights or options to purchase any of the foregoing.

"**Consolidated Coverage Ratio**" means, on any date of determination, the ratio of (a) EBITDA for the one (1) year period ending on such date to (b) Consolidated Interest Expense for the one (1) year period ending on such date.

"**Consolidated Debt**" means, at any date, the sum (without duplication) of (a) the aggregate amount of all Debt of the Parent and its Subsidiaries at such date, which shall include the amount of any recourse in respect of Inventory Financing permitted under paragraph (e) of the definition of Permitted Financial Indebtedness, *plus* (b) to the extent not included in Debt, the aggregate net mark-to-market amount of all derivative financing in the form of equity swaps outstanding at such date (except to the extent such exposure is cash collateralised to the extent permitted under the Finance Documents).

"**Consolidated Funded Debt**" means, for any period, Consolidated Debt less the sum (without duplication) of (a) all obligations of such person to pay the deferred purchase price of property or services, (b) all obligations of such person as lessee under Capital Leases, and (c) all obligations of such person with respect to product invoices incurred in connection with export financing.

"**Consolidated Interest Expense**" means, for any period, the sum of (a) the total gross cash and non cash interest expense of the Parent and its consolidated Subsidiaries relating to Consolidated Funded Debt of such persons, (b) any amortisation or accretion of debt discount or any interest paid on Consolidated Funded Debt of the Parent and its Subsidiaries in the form of additional Financial Indebtedness (but excluding any amortisation of deferred financing and debt issuance costs), (c) the net costs under Treasury Transactions in respect of interest rates (but excluding amortisation of fees), (d) any amounts paid in cash on preferred stock, and (e) any interest paid or accrued in respect of Consolidated Funded Debt without a maturity date, regardless of whether considered interest expense under Applicable GAAP of the Parent.

"**Consolidated Leverage Ratio**" means, on any date of determination, the ratio of (a) Consolidated Funded Debt on such date to (b) EBITDA for the one (1) year period ending on such date.

"**Debt**" of any person means, without duplication:

(a) all obligations of such person for borrowed money;

(b) all obligations of such person evidenced by bonds, debentures, notes or other similar instruments, including perpetual bonds;

(c) the aggregate net mark-to-market of Treasury Transactions (except to the extent such exposure is cash collateralised to the extent permitted under the Finance Documents) of such person but excluding Treasury Transactions relating to the rate or price of energy or any commodity;

(d) all obligations of such person to pay the deferred purchase price of property or services, except trade accounts payable arising in the ordinary course of trading;

(e) all obligations of such person as lessee under Capital Leases;

(f) all Debt of others secured by Security on any asset of such person, up to the value of such asset;

(g) all obligations of such person with respect to product invoices incurred in connection with export financing;

(h) all obligations of such person under repurchase agreements for the stock issued by such person or another person;

(i) all obligations of such person in respect of Inventory Financing permitted under paragraph (e) of the definition of Permitted Financial Indebtedness; and

(j) all guarantees of such person in respect of any of the foregoing,

**provided, however**, that:

(i) for the purposes of calculating the Consolidated Funded Debt element of the Consolidated Leverage Ratio, Relevant Convertible/ Exchangeable Obligations shall be excluded from each of the foregoing paragraphs (a) to (j) inclusive ( **provided that**, in the case of outstanding Financial Indebtedness under any Subordinated Optional Convertible Securities (A) only the principal amount thereof shall be excluded and (B) such exclusion shall apply only for so long as such amounts remain subordinated in accordance with the terms of that definition);

(ii) any Financial Indebtedness of a PPP Vehicle in respect of which no member of the Group has any liability to that PPP Vehicle or any third party (except as permitted by paragraph (d) of the definition of Permitted PPP Investment) shall be excluded from each of the foregoing paragraphs (a) to (j) inclusive;

(iii) any amounts of Relevant Proceeds (including Caliza Proceeds), Excluded Debt Fundraising Proceeds falling within paragraphs (i) or (ii) of the definition thereof or Excess Cashflow (A) standing to the credit of, or to be applied in accordance with this Agreement to, a Reserve or in a Segregated Account (in each case) for the period in which they are being held by the Parent or any other member of the Group pending application in accordance with the terms of this Agreement (but excluding, until the earlier of (1) the date of exercise of the Caliza Offering Option, if exercised in whole, and (2) the last day of the Caliza Offering Option Exercise Period, any Caliza Offering Option Amount) or (B) which are, pursuant to Clause 7 ( *Mandatory Prepayment and Segregated Accounts*), capable of being applied in prepayment of any Financial Indebtedness shall be deducted from the aggregate calculation of Debt resulting from this definition,

(iv) if at any time during any applicable period the Parent or any of its Subsidiaries shall own, directly or indirectly, more than 50 per cent. of the share capital of Caliza pursuant to the Caliza Transaction and the EBITDA attributable to the Caliza Group is counted in EBITDA, 100 per cent. of the Debt attributable to the Caliza Group shall continue to be included when calculating Debt;

(v) for the avoidance of doubt, a Permitted Securitisation shall not be deemed to be Debt **except that** any recourse required as a result of the Relevant Legislation and which is not recourse over the collection of receivables and would, but for this provision, be treated as Debt will, to the extent of the required recourse under the Relevant Legislation, be counted as Debt; and

(vi) for the avoidance of doubt, all performance bonds, guarantees, bonding, documentary or stand-by letters of credit, banker's

acceptances or similar credit transactions, including reimbursement obligations in respect thereof, are not Debt until they are required to be funded.

"**Discontinued EBITDA**" means, for any period, the sum for Discontinued Operations of (a) operating income ( *utilidad de operación*), and (b) depreciation and amortisation expense, in each case determined in accordance with Applicable GAAP of the Parent consistently applied for such period.

"**Discontinued Operations**" means operations that are accounted for as discontinued operations pursuant to Applicable GAAP of the Parent for which the Disposal of such assets has not yet occurred.

"**EBITDA**" means, for any period, the sum for the Parent and its Subsidiaries, determined on a consolidated basis of (x) operating income ( *Utilidad de Operacion*) and (y) depreciation and amortisation expense, in each case determined in accordance with Applicable GAAP of the Parent, subject to the adjustments herein, consistently applied for such period and adjusted for Discontinued EBITDA as follows: if the amount of Discontinued EBITDA is a positive amount, then EBITDA shall increase by such amount, and if the amount of Discontinued EBITDA is a negative amount, then EBITDA shall decrease by the absolute value of such amount. For the purposes of calculating EBITDA for any applicable period pursuant to any determination of the Consolidated Leverage Ratio (but not the Consolidated Coverage Ratio):

(a) if at any time during such applicable period the Parent or any of its Subsidiaries shall have made:

(i) any Material Disposal, the EBITDA for such applicable period shall be reduced by an amount equal to the EBITDA (if positive) attributable to the property that is the subject of such Material Disposal for such applicable period (but when the Material Disposal is by way of lease, income received by the Parent or any of its Subsidiaries under such lease shall be included in EBITDA); and

(ii) any Material Acquisition, EBITDA for such applicable period shall be calculated after giving *pro forma* effect thereto as if such Material Acquisition had occurred on the first day of such applicable period,

and if since the beginning of such applicable period any person that subsequently shall have become a Subsidiary or was merged or consolidated with the Parent or any of its Subsidiaries as a result of a Material Acquisition occurring during such applicable period shall have made any Material Disposal or Material Acquisition of property that would have required an adjustment pursuant to sub paragraphs (i) or (ii) above if made by the Parent or any of its Subsidiaries during such applicable period, EBITDA for such period shall be calculated after giving *pro forma* effect thereto as if such Material Disposal or Material Acquisition had occurred on the first day of such applicable period **provided that** if at any time during such applicable period the Parent or any of its Subsidiaries shall own, directly or indirectly, more than 50 per cent. of the share capital of Caliza, 100 per cent. of the EBITDA attributable to the Caliza Group shall continue to be counted in the EBITDA for such applicable period; and

(b) EBITDA will be recalculated by multiplying each month's EBITDA by the Ending Exchange Rate and dividing the amount obtained thereto by the exchange rate used by the Parent in preparation of its monthly financial statements in accordance with Applicable GAAP of the Parent to convert $ into Mexican pesos (such recalculated EBITDA being the "**Recalculated EBITDA**").

"**Ending Exchange Rate**" means the exchange rate at the end of a Reference Period for converting $ into Mexican pesos as used by the Parent and its auditors in preparation of the Parent's financial statements in accordance with Applicable GAAP of the Parent.

"**Excess Cashflow**" means, for any period for which it is being calculated, the amount by which the aggregate of (a) the cash in hand of the Parent on a consolidated basis on the last day of the period less (b) the lower of (i) cash in hand of the Caliza Group (excluding any Caliza Offering Option Amount) and (ii) the Caliza Cash Maintenance Threshold, exceeds $625,000,000 (or in respect of any Financial Quarter ending on or about 31 December, $725,000,000). For the avoidance of doubt, the cash in hand of the Parent for the purposes of calculating Excess Cashflow shall not include (without duplication) (i) any amounts of Relevant Proceeds (including Caliza Proceeds) or Excluded Debt Fundraising Proceeds falling within paragraphs (i) or (ii) of the definition thereof (A) standing to the credit of, or to be applied in accordance with this Agreement to, a Reserve or in a Segregated Account (in each case) for the period in which they are being held by the Parent pending application in accordance with the terms of this Agreement or (B) which are, pursuant to Clause 7 ( *Mandatory Prepayment and Segregated Accounts*), capable of being applied in prepayment of any Financial Indebtedness or (ii) any Caliza Offering Option Amount.

**"Financial Quarter**" means the period commencing on the day after one Quarter Date and ending on the next Quarter Date.

"**Financial Year**" means the annual accounting period of the Parent ending on or about 31 December in each year.

"**Material Acquisition**" means any (a) acquisition of property or series of related acquisitions of property that constitutes assets comprising all or substantially all of an operating unit, division or line of business or (b) acquisition of or other investment in the Capital Stock of any Subsidiary or any person which becomes a Subsidiary or is merged or consolidated with the Borrower or any of its Subsidiaries, in each case, which involves the payment of consideration by the Borrower and its Subsidiaries in excess of $100,000,000 (or the equivalent in other currencies).

"**Material Disposal**" means any Disposal of property or series of related Disposals of property that yields gross proceeds to the Parent or any of its Subsidiaries in excess of $100,000,000 (or the equivalent in other currencies) excluding the Caliza Transaction.

"**Quarter Date**" means each of 31 March, 30 June, 30 September and 31 December.

"**Reference Period**" means a period of four consecutive Financial Quarters.

"**Relevant Convertible/Exchangeable Obligations**" means:

(a) any Financial Indebtedness incurred by any person the terms of which provide that satisfaction of the principal amount owing under such Financial Indebtedness (whether on or prior to its maturity and whether as a result of bankruptcy, liquidation or other default by such person or otherwise) shall occur solely by delivery of shares or common equity securities in the Parent; and

(b) any Financial Indebtedness under any Subordinated Optional Convertible Securities.

21.2 **Financial condition**

The Parent shall ensure that:

(a) *Consolidated Coverage Ratio*: the Consolidated Coverage Ratio in respect of any Reference Period specified in column 1 below shall not be less than the ratio set out in column 2 below opposite that Reference Period.

| **Column 1**<br>**Reference Period ending** | **Column 2**<br>**Ratio** |
|---|---|
| 31 December 2012 | 1.50: 1 |
| 30 June 2013 | 1.50: 1 |
| 31 December 2013 | 1.50: 1 |
| 30 June 2014 | 1.50: 1 |
| 31 December 2014 | 1.75: 1 |
| 30 June 2015 | 1.75: 1 |
| 31 December 2015 | 1.85:1 |
| 30 June 2016 | 2.00:1 |
| 31 December 2016 | 2.25:1 |

(b) *Consolidated Leverage Ratio*: the Consolidated Leverage Ratio in respect of any Reference Period specified in column 1 below shall not exceed the ratio set out in column 2 below opposite that Reference Period.

| **Column 1**<br>**Reference Period ending** | **Column 2**<br>**Ratio** |
|---|---|
| 31 December 2012 | 7.00:1 |
| 30 June 2013 | 7.00:1 |
| 31 December 2013 | 7.00:1 |
| 30 June 2014 | 6.75:1 |
| 31 December 2014 | 6.50:1 |
| 30 June 2015 | 6.00:1 |
| 31 December 2015 | 5.50:1 |
| 30 June 2016 | 5.00:1 |
| 31 December 2016 | 4.25:1 |

(c) *Capital Expenditure*: The aggregate Capital Expenditure of the Group (other than any Caliza Expansion Capital) in respect of any Financial Year shall not exceed $800,000,000.

If in any Financial Year (the "**First Financial Year**") the amount of the Capital Expenditure of the Group is less than the maximum amount permitted for that Financial Year (the difference being referred to as the "**Unused Amount**"), then a portion of the Capital Expenditure incurred in the Financial Quarter immediately following the First Financial Year in an amount up to the Unused Amount will be treated for the purposes of this paragraph (c) as if it had been incurred in the First Financial Year.

(d) *Caliza Capital Expenditure*: in addition to the amount referred to in paragraph (c) above, the Caliza Group shall be entitled to incur Capital Expenditure in an aggregate amount (when aggregated with all other amounts of Caliza Expansion Capital then incurred) not exceeding the Caliza Expansion Capital Permitted Limit.

21.3 **Financial testing**

The financial covenants set out in Clause 21.2 (*Financial condition*) shall be tested semi-annually by reference to the Parent's consolidated financial statements delivered pursuant to Clause 20.1 (*Financial statements*) and/or each Compliance Certificate delivered pursuant to Clause 20.2 (*Compliance Certificate*).

21.4 **Accounting terms**

All accounting expressions which are not otherwise defined herein shall have the meaning ascribed thereto in Applicable GAAP of the Parent.

## 22. GENERAL UNDERTAKINGS

The undertakings in this Clause 22 remain in force from the Effective Date for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

22.1 **Authorisations**

Each Obligor shall promptly:

(a) obtain, comply with and do all that is necessary to maintain in full force and effect; and

(b) supply certified copies to the Agent of,

any Authorisation required under any law or regulation of its jurisdiction of incorporation to enable it to perform its obligations under the Finance Documents and to ensure the legality, validity, enforceability or admissibility in evidence in its jurisdiction of incorporation of any Finance Document.

22.2 **Preservation of corporate existence**

Subject to Clause 22.7 (*Merger*), each Obligor shall (and the Parent shall ensure that each of its Material Subsidiaries will), preserve and maintain its corporate existence and rights.

22.3 **Preservation of properties**

Each Obligor shall (and the Parent shall ensure that each of its Material Subsidiaries will):

(a) maintain and preserve all of its properties that are used in the conduct of its business in good working order and condition, ordinary wear and tear excepted; and

(b) maintain, preserve and protect all Intellectual Property and all necessary governmental and third party approvals, franchises, licenses and permits, material to the business of Parent or its Subsidiaries,

provided neither paragraph (a) nor paragraph (b) shall prevent the Parent or any of its Subsidiaries from discontinuing the operation and maintenance of any of its properties or allowing to lapse certain approvals, licenses or permits which discontinuance is desirable in the conduct of its business and which discontinuance could not individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

22.4 **Compliance with laws, regulations and contractual obligations**

(a) Each Obligor shall (and shall procure that each of its Subsidiaries will) comply in all respects with all laws and regulations to which it may be subject and all material contractual obligations to which it is a party or by which it or any of its property or assets is bound, in each case, if failure to so comply would be likely to have a Material Adverse Effect.

(b) The Parent and each Obligor shall (and shall procure that each of its respective Subsidiaries will) comply with all applicable requirements under ERISA and laws relating to IMSS, INFONAVIT, SAR laws or under other mandatory pension or retirement fund laws and will ensure that the levels of contribution

to pension schemes are in accordance with all its and their material obligations under such schemes and generally under applicable laws (including ERISA) and regulations, except where such failure to comply or failure to make such contributions would not reasonably be expected to have a Material Adverse Effect.

(c) Each Dutch Obligor will comply with the Dutch FSA if failure to so comply would be likely to have a Material Adverse Effect.

22.5 **Negative pledge**

The Parent shall not and shall not permit any of its Subsidiaries:

(a) to directly or indirectly, create, incur, assume or permit to exist any Security on or with respect to any of its property or assets or those of any Subsidiary, whether now owned or held or hereafter acquired; or

(b) to:

(i) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by an Obligor or any other member of the Group;

(ii) sell, transfer or otherwise dispose of any of its receivables on recourse terms;

(iii) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or

(iv) enter into any other preferential arrangement having a similar effect,

in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset (such arrangement or transaction being " **Quasi-Security**"),

other than the following Security and Quasi-Security (" **Permitted Security**"):

(A) Security for taxes, assessments and other governmental charges the payment of which is being contested in good faith by appropriate proceedings promptly initiated and diligently conducted and for which such reserves or other appropriate provision, if any, as shall be required by Applicable GAAP of the Parent shall have been made;

(B) Security granted pursuant to or in connection with any netting or set-off arrangements entered into in the ordinary course of trading (including, for the avoidance of doubt, any cash pooling or cash management arrangements in place with a bank or financial institution falling within paragraph (k) of the definition of Permitted Financial Indebtedness);

(C) statutory liens of landlords and liens of carriers, warehousemen, mechanics and materialmen incurred in the ordinary course of business for sums not yet due or the payment of which is being contested in good faith by appropriate proceedings promptly initiated and diligently conducted and for which such reserves or other appropriate provision, if any, as shall be required by Applicable GAAP of the Parent shall have been made;

(D) liens incurred or deposits made in the ordinary course of business in connection with (1) workers' compensation, unemployment insurance and other types of social security, or (2) other insurance maintained by the Group in accordance with Clause 22.9 (*Insurance*);

(E) any attachment or judgment lien, unless the judgment it secures shall not, within 60 days after the entry thereof, have been discharged or execution thereof stayed pending appeal, or shall not have been discharged within 60 days after the expiration of any such stay;

(F) Security and Quasi-Security existing on the date of this Agreement as described in Schedule 12 ( *Existing Security and Quasi-Security*) (or any replacement of Security or Quasi-Security in accordance with paragraph 3 of Schedule 17 ( *Hedging Parameters*) or any equivalent Security or Quasi-Security for Existing Financial Indebtedness that is a refinancing or replacement of Existing Financial Indebtedness) **provided that** the principal amount secured thereby is not increased (save that principal amounts secured by Security or Quasi-Security in respect of:

(1) Treasury Transactions where there are fluctuations in the mark-to-market exposures of those Treasury Transactions; and

(2) Existing Financial Indebtedness where principal may increase by virtue of capitalisation of interest or, in the case of the Banobras Facility or, as the case may be, a Replacement Banobras Facility, where further drawings may be made **provided that** (aa) the maximum amount outstanding under the Banobras Facility or, as the case may be, a Replacement Banobras Facility, does not exceed Mex$5,000,000,000 at any time and (bb) the Security (and, if any, Quasi-Security) granted in relation to the Banobras Facility or, as the case may be, a Replacement Banobras Facility, is limited to Security (and, if any, Quasi-Security) over the same assets (or, in the case of receivables, the same type of asset) in respect of which Security (and, if any, Quasi-Security) have been granted in relation to the Banobras Facility as at the date of this Agreement ( **and further provided**

**that**, subject to compliance with (aa) and (bb) above, in the case of a Replacement Banobras Facility, such Security or Quasi-Security may be amended as necessary to reflect that the Banobras Facility (or any subsequent Replacement Banobras Facility which is being refinanced or replaced) has been refinanced or replaced);

may be increased by the amount of such fluctuations, or capitalisations or drawings, as the case may be);

(G) any Security or Quasi-Security permitted by the Agent, acting on the instructions of the Majority Creditors;

(H) any Security created or deemed created pursuant to a Permitted Securitisation;

(I) any Permitted PPP Security;

(J) any Security granted by any member of the Group to secure Financial Indebtedness under a Permitted Liquidity Facility **provided that**: (1) such Security is not granted in respect of assets that are the subject of the Transaction Security; and (2) the maximum aggregate amount of the Financial Indebtedness secured by such Security does not exceed $400,000,000 at any time;

(K) any Security granted by the Parent or any member of the Group incorporated in Mexico in favour of a Mexican development bank (*sociedad nacional de crédito*) controlled by the government of Mexico (including Banco Nacional de Comercio Exterior, S.N.C., and Banco Nacional de Obras y Sevicios Públicos, S.N.C.) securing indebtedness of the members of the Group in an aggregate additional amount of such indebtedness not exceeding $250,000,000 (or its equivalent in any other currency);

(L) any Security or Quasi-Security granted in connection with any Treasury Transaction, excluding any Treasury Transaction described in Schedule 12 (*Existing Security and Quasi-Security*), that constitutes Permitted Financial Indebtedness **provided that** the aggregate value of the assets that are the subject of such Security or Quasi-Security does not exceed $200,000,000 (or its equivalent in other currencies) at any time;

(M) Security or Quasi-Security granted or arising over receivables, inventory, plant or equipment that are the subject of an arrangement falling within paragraph (e) of the definition of Permitted Financial Indebtedness;

(N) the Transaction Security including, for the avoidance of doubt, any sharing in the Transaction Security referred to in paragraph (f) of the definition of Permitted Financial Indebtedness;

(O) any Quasi-Security that is created or deemed created on shares of the Parent or, as the case may be, Caliza, under paragraph (r) of the definition of Permitted Disposals by virtue of such shares being held on trust for the holders of the convertible securities pending exercise of any conversion option, where such Quasi-Security is customary for such transaction;

(P) any Security or Quasi-Security granted over assets of the Caliza Group in connection with any Permitted Financial Indebtedness referred to in paragraph (p) of that definition; or

(Q) in addition to the Security and Quasi-Security permitted by the foregoing paragraphs (A) to (P), Security or Quasi-Security securing indebtedness of the Parent and its Subsidiaries (taken as a whole) not in excess of $500,000,000; or

(c) to permit any Pension Plan to incur any "funding deficiency" whether or not waived, within the meaning of Section 302 of ERISA or Section 412 of the Code or to permit any Non-US Pension Plan to violate any material funding requirements under applicable law.

22.6 **Financial Indebtedness**

(a) Except as permitted under paragraph (b) below, no Obligor shall (and the Parent shall ensure that no member of the Group will) incur or allow to remain outstanding any Financial Indebtedness.

(b) Paragraph (a) above does not apply to Financial Indebtedness which is Permitted Financial Indebtedness, Permitted Security, a Permitted Guarantee or Financial Indebtedness constituting (or incurred pursuant to) a Permitted Transaction.

22.7 **Merger**

(a) Subject to paragraph (b) of this Clause 22.7, unless it has obtained the prior written approval of the Majority Creditors, no Obligor shall (and the Parent shall ensure that none of its Subsidiaries will) enter into any amalgamation, demerger, merger, *fusión*, *escisión* or other corporate reconstruction (a "**Reconstruction**"), other than (i) a Reconstruction relating only to the Parent's Subsidiaries inter se; (ii) a Reconstruction between the Parent and any of its Subsidiaries; (iii) a Reconstruction between members of the Caliza Group; or (iv) a solvent reorganisation or liquidation of any of the Subsidiaries that are not Obligors, **provided that** in any case no Default shall have occurred and be continuing at the time of such transaction or would result therefrom and **provided further that** (A) none of the Transaction Security (if any) granted to the Creditors nor the guarantees granted by the Guarantors hereunder is or are adversely affected as a result, and (B) the resulting entity, if it is not an Obligor, assumes the obligations of the Obligor the subject of the merger.

(b) No merger otherwise permitted by paragraph (a) of this Clause 22.7 (other than a Permitted Reorganisation) shall be so permitted if:

(i) as a result the then existing Ratings of the Parent would be downgraded or the Outlook would be negative, in each case at the date of announcement of a Reconstruction, directly as a result of any merger involving the Parent; or

(ii) the resulting entity, if it is not an Obligor, does not assume the obligations of the Obligor that is the subject of the merger.

22.8 **Change of business**

(a) None of the Obligors (other than a Security Provider that is not also a Borrower or a Guarantor) shall make a substantial change to the general nature of its business from that carried on at the date of this Agreement and there shall be no cessation of business in relation to any of the Obligors (unless (except in the case of the Parent which shall in no event cease or substantially change its business) another Obligor continues to operate any such business).

(b) The Parent shall procure that no substantial change is made to the general nature of the business of any of its Material Subsidiaries from that carried on at the date of this Agreement and that there shall be no cessation of such business (save that a Material Subsidiary that is only a Material Subsidiary by virtue of its being a Holding Company of a Material Subsidiary may change the nature of its business such that it is substantially similar to the business carried on by any other Material Subsidiary).

22.9 **Insurance**

The Obligors (other than a Security Provider that is not also a Borrower or a Guarantor) shall (and the Parent shall ensure that each of its Material Subsidiaries will) maintain insurances on and in relation to its business and assets with reputable underwriters or insurance companies against those risks and to the extent as is usual for companies carrying on the same or substantially similar business where such insurance is available on reasonable commercial terms.

22.10 **Environmental Compliance**

The Parent shall (and the Parent shall ensure that each of its Subsidiaries will) comply in all material respects with all Environmental Law and obtain and maintain any Environmental Permits and take all reasonable steps in anticipation of known or expected future changes to or obligations under the same, in each case where failure to do so might reasonably be expected to have a Material Adverse Effect.

22.11 **Environmental Claims**

The Parent shall inform the Agent in writing as soon as reasonably practicable upon becoming aware of the same:

(a) if any Environmental Claim has been commenced or (to the best of the Parent's knowledge and belief) is threatened against any member of the Group which is likely to be determined adversely to the member of the Group; or

(b) of any facts or circumstances which will or are reasonably likely to result in any Environmental Claim being commenced or threatened against any member of the Group,

where the claim would be reasonably likely, if determined against that member of the Group, to have a Material Adverse Effect.

22.12 **Transactions with Affiliates**

Each Obligor shall (and the Parent shall ensure that its Subsidiaries will) ensure that any transactions with respective Affiliates (other than a Permitted Reorganisation) are on terms that are fair and reasonable and no less favourable to such Obligor or such Subsidiary than it would obtain in a comparable arm's-length transaction with a person not an Affiliate (and, if applicable, in accordance with any requirement of law (such as the Mexican Security Market Law (*Ley del Mercado de Valores*)).

22.13 **Pari passu ranking**

Each Obligor shall ensure that at all times its payment obligations under the Finance Documents rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law or regulation applying to companies generally from time to time.

22.14 **Payment restrictions affecting Subsidiaries**

(a) Except as permitted under paragraph (b) below, the Parent shall not enter into or suffer to exist, or permit any of its Subsidiaries to enter into or suffer to exist, any agreement or arrangement (other than any Finance Document) directly limiting the ability of any of its Subsidiaries to:

(i) declare or pay dividends or other distributions in respect of its or their respective equity interests in a Subsidiary, except any agreement or arrangement entered into by a person prior to such person becoming a Subsidiary, in which case the Parent shall use its reasonable endeavours to remove such limitations. If however, such limitations are reasonably likely to affect the ability of any Obligor to satisfy its payment obligations under this Agreement, the Parent shall use its best endeavours to remove such limitations as soon as possible; or

(ii) repay or capitalise any intercompany indebtedness owed by any Subsidiary to any Obligor and, for the avoidance of doubt, subordination provisions shall not be considered a limitation for the purpose of this Clause 22.14.

(b) The provision of paragraph (a) above shall not restrict:

(i) any agreements or arrangements that are binding upon any person in connection with a Permitted Securitisation and any agreement or arrangement that limits the ability of any Subsidiary of the Parent that transfers receivables and related assets pursuant to a Permitted Securitisation to distribute or transfer receivables and related assets **provided that**, in each case, all such agreements and arrangements are customarily required by the institutional sponsor or arranger of such Permitted Securitisation in similar types of documents relating to the purchase of receivables and related assets in connection with the financing thereof;

(ii) customary provisions in Joint Venture agreements relating to dividends or other distributions in respect of such Joint Venture or the securities, assets or revenues of such Joint Venture;

(iii) restrictions on distributions applicable to Subsidiaries of the Parent that are the subject of agreements to sell or otherwise dispose of the stock or assets of such Subsidiaries pending such sale or other disposition;

(iv) any repayments of intercompany indebtedness owed by Caliza to the Parent or any other member of the Group following completion of the first Caliza Transaction (if so completed); and

(v) (subject to such Financial Indebtedness being Permitted Financial Indebtedness, and there being no other requirements restricting the same) entry by any member of the Caliza Group into a working capital facility the terms of which limit the amount of dividends or other distributions as referred to in paragraph (a) above or the amount of repayments or capitalisation of intercompany indebtedness as referred to in paragraph (a)(ii) above which may be made (in each case) by Caliza to any member of the Group at any time at which the cash in hand of the Caliza Group is below the Caliza Cash Maintenance Threshold.

22.15 **Notification of adverse change in Ratings**

The Parent shall promptly notify the Agent of any change in its Ratings or Outlook.

22.16 **Acquisitions**

(a) Except as permitted under paragraph (b) below, no Obligor shall (and the Parent shall ensure that no other member of the Group will) acquire a company or any shares or securities or a business or undertaking (or, in each case, any interest in any of them).

(b) Paragraph (a) above does not apply to an acquisition of a company, of shares, securities or a business or undertaking (or, in each case, any interest in any of them) or the incorporation of a company which is a Permitted Acquisition, a Permitted Joint Venture or a Permitted Transaction.

22.17 **Joint ventures**

(a) Except as permitted under paragraph (b) below, no Obligor shall (and the Parent shall ensure that no member of the Group will):

(i) enter into, invest in or acquire (or agree to acquire) any shares, stocks, securities or other interest in any Joint Venture; or

(ii) transfer any assets or lend to or guarantee or give an indemnity for or give Security for the obligations of a Joint Venture or maintain the solvency of or provide working capital to any Joint Venture (or agree to do any of the foregoing).

(b) Paragraph (a) above does not apply to any acquisition of (or agreement to acquire) any interest in a Joint Venture or transfer of assets (or agreement to transfer assets) to a Joint Venture or loan made to or guarantee or indemnity or Security given in respect of the obligations of a Joint Venture if such transaction is a Permitted Acquisition, a Permitted Transaction, a Permitted Disposal, a Permitted Loan, Permitted Security or a Permitted Joint Venture.

22.18 **Disposals**

(a) Except as permitted under paragraph (b) below, no Obligor shall (and the Parent shall ensure that no member of the Group will) enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of any asset.

(b) Paragraph (a) above does not apply to any sale, lease, transfer or other disposal which is a Permitted Disposal, a Permitted Distribution or a Permitted Transaction.

22.19 **Arm's length basis**

(a) Except as permitted by paragraph (b) below, no Obligor shall (and the Parent shall ensure no member of the Group will) enter into any transaction with any person except on arm's length terms and for full market value.

(b) The following transactions shall not be a breach of this Clause 22.19:

(i) intra-Group loans permitted under Clause 22.20 ( *Loans or credit*);

(ii) any Permitted Reorganisation or Permitted Transaction.

22.20 **Loans or credit**

(a) Except as permitted under paragraph (b) below, no Obligor shall (and the Parent shall ensure that no member of the Group will) be a creditor in respect of any Financial Indebtedness.

(b) Paragraph (a) above does not apply to:

(i) a Permitted Loan; or

(ii) a Permitted Transaction.

22.21 **No Guarantees or indemnities**

(a) Except as permitted under paragraph (b) below, no Obligor shall (and the Parent shall ensure that no member of the Group will) incur or allow to remain outstanding any guarantee in respect of any obligation of any person.

(b) Paragraph (a) does not apply to a guarantee which is:

(i) a Permitted Guarantee; or

(ii) a Permitted Transaction.

22.22 **Dividends and share redemption**

(a) Except as permitted under paragraph (b) below, the Parent shall not (and will ensure that no other member of the Group will):

(i) declare, make or pay any dividend, charge, fee or other distribution (or interest on any unpaid dividend, charge, fee or other distribution) (whether in cash or in kind) on or in respect of its share capital (or any class of its share capital);

(ii) repay or distribute any dividend or share premium reserve;

(iii) pay or allow any member of the Group to pay any management, advisory or other fee to or to the order of any of the shareholders of the Parent; or

(iv) redeem, repurchase, defease, retire or repay any of its share capital or resolve to do so,

other than, in each case, in connection with the entry into or performance of obligations or distribution or settlement under any Permitted Put/Call Transaction or, in the case of sub paragraph (iv) above, in connection with the entry into or performance of obligations or distribution or settlement under any Caliza Offering Option.

(b) Paragraph (a) above does not apply to:

(i) a Permitted Distribution; or

(ii) a Permitted Transaction (other than one referred to in paragraph (d) of the definition of that term).

22.23 **Existing Financial Indebtedness and Permitted Fundraisings**

(a) Except as permitted under paragraph (b) below, the Parent shall not (and will ensure that no other member of the Group will):

(i) repay or prepay any principal amount (or capitalised interest) under the Existing Financial Indebtedness or any Permitted Fundraising falling within paragraph (c) of the definition thereof; or

(ii) (other than where such Financial Indebtedness is acquired by the Group in consideration for a Permitted Disposal or results from a Permitted Acquisition) purchase, redeem, defease or discharge any of the Existing Financial Indebtedness or any Permitted Fundraising falling within paragraph (c) of the definition thereof.

(b) Paragraph (a) above does not apply to a Permitted Payment or a Permitted Transaction.

(c) The Parent shall (and will ensure that any other member of the Group which is or becomes a party to the Bancomext Facility or any refinancing thereof will) use its best endeavours to refinance the Bancomext Facility (and any subsequent refinancing of the Bancomext Facility) on terms (excluding Security) which are no more favourable to Bancomext than the terms of this Agreement are to the Creditors hereunder.

(d) For the avoidance of doubt:

(i) any delivery of shares, common equity securities in the Parent or reference property in connection with the same pursuant to the operation of the terms of any Relevant Convertible/Exchangeable Obligations; and

(ii) any payment pursuant to Clause 26.1 (*Permitted Debt Purchase Transactions*),

shall not be restricted by this Clause 22.23.

22.24 **Share capital**

No Obligor shall (and the Parent shall ensure no member of the Group will) issue any shares except pursuant to:

(a) a Permitted Share Issue;

(b) a Permitted Distribution; and

(c) a Permitted Transaction.

22.25 **Amendments**

(a) No Obligor shall (and the Parent shall ensure that no member of the Group will) following the Effective Date amend, vary, novate, supplement,

supersede, waive or terminate any term of a 2009 Financing Agreement Document, any other document evidencing or relating to Existing Financial Indebtedness or any other document delivered to the Agent pursuant to Part I of Schedule 2 ( *Conditions Precedent*) or Clause 27 (*Changes to the Obligors*) or any document evidencing or relating to any Existing Financial Indebtedness or enter into any agreement with any shareholders of the Parent or any of their Affiliates which is not a member of the Group except in writing:

(i) in the case of a 2009 Financing Agreement Document, to the extent that that amendment, variation, novation, supplement, superseding, waiver or termination could not reasonably be expected materially and adversely to affect the interests of the Creditors;

(ii) in the case of any other document evidencing or relating to any Existing Financial Indebtedness, in a way which:

(A) could not be reasonably expected materially and adversely to affect the interests of the Creditors; and

(B) except as provided for under this Agreement, would not change the obligors, borrowers or guarantors, provide Security or Quasi-Security, bring forward a date for payment or increase the amount of interest, principal or fees payable, in each case in respect of Existing Financial Indebtedness ( **provided that** nothing in this Clause 22.25 will affect the ability of members of the Group to enter into a Permitted Fundraising,

and **provided that** in the context of an extension of the same as contemplated by sub paragraphs (i) to (vi) of paragraph (a) of Clause 5.1 (*Spring Back Dates*) the terms of the Existing Financial Indebtedness referred to in such paragraphs may be amended in order to extend their respective maturities, amend the pricing provisions thereof and/or (if applicable) to vary the strike price thereunder;

(iii) in the case of an agreement with any shareholder of the Parent or any of their Affiliates which is not a member of the Group, where such agreement could not be reasonably expected to materially and adversely affect the interests of the Creditors (taken as a whole).

(b) The Parent shall promptly supply to the Agent a copy of any document relating to any of the matters referred to in paragraphs (i) to (iii) above.

22.26 **Treasury Transactions**

No Obligor shall (and the Parent will procure that no members of the Group will) engage in any Treasury Transaction, other than in accordance with the terms of Schedule 17 (*Hedging Parameters*).

22.27 **Transaction Security**

The Parent will ensure that, under the Transaction Security Documents, save as a result of the operation of clause 9 ( *Automatic Release of Transaction Security)* of the Intercreditor Agreement, the Creditors have Transaction Security over:

(a) all of the shares in each entity that is a direct or indirect shareholder in CEMEX España (except (i) CEMEX International Finance Company, CEMEX Trading Caribe Ltd, CEMEX Trading LLC, Sunbelt Trading, SRL and Sunbelt-Re Limited; (ii) 0.4326% of the shares in CEMEX TRADEMARKS HOLDING Ltd. held by CEMEX, Inc.; (iii) 0.1245% of the shares in CEMEX México held by CEMEX, Inc. and (iv) the single share held by a minority shareholder that is a member of the Group in each Mexican company whose shares are the subject of Transaction Security (other than CEMEX México)); and

(b) all of the shares in CEMEX España (except (i) 0.2444% of the issued share capital, being shares owned by CEMEX España; and (ii) 0.1164% of the issued share capital, being shares owned by persons that are not members of the Group),

such Transaction Security to be, in each case, in substantially the form of the Transaction Security referred to in paragraph 2 of Part I of Schedule 2 (*Conditions precedent*) granted in the jurisdiction of incorporation or establishment of the company whose shares are the subject of the Transaction Security or, where there is no Transaction Security referred to in paragraph 2 Part I of Schedule 2 ( *Conditions precedent*) in such jurisdiction, in form and substance satisfactory to the Agent (acting reasonably).

22.28 **Further assurance**

(a) Each Obligor shall (and the Parent shall procure that each member of the Group will) promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Security Agent may reasonably specify (and in such form as the Security Agent may reasonably require in favour of the Security Agent or its nominee(s)):

(i) to perfect the Security created or intended to be created under or evidenced by the Transaction Security Documents (which may include the execution of a mortgage, security trust, charge, assignment or other Security over all or any of the assets which are, or are intended to be, the subject of the Transaction Security) or for the exercise of any rights, powers and remedies of the Security Agent or the Finance Parties provided by or pursuant to the Finance Documents or by law (directly, through the Agent or Security Agent, through any sub-agent appointed thereby or otherwise);

(ii) to confer on the Security Agent (or confer on the Finance Parties) Security over any property and assets of that Obligor located in any jurisdiction equivalent or similar to the Security intended to be conferred by or pursuant to the Transaction Security Documents; and/or

(iii) to facilitate the realisation of the assets which are, or are intended to be, the subject of the Transaction Security.

(b) Each Obligor shall (and the Parent shall procure that each member of the Group shall) take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Security Agent or the Finance Parties by or pursuant to the Finance Documents.

22.29 **Restriction on exercise of perpetual bond call options**

The Parent shall not (and shall procure that no member of the Group will) exercise (or take any action or step with a view to exercising) any call option in relation to any perpetual bonds issued by any member of the Group unless the exercise of the call option will not have a materially negative impact on the cashflow of the Group (and, prior to exercising such call option, the Parent has delivered written notice to the Agent confirming that this is the case).

22.30 **Payment of Obligations**

The Parent will pay and discharge, and cause each of its Subsidiaries to pay and discharge, before the same shall become delinquent, (a) all taxes, assessments and governmental charges or levies assessed, charged or imposed upon it or upon its property and (b) all lawful claims that, if unpaid, might by law become a Security upon its property, except where the failure to make such payments or effect such discharges could not reasonably be expected to have Material Adverse Effect, **provided**, **however**, **that** neither Parent nor any of its Subsidiaries shall be required to pay or discharge or cause to be paid or discharged any such tax, assessment, charge or claim that is being contested in good faith and proper proceedings and as to which appropriate reserves are being maintained in accordance with Applicable GAAP of the Parent, unless and until any Security resulting therefrom attaches to its property and becomes enforceable against its other creditors.

22.31 **Margin regulations**

No Borrower shall use any part of the proceeds of the Utilisations for any purpose which would result in any violation (whether by any Borrower, the Agent or the Creditors) of Regulation T, U or X of the Board of Governors of the Federal Reserve System or to extend credit to others for any such purpose. No Borrower shall engage in, or maintain as one of its important activities, the business of extending credit for the purpose of purchasing or carrying any margin stock (as defined in such regulations).

22.32 **Caliza**

The Parent shall if it owns (directly or indirectly) any shares in Caliza, ensure that:

(a) it has the power to:

(i) cast, or control the casting of, at least 51% of the maximum number of votes that might be cast at a general meeting of Caliza; and

(ii) appoint or remove all, or the majority, of the directors or other equivalent officers of Caliza;

(b) it has the right to receive at least 51% of all dividends and other distributions in respect of equity interests in Caliza; and

(c) to the extent permitted by Applicable GAAP, Caliza is consolidated within the Group for accounting purposes in accordance with Applicable GAAP (and, if Caliza is not consolidated, the Parent shall provide to the Agent, at the same time it delivers consolidated financial statements pursuant to Clause 20.1 (*Financial statements*), pro forma financial statements for the Group (for the avoidance of doubt, including the Caliza Group)).

22.33 **Restriction on transfer of Material Operating Subsidiaries**

(a) The Parent shall procure that:

(i) neither:

(A) the direct or indirect legal or beneficial ownership of more than 10 per cent. of the shares held by members of the Group in any Material Operating Subsidiary that is a Subsidiary of CEMEX España; nor

(B) all or substantially all the assets of CEMEX España or any Material Operating Subsidiary that is a Subsidiary of CEMEX España,

are disposed of (in a single transaction or series of related or unrelated transactions) to a member of the Group that is not CEMEX España or a Subsidiary of CEMEX España; and

(ii) neither:

(A) the direct or indirect legal or beneficial ownership of more than 10 per cent. of the shares held by members of the Group in any Material Operating Subsidiary that is not a Subsidiary of CEMEX España; nor

(B) all or substantially all the assets of the Parent or any Material Operating Subsidiary that is not a CEMEX España or a Subsidiary of CEMEX España, are disposed of (in a single transaction or series of related or unrelated transactions) to CEMEX España or any of its Subsidiaries.

(b) Paragraph (a) above shall not apply to the Caliza Reorganisation or the Caliza Transaction.

22.34 **Relevant Convertible/Exchangeable Obligations**

The Parent shall (and shall ensure that all members of the Group shall) ensure that in relation to any issuance of Relevant Convertible/Exchangeable Obligations where there is a related Permitted Put/Call Transaction, at the time of the issuance of the Relevant Convertible/Exchangeable Obligations, the aggregate of (i) the maximum applicable coupon (excluding any amounts payable as a result of or in relation to any withholding tax) on the Relevant Convertible/Exchangeable Obligations (expressed as a percentage on an annual basis) plus the premium associated with any Permitted Put/Call Transaction(s) related to those Relevant Convertible/Exchangeable Obligations (expressed as a percentage of the aggregate principal amount of such issuance of Relevant Convertible/Exchangeable Obligations) divided by (ii) the number of years for which those Relevant Convertible/Exchangeable Obligations are issued, will be less than or equal to 15 per cent. per annum.

22.35 **Conditions subsequent**

(a) If the capital stock of:

(i) CEMEX Bogotá Investments B.V., a company incorporated in the Netherlands with registration number 55858236 (" **CEMEX Bogotá**"); and

(ii) CEMEX Caribe II Investments B.V., a company incorporated in the Netherlands with registration number 34159949 (" **CEMEX Caribe II**"),

or substantially all of their respective assets (excluding any intra-Group loans) have not been transferred (whether by contribution, merger or otherwise) to Caliza or another member of the Caliza Group by 31 March 2013 (or, with the prior consent of the Majority Creditors, such later date falling no more than 90 days thereafter as the Parent may request), the Parent shall procure that CEMEX Bogotá and/or, as the case may be, CEMEX Caribe II, shall accede to this Agreement as an Additional Guarantor in accordance with Clause 27.3 ( *Additional Guarantors and Additional Security Providers*) and grant a guarantee under:

(A) Clause 18.1 (*Guarantee and indemnity – Specific Guaranteed Facilities* ) of this Agreement and, from the date of such accession, the definition of "España Subsidiary Guarantor" shall be deemed to include CEMEX Bogotá and/or, as the case may be, CEMEX Caribe II for the purposes of the Finance Documents; and

(B) Clause 18.2 (*Guarantee and indemnity – all Finance Documents* ) (such guarantee to be shared with the noteholders under the New High Yield Notes to the extent required by such noteholders).

(b) The Parent shall take all steps necessary to ensure that on or prior to the date falling 60 days after the Effective Date or, if the Security Agent has not confirmed its availability to take the actions required of it in order for the matters described in this paragraph (b) to be effected on or before the date falling 60 days after the Effective Date within 10 days of the date on which the Security Agent so confirms (or such longer period as the Agent may agree), it shall:

(i) procure that a share pledge over shares in CEMEX España substantially in the form distributed to the Creditors prior to the date of this Agreement is granted (and that Dutch and Spanish legal opinions have been issued in respect thereof in form and substance satisfactory to the Agent (acting reasonably)) and that each person (other than a Creditor) that is required to take any action in order to execute and accept such share pledge before a notary in Madrid has taken such action; and

(ii) upon the request of the Agent and at the time requested by the Agent during ordinary business hours, appear before a notary in Madrid to notarise or raise to the status of a public document this Agreement and the 2009 Financing Agreement Amendment Agreement (*otorgar una póliza intervenida por notario, escritura pública y/o elevar a publico* ) and to execute before a notary in Madrid the Transaction Security governed by the laws of Spain and the irrevocable powers of attorney in connection therewith and shall procure that any Obligor a party to either of such documents so appears and enters into such public or private document, in each case, as the Agent may reasonably require **provided that**:

(A) any such request may only be made by the Agent if the proposed appearance before the notary is to occur 10 days or more after the notice is given (and in ordinary business hours); and

(B) where the date requested is not the date falling 60 days after the Effective Date (or, if the Security Agent has not confirmed its availability to take the actions required of it in order for the matters described in this paragraph (B) to be effected on or before the date falling 60 days after the Effective Date, the date 10 days from the date on which the Security Agent so confirms, the Agent confirms at the time of giving each notice under sub-paragraph (i) above that at least 25 of the Creditors (or such lesser number as would represent the remainder of the Creditors that have yet to appear and enter into the necessary public or private documents referred to above) have confirmed to it that they are able to appear or have prepared the necessary

documentation required by Spanish law for a person or persons to act on their behalf to raise this Agreement and the 2009 Financing Agreement Amendment Agreement to the status of a public deed under the laws of Spain and for the Transaction Security governed by the laws of Spain to be executed before a notary in Spain.

23. **COVENANT RESET DATE**

With effect from the Covenant Reset Date:

(a) the definition of "Excluded Disposal Proceeds" of Clause 7.3 ( *Disposal Proceeds*) shall be amended to include:

"(x) redundant or obsolete assets; and

(xi) any assets **provided that** such proceeds are re-invested within 120 days of receipt".

(b) In paragraph (b) of Clause 7.3 (*Disposal Proceeds*) the figure of "$50,000,000" shall be deleted and the figure of "$100,000,000" substituted therefor, and the words "50 per cent. of" shall be added before "the amount of any Disposal Proceeds";

(c) Clause 7.4 (*Excess Cashflow*) shall be deleted;

(d) In paragraph (b) of Clause 7.5 (*Permitted Equity Fundraising Proceeds*) the words "50 per cent. of" shall be added before, and the words "raised in excess of $100,000,000 in any Financial Year" shall be added after, the words "the amount of Permitted Equity Fundraising Proceeds";

(e) In paragraph (b) of Clause 7.6 (*Permitted Debt Fundraising Proceeds and Permitted Securitisation Proceeds* ) the words "50 per cent. of" shall be added before, and the words "raised in excess of $100,000,000 in any Financial Year" shall be added after, the words "the amount of Permitted Debt Fundraising Proceeds and Permitted Securitisation Proceeds";

(f) Clause 20.4 (*Liquidity forecast*) and Clause 20.9 (*Appointment of financial adviser*) shall be deleted;

(g) paragraph (c) of Clause 21.2 (*Financial condition*) shall be deleted;

(h) subject to the proviso below:

(i) Clause 22.22 (*Dividends and share redemption*), Clause 22.23 (*Existing Financial Indebtedness and Permitted Fundraisings* ), Clause 22.24 (*Share capital*) and Clause 22.29 (*Restriction on exercise of perpetual bond call options* ) shall be deleted;

(ii) in paragraph (k) of the definition of "Permitted Disposal", sub-paragraphs (i) and (ii) are deleted;

(iii) in each of paragraph (n) of the definition of "Permitted Acquisition", paragraph (t) of the definition of Permitted Disposal and paragraph (c)(ii) of the definition of Permitted Joint Venture, the reference to "$250,000,000" shall be replaced with a reference to "$350,000,000";

(iv) in paragraph (m) of the definition of "Permitted Guarantee", the reference to "$500,000,000" shall be replaced with a reference to "$750,000,000";

(v) in paragraph (Q) of Clause 22.5 (*Negative pledge*), the reference to "$500,000,000" shall be replaced with a reference to "5% of the total consolidated gross assets of the Group";

(vi) in Clauses 24.5 (*Cross default*), 24.6 (*Insolvency*), 24.10 (*Creditors' process and enforcement of Security*), 24.12 (*Judgment*), each reference to "$50,000,000" shall be replaced with a reference to "$75,000,000"; and

(vii) Clause 22.26 (*Treasury Transactions*) shall be deleted and replaced with "No Obligor shall (and the Parent will procure that no member of the Group will) engage in any Treasury Transaction other than Treasury Transactions entered into in the ordinary course of business and for non-speculative purposes."

**provided that** where, at any time after the Covenant Reset Date, any Financial Indebtedness of a member of the Group under a facility in respect of which the utilised and unutilised commitments are at least $75,000,000 (or under an issuance where the principal amount outstanding under such issuance is at least $75,000,000) benefits from more restrictive covenants in respect of any of the matters to which any of these provisions relates than those set out above, the Creditors will also have the benefit of those more restrictive covenants.

(i) The definition of "**Repeating Representations**" in Clause 1.1 (*Definitions*) shall have added to the end thereof "save that Clause 19.4 ( *Non-conflict with other obligations*) shall not be repeated with respect to the Transaction Security".

## 24. EVENTS OF DEFAULT

Each of the events or circumstances set out in this Clause 24 (except for Clause 24.16 ( *Acceleration*)) is an Event of Default.

### 24.1 Non-payment

An Obligor does not pay on the due date any amount payable to or for the account of a Creditor pursuant to a Finance Document or the Ancillary Agreement at the place at and in the currency in which it is expressed to be payable unless such failure to pay is caused by an administrative error or technical difficulties within the banking system in relation to the transmission of funds and payment is made within three Business Days of its due date.

24.2 **Financial Covenants and other obligations**

Any requirement of Clause 21 (*Financial Covenants*) is not satisfied or the Parent fails to deliver any Compliance Certificate in accordance with Clause 20.2 (*Compliance Certificate*).

24.3 **Other obligations**

(a) An Obligor or any other member of the Group does not comply with any provision of the Finance Documents (other than those referred to in Clause 24.1 (*Non-payment*) and Clause 24.2 (*Financial covenants and other obligations*)).

(b) No Event of Default under paragraph (a) of this Clause 24.3 above will occur if the failure to comply is capable of remedy and is remedied within fifteen Business Days of the Agent giving written notice to the Parent or an Obligor becoming aware of the failure to comply, whichever is the earlier.

24.4 **Misrepresentation**

(a) Any representation or statement made or deemed to be made by an Obligor in the Finance Documents or any other document delivered by or on behalf of any Obligor under or in connection with any Finance Document is or proves to have been incorrect or misleading in any material respect when made or deemed to be made.

(b) No Event of Default under paragraph (a) of this Clause 24.4 above will arise if the circumstances giving rise to the misrepresentation are capable of remedy and are remedied within fifteen Business Days of the Agent giving written notice to the Parent or an Obligor becoming aware of the failure to comply, whichever is the earlier.

24.5 **Cross default**

(a) Any Financial Indebtedness of any Obligor or member of the Group is not paid when due nor within any originally applicable grace period.

(b) Any Financial Indebtedness of any Obligor or member of the Group is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).

(c) Any creditor of any member of the Group or any Obligor becomes entitled to declare any Financial Indebtedness of any member of the Group or any Obligor due and payable prior to its specified maturity as a result of an event of default (however described).

(d) No Event of Default will occur under this Clause 24.5 if the aggregate amount of Financial Indebtedness falling within paragraphs (a) to (c) of this Clause 24.5 above is less than $50,000,000 (or its equivalent in any other currency or currencies).

24.6 **Insolvency**

(a) Any of the Obligors or Material Subsidiaries is unable or admits inability to pay its debts as they fall due (including a state of *cessation des paiements* within the meaning of the French Commercial Code) or, by reason of actual financial difficulties: (i) suspends or threatens to suspend making payments on any of its debts in an aggregate amount exceeding $50,000,000 (or its equivalent in any other currency or currencies) or (ii) commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness in respect of an aggregate amount of indebtedness exceeding $50,000,000 (or its equivalent in any other currency or currencies).

(b) The value of the assets of any of the Obligors or Material Subsidiaries is less than its liabilities (taking into account contingent and prospective liabilities other than any such liabilities arising under Clause 18 ( *Guarantee and indemnity*)) other than:

(i) in the case of CEMEX Corp. or the Holding Company of CEMEX Corp. or any other Holding Company which (A) is not an Obligor (B) is not a Holding Company incorporated in Mexico or (C) does not, on a solus basis, satisfy the requirements of paragraphs (a), (b) or (c) of the definition of Material Subsidiary, liabilities (including contingent and prospective liabilities) owed by such companies on and at any time after the date of this Agreement to another member of the Group **provided that**, in each case, such liabilities of such companies are subordinated to the claims of the Creditors in the event of the bankruptcy, winding up or liquidation of such companies or an acceleration under Clause 24.16 ( *Acceleration*); and

(ii) in the case of the Holding Company of CEMEX Corp. when consolidating CEMEX Corp. or when considering the value of its shareholding in CEMEX Corp., any liabilities (including contingent and prospective liabilities) owed by CEMEX Corp. to another member of the Group **provided that**, such liabilities of CEMEX Corp. are subordinated to the claims of the Creditors in the event of the bankruptcy, winding up or liquidation of CEMEX Corp. or an acceleration under Clause 24.16 ( *Acceleration*).

(c) A moratorium is declared in respect of any indebtedness of any of the Obligors or Material Subsidiaries.

24.7 **Insolvency proceedings**

Any corporate action, legal proceeding or other procedure or step is taken in relation to:

(a) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration, the opening of proceedings for *sauvegarde financière accélérée*, *redressement judiciaire* or *liquidation judiciaire* or judgement for *cession totale ou partielle de l'entreprise* pursuant to articles L. 620-1 to L. 670-8 of the French Commercial Code, Irish law examinership,

reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise, including, in the context of a *mandat ad hoc* or of a *conciliation* in accordance with articles L. 611-3 to L. 611-15 of the French Commercial Code), *concurso mercantil, quiebra* of any of the Obligors or Material Subsidiaries other than a solvent liquidation or reorganisation of any of the Material Subsidiaries;

(b) a composition, assignment or arrangement with any class of creditor of any of the Obligors or Material Subsidiaries;

(c) the appointment of a liquidator (other than in respect of a solvent liquidation of any of the Material Subsidiaries), receiver, administrator, examiner, *conciliador*, administrative receiver, compulsory manager or other similar officer in respect of any of the Obligors or Material Subsidiaries or any of their assets,

or any analogous procedure or step is taken in any jurisdiction.

This paragraph shall not apply to any winding-up petition (or equivalent procedure in any jurisdiction) which is frivolous or vexatious and is discharged, stayed or dismissed within 60 days of commencement.

24.8 **Expropriation and sequestration**

(a) Any expropriation or sequestration (or equivalent event under any applicable law) affects any asset or assets of any Obligor or any Material Subsidiary and has a Material Adverse Effect.

(b) The authority or ability of the Parent or any Material Subsidiary to conduct its business is limited or wholly or substantially curtailed by any seizure, expropriation, nationalisation, intervention, restriction or other action by or on behalf of any governmental, regulatory or other authority or other person in relation to the Parent or any Material Subsidiary (or, in each case, any of its assets) with an aggregate book value equal to 5 per cent. or more of the gross book value of the assets of the Group (on a consolidated basis).

24.9 **Availability of foreign exchange**

(a) Any restriction or requirement not in effect on the date hereof shall be imposed, whether by legislative enactment, decree, regulation, order or otherwise, which limits the availability or the transfer of foreign exchange by any Obligor for the purpose of performing any material obligations under the Finance Documents, any certificates, waivers, or any other agreements delivered pursuant to the Finance Documents.

(b) Paragraph (a) above shall not apply to any such restriction or requirement imposed as a result of member state of the European Union which is a Participating Member State in relation to the euro ceasing to be a Participating Member State in relation to the euro, unless such restriction or requirement would be reasonably likely to result in a Material Adverse Effect.

24.10 **Creditors' process and enforcement of Security**

(a) Any Security is enforced against any Obligor or any Material Subsidiary.

(b) Any attachment, distress or execution affects any asset or assets of any Obligor or any Material Subsidiary which is reasonably likely to cause a Material Adverse Effect.

(c) No Event of Default under paragraphs (a) or (b) of this Clause 24.10 above will occur if:

(i) the action is being contested in good faith by appropriate proceedings;

(ii) the principal amount of the indebtedness secured by such Security or in respect of which such attachment, distress or execution is carried out represents less than $50,000,000 (or its equivalent in any other currency or currencies); and

(iii) the enforcement proceedings, attachment, distress or execution is or are discharged within 60 days of commencement.

24.11 **Ownership of Obligors**

(a) Any Obligor (other than the Parent) ceases to be a wholly owned Subsidiary of the Parent (or, in the case of CEMEX España, CEMEX Concretos, CEMEX Finance, CEMEX Corp., CEMEX, Inc., CEMEX Materials or any España Subsidiary Guarantor, the Parent's percentage indirect shareholding in CEMEX España, CEMEX Concretos, CEMEX Finance, CEMEX Corp., CEMEX, Inc., CEMEX Materials or that España Subsidiary Guarantor is reduced from the percentage as at the date of this Agreement) except if it is the subject of a Third Party Disposal.

(b) Either of the following events occurs:

(i) a Change of Control; or

(ii) the sale of all or substantially all of the assets of the Group whether in a single transaction or a series of related transactions.

24.12 **Judgment**

(a) A final judgment or judgments or order or orders not subject to further appeal for the payment of money in an aggregate amount in excess of $50,000,000 shall be rendered against the Parent and/or any of its Subsidiaries that are neither discharged nor bonded in full within 60 days thereafter; or

(b) Any Obligor or any Material Subsidiary fails to comply with or pay any sum due from it under any judgment or any order made or given by any court of competent jurisdiction (in each case in an amount in aggregate exceeding $50,000,000 at any time) save unless payment of any such sum is suspended pending an appeal.

24.13 **Unlawfulness**

(a) It is or becomes unlawful for an Obligor or any other member of the Group that is a party to the Intercreditor Agreement to perform any of its obligations under the Finance Documents where non-performance is reasonably likely to cause a Material Adverse Effect.

(b) Any Transaction Security created or expressed to be created or evidenced by the Transaction Security Documents ceases to be effective except in accordance with the terms of the Finance Documents.

(c) Any obligation or obligations of any Obligor under any Finance Documents or any other member of the Group under the Intercreditor Agreement are not (subject to the Legal Reservations) or cease to be legal, valid, binding or enforceable and the cessation individually or cumulatively materially and adversely affects the interests of the Creditors under the Finance Documents.

(d) Any Finance Document ceases to be in full force and effect or is alleged by an Obligor to be ineffective except in accordance with the terms of the Finance Documents.

24.14 **Repudiation**

An Obligor repudiates a Finance Document or any of the Transaction Security or evidences an intention to repudiate a Finance Document or any of the Transaction Security.

24.15 **Failure to perform payment obligations**

Any material adverse change arises in the financial condition of the Group taken as a whole which the Majority Creditors reasonably determine would result in the failure by the Obligors (taken as a whole) to perform their payment obligations under any of the Finance Documents.

24.16 **Acceleration**

On and at any time after the occurrence of an Event of Default which is continuing the Agent may, without *mise en demeure* or any judicial or extra judicial step, and shall if so directed by the Majority Creditors, by notice to the Parent (but, in respect of any French Obligor, subject to the mandatory provisions of articles L. 620-1 to L. 670-8 of the French Commercial Code):

(a) cancel the Total Commitments at which time they shall immediately be cancelled; and/or

(b) declare that all or part of the Outstanding Principal Amounts, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, at which time they shall become immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived; and/or

(c) declare that all or part of the Outstanding Principal Amounts be payable on demand, at which time they shall immediately become payable on demand by the Agent on the instructions of the Majority Creditors;

(d) make demand on any Guarantor under this Agreement in respect of amounts due and payable under or in connection with this Agreement without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived; and/or

(e) subject to the Intercreditor Agreement (including the requirements of clause 7.2 ( *Enforcement Instructions*) thereof), exercise or direct the Security Agent to exercise any or all of its rights, remedies, powers or discretions under the Finance Documents,

**provided that** in the case of an Event of Default under Clauses 24.6 ( *Insolvency*) or Clause 24.7 (*Insolvency proceedings*) with respect to an Obligor, all of the Total Commitments shall be cancelled automatically and immediately and all Utilisations under the Facilities (together with accrued interest and all other amounts accrued under the Finance Documents) shall become due and payable automatically and immediately without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived.

## SECTION 9
## CHANGES TO PARTIES

### 25. CHANGES TO THE CREDITORS

#### 25.1 Assignments and transfers by the Creditors

Subject to this Clause 25 and to Clause 26 (*Debt Purchase Transactions*), a Creditor (the "**Existing Creditor**") may:

(a) assign any of its rights and benefits; or

(b) transfer by novation any of its rights, benefits and obligations,

under any Finance Document to another bank or financial institution or to a trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets (the " **New Creditor**").

#### 25.2 Conditions of assignment or transfer

(a) (Other than in the case of an assignment permitted by paragraph (b) of Clause 26.1 ( *Permitted Debt Purchase Transactions*)) an assignment will only be effective on:

(i) receipt by the Agent (whether in the Assignment Agreement or otherwise) of written confirmation from the New Creditor (in form and substance satisfactory to the Agent) that the New Creditor will assume the same obligations to the other Finance Parties and the other Secured Parties as it would have been under if it was an Original Creditor;

(ii) the New Creditor entering into the documentation required for it to accede as a party to the Intercreditor Agreement; and

(iii) the performance by the Agent of all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to such assignment to a New Creditor, the completion of which the Agent shall promptly notify to the Existing Creditor and the New Creditor.

(b) A transfer will only be effective if the New Creditor enters into the documentation required for it to accede as a party to the Intercreditor Agreement and if the procedures set out in Clause 25.5 ( *Procedure for transfer*) and paragraph (e) below are complied with.

(c) If:

(i) a Creditor assigns, transfers, declares a trust or grants Security over any of its rights or obligations under the Finance Documents or changes its Facility Office; and

(ii) as a result of the assignment, transfer, declaration of trust, grant of Security or change (other than because of any change in law), an Obligor would be obliged to make a payment to the New Creditor or Creditor acting through its new Facility Office under Clause 13 (*Tax gross-up and indemnities*) or Clause 14 (*Increased Costs*),

then the New Creditor or Creditor acting through its new Facility Office is only entitled to receive payment under that Clause to the same extent as the Existing Creditor or Creditor acting through its previous Facility Office would have been if the assignment, transfer, declaration of trust, grant of Security or change had not occurred.

(d) Each New Creditor, by executing the relevant Transfer Certificate or Assignment Agreement, confirms, for the avoidance of doubt, that the Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Creditor or Creditors in accordance with this Agreement on or prior to the date on which the transfer or assignment becomes effective in accordance with this Agreement and that it is bound by that decision to the same extent as the Existing Creditor would have been had it remained a Creditor.

(e) If an assignment or transfer is made by a Lender under a Loan Facility to whom a Loan Facility Promissory Note has been issued as provided in Clause 4.3 (*Promissory Notes under Loan Facilities*), by a Derivatives Unwind Promissory Noteholder or by a USPP Noteholder of its rights and benefits or, as the case may be, its rights, benefits and obligations under any Finance Document, in accordance with this Clause 25 (*Changes to the Creditors*), the relevant Promissory Note or, as the case may be, USPP Note shall (in whole or part, as appropriate) be endorsed, assigned or transferred to the New Creditor in accordance with its terms (and, in the case of a USPP Note, in accordance with the terms of the USPP Note Agreement) and, in the case of a Promissory Note, to the extent necessary, the Agent and the relevant Borrower shall make appropriate arrangements so that a new Promissory Note is issued to the New Creditor at the expense of the New Creditor, and the existing Promissory Note returned to the Parent.

(f) The minimum amount of an assignment or transfer shall be the lower of $200,000 (or equivalent) or the amount of a Creditor's participation **provided that**, in order to comply with the Dutch FSA, the amount assigned or transferred in respect of Facility A6 and Facility A7 under this Clause 25 (*Changes to the Creditors*) by any Creditor shall be at least EUR 100,000 (or equivalent) per New Creditor or such other amount as may be required from time to time by the Dutch Financial Supervision Act (or implementing legislation) or, if an assignment or transfer is in a lesser amount, the New Creditor shall confirm in writing to the Parent that it is a professional market party within the meaning of the Dutch FSA.

25.3 **Assignment or transfer fee**

Unless the Agent otherwise agrees, the New Creditor shall, on the date upon which an assignment or transfer takes effect, pay to the Agent (for its own account) a fee of $2,000.

25.4 **Limitation of responsibility of Existing Creditors**

(a) Unless expressly agreed to the contrary, an Existing Creditor makes no representation or warranty and assumes no responsibility to a New Creditor for:

(i) the legality, validity, effectiveness, adequacy or enforceability of the Finance Documents, the Transaction Security or any other documents;

(ii) the financial condition of any Obligor;

(iii) the performance and observance by any Obligor of its obligations under the Finance Documents or any other documents; or

(iv) the accuracy of any statements (whether written or oral) made in or in connection with any Finance Document or any other document,

and any representations or warranties implied by law are excluded.

(b) Each New Creditor confirms to the Existing Creditor, the other Finance Parties and the Secured Parties that it:

(i) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of each Obligor and its related entities in connection with its participation in the Finance Documents and has not relied exclusively on any information provided to it by the Existing Creditor or any other Finance Party in connection with any Finance Document or the Transaction Security; and

(ii) will continue to make its own independent appraisal of the creditworthiness of each Obligor and its related entities whilst any amount is or may be outstanding under the Finance Documents or any Commitment is in force.

(c) Nothing in any Finance Document obliges an Existing Creditor to:

(i) accept a re-transfer or re-assignment from a New Creditor of any of the rights and obligations assigned or transferred under this Clause 25; or

(ii) support any losses directly or indirectly incurred by the New Creditor by reason of the non-performance by any Obligor of its obligations under the Finance Documents or otherwise.

25.5 **Procedure for transfer**

(a) Subject to the conditions set out in Clause 25.2 ( *Conditions of assignment or transfer* ) a transfer is effected in accordance with paragraph (c) below when the Agent executes an otherwise duly completed Transfer Certificate delivered to it by the Existing Creditor and the New Creditor. The Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Transfer Certificate appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Transfer Certificate.

(b) The Agent shall only be obliged to execute a Transfer Certificate delivered to it by the Existing Creditor and the New Creditor once it is satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the transfer to such New Creditor.

(c) Subject to Clause 25.9 (*Pro rata interest settlement*), on the Transfer Date:

(i) to the extent that in the Transfer Certificate the Existing Creditor seeks to transfer by novation its rights and obligations under the Finance Documents and in respect of the Transaction Security each of the Obligors and the Existing Creditor shall be released from further obligations towards one another under the Finance Documents and in respect of the Transaction Security and their respective rights against one another under the Finance Documents and in respect of the Transaction Security shall be cancelled (being the "**Discharged Rights and Obligations**");

(ii) each of the Obligors and the New Creditor shall assume obligations towards one another and/or acquire rights against one another which differ from the Discharged Rights and Obligations only insofar as that Obligor or other member of the Group and the New Creditor have assumed and/or acquired the same in place of that Obligor and the Existing Creditor;

(iii) the Agent, the Security Agent, the New Creditor and the other Creditors shall acquire the same rights and assume the same obligations between themselves and in respect of the Transaction Security as they would have acquired and assumed had the New Creditor been an Original Creditor with the rights, and/or obligations acquired or assumed by it as a result of the transfer and to that extent the Agent the Security Agent, and the Existing Creditor shall each be released from further obligations to each other under the Finance Documents; and

(iv) the New Creditor shall become a Party as a "Creditor".

25.6 **Procedure for assignment**

(a) Subject to the conditions set out in Clause 25.2 ( *Conditions of assignment or transfer* ) an assignment may be effected in accordance with paragraph (c) below when the Agent executes an otherwise duly completed Assignment Agreement delivered to it by the Existing Creditor and the New Creditor. The Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Assignment Agreement appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Assignment Agreement.

(b) The Agent shall only be obliged to execute an Assignment Agreement delivered to it by the Existing Creditor and the New Creditor once it is satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the assignment to such New Creditor.

(c) Subject to Clause 25.9 (*Pro rata interest settlement)*, on the Transfer Date:

(i) the Existing Creditor will assign absolutely to the New Creditor its rights under the Finance Documents and in respect of the Transaction Security expressed to be the subject of the assignment in the Assignment Agreement;

(ii) the Existing Creditor will be released from the obligations (the " **Relevant Obligations**") expressed to be the subject of the release in the Assignment Agreement (and any corresponding obligations by which it is bound in respect of the Transaction Security); and

(iii) the New Creditor shall become a Party as a "Creditor" and will be bound by obligations equivalent to the Relevant Obligations.

(d) Creditors may utilise procedures other than those set out in this Clause 25.6 to assign their rights under the Finance Documents (but not, without the consent of the relevant Obligor or unless in accordance with Clause 25.5 ( *Procedure for transfer*), to obtain a release by that Obligor from the obligations owed to that Obligor by the Creditors nor the assumption of equivalent obligations by a New Creditor) **provided that** they comply with the conditions set out in Clause 25.2 ( *Conditions of assignment or transfer* ).

25.7 **Copy of Transfer Certificate or Assignment Agreement to Parent**

The Agent shall, as soon as reasonably practicable after it has executed a Transfer Certificate or an Assignment Agreement, send to the Parent a copy of that Transfer Certificate or Assignment Agreement.

25.8 **Security over Creditors' rights**

In addition to the other rights provided to Creditors under this Clause 25, each Creditor may without consulting with or obtaining consent from any Obligor, at any time charge, assign or otherwise create Security in or over (whether by way of collateral or otherwise) all or any of its rights under any Finance Document to secure obligations of that Creditor including, without limitation:

(a) any charge, assignment or other Security to secure obligations to a federal reserve or central bank; and

(b) in the case of any Creditor which is a fund, any charge, assignment or other Security granted to any holders (or trustee or representatives of holders) of obligations owed, or securities issued, by that Creditor as security for those obligations or securities,

except that no such charge, assignment or Security shall:

(i) release a Creditor from any of its obligations under the Finance Documents or substitute the beneficiary of the relevant charge, assignment or other Security for the Creditor as a party to any of the Finance Documents; or

(ii) require any payments to be made by an Obligor or grant to any person any more extensive rights than those required to be made or granted to the relevant Creditor under the Finance Documents.

25.9 **Pro rata interest settlement**

If the Agent has notified the Creditors that it is able to distribute interest payments on a "***pro rata* basis**" to Existing Creditors and New Creditors then (in respect of any transfer pursuant to Clause 25.5 (*Procedure for transfer*) or any assignment pursuant to Clause 25.6 (*Procedure for assignment*) the Transfer Date of which, in each case, is after the date of such notification and is not on the last day of an Interest Period):

(a) any interest or fees in respect of the relevant participation which are expressed to accrue by reference to the lapse of time shall continue to accrue in favour of the Existing Creditor up to but excluding the Transfer Date ("**Accrued Amounts**") and shall become due and payable to the Existing Creditor (without further interest accruing on them) on the last day of the current Interest Period (or, if the Interest Period is longer than six Months, on the next of the dates which falls at six Monthly intervals after the first day of that Interest Period); and

(b) the rights assigned or transferred by the Existing Creditor will not include the right to the Accrued Amounts so that, for the avoidance of doubt:

(i) when the Accrued Amounts become payable, those Accrued Amounts will be payable for the account of the Existing Creditor; and

(ii) the amount payable to the New Creditor on that date will be the amount which would, but for the application of this Clause 25.9, have been payable to it on that date, but after deduction of the Accrued Amounts.

25.10 **French law provisions**

(a) To the extent a transfer of rights and obligations hereunder could be construed as a novation within the meaning of articles 1271 et seq. of the French Civil Code, each Party agrees that upon a transfer under Clauses 25.1 ( *Assignments and transfers by the Creditors*) and 25.5 (*Procedure for transfer*), the Security created under the French law governed Transaction Security Documents shall be preserved and maintained for the benefit of the Security, the New Creditor and the remaining Finance Parties pursuant to articles 1278 *et seq*. of the French Civil Code.

(b) The New Creditor may, in case of an assignment of rights by an Existing Creditor hereunder, if it considers it necessary to make such transfer effective as against third parties, arrange for the Assignment Agreement to be notified by way of *signification* to any French Obligor in accordance with article 1690 of the French Civil Code.

25.11 **Acceding Creditors**

(a) The Parent may in its absolute discretion, by posting a notice to Debtdomain addressed to the Participating Creditors under (and as defined in) the 2009 Financing Agreement, invite such Participating Creditors to elect to exchange into this Agreement on or before the date falling 30 days after the Effective Date, by executing a Creditor Accession Letter. Such invitation to elect to exchange may, at the discretion of the Parent, be subject to an overall aggregate cap on the amounts that may be so exchanged into this Agreement and where the Participating Creditors that elect to exchange have Exposures (under and as defined in the 2009 Financing Agreement) over the level of such cap, then any exchange shall be effected *pro rata* as between the Exposures (under and as defined in the 2009 Financing Agreement) of such Participating Creditors that have elected to exchange.

(b) The Agent and the Security Agent shall (and the Creditors hereby authorise and instruct the Agent and the Security Agent to) execute such Creditor Accession Letter to give effect to the accession by that person as a Creditor under the Finance Documents (and as a party to the Ancillary Agreement as set out in that Creditor Accession Letter).

## 26. DEBT PURCHASE TRANSACTIONS

26.1 **Permitted Debt Purchase Transactions**

(a) The Parent shall not (and shall procure that no other member of the Group or any Affiliate of the Parent shall) (i) enter into any Permitted Debt Purchase Transaction other than in accordance with the other provisions of this Clause 26.1 or (ii) be party to (or beneficially own all or any part of the share capital of a company that is a Creditor or a party to) any Restricted Debt Purchase Transaction.

(b) A Borrower may purchase by way of assignment, pursuant to Clause 25 ( *Changes to the Creditors*), a participation in any Utilisation in respect of which it is the borrower and any related Commitment where:

(i) such purchase is made for a consideration of less than par;

(ii) such purchase is made using one of the processes set out at paragraphs (c) and (d) below;

(iii) such purchase is made at a time when no Default is continuing; and

(iv) the consideration for such purchase is funded from that part of any proceeds referred to in Clauses 7.2 ( *Caliza Proceeds*), 7.3 (*Disposal Proceeds*), 7.4 (*Excess Cashflow*), 7.5 (*Permitted Equity Fundraising Proceeds*) or 7.6 (*Permitted Debt Fundraising Proceeds and Permitted Securitisation Proceeds*) which is permitted to be retained by the Group and is not required to be deposited in a Segregated Account or applied to prepay the Facilities or to prepay, redeem, repay, retire, or purchase other Financial Indebtedness (or to be placed in a Reserve for such purpose) pursuant to Clause 7 ( *Mandatory prepayment and Segregated Accounts*).

(c)

(i) A Permitted Debt Purchase Transaction referred to in paragraph (b) above may be entered into pursuant to a solicitation process (a "**Solicitation Process**") which is carried out as follows.

(ii) Prior to 11.00 am on a given Business Day (the "**Solicitation Day**") the Parent or a financial institution acting on its behalf (the "**Purchase Agent**") will approach at the same time each Creditor which participates in the Facilities to enable them to offer to sell to the relevant Borrower(s) an amount of their participation in one or more Facilities. Any Creditor wishing to make such an offer shall, by 11.00 am on the second Business Day following such Solicitation Day, communicate to the Purchase Agent details of the amount of its participations, and in which Facilities, it is offering to sell and the price at which it is offering to sell such participations. Any such offer shall be irrevocable until 11.00 am on the third Business Day following such Solicitation Day and shall be capable of acceptance by the Parent on behalf of the relevant Borrower(s) on or before such time by communicating its acceptance in writing to the Purchase Agent or, if it is the Purchase Agent, the relevant Creditors. The Purchase Agent (if someone other than the Parent) will communicate to the relevant Creditors which offers have been accepted by 12 noon on the third Business Day following such Solicitation Day. In any event by 11.00 am on the fourth Business Day following such Solicitation Day, the Parent shall notify the Agent of the amounts of the participations purchased through the relevant Solicitation Process, the identity of the Facilities to which they relate and the average price paid for the purchase of participations in each relevant Facility. The Agent shall disclose such information to any Creditor that requests such disclosure.

(iii) Any purchase of participations in the Facilities pursuant to a Solicitation Process shall be completed and settled on or before the fifth Business Day after the relevant Solicitation Day.

(iv) In accepting any offers made pursuant to a Solicitation Process the Parent shall be free to select which offers and in which amounts it accepts but on the basis that in relation to a participation in a particular Facility it accepts offers in inverse order of the price offered (with the offer or offers at the lowest price being accepted first) and that if in respect of participations in a particular Facility it receives two or more offers at the same price it shall only accept such offers on a *pro rata* basis.

(d)

(i) A Permitted Debt Purchase Transaction referred to in paragraph (b) above may also be entered into pursuant to an open order process (an "**Open Order Process**") which is carried out as follows.

(ii) The Parent (on behalf of the relevant Borrower(s)) may by itself or through another Purchase Agent place an open order (an " **Open Order**") to purchase participations in one or more of the Facilities up to a set aggregate amount at a set price by notifying at the same time all the Creditors participating in the Facilities of the same. Any Creditor wishing to sell pursuant to an Open Order will, by 11.00 am on any Business Day following the date on which the Open Order is placed but no earlier than the first Business Day, and no later than the fifth Business Day, following the date on which the Open Order is placed, communicate to the Purchase Agent details of the amount of its participations, and in which Facilities, it is offering to sell. Any such offer to sell shall be irrevocable until 11.00 am on the Business Day following the date of such offer from the Creditor and shall be capable of acceptance by the Parent on behalf of the relevant Borrower(s) on or before such time by it communicating such acceptance in writing to the relevant Creditor.

(iii) Any purchase of participations in the Facilities pursuant to an Open Order Process shall be completed and settled by the relevant Borrower(s) on or before the fourth Business Day after the date of the relevant offer by a Creditor to sell under the relevant Open Order.

(iv) If in respect of participations in a Facility the Purchase Agent receives on the same Business Day two or more offers at the set price such that the maximum amount of such Facility to which an Open Order relates would be exceeded, the Parent shall only accept such offers on a *pro rata* basis.

(v) The Parent shall, by 11.00 am on the sixth Business Day following the date on which an Open Order is placed, notify the Agent of the

amounts of the participations purchased through such Open Order Process and the identity of the Facilities to which they relate. The Agent shall disclose such information to any Creditor that requests the same.

(e) For the avoidance of doubt, there is no limit on the number of occasions a Solicitation Process or an Open Order Process may be implemented.

(f) In relation to any Permitted Debt Purchase Transaction entered into pursuant to this Clause 26.1, notwithstanding any other term of this Agreement or the other Finance Documents:

(i) on completion of the relevant assignment pursuant to Clause 25 ( *Changes to the Creditors*), the portions of the Utilisations to which it relates shall be extinguished and any related Repayment Instalments will be reduced pro-rata accordingly;

(ii) such Permitted Debt Purchase Transaction and the related extinguishment referred to in paragraph (i) above shall not constitute a prepayment of the Facilities;

(iii) the Borrower which is the assignee shall be deemed to be an entity which fulfils the requirements of Clause 25.1 ( *Assignments and transfers by the Creditors*) to be a New Creditor (as defined in such Clause);

(iv) no member of the Group shall be deemed to be in breach of any provision Clause 22 ( *General Undertakings*) solely by reason of such Permitted Debt Purchase Transaction;

(v) Clause 30 (*Sharing among the Finance Parties*) shall not be applicable to the consideration paid under such Permitted Debt Purchase Transaction; and

(vi) for the avoidance of doubt, any extinguishment of any part of the Utilisations shall not affect any amendment or waiver which prior to such extinguishment had been approved by or on behalf of the requisite Creditor or Creditors in accordance with this Agreement.

(g) The Agent shall be under no obligation to act as Purchase Agent under any transaction contemplated by this Clause 26.1.

## 27. CHANGES TO THE OBLIGORS

### 27.1 Assignment and Transfers by Obligors

No Obligor or any other member of the Group may assign any of its rights or transfer any of its rights or obligations under the Finance Documents.

27.2 **Resignation of a Borrower**

(a) In this Clause 27.2, Clause 27.4 (*Resignation of a Guarantor*) and Clause 27.7 (*Resignation and release of Security on disposal*), "**Third Party Disposal**" means the disposal of all of the issued share capital of an Obligor to a person which is not a member of the Group where that disposal is permitted under Clause 22.18 (*Disposals*) or made with the approval of the Majority Creditors (and the Parent has confirmed this is the case).

(b) If a Borrower is the subject of a Third Party Disposal, the Parent may request that such Borrower (other than the Parent) ceases to be a Borrower by delivering to the Agent a Resignation Letter.

(c) The Agent shall accept a Resignation Letter and notify the Parent and the other Finance Parties of its acceptance if:

(i) the Parent has confirmed that no Default is continuing or would result from the acceptance of the Resignation Letter;

(ii) either:

(A) the Borrower has repaid all Utilisations in respect of which it is the Borrower as provided in paragraph (c) of Clause 7.3 (*Disposal Proceeds*) (and paid all other amounts relating to such Utilisations) and is under no actual or contingent obligations as a Borrower under any Finance Documents; or

(B) the Creditor(s) under any Facility in respect of which the Obligor the subject of the Third Party Disposal is the Borrower and the Borrower have agreed in writing that such Facility will remain in place (without recourse to any member of the Group) following completion of the Third Party Disposal and notified the Agent of the same in the relevant Resignation Letter;

(iii) where the Borrower is also a Guarantor (unless its resignation has been accepted in accordance with Clause 27.4 ( *Resignation of a Guarantor*)), its obligations in its capacity as Guarantor continue to be legal, valid, binding and enforceable and in full force and effect (subject to the Legal Reservations) and the amount guaranteed by it as a Guarantor is not decreased (and the Parent has confirmed this is the case); and

(iv) the Parent has confirmed that it shall, if so required, ensure that any relevant Disposal Proceeds will be applied in accordance with Clause 7 (*Mandatory Prepayment and Segregated Accounts*).

(d) If the Creditor(s) under any Facility in respect of which the Obligor the subject of the Third Party Disposal is the Borrower and the Borrower have agreed that such Facility will remain in place (without recourse to any member of the Group) following completion of the Third Party Disposal then upon completion of the Third Party Disposal:

(i) the Borrower will cease to be a "Borrower" or "Guarantor" for the purposes of the Finance Documents;

(ii) the relevant Facility will cease to be a "Facility" for the purposes of the Finance Documents; and

(iii) the Creditor(s) in respect of that Facility will cease to be "Creditors" in respect of that Facility under the Finance Documents.

(e) Upon notification by the Agent to the Parent of its acceptance of the resignation of a Borrower, that company shall cease to be a Borrower and shall have no further rights or obligations under the Finance Documents as a Borrower except that the resignation shall not take effect (and the Borrower will continue to have rights and obligations under the Finance Documents) until the date on which the Third Party Disposal takes effect.

(f) The Agent may, at the cost and expense of the Parent, require a legal opinion from counsel to the Agent confirming the matters set out in paragraph (c)(iii) above and the Agent shall be under no obligation to accept a Resignation Letter until it has obtained such opinion in form and substance reasonably satisfactory to it.

27.3 **Additional Guarantors and Additional Security Providers**

(a) Subject to compliance with the provisions of paragraphs (b) and (c) of Clause 20.8 ( *"Know your client" checks*), the Parent may request that any of its wholly owned Subsidiaries become an Additional Guarantor or an Additional Security Provider by:

(i) the Parent delivering to the Agent a duly-completed and executed Accession Letter; and

(ii) the Parent delivers (or procures that the Additional Guarantor or Additional Security Provider (as the case may be) delivers) all of the documents and other evidence referred to in Part II ( *Conditions Precedent required to be delivered by an Additional Obligor*) of Schedule 2 (*Conditions Precedent)* in relation to that Additional Guarantor or Additional Security Provider to the Agent.

(b) The Agent shall notify the Obligors and the Creditors promptly upon being satisfied that it has received all the documents and other evidence listed in Part II (*Conditions Precedent required to be delivered by an Additional Obligor*) of Schedule 2 (*Conditions Precedent)*.

27.4 **Resignation of a Guarantor**

(a) The Parent may request that a Guarantor (other than the Parent) ceases to be a Guarantor by delivering to the Agent a Resignation Letter if:

(i) that Guarantor is being disposed of by way of a Third Party Disposal (as defined in Clause 27.2 ( *Resignation of a Borrower*)) and the Parent has confirmed this is the case; or

(ii) all the Creditors have consented to the resignation of that Guarantor.

(b) The Agent shall accept a Resignation Letter and notify the Parent and the Creditors of its acceptance if:

(i) the Parent has confirmed that no Default is continuing or would result from the acceptance of the Resignation Letter;

(ii) no payment is due from the Guarantor under Clause 18 ( *Guarantee and indemnity*);

(iii) where the Guarantor is also a Borrower, it is under no actual or contingent obligations as a Borrower and has resigned and ceased to be a Borrower under Clause 27.2 (*Resignation of a Borrower*); and

(iv) the Parent has confirmed that it shall ensure, if so required, that the Disposal Proceeds will be applied in accordance with Clause 7 (*Mandatory Prepayment and Segregated Accounts*).

(c) The resignation of a Guarantor under paragraph (a)(i) above shall not be effective until the date of the relevant Third Party Disposal, at which time that company shall cease to be a Guarantor and shall have no further rights or obligations under the Finance Documents as a Guarantor.

27.5 **Resignation of a Security Provider**

(a) The Parent may request that a Security Provider ceases to be a Security Provider by delivering to the Agent a Resignation Letter if:

(i) the Transaction Security granted by that Security Provider is being released under and in accordance with the Intercreditor Agreement and the Parent has confirmed that this is the case; or

(ii) all the Creditors have consented to the resignation of that Security Provider.

(b) The Agent shall accept a Resignation Letter and notify the Parent and the Creditors of its acceptance if:

(i) the Parent has confirmed that no Default is continuing or would result from the acceptance of the Resignation Letter;

(ii) the Parent has confirmed that the Transaction Security granted by that Security Provider has not become enforceable in accordance with its terms.

(c) The resignation of that Security Provider shall not be effective until the date on which the Transaction Security granted by the Security Provider has been released under and in accordance with the Intercreditor Agreement, at which time that company shall cease to be a Security Provider and shall have no further rights or obligations under the Finance Documents as a Security Provider.

27.6 **Repetition of Representations**

Delivery of an Accession Letter constitutes confirmation by the relevant Affiliate that the Repeating Representations are true and correct in relation to it as at the date of delivery as if made by reference to the facts and circumstances then existing.

27.7 **Resignation and release of Security on disposal**

If a Borrower or Guarantor is or is proposed to be the subject of a Third Party Disposal then:

(a) where that Obligor created Transaction Security over any of its assets or business in favour of the Security Agent, or Transaction Security in favour of the Security Agent was created over the shares (or equivalent) of that Obligor, the Security Agent may, at the cost and request of the Parent, release those assets, business or shares (or equivalent) and issue certificates of non-crystallisation;

(b) the resignation of that Obligor and related release of Transaction Security referred to in paragraph (a) above shall not become effective until the date of that disposal; and

(c) if the disposal of that Obligor is not made, the Resignation Letter of that Obligor and the related release of Transaction Security referred to in paragraph (a) above shall have no effect and the obligations of the Obligor and the Transaction Security created or intended to be created by or over that Obligor shall continue in such force and effect as if that release had not been effected.

## SECTION 10
## THE FINANCE PARTIES

### 28. ROLE OF THE AGENT

#### 28.1 Appointment of the Agent

(a) Each of the Creditors appoints the Agent to act as its agent under and in connection with the Finance Documents.

(b) Each of the Creditors authorises the Agent to exercise the rights, powers, authorities and discretions specifically given to the Agent under or in connection with the Finance Documents (including the appointment of any sub-agents or local agents to assist in administration of payments, the supervision or enforcement of any of the Finance Documents) together with any other incidental rights, powers, authorities and discretions.

#### 28.2 Interests of Creditors

Without limiting paragraphs (a) to (c) of Clause 28.8 (*Majority Creditors' instructions*), in connection with the exercise of its powers, authorities or discretions (including, but not limited to, those in relation to any proposed modifications, waiver or authorisation of any breach or proposed breach of any of the provisions of this Agreement), the Agent shall have regard to the general interests of the Creditors (taken as a whole) and shall not have regard to any interest arising from circumstances particular to individual Creditors.

#### 28.3 Duties of the Agent

(a) Subject to paragraph (b) below, the Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Agent for that Party by any other Party.

(b) Without prejudice to Clause 25.7 (*Copy of Transfer Certificate or Assignment Agreement to Parent*), paragraph (a) above shall not apply to any Transfer Certificate or any Assignment Agreement.

(c) The Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.

(d) If the Agent receives notice from a Party referring to this Agreement, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the other Finance Parties.

(e) If the Agent is aware of the non-payment of any principal, interest or fee payable to a Finance Party (other than the Agent or the Security Agent) under this Agreement it shall promptly notify the other Finance Parties.

(f) The Agent shall provide to the Parent within three Business Days of a request by the Parent (but no more frequently than once per calendar month) a list (which may be in electronic form) setting out the names of the Creditors as at that Business Day, their respective Commitments, and the name of the contact

person, if any, for whose attention any communication sent to that Creditor is to be made or any document delivered under or in connection with the Finance Documents and, in the case of any Creditor to whom any communication under or in connection with the Finance Documents may be made by that means, the electronical mail address and/or any other information required to enable the sending and receipt of information by electronic mail or other electronic means to and by that Creditor.

(g) The Agent's duties under the Finance Documents are solely mechanical and administrative in nature.

28.4 **Role of the Structuring Banks**

(a) Except as specifically provided in the Finance Documents, the Structuring Banks do not have any obligations or liabilities of any kind to any other Party under or in connection with any Finance Document.

(b) With effect from the Effective Date (and without prejudicing any accrued rights and liabilities of the parties to those documents), the Structuring Bank Documents shall be terminated in accordance with their terms.

28.5 **No fiduciary duties**

(a) Nothing in this Agreement constitutes the Agent or any Structuring Bank as a trustee or fiduciary of any other person.

(b) None of the Agent or the Security Agent or any Structuring Bank shall be bound to account to any Creditor for any sum or the profit element of any sum received by it for its own account.

28.6 **Business with the Group**

The Agent, the Security Agent or any Structuring Bank may accept deposits from, lend money to and generally engage in any kind of banking or other business with any member of the Group.

28.7 **Rights and discretions**

(a) The Agent may rely on:

(i) any representation, notice or document (including, for the avoidance of doubt, any representation, notice or document communicating the consent of the Majority Creditors pursuant to Clause 37.1 ( *Required consents*)) believed by it to be genuine, correct and appropriately authorised; and

(ii) any statement made by a director, authorised signatory or employee of any person regarding any matters which may reasonably be assumed to be within his knowledge or within his power to verify.

(b) The Agent may assume (unless it has received notice to the contrary in its capacity as agent for the Creditors) that:

(i) no Default has occurred (unless it has actual knowledge of a Default arising under Clause 24.1 ( *Non-payment*));

(ii) any right, power, authority or discretion vested in any Party or the Majority Creditors has not been exercised;

(iii) any notice or request made by the Parent (other than a Selection Notice) is made on behalf of and with the consent and knowledge of all the Obligors.

(c) The Agent may engage, pay for and rely on the advice or services of any lawyers, accountants, surveyors or other experts.

(d) The Agent may act in relation to the Finance Documents through its personnel and agents and through any necessary subagent, local agent or Affiliate and for that purpose, may enter into any agreement or cause any agreement to be entered into, by any such subagent, local agent or Affiliate, including the execution, delivery, performance or enforcement of any Transaction Security Document.

(e) The Agent may disclose to any other Party any information it reasonably believes it has received as agent under this Agreement.

(f) Without prejudice to the generality of paragraph (e) above, the Agent may disclose the identity of a Defaulting Creditor to the other Finance Parties and the Parent and shall disclose the same upon the written request of the Parent or the Majority Creditors.

(g) Notwithstanding any other provision of any Finance Document to the contrary, none of the Agent or any Structuring Bank is obliged to do or omit to do anything if it would or might in its reasonable opinion constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.

(h) The Agent is not obliged to disclose to any Finance Party but shall disclose to the Parent as soon as reasonably practical following a request to do so any details of the rate notified to the Agent by any Creditor or the identity of any such Creditor for the purpose of paragraph (a)(ii) of Clause 11.2 (*Market disruption*) (**provided that** the Parent, by its signature to this Agreement, agrees to keep such information confidential and not to disclose it to anyone except for its officers, directors, employees and professional advisers on a confidential and "need to know" basis).

28.8 **Majority Creditors' instructions**

(a) Unless a contrary indication appears in a Finance Document, the Agent shall (i) exercise any right, power, authority or discretion vested in it as Agent in accordance with any instructions given to it by the Majority Creditors (or, if so instructed by the Majority Creditors, refrain from exercising any right, power,

authority or discretion vested in it as Agent) and (ii) not be liable for any act (or omission) if it acts (or refrains from taking any action) in accordance with an instruction of the Majority Creditors.

(b) Unless a contrary indication appears in a Finance Document, any instructions given by the Majority Creditors will be binding on all the Finance Parties other than the Security Agent.

(c) The Agent may refrain from acting in accordance with the instructions of the Majority Creditors (or, if appropriate, the Creditors) until it has received such security as it may require for any cost, loss or liability (together with any associated VAT) which it may incur in complying with the instructions.

(d) In the absence of instructions from the Majority Creditors, (or, if appropriate, the Creditors) the Agent may act (or refrain from taking action) as it considers to be in the best interest of the Creditors (taken as a whole).

(e) The Agent is not authorised to act on behalf of a Creditor (without first obtaining that Creditor's consent) in any legal or arbitration proceedings relating to any Finance Document. This paragraph (e) shall not apply to any legal or arbitration proceeding relating to the perfection, preservation or protection of rights under the Transaction Security Documents or enforcement of the Transaction Security or Transaction Security Documents.

28.9 **Responsibility for documentation**

None of the Agent or any Structuring Bank is:

(a) responsible for the adequacy, accuracy and/or completeness of any information (whether oral or written) supplied by the Agent, an Obligor or any other person given in or in connection with any Finance Document or the Transaction Security;

(b) responsible for the legality, validity, effectiveness, adequacy or enforceability of any Finance Document or the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of or in connection with any Finance Document or the Transaction Security; or

(c) responsible for any determination as to whether any information provided or to be provided to any Finance Party is non-public information the use of which may be regulated or prohibited by applicable law or regulation relating to insider dealing or otherwise.

28.10 **Exclusion of liability**

(a) Without limiting paragraph (b) below, none of the Agent or any Structuring Bank will be liable for any action taken by it under or in connection with any Finance Document or the Transaction Security (or the negotiation or implementation of such documents) unless directly caused by its gross negligence or wilful misconduct or wilful breach of any Finance Document (and, for the avoidance of doubt, none of the Agent or any Structuring Bank will be liable in any circumstances for any consequential loss).

(b) No Party (other than the Agent) may take any proceedings against any officer, employee or agent of the Agent in respect of any claim it might have against the Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document and any officer, employee or agent of the Agent may rely on this Clause subject to Clause 1.5 ( *Third party rights*) and the provisions of the Third Parties Act.

(c) The Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by the Agent if the Agent has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Agent for that purpose.

(d) Nothing in this Agreement shall oblige the Agent or any Structuring Bank to carry out any checks pursuant to any laws or regulations relating to money laundering in relation to any person on behalf of any Creditor and each Creditor confirms to the Agent and each Structuring Bank that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Agent or a Structuring Bank.

(e) The Agent will have no liability for the acts of its agents, sub-agents or delegates (including Affiliates acting in such capacities) except to the extent that the acts or omissions of such agent or sub-agent (to the extent that it is an Affiliate of the Agent) constituted gross negligence, wilful misconduct.

28.11 **Creditors' indemnity to the Agent**

Each Creditor shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Agent and its Affiliates (to the extent they act as agents, sub-agents or delegates in relation to the Finance Documents), within three Business Days of demand, against any cost, loss or liability incurred by the Agent and its Affiliates (to the extent they act as agents, sub-agents or delegates in relation to the Finance Documents) (otherwise than by reason of the Agent's or the relevant Affiliate's gross negligence or wilful misconduct) in acting as (or as the case may be, assisting the) Agent under the Finance Documents (unless the Agent or the relevant Affiliate has been reimbursed by an Obligor pursuant to a Finance Document). Any third party referred to in this Clause 28.11 may rely on this Clause 28.11.

28.12 **Resignation of the Agent**

(a) The Agent may resign and appoint one of its Affiliates acting through an office in the European Union as successor by giving notice to the other Finance Parties and the Parent.

(b) Alternatively the Agent may resign by giving notice to the other Finance Parties and the Parent, in which case the Majority Creditors (after consultation with the Parent) may appoint a successor Agent.

(c) If the Majority Creditors have not appointed a successor Agent in accordance with paragraph (b) above within 30 days after notice of resignation was given, the Agent (after consultation with the Parent) may appoint a successor Agent (acting through an office in the European Union).

(d) The retiring Agent shall, at its own cost, make available to the successor Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents.

(e) The Agent's resignation notice shall only take effect upon the appointment of a successor.

(f) Upon the appointment of a successor, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents but shall remain entitled to the benefit of this Clause 28.12. Its successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.

28.13 **Replacement of the Agent**

(a) After consultation with the Parent, the Majority Creditors may, by giving 30 days' notice to the Agent (or, at any time the Agent is an Impaired Agent, by giving any shorter notice determined by the Majority Creditors) replace the Agent by appointing a successor Agent (acting through an office in the European Union).

(b) The retiring Agent shall (at its own cost if it is an Impaired Agent and otherwise at the expense of the Creditors) make available to the successor Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents.

(c) The appointment of the successor Agent shall take effect on the date specified in the notice from the Majority Creditors to the retiring Agent. As from this date, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents but shall remain entitled to the benefit of this Clause 28 (and any agency fees for the account of the retiring Agent shall cease to accrue from (and shall be payable on) that date).

(d) Any successor Agent and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.

28.14 **Confidentiality**

(a) In acting as agent for the Finance Parties, the Agent shall be regarded as acting through its agency division which shall be treated as a separate entity from any other of its divisions or departments.

(b) If information is received by another division or department of the Agent, it may be treated as confidential to that division or department and the Agent shall not be deemed to have notice of it.

(c) Notwithstanding any other provision of any Finance Document to the contrary, the Agent is not obliged to disclose to any other person (i) any confidential information or (ii) any other information if the disclosure would or might in its reasonable opinion constitute a breach of any law or a breach of a fiduciary duty.

28.15 **Relationship with the Creditors**

(a) Subject to Clause 25.9 (*Pro rata interest settlement*), the Agent may treat the person shown in its records as Creditor at the opening of business (in the place of the Agent's principal office as notified to the Finance Parties from time to time) as the Creditor acting through its Facility Office:

(i) entitled to or liable for any payment due under any Finance Document on that day; and

(ii) entitled to receive and act upon any notice, request, document or communication or make any decision or determination under any Finance Document made or delivered on that day,

unless it has received not less than five Business Days' prior notice from that Creditor to the contrary in accordance with the terms of this Agreement.

(b) Each Creditor shall supply the Agent with any information required by the Agent in order to calculate the Mandatory Cost in accordance with Schedule 5 (*Mandatory Cost Formula*).

(c) Each Creditor shall supply the Agent with any information that the Security Agent may reasonably specify (through the Agent) as being necessary or desirable to enable the Security Agent to perform its functions as Security Agent. Each Creditor shall deal with the Security Agent exclusively through the Agent and shall not deal directly with the Security Agent.

(d) The Agent may disclose to any Creditor any information received by it in its capacity as Agent (including, without limitation, details of the identities and Commitments of the Creditors).

(e) Any Creditor may by notice to the Agent appoint a person to receive on its behalf all notices, communications, information and documents to be made or despatched to that Creditor under the Finance Documents. Such notice shall contain the address, fax number and (where communication by electronic mail or other electronic means is permitted under Clause 33.6 ( *Electronic communication*)) electronic mail address and/or any other information required to enable the sending and receipt of information by that means (and, in each case, the department or officer, if any, for whose attention communication is to be made) and be treated as a notification of a substitute address, fax number, electronic mail address, department and officer by that

Creditor for the purposes of Clause 33.2 (*Addresses*) and paragraph (a) (iii) of Clause 33.6 (*Electronic communication*) and the Agent shall be entitled to treat such person as the person entitled to receive all such notices, communications, information and documents as though that person were that Creditor.

28.16 **Credit appraisal by the Creditors**

Without affecting the responsibility of any Obligor for information supplied by it or on its behalf in connection with any Finance Document, each Creditor confirms to the Agent and each Structuring Bank that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Finance Document including but not limited to:

(a) the financial condition, status and nature of each member of the Group;

(b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document and the Transaction Security and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Transaction Security;

(c) whether that Secured Party has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Finance Document, the Transaction Security or the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;

(d) the adequacy, accuracy and/or completeness of any information provided by the Agent, any Party or by any other person under or in connection with any Finance Document, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;

(e) the right or title of any person in or to, or the value or sufficiency of any part of the Charged Property, the priority of any of the Transaction Security or the existence of any Security affecting the Charged Property; and

(f) the legality, validity, effectiveness, adequacy or enforceability of any action taken or made in connection with any Finance Document.

28.17 **Reference Banks**

The Parties agree and acknowledge that:

(a) the Obligors have proposed the names of the entities referred to in the definition of Reference Banks and the appointment of those Reference Banks has been accepted by the Original Creditors; and

(b) each Obligor represents that it considers it beneficial for it to appoint banks of international repute which are Creditors hereunder as Reference Banks for the purposes of this Agreement (instead of other banks which are not Creditors hereunder in order to have Reference Banks which are not Creditors the rates of which could be less representative of market rates).

28.18 **Agent's management time**

Any amount payable to the Agent under Clause 15.3 ( *Indemnity to the Agent*), Clause 17 (*Costs and expenses*) and Clause 28.11 (*Creditors' indemnity to the Agent*) shall include the cost of utilising the Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Agent may notify to the Parent and the Creditors, and is in addition to any fee paid or payable to the Agent under Clause 12 (*Fees*).

28.19 **Deduction from amounts payable by the Agent**

If any Party owes an amount to the Agent under the Finance Documents the Agent may, after giving notice to that Party, deduct an amount not exceeding that amount from any payment to that Party which the Agent would otherwise be obliged to make under the Finance Documents and apply the amount deducted in or towards satisfaction of the amount owed. For the purposes of the Finance Documents that Party shall be regarded as having received any amount so deducted.

28.20 **Role of FTI Consulting Canada, ULC**

Each Party agrees and acknowledges that FTI Consulting Canada, ULC has provided the FTI Report and is otherwise acting on the terms of its engagement letter dated 1 February 2012 with the Parent for the provision of reports to the Creditors, and shall have no liability whatsoever save to the extent expressly contemplated in that engagement letter.

28.21 **Role of the Security Agent**

(a) The Security Agent's duties under this Agreement are solely mechanical and administrative in nature.

(b) In particular, the role and, *inter alia*, duties, rights, powers, protections and benefits of the Security Agent are more particularly described in the Intercreditor Agreement, which sets out the basis upon which the Security Agent acts under this Agreement. Should any provision regarding the duties, discretions, rights, benefits, protections, indemnities and immunities of the Security Agent (the " **Security Agent Provisions**") conflict or otherwise be inconsistent as between this Agreement and the Intercreditor Agreement, then the Security Agent Provisions as contained in the Intercreditor Agreement shall prevail.

28.22 **Reliance and engagement letters**

Each Finance Party and Secured Party confirms that the Agent has authority to accept on its behalf (and ratifies the acceptance on its behalf of any letters or reports already accepted by the Agent) the terms of any reliance letter or engagement letters relating

to the FTI Report or any reports or letters provided by accountants in connection with the Finance Documents or the transactions contemplated in the Finance Documents and to bind it in respect of the FTI Report or those other reports or letters and to sign such letters on its behalf and further confirms that it accepts the terms and qualifications set out in such letters unless, in the case of the FTI Report, it has already entered into a non-reliance letter in form and substance satisfactory to FTI Consulting Canada, ULC.

## 29. CONDUCT OF BUSINESS BY THE FINANCE PARTIES

No provision of this Agreement will:

(a) interfere with the right of any Finance Party to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;

(b) oblige any Finance Party to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or

(c) oblige any Finance Party to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

## 30. SHARING AMONG THE FINANCE PARTIES

### 30.1 Payments to Finance Parties

If a Finance Party (a "**Recovering Finance Party**") receives or recovers any amount from an Obligor other than in accordance with Clause 31 (*Payment mechanics*) or otherwise receives or recovers more than the amount to which it is entitled under the Finance Documents (a " **Recovered Amount**") and applies that amount to a payment due under the Finance Documents then:

(b) the Recovering Finance Party shall, within three Business Days, notify details of the receipt or recovery, to the Agent;

(c) the Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Finance Party would have been paid had the receipt or recovery been received or made by the Agent and distributed in accordance with Clause 31 ( *Payment mechanics*), without taking account of any Tax which would be imposed on the Agent in relation to the receipt, recovery or distribution; and

(d) the Recovering Finance Party shall, within three Business Days of demand by the Agent, pay to the Agent an amount (the " **Sharing Payment**") equal to such receipt or recovery less any amount which the Agent determines may be retained by the Recovering Finance Party as its share of any payment to be made, in accordance with Clause 31.6 ( *Partial payments*).

### 30.2 Redistribution of payments

The Agent shall treat the Sharing Payment as if it had been paid by the relevant Obligor and distribute it between the Finance Parties (other than the Recovering Finance Party) (the "**Sharing Finance Parties**") in accordance with Clause 31.6 (*Partial payments*) towards the obligations of that Obligor to the Sharing Finance Parties.

30.3 **Recovering Finance Party's rights**

(a) On a distribution by the Agent under Clause 30.2 ( *Redistribution of payments*), of a payment received by a Recovering Finance Party from an Obligor, as between the relevant Obligor and the Recovering Finance Party, an amount of the Recovered Amount equal to the Sharing Payment will be treated as not having been paid by that Obligor.

(b) If and to the extent that the Recovering Finance Party is not able to rely on its rights under paragraph (a) above, the relevant Obligor shall be liable to the Recovering Finance Party for a debt equal to the Sharing Payment which is immediately due and payable.

30.4 **Reversal of redistribution**

If any part of the Sharing Payment received or recovered by a Recovering Finance Party becomes repayable and is repaid by that Recovering Finance Party, then:

(a) each Sharing Finance Party shall, upon request of the Agent, pay to the Agent for the account of that Recovering Finance Party an amount equal to the appropriate part of its share of the Sharing Payment (together with an amount as is necessary to reimburse that Recovering Finance Party for its proportion of any interest on the Sharing Payment which that Recovering Finance Party is required to pay) (the " **Redistributed Amount**"); and

(b) that Recovering Finance Party's right of subrogation in respect of any reimbursement shall be cancelled and, as between the relevant Obligor and each relevant Sharing Finance Party, an amount equal to the relevant Redistributed Amount will be treated as not having been paid by that Obligor.

30.5 **Exceptions**

(a) This Clause 30 shall not apply to the extent that the Recovering Finance Party would not, after making any payment pursuant to this Clause, have a valid and enforceable claim against the relevant Obligor.

(b) A Recovering Finance Party is not obliged to share with any other Finance Party any amount which the Recovering Finance Party has received or recovered as a result of taking legal or arbitration proceedings, if:

(i) it notified the other Finance Party of the legal or arbitration proceedings; and

(ii) the other Finance Party had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice and did not take separate legal or arbitration proceedings.

(c) This Clause 30 shall not impose any obligation on the Security Agent to pay a Sharing Payment to the Agent under Clause 30.1 ( *Payments to Finance Parties*) or Clause 30.4 (*Reversal of redistribution*).

## SECTION 11
## ADMINISTRATION

### 31. PAYMENT MECHANICS

#### 31.1 Payments to the Agent

(a) Subject to paragraph (b), on each date on which an Obligor or a Creditor is required to make a payment under a Finance Document, that Obligor or Creditor shall make the same available to the Agent (unless a contrary indication appears in a Finance Document) for value on the due date at the time and in such funds specified by the Agent as being customary at the time for settlement of transactions in the relevant currency in the place of payment.

(b) Payment shall be made to such account in the principal financial centre of the country of that currency (or, in relation to euro, in a principal financial centre in a Participating Member State or London) with such bank as the Agent specifies.

#### 31.2 Distributions by the Agent

Each payment received by the Agent under the Finance Documents for another Party shall, subject to Clause 31.3 ( *Distributions to an Obligor*) and Clause 31.4 (*Clawback*) and Clause 28.19 (*Deduction from amounts payable by the Agent*) be made available by the Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement for the account of its Facility Office, to such account as that Party may notify to the Agent by not less than five Business Days' notice with a bank in the principal financial centre of the country of that currency (or, in relation to euro, in the principal financial centre of a Participating Member State or London).

#### 31.3 Distributions to an Obligor

The Agent may (with the consent of the Obligor or in accordance with Clause 32 ( *Set-Off*)) apply any amount received by it for that Obligor in or towards payment (on the date and in the currency and funds of receipt) of any amount due from that Obligor under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

#### 31.4 Clawback

(a) Where a sum is to be paid to the Agent under the Finance Documents for another Party, the Agent is not obliged to pay that sum to that other Party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.

(b) If the Agent pays an amount to another Party and it proves to be the case that the Agent had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by the Agent shall on demand refund the same to the Agent together with interest on that amount from the date of payment to the date of receipt by the Agent, calculated by the Agent to reflect its cost of funds.

31.5 **Impaired Agent**

(a) If, at any time, the Agent becomes an Impaired Agent, an Obligor or a Creditor which is required to make a payment under the Finance Documents to the Agent in accordance with Clause 31.1 ( *Payments to the Agent*) may instead either pay that amount direct to the required recipient or pay that amount to an interest-bearing account held with an Acceptable Bank within the meaning of paragraph (a) of the definition of "Acceptable Bank" and in relation to which no Insolvency Event has occurred and is continuing, in the name of the Obligor or the Creditor making the payment and designated as a trust account for the benefit of the Party or Parties beneficially entitled to that payment under the Finance Documents. In each case such payments must be made on the due date for payment under the Finance Documents.

(b) All interest accrued on the amount standing to the credit of the trust account shall be for the benefit of the beneficiaries of that trust account *pro rata* to their respective entitlements.

(c) A Party which has made a payment in accordance with this Clause 31.5 shall be discharged of the relevant payment obligation under the Finance Documents and shall not take any credit risk with respect to the amounts standing to the credit of the trust account.

(d) Promptly upon the appointment of a successor Agent in accordance with Clause 28.13 ( *Replacement of the Agent*), each Party which has made a payment to a trust account in accordance with this Clause 31.5 shall give all requisite instructions to the bank with whom the trust account is held to transfer the amount (together with any accrued interest) to the successor Agent for distribution in accordance with Clause 31.2 (*Distributions by the Agent*).

31.6 **Partial payments**

(a) Subject to the provisions of the Intercreditor Agreement, if the Agent receives a payment for application against amounts due in respect of any Finance Documents that is insufficient to discharge all the amounts then due and payable by an Obligor under those Finance Documents, the Agent shall apply that payment towards the obligations of that Obligor under those Finance Documents in the following order:

(i) **first**, in or towards payment *pro rata* of any unpaid fees, costs and expenses of the Agent and the Security Agent under those Finance Documents;

(ii) **secondly**, in or towards payment *pro rata* of any accrued interest, fee or commission due but unpaid under those Finance Documents;

(iii) **thirdly**, in or towards payment *pro rata* of any principal due but unpaid under those Finance Documents; and

(iv) **fourthly**, in or towards payment *pro rata* of any other sum due but unpaid under the Finance Documents.

(b) The Agent shall, if so directed by the Majority Creditors, vary the order set out in paragraphs (a)(ii) to (iv) above (but not, for the avoidance of doubt, the *pro rata* allocation of payments falling within any such paragraph).

(c) Paragraphs (a) and (b) above will override any appropriation made by an Obligor.

31.7 **Set-off by Obligors**

All payments to be made by an Obligor under the Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

31.8 **Business Days**

(a) Any payment which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).

(b) During any extension of the due date for payment of any principal or Unpaid Sum under this Agreement interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

31.9 **Currency of account**

(a) Subject to paragraphs (b) to (e) below, the Base Currency is the currency of account and payment for any sum due from an Obligor under any Finance Document.

(b) A repayment of a Utilisation or Unpaid Sum or a part of a Utilisation or Unpaid Sum shall be made in the currency in which that Utilisation or Unpaid Sum is denominated on its due date.

(c) Each payment of interest shall be made in the currency in which the sum in respect of which the interest is payable was denominated when that interest accrued.

(d) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.

(e) Any amount expressed to be payable in a currency other than the Base Currency shall be paid in that other currency.

31.10 **Change of currency**

(a) Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:

(i) any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Agent (after consultation with the Parent); and

(ii) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Agent (acting reasonably).

(b) If a change in any currency of a country occurs, this Agreement will, to the extent the Agent (acting reasonably and after consultation with the Parent) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the Relevant Interbank Market and otherwise to reflect the change in currency.

32. **SET-OFF**

A Finance Party may set off any matured obligation due from an Obligor under the Finance Documents (to the extent beneficially owned by that Finance Party) against any matured obligation owed by that Finance Party to that Obligor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Finance Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

33. **NOTICES**

33.1 **Communications in writing**

Any communication to be made under or in connection with the Finance Documents shall be made in writing and, unless otherwise stated, may be made by fax or letter or (in accordance with Clause 33.6 ( *Electronic communication*)) by email.

33.2 **Addresses**

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with the Finance Documents is:

(a) in the case of the Parent:

Address: CEMEX, S.A.B. de C.V.
Ave Ricardo Margáin Zozaya #325
Colonia Valle del Campestre
San Pedro Garza García Monterrey, 66265
Mexico

Fax: +52 (81) 8888 4399

Attention: Financial Operations Manager

And to: CEMEX, S.A.B. de C.V.
Calle Hernández de Tejada,
28027 Madrid
Spain

Fax: +34 (91) 377 9415

Attention: Financial Operations Manager;

(b) in the case of each Creditor, or any other Obligor, that notified in writing to the Agent on or prior to the date on which it becomes a Party;

(c) in the case of the Agent:

Address: Citibank International PLC
5th Floor, Citigroup Centre
25 Canada Square, Canary Wharf
London E14 5LB
United Kingdom

Fax: +44 20 8636 3824

Attention: Loans Agency; and

(d) in the case of the Security Agent:

Address: Third Floor, 1 King's Arms Yard
London EC2R 7AF
United Kingdom

Fax: +44 (0) 20 7397 3601

Attention: Sajada Afzal,

or any substitute address, fax number or department or officer as the Party may notify to the Agent (or the Agent may notify to the other Parties, if a change is made by the Agent) by not less than five Business Days' notice.

33.3 **Delivery**

(a) Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective:

(i) if by way of fax, when received in legible form; or

(ii) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post (postage prepaid) in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under Clause 33.2 ( *Addresses*), if addressed to that department or officer.

(b) Any communication or document to be made or delivered to the Agent or the Security Agent will be effective only when actually received by the Agent or Security Agent and then only if it is expressly marked for the attention of the department or officer identified in Clause 33.2 (*Addresses*) above (or any substitute department or officer as the Agent or Security Agent shall specify for this purpose).

(c) All notices from or to an Obligor shall be sent through the Agent. The Parent may make and/or deliver as agent of each Obligor notices and/or requests on behalf of each Obligor.

(d) Any communication or document made or delivered to the Parent in accordance with this Clause 33.3 will be deemed to have been made or delivered to each of the Obligors.

33.4 **Notification of address and fax number**

Promptly upon receipt of notification of an address or fax number or change of address or fax number pursuant to Clause 33.2 ( *Addresses*) or changing its own address or fax number, the Agent shall notify the other Parties.

33.5 **Communication when Agent is Impaired Agent**

If the Agent is an Impaired Agent the Parties may, instead of communicating with each other through the Agent, communicate with each other directly and (while the Agent is an Impaired Agent) all the provisions of the Finance Documents which require communications to be made or notices to be given to or by the Agent shall be varied so that communications may be made and notices given to or by the relevant Parties directly. This provision shall not operate after a replacement Agent has been appointed.

33.6 **Electronic communication**

(a) Any communication to be made between the Agent or the Security Agent and a Creditor and/or any member of the Group under or in connection with the Finance Documents may be made by electronic mail or other electronic means, if the Agent, the Security Agent and the relevant Creditor and/or member of the Group:

(i) agree that, unless and until notified to the contrary, this is to be an accepted form of communication;

(ii) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and

(iii) notify each other of any change to their address or any other such information supplied by them.

(b) Any electronic communication made between the Agent and a Creditor or the Security Agent and/or any member of the Group will be effective only when actually received in readable form and in the case of any electronic communication made by a Creditor and/or the Security Agent and/or any member of the Group to the Agent only if it is addressed in such a manner as the Agent or Security Agent shall specify for this purpose.

(c) As at the date of this Agreement, the Security Agent has not agreed that electronic communication as contemplated by this Clause 33.6 is an accepted form of communication unless any communication from a Party to the Security Agent by electronic means is also made by fax, and such communication shall only be effective when such fax is received in legible form.

33.7 **English language**

(a) Any notice given under or in connection with any Finance Document must be in English.

(b) All other documents provided under or in connection with any Finance Document must be:

(i) in English; or

(ii) if not in English, and if so required by the Agent, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

33.8 **Obligor Agent**

(a) Each Obligor (other than the Parent) by its execution of this Agreement or an Accession Letter (as the case may be) irrevocably appoints the Parent to act on its behalf as its agent in relation to the Finance Documents and irrevocably authorises:

(i) the Parent on its behalf to supply all information concerning itself contemplated by this Agreement to the Finance Parties and to give all notices and instructions, to execute on its behalf any documents required hereunder and to make such agreements capable of being given or made by any Obligor notwithstanding that they may affect such Obligor, without further reference to or consent of such Obligor; and

(ii) each Finance Party to give any notice, demand or other communication to such Obligor pursuant to the Finance Documents to the Parent on its behalf,

and in each case such Obligor shall be bound thereby as though such Obligor itself had given such notices and instructions or executed or made such agreements or received any notice, demand or other communication.

(b) Every act, agreement, undertaking, settlement, waiver, notice or other communication given or made by the Parent, or given to the Parent, in its capacity as agent in accordance with paragraph (a) of this Clause 33.8, in connection with this Agreement shall be binding for all purposes on such Obligors as if the other Obligors had expressly made, given or concurred with the same. In the event of any conflict between any notices or other communications of the Parent and any other Obligor, those of the Parent shall prevail.

33.9 **Use of websites**

(a) The Parent may satisfy its obligation under this Agreement to deliver any information in relation to those Creditors (the " **Website Creditors**") who accept this method of communication by posting this information onto an electronic website designated by the Parent and the Agent (the "**Designated Website**") if:

(i) the Agent expressly agrees (after consultation with each of the Creditors) that it will accept communication of the information by this method;

(ii) both the Parent and the Agent are aware of the address of and any relevant password specifications for the Designated Website; and

(iii) the information is in a format previously agreed between the Parent and the Agent.

If any Creditor (a "**Paper Form Creditor**") does not agree to the delivery of information electronically then the Agent shall notify the Parent accordingly and the Parent shall supply the information to the Agent in paper form. In any event the Parent shall supply the Agent with at least one copy in paper form of any information required to be provided by it.

(b) The Agent shall supply each Website Creditor with the address of and any relevant password specifications for the Designated Website following designation of that website by the Parent and the Agent.

(c) The Parent shall promptly upon becoming aware of its occurrence notify the Agent if:

(i) the Designated Website cannot be accessed due to technical failure;

(ii) the password specifications for the Designated Website change;

(iii) any new information which is required to be provided under this Agreement is posted onto the Designated Website;

(iv) any existing information which has been provided under this Agreement and posted onto the Designated Website is amended; or

(v) the Parent becomes aware that the Designated Website or any information posted onto the Designated Website is or has been infected by any electronic virus or similar software.

If the Parent notifies the Agent under paragraph (c)(i) or paragraph (c)(v) above, all information to be provided by the Parent under this Agreement after the date of that notice shall be supplied in paper form unless and until the Agent and each Website Creditor is satisfied that the circumstances giving rise to the notification are no longer continuing.

(d) Any Website Creditor may request, through the Agent, one paper copy of any information required to be provided under this Agreement which is posted onto the Designated Website. The Parent shall at its own cost comply with any such request within ten Business Days.

## 34. CALCULATIONS AND CERTIFICATES

### 34.1 Accounts

In any litigation or arbitration proceedings arising out of or in connection with a Finance Document, the entries made in the accounts maintained by a Finance Party are *prima facie* evidence of the matters to which they relate.

### 34.2 Certificates and determinations

Any certification or determination by a Finance Party of a rate or amount under any Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

### 34.3 Day count convention

Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 360 days or, where the interest, commission or fee is to accrue in respect of any amount denominated in sterling, 365 days or, in any case where the practice in the Relevant Interbank Market differs, in accordance with that market practice.

### 34.4 Spanish Civil Procedure

In the event that this Agreement is raised to a Spanish Public Document, for the purposes of Article 572.2 of the Spanish Civil Procedure Law ( *Ley de Enjuiciamiento Civil*), all parties expressly agree that the exact amount due at any time by the Obligors to the Creditors will be the amount specified in a certificate issued by the Agent (and/or any Creditor) in accordance with Clause 34.2 ( *Certificates and Determinations*) as representative of the Creditors reflecting the balance of the accounts referred to in Clause 34.1 ( *Accounts*).

### 34.5 No personal liability

If an individual signs a certificate on behalf of any member of the Group and the certificate proves to be incorrect, the individual will incur no personal liability as a result, unless the individual acted fraudulently in giving the certificate. In this case any liability of the individual will be determined in accordance with applicable law.

## 35. PARTIAL INVALIDITY

If, at any time, any provision of the Finance Documents is or becomes illegal, invalid or unenforceable in any respect under any law or regulation of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law or regulations of any other jurisdiction will in any way be affected or impaired.

## 36. REMEDIES AND WAIVERS

No failure to exercise, nor any delay in exercising, on the part of any Finance Party or Secured Party, any right or remedy under the Finance Documents shall operate as a waiver of any such right or remedy or constitute an election to affirm any of the Finance Documents. No election to affirm any of the Finance Documents on the part of any Finance Party shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law or regulation.

## 37. AMENDMENTS AND WAIVERS

### 37.1 Required consents

(a) Subject to Clause 37.2 (*Exceptions*) and Clause 37.3 (*Facility Change*), any term of the Finance Documents may be amended or waived only with the consent of the Majority Creditors and the Parent and any such amendment or waiver will be binding on all Parties.

(b) The Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause 37.

(c) Each Obligor agrees to any such amendment or waiver permitted by this Clause 37 which is agreed to by the Parent. This includes any amendment or waiver which would, but for this paragraph (c), require the consent of all of the Guarantors.

### 37.2 Exceptions

(a) An amendment or waiver that has the effect of changing or which relates to:

(i) the definition of “Majority Creditors” or “Super Majority Creditors” in Clause 1.1 ( *Definitions*);

(ii) an extension to the Termination Date or to the date of any scheduled payment of any amount under the Finance Documents (except in relation to a Spring Back Date or pursuant to a Facility Change);

(iii) a reduction in the Margin or a reduction in the amount (or, in respect of interest, fees and commissions, the rate) of any payment of principal, interest, fees or commission payable

(iv) the allocation as among the Creditors of any amount payable under the Finance Documents;

(v) a change in currency of payment of any amount under the Finance Documents;

(vi) an increase in or an extension of any Commitment or the Total Commitments (except pursuant to a Facility Change);

(vii) a change to the Borrowers or any of the Guarantors other than in accordance with Clause 27 ( *Changes to the Obligors*);

(viii) any provision which expressly requires the consent of all the Creditors;

(ix) Clause 2.3 (*Finance Parties' rights and obligations*), Clause 18 (*Guarantee and indemnity*), Clause 25 (*Changes to the Creditors*), Clause 27 (*Changes to the Obligors*) or this Clause 37; or

(x) any amendment to the order of priority or subordination under the Intercreditor Agreement,

shall not be made without the prior consent of all of the Creditors.

(b) An amendment or waiver which relates to the rights or obligations of the Agent, a Structuring Bank or, as the case may be, the Security Agent may not be effected without the consent of the Agent, that Structuring Bank or, as the case may be, the Security Agent at such time.

(c) Any amendment or waiver that has the effect of changing or that relates to:

(i) any Spring Back Date (except for any change to the Spring Back Date permitted by the Majority Creditors in accordance with sub paragraph (i) of paragraph (a) of Clause 5.1 ( *Spring Back Dates*));

(ii) the nature or scope of the Charged Property or the manner in which the proceeds of enforcement of the Transaction Security are distributed (except insofar as it relates to a sale or disposal of an asset which is the subject of the Transaction Security where such sale or disposal is expressly permitted under this Agreement or any other Finance Document);

(iii) the release of any guarantee and indemnity granted under Clause 18 ( *Guarantee and Indemnity*) or of any Transaction Security unless permitted under this Agreement or any other Finance Document or relating to a sale or disposal of an asset which is the subject of the Transaction Security where such sale or disposal is expressly permitted under this Agreement or any other Finance Document, may only be made with the consent of the Super Majority Creditors.

(d) If any Creditor fails to respond to a request for a consent, waiver or amendment of or in relation to any of the terms of any Finance Document or other vote of Creditors under the terms of this Agreement within 20 Business Days of that request being made (or such longer period as the Parent may, in its absolute discretion, specify (subject to prior notice being given by the Parent to the Agent)), its Commitment and/or participation shall not be included for the purpose of calculating the Total Commitments or participations under the relevant Facility/ies when ascertaining whether any relevant percentage (including, for the avoidance of doubt, unanimity) of Total Commitments and/or participations has been obtained to approve that request.

37.3 **Facility Change**

(a) The Parent may, by notice to the Agent for circulation to all Creditors, request the consent of each Creditor to an extension of the Termination Date with respect to that Creditor's Commitment and Outstanding Principal Amounts under this Agreement (such extension, a " **Facility Change**", and any such Creditor which consents to an extension of the Termination Date with respect to its Commitment and Outstanding Principal Amounts under this Agreement, a "**Facility Change Creditor**").

(b) A Facility Change shall be implemented by way of an amendment to this Agreement (and, if required, any other Finance Document) to reflect the Facility Change in relation to the relevant Facility Change Creditor(s) (but, for the avoidance of doubt, in relation to no other Creditor) (including, without limitation, by the creation of sub tranches or a new facility comprising the Commitment and Outstanding Principal Amounts of the Facility Change Creditor(s), and to which the extended Termination Date is to apply).

(c) Notwithstanding anything in this Clause 37 or any other provision of the Finance Documents to the contrary, an amendment to any term of the Finance Documents made in accordance with this Clause 37.3 in order to implement a Facility Change may be approved with the consent of the relevant Facility Change Creditor and the Parent (and countersigned by the Agent) and any such amendment will be binding on all Parties.

37.4 **Replacement of Creditor**

(a) If at any time:

(i) any Creditor becomes a Non-Consenting Creditor (as defined in paragraph (c) below); or

(ii) an Obligor other than a Security Provider that is not also a Borrower or Guarantor becomes obliged to repay any amount in accordance with Clause 6.1 (*Illegality*) or to pay additional amounts pursuant to Clause 14.1 ( *Increased Costs*), Clause 13.2 (*Tax gross-up*), Clause 13.3 (*Tax indemnity*), Clause 13.8 (*FATCA Deduction and gross-up by Obligor*) or Clause 13.9 (*FATCA Deduction by a Finance Party*) to any Creditor in excess of amounts payable to the other Creditors generally,

then the Parent may, on 10 Business Days' prior written notice to the Agent and such Creditor, replace such Creditor by requiring such Creditor to (and such Creditor shall) transfer pursuant to Clause 25 ( *Changes to the Creditors*) all (and not part only) of its rights and obligations under this Agreement (and, with respect to any holder of a Derivatives Unwind Promissory Note, under that Derivatives Unwind Promissory Note in accordance with the terms thereof, and with respect to any USPP Noteholder, under its USPP Note and the USPP Note Agreement in accordance with the terms thereof) to a Creditor or other bank, financial institution, trust, fund or other entity (a " **Replacement Creditor**") selected by the Parent, and (unless at such time the Agent is an Impaired Agent) which is acceptable to the Agent (acting reasonably), which confirms its willingness to assume and does assume all the obligations of the transferring Creditor (including the assumption of the transferring Creditor's participations on the same basis as the transferring Creditor) for a purchase price in cash payable at the time of transfer equal to the outstanding principal amount of such Creditor's participation in the outstanding Utilisations and all accrued interest and/or Break Costs and other amounts payable in relation thereto under the Finance Documents.

(b) The replacement of a Creditor pursuant to this Clause shall be subject to the following conditions:

(i) the Parent shall have no right to replace the Agent or Security Agent;

(ii) neither the Agent nor the Creditor shall have any obligation to the Parent to find a Replacement Creditor;

(iii) in the event of a replacement of a Non-Consenting Creditor such replacement must take place no later than 180 days after the date the Non-Consenting Creditor notifies the Parent and the Agent of its failure or refusal to give a consent in relation to, or agree to any waiver or amendment to the Finance Documents requested by the Parent; and

(iv) in no event shall the Creditor replaced under this paragraph (b) be required to pay or surrender to such Replacement Creditor any of the fees received by such Creditor pursuant to the Finance Documents.

(c) In the event that:

(i) the Parent or the Agent (at the request of the Parent) has requested the Creditors to give a consent in relation to, or to agree to a waiver or amendment of, any provisions of the Finance Documents;

(ii) the consent, waiver or amendment in question requires the approval of all the Creditors; and

(iii) Creditors whose Commitments aggregate more than 85 per cent. of the Total Commitments (or, if the Total Commitments have been reduced

to zero, aggregated more than 85 per cent. of the Total Commitments prior to that reduction) have consented or agreed to such waiver or amendment,

then any Creditor who does not and continues not to consent or agree to such waiver or amendment shall be deemed a " **Non-Consenting Creditor**".

37.5 **Replacement of a Defaulting Creditor**

(a) The Parent may, at any time a Creditor has become and continues to be a Defaulting Creditor, by giving 10 Business Days' prior written notice to the Agent and such Creditor, replace such Creditor by requiring such Creditor to (and such Creditor shall) transfer pursuant to Clause 25 (*Changes to the Creditors*) all (and not part only) of its rights and obligations under this Agreement to a Creditor or other bank, financial institution, trust, fund or other entity (a "**Replacement Creditor**") selected by the Parent, and which (unless the Agent is an Impaired Agent) is acceptable to the Agent (acting reasonably), which confirms its willingness to assume and does assume all the obligations or all the relevant obligations of the transferring Creditor (including the assumption of the transferring Creditor's participations or unfunded participations (as the case may be) on the same basis as the transferring Creditor) for a purchase price in cash payable at the time of transfer equal to the outstanding principal amount of such Creditor's participation in the outstanding Utilisations and all accrued interest, Break Costs and other amounts payable in relation thereto under the Finance Documents.

(b) Any transfer of rights and obligations of a Defaulting Creditor pursuant to this Clause shall be subject to the following conditions:

(i) the Parent shall have no right to replace the Agent or Security Agent;

(ii) neither the Agent nor the Defaulting Creditor shall have any obligation to the Parent to find a Replacement Creditor;

(iii) the transfer must take place no later than 180 days after the notice referred to in paragraph (a) above; and

(iv) in no event shall the Defaulting Creditor be required to pay or surrender to the Replacement Creditor any of the fees received by the Defaulting Creditor pursuant to the Finance Documents.

38. **CONFIDENTIALITY**

38.1 **Confidential Information**

Each Finance Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 38.2 (*Disclosure of Confidential Information*) and Clause 38.3 (*Disclosure to numbering service providers*), and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

38.2 **Disclosure of Confidential Information**

Any Finance Party may, subject (where applicable) to the provisions of article L. 511-33 of the French Monetary and Financial Code, disclose:

(a) to any of its Affiliates and Related Funds and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives such Confidential Information as that Finance Party shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph (a) is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;

(b) to any person:

(i) to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Finance Documents and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;

(ii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or one or more Obligors and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;

(iii) appointed by any Finance Party or by a person to whom paragraph (b)(i) or (ii) above applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf (including, without limitation, any person appointed under paragraph (e) of Clause 28.15 ( *Relationship with the Creditors*));

(iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in paragraph (b)(i) or (b)(ii) above;

(v) to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;

(vi) to whom or for whose benefit that Finance Party charges, assigns or otherwise creates Security (or may do so) pursuant to Clause 25.8 (*Security over Creditors' rights*);

(vii) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;

(viii) who is a Party; or

(ix) with the consent of the Parent;

in each case, such Confidential Information as that Finance Party shall consider appropriate if:

(A) in relation to paragraphs (b)(i), (b)(ii) and b(iii) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;

(B) in relation to paragraph (b)(iv) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information;

(C) in relation to paragraphs (b)(v), (b)(vi) and (b)(vii) above, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of that Finance Party, it is not practicable so to do in the circumstances;

(c) to any person appointed by that Finance Party or by a person to whom paragraph (b)(i) or (b)(ii) above applies to provide administration or settlement services in respect of one or more of the Finance Documents including without limitation, in relation to the trading of participations in respect of the Finance Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this paragraph (c) if the service provider to whom the Confidential Information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Parent and the relevant Finance Party; and

(d) to any rating agency (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to the Finance Documents

and/or the Obligors if the rating agency to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information.

38.3 **Disclosure to numbering service providers**

(a) Any Finance Party may, subject (where applicable) to the provisions of article L. 511-33 of the French Monetary and Financial Code, disclose to any national or international numbering service provider appointed by that Finance Party to provide identification numbering services in respect of this Agreement, the Facilities and/or one or more Obligors the following information:

(i) names of Obligors;

(ii) country of domicile of Obligors;

(iii) place of incorporation of Obligors;

(iv) date of this Agreement;

(v) the name of the Agent;

(vi) date of each amendment and restatement of this Agreement;

(vii) amount of the Commitments under each Facility;

(viii) currencies of the Facilities;

(ix) type of Facilities;

(x) ranking of Facilities;

(xi) Termination Date for Facilities;

(xii) law and jurisdiction of the Facilities;

(xiii) changes to any of the information previously supplied pursuant to paragraphs (i) to (xii) above; and

(xiv) such other information agreed between such Finance Party and the Parent,

to enable such numbering service provider to provide its usual syndicated loan numbering identification services.

(b) The Parties acknowledge and agree that each identification number assigned to this Agreement, the Facilities and/or one or more Obligors by a numbering service provider and the information associated with each such number may be disclosed to users of its services in accordance with the standard terms and conditions of that numbering service provider.

(c) The Agent shall notify the Parent and the other Finance Parties of:

(i) the name of any numbering service provider appointed by the Agent in respect of this Agreement, the Facilities and/or one or more Obligors; and

(ii) the number or, as the case may be, numbers assigned to this Agreement, the Facilities and/or one or more Obligors by such numbering service provider.

38.4 **Entire agreement**

Subject to the provisions of article L. 511-33 of the French Monetary and Financial Code, this Clause 38 ( *Confidentiality*), together with, in the case of the USPP Noteholders, Section 20 of the USPP Note Agreement, constitutes the entire agreement between the Parties in relation to the obligations of the Finance Parties under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

38.5 **Inside information**

Each of the Finance Parties acknowledges that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and each of the Finance Parties undertakes not to use any Confidential Information for any unlawful purpose.

38.6 **Notification of disclosure**

Each of the Finance Parties agrees (to the extent permitted by law and regulation) to inform the Parent as soon as reasonably practicable:

(a) of the circumstances of any disclosure of Confidential Information made pursuant to paragraph (b)(v) of Clause 38.2 ( *Disclosure of Confidential Information*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and

(b) upon becoming aware that Confidential Information has been disclosed in breach of this Clause 38 ( *Confidentiality*).

38.7 **Continuing obligations**

The obligations in this Clause 38 (*Confidentiality*) are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of twelve months from the earlier of:

(a) the date on which all amounts payable by the Obligors under or in connection with the Finance Documents have been paid in full and all Commitments have been cancelled or otherwise cease to be available; and

(b) the date on which such Finance Party otherwise ceases to be a Finance Party.

39. **COUNTERPARTS**

Each Finance Document may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Finance Document.

## SECTION 12
## GOVERNING LAW AND ENFORCEMENT

40. **GOVERNING LAW**

(a) This Agreement and all non-contractual obligations arising from or connected with it are governed by English law.

(b) If any of the Original Obligors is represented by an attorney or attorneys in connection with the signing and/or execution and/or delivery of this Agreement or any agreement or document referred to herein or made pursuant hereto and the relevant power or powers of attorney is or are expressed to be governed by the laws and regulations of a particular jurisdiction, it is hereby expressly acknowledged and accepted by the other parties hereto that such laws and regulations shall govern the existence and extent of such attorney's or attorney's authority and the effects of the exercise thereof.

(c) Nothing in this Agreement shall operate to change the governing law of the USPP Note Agreement, the USPP Note Guarantee or any USPP Note.

41. **ENFORCEMENT**

41.1 **Jurisdiction in relation to actions brought against parties organised or incorporated in Mexico**

In relation to actions brought by or against any Party organised or incorporated in Mexico:

(a) each of the Parties agrees that the courts of England and the courts of each Party's corporate domicile (but only in respect of actions brought against such Party as a defendant), have jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute regarding the existence, validity or termination of this Agreement or any non-contractual obligations arising from or connected with this Agreement) (a "**Dispute**"); and

(b) each of the Parties agrees that the courts of England and such courts of each Party's corporate domicile (but only in respect of actions brought against such Party as a defendant) are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary and hereby waive any right to which any of them may be entitled on account of place of residence or domicile.

41.2 **Jurisdiction of English Courts in other cases**

Subject to Clause 41.1 (*Jurisdiction in relation to actions brought against parties organised or incorporated in Mexico* ) above:

(a) the courts of England have jurisdiction to settle any Dispute;

(b) the Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary and hereby waive any right to which any of them may be entitled on account of place of residence or domicile; and

(c) this Clause 41.2 is for the benefit of the Finance Parties and Secured Parties only. As a result, no Finance Party or Secured Party shall be prevented from taking proceedings relating to a Dispute (or any other dispute whatsoever) in any other courts with jurisdiction. To the extent allowed by law or regulation, the Finance Parties and Secured Parties may take concurrent proceedings in any number of jurisdictions.

41.3 **Service of process**

Without prejudice to any other mode of service allowed under any relevant law or regulation, each Obligor (other than an Obligor incorporated in England and Wales):

(a) irrevocably appoints the Process Agent as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document (and the Process Agent, by its execution of this Agreement, accepts that appointment); and

(b) agrees that failure by the Process Agent to notify the relevant Obligor of the process will not invalidate the proceedings concerned,

and each Obligor, including each Additional Guarantor or Additional Security Provider, that is incorporated in Mexico shall grant an irrevocable power of attorney granted before a Mexican notary public, appointing the Process Agent as its agent for service of process as provided herein on or before the date of this Agreement or when it becomes a Party to this Agreement, as applicable.

41.4 **Waiver of right to trial by jury**

To the extent permitted by applicable law, each party to this Agreement hereby expressly and irrevocably waives any right to trial by jury of any claim, demand, action or cause of action arising under any Finance Document or in any way connected with or related or incidental to the dealings of the Parties hereto or any of them with respect to any Finance Document, or the transactions related thereto, in each case whether now existing or hereafter arising, and whether founded in contract or tort or otherwise; and each party hereby agrees and consents that any such claim, demand, action or cause of action shall be decided by court trial without a jury, and that any Party to this Agreement may file an original counterpart or a copy of this Clause 41.4 with any court as written evidence of the consent of the signatories hereto to the waiver of their right to trial by jury.

**This Agreement has been entered into on the date stated at the beginning of this Agreement.**

**SCHEDULE 1**
**THE ORIGINAL PARTIES**

**PART I**
**THE ORIGINAL OBLIGORS**

| **Name of Original Borrowers** | **Registration number or equivalent** |
|---|---|
| CEMEX, S.A.B. de C.V. | CEM-880726-UZA |
| CEMEX España, S.A. | A-46004214 |
| New Sunward Holding B.V. | 34133556 |
| CEMEX Materials LLC | File # 4443303 (Delaware) |
| CEMEX Finance LLC (formerly known as CEMEX España Finance LLC) | File # 3654572 (Delaware) |

| **Name of Original Guarantors** | **Registration number or equivalent** |
|---|---|
| CEMEX, S.A.B. de C.V. | CEM-880726-UZA |
| CEMEX España, S.A. | A-46004214 |
| CEMEX México, S.A. de C.V. | CME-820101-LJ4 |
| CEMEX Concretos, S.A. de C.V. | CCO-740918-9M1 |
| Empresas Tolteca de México, S.A. de C.V. | ETM-890720-DJ2 |
| New Sunward Holding B.V. | 34133556 |
| CEMEX Corp. | File #: 2162255 |
| CEMEX, Inc. | Charter # 13000400D (Louisiana) |
| CEMEX Finance LLC (formerly known as CEMEX España Finance LLC) | File #: 3654572 (Delaware) |
| CEMEX Research Group AG | CH-036.3.040.528-8 |

| | |
|---|---|
| CEMEX Shipping B.V. | 34213063 |
| CEMEX Asia B.V. | 34228466 |
| CEMEX France Gestion (S.A.S.) | 334 533 288 |
| CEMEX UK | 05196131 |
| CEMEX Egyptian Investments B.V. | 341 08365 |

| **Name of Original Security Providers** | **Registration number or equivalent** |
|---|---|
| CEMEX, S.A.B. de C.V. | CEM-880726-UZA |
| CEMEX México, S.A. de C.V. | CME-820101-LJ4 |
| Centro Distribuidor de Cemento, S.A. de C.V. | CDC-960913-SK6 |
| Empresas Tolteca de México, S.A. de C.V. | ETM-890720-DJ2 |
| Impra Café, S.A. de C.V. | ICA-801002-5E8 |
| Interamerican Investments, Inc. | File #: 2252951 |
| Mexcement Holdings, S.A. de C.V. | MHO-010605-UDA |
| Corporación Gouda, S.A. de C.V. | CGO-020124-4W0 |
| New Sunward Holding B.V. | 34133556 |
| CEMEX International Finance Company | 226652 |
| CEMEX TRADEMARKS HOLDING Ltd. | CH-035.3.029.636-0 |

**PART II**
**THE ORIGINAL CREDITORS**

## Section A – Existing Exposures

| Obligation | Existing Exposure at the calculation date | Obligor | Guarantor |
|---|---|---|---|
| **Part I** | | | |
| **Part I.A (Syndicated Facilities)** | | | |
| **CEMEX, S.A.B. de C.V. US$700,000,000 (originally US$800,000,000) Credit Agreement dated 23 June 2004 as amended** | **Current total exposure $267,238,573.62** | **CEMEX, S.A.B. de C.V.** | **CEMEX México, S.A. de C.V.; Empresas Tolteca de México, S.A. de C.V.** |
| BANAMEX USA | $4,903,000.00 | | |
| BANCO NACIONAL DE MÉXICO, S.A. INTEGRANTE DEL GRUPO FINANCIERO BANAMEX, ACTING THROUGH ITS NASSAU BAHAMAS BRANCH | $13,728,400.00 | | |
| BANCO SANTANDER (MEXICO), S.A., INSTITUCIÓN DE BANCA MÚLTIPLE, GRUPO FINANCIERO SANTANDER | $20,592,600.02 | | |
| BANK OF AMERICA N.A. | $17,603,294.94 | | |
| BARCLAYS BANK PLC | $11,952,952.46 | | |
| BAYERISCHE LANDESBANK, NEW YORK BRANCH | $14,709,000.01 | | |
| BBVA BANCOMER, S.A., INSTITUCIÓN DE BANCA MÚLTIPLE GRUPO FINANCIERO BBVA BANCOMER | $18,631,400.01 | | |
| BNP PARIBAS (NEW YORK BRANCH) | $24,514,999.99 | | |
| COMERICA BANK | $4,466,986.02 | | |

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| COMMERZBANK AG, NEW YORK BRANCH | $9,806,000.01 | | |
| CREDIT AGRICOLE CORPORATE AND INVESTMENT BANK S.A.; NEW YORK BRANCH | $20,592,600.02 | | |
| CREDIT SUISSE AG CAYMAN ISLANDS BRANCH | $2,199,706.31 | | |
| HSBC MEXICO, S.A., INSTITUCIÓN DE BANCA MÚLTIPLE, GRUPO FINANCIERO HSBC | $14,709,000.01 | | |
| ING BANK N.V., DUBLIN BRANCH | $20,592,599.85 | | |
| INTESA SANPAOLO SPA, NEW YORK BRANCH | $9,806,000.01 | | |
| JPMORGAN CHASE BANK, N.A. | $9,146,494.21 | | |
| MIZUHO CORPORATE BANK, LTD. | $15,143,252.31 | | |
| QP SFM CAPITAL HOLDINGS LIMITED | $4,903,000.00 | | |
| STANDARD CHARTERED BANK | $2,451,500.03 | | |
| THE BANK OF NOVA SCOTIA | $20,592,600.02 | | |
| UBS AG, STAMFORD BRANCH | $6,193,187.39 | | |
| **CEMEX, S.A.B. de C.V. US$1,200,000,000 Credit Agreement dated 31 May 2005 as amended** | **Current total exposure $497,055,705.54** | **CEMEX, S.A.B. de C.V.** | **CEMEX México, S.A. de C.V.; Empresas Tolteca de México, S.A. de C.V.** |
| BANCA MONTE DEI PASCHI DI SIENA-NEW YORK BRANCH | $7,354,500.00 | | |
| BANCO NACIONAL DE MÉXICO, S.A. INTEGRANTE DEL GRUPO FINANCIERO BANAMEX, ACTING THROUGH ITS NASSAU BAHAMAS BRANCH | $39,714,300.03 | | |
| BANCO SANTANDER (MEXICO), S.A., INSTITUCIÓN DE BANCA MÚLTIPLE, GRUPO FINANCIERO SANTANDER | $43,146,400.03 | | |
| BANK OF AMERICA N.A. | $20,410,524.18 | | |

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| BANKIA, S.A. MIAMI BRANCH | $4,903,000.00 | | |
| BARCLAYS BANK PLC | $7,883,318.17 | | |
| BAYERISCHE LANDESBANK, NEW YORK BRANCH | $24,515,000.04 | | |
| BBVA BANCOMER, S.A., INSTITUCIÓN DE BANCA MÚLTIPLE GRUPO FINANCIERO BBVA BANCOMER | $38,978,850.05 | | |
| BNP PARIBAS (NEW YORK BRANCH) | $73,545,000.12 | | |
| CITIBANK N.A. | $5,738,165.93 | | |
| COMERICA BANK | $2,233,493.01 | | |
| CREDIT AGRICOLE CORPORATE & INVESTMENT BANK S.A. - NEW YORK BRANCH | $43,146,400.03 | | |
| HSBC BANK PLC, SUCURSAL EN ESPAÑA | $24,515,000.04 | | |
| ING BANK N.V., DUBLIN BRANCH | $43,146,400.03 | | |
| INTESA SANPAOLO SPA, NEW YORK BRANCH | $12,257,500.01 | | |
| JPMORGAN CHASE BANK, N.A. | $52,305,866.42 | | |
| QP SFM CAPITAL HOLDINGS LIMITED | $10,115,587.42 | | |
| THE BANK OF NOVA SCOTIA | $43,146,400.03 | | |
| **CEMEX, S.A.B. de C.V. US$437,500,000 & Mex$4,773,282,950 Joint Bilateral Financing Facilities Agreement dated 27 January, 2009** | **Current total exposure $214,506,251.88 Mex$2,340,340,631.21** | **CEMEX, S.A.B. de C.V.** | **CEMEX México, S.A. de C.V.; CEMEX Concretos, S.A. de C.V.** |
| **USD TRANCHE** | **$214,506,251.88** | **CEMEX, S.A.B. de C.V.** | **CEMEX México, S.A. de C.V.; CEMEX Concretos, S.A. de C.V.** |
| BANAMEX USA | $12,257,493.17 | | |

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| BANCO NACIONAL DE COMERCIO EXTERIOR, S.N.C. | $39,224,008.09 | | |
| BANCO NACIONAL DE MÉXICO, S.A. INTEGRANTE DEL GRUPO FINANCIERO BANAMEX, ACTING THROUGH ITS NASSAU BAHAMAS BRANCH | $23,289,254.67 | | |
| BANCO SANTANDER (MEXICO), S.A., INSTITUCIÓN DE BANCA MÚLTIPLE, GRUPO FINANCIERO SANTANDER | $26,966,497.80 | | |
| BBVA BANCOMER, S.A., INSTITUCIÓN DE BANCA MÚLTIPLE GRUPO FINANCIERO BBVA BANCOMER | $112,768,998.15 | | |
| **Mex$ TRANCHE** | **Mex$2,340,340,631.21** | **CEMEX, S.A.B. de C.V.** | **CEMEX México, S.A. de C.V.; CEMEX Concretos, S.A. de C.V.** |
| BANCO NACIONAL DE MÉXICO, S.A. INTEGRANTE DEL GRUPO FINANCIERO BANAMEX | Mex$480,041,090.33 | | |
| BANCO SANTANDER (MEXICO), S.A., INSTITUCIÓN DE BANCA MÚLTIPLE, GRUPO FINANCIERO SANTANDER | Mex$364,169,066.82 | | |
| BBVA BANCOMER, S.A., INSTITUCIÓN DE BANCA MÚLTIPLE GRUPO FINANCIERO BBVA BANCOMER | Mex$1,111,195,951.19 | | |
| HSBC MEXICO, S.A., INSTITUCIÓN DE BANCA MÚLTIPLE, GRUPO FINANCIERO HSBC | Mex$384,934,522.87 | | |
| **CEMEX España, S.A. €250,000,000 and ¥19,308,000,000 term and revolving facilities agreement dated 30 March 2004 as amended** | **Current total exposure €59,457,239.57 $4,263,761.25** | CEMEX España, S.A. | N/A |
| **FACILITY C1 (EURO TRANCHE)** | **€59,457,239.57** | **CEMEX España, S.A.** | **N/A** |
| BANCO BILBAO VIZCAYA ARGENTARIA, S.A. | €803,828.29 | | |
| BANCO ESPAÑOL DE CRÉDITO, S.A. | €10,988,758.65 | | |
| BANCO SANTANDER (MEXICO), S.A., INSTITUCIÓN DE BANCA MÚLTIPLE, GRUPO FINANCIERO SANTANDER | €7,095,487.23 | | |

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| BBVA BANCOMER, S.A., INSTITUCIÓN DE BANCA MÚLTIPLE GRUPO FINANCIERO BBVA BANCOMER | €10,000,000.00 | | |
| BNP PARIBAS S.A., SUCURSAL EN ESPAÑA | €7,095,487.21 | | |
| FORTIS BANK, S.A., SUCURSAL EN ESPAÑA | €2,187,216.55 | | |
| HSBC BANK PLC SUCURSAL EN ESPAÑA | €7,095,487.21 | | |
| ING BELGIUM S.A., SUCURSAL EN ESPAÑA | €7,095,487.21 | | |
| THE ROYAL BANK OF SCOTLAND PLC | €7,095,487.22 | | |
| **FACILITY C2 (USD TRANCHE)** | **$4,263,761.25** | **CEMEX España, S.A.** | **N/A** |
| CITIBANK INTERNATIONAL PLC, SUCURSAL EN ESPAÑA | $4,263,761.25 | | |
| **CEMEX España, S.A. US$2,300,000,000 RMC Revolving Facilities Agreement dated 24 September 2004 as amended** | **$464,816,908.08** | **CEMEX España, S.A.** | **CEMEX España, S.A.** |
| **FACILITY B (Revolving Facility)** | **Current total exposure $231,016,696.06** | **CEMEX España, S.A.** | **CEMEX España, S.A.** |
| BANCO BILBAO VIZCAYA ARGENTARIA, S.A. | $22,071,539.70 | | |
| BANCO ESPAÑOL DE CRÉDITO, S.A. | $12,441,362.50 | | |
| BANCO SANTANDER (MEXICO), S.A., INSTITUCIÓN DE BANCA MÚLTIPLE, GRUPO FINANCIERO SANTANDER | $14,501,803.39 | | |
| BANK OF AMERICA N.A SUCURSAL EN ESPAÑA | $4,406,967.90 | | |
| BANKIA, S.A. | $2,206,350.00 | | |
| BARCLAYS BANK PLC | $8,329,367.90 | | |
| BAYERISCHE LANDESBANK, NEW YORK BRANCH | $5,444,619.21 | | |
| BNP PARIBAS S.A., SUCURSAL EN ESPAÑA | $14,279,987.50 | | |
| CITIBANK INTERNATIONAL PLC, SUCURSAL EN ESPAÑA | $11,039,789.69 | | |

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| COMMERZBANK AG, LONDON BRANCH | $2,451,500.00 | | |
| CREDIT AGRICOLE, CIB, SUCURSAL EN ESPAÑA | $14,501,803.39 | | |
| FORTIS BANK, S.A. SUCURSAL EN ESPAÑA | $15,689,600.00 | | |
| HSBC BANK PLC SUCURSAL EN ESPAÑA | $11,215,612.50 | | |
| ING BELGIUM S.A, SUCURSAL EN ESPAÑA | $7,281,067.28 | | |
| INSTITUTO DE CRÉDITO OFICIAL | $15,321,875.00 | | |
| INTESA SANPAOLO SPA SUCURSAL EN ESPAÑA | $4,766,941.75 | | |
| JPMORGAN CHASE BANK N.A., SUCURSAL EN ESPAÑA | $12,441,362.50 | | |
| LIBERBANK, S.A. | $1,985,715.00 | | |
| LLOYDS TSB BANK PLC | $7,022,556.11 | | |
| NCG BANCO, S.A. | $558,373.25 | | |
| PORTIGON AG, SUCURSAL EN ESPAÑA | $12,441,362.50 | | |
| QP SFM CAPITAL HOLDINGS LIMITED | $7,354,500.00 | | |
| SCOTIABANK EUROPE PLC | $5,918,276.46 | | |
| THE GOVERNOR AND COMPANY OF THE BANK OF IRELAND | $4,903,000.00 | | |
| THE ROYAL BANK OF SCOTLAND PLC | $12,441,362.50 | | |
| **FACILITY C (Revolving Facility)** | **Current total exposure $233,800,212.02** | **CEMEX España, S.A.** | **CEMEX España, S.A.** |
| BANCO BILBAO VIZCAYA ARGENTARIA, S.A. | $22,342,349.30 | | |
| BANCO ESPAÑOL DE CRÉDITO, S.A. | $12,441,362.50 | | |
| BANCO SANTANDER (MEXICO), S.A., INSTITUCIÓN DE BANCA MÚLTIPLE, GRUPO FINANCIERO SANTANDER | $14,501,803.39 | | |

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| GRUPO FINANCIERO SANTANDER | |
| BANK OF AMERICA N.A SUCURSAL EN ESPAÑA | $4,406,967.90 |
| BANKIA, S.A. | $4,448,246.75 |
| BARCLAYS BANK PLC | $8,329,367.90 |
| BAYERISCHE LANDESBANK, NEW YORK BRANCH | $5,444,619.21 |
| BNP PARIBAS S.A., SUCURSAL EN ESPAÑA | $14,279,987.50 |
| CITIBANK INTERNATIONAL PLC, SUCURSAL EN ESPAÑA | $11,310,599.30 |
| COMMERZBANK AG, LONDON BRANCH | $2,451,500.00 |
| CREDIT AGRICOLE, CIB, SUCURSAL EN ESPAÑA | $14,501,803.39 |
| FORTIS BANK, S.A. SUCURSAL EN ESPAÑA | $15,689,600.00 |
| HSBC BANK PLC SUCURSAL EN ESPAÑA | $11,215,612.50 |
| ING BELGIUM S.A, SUCURSAL EN ESPAÑA | $7,281,067.28 |
| INSTITUTO DE CRÉDITO OFICIAL | $15,321,875.00 |
| INTESA SANPAOLO SPA SUCURSAL EN ESPAÑA | $4,766,941.75 |
| JPMORGAN CHASE BANK N.A., SUCURSAL EN ESPAÑA | $12,441,362.50 |
| LIBERBANK, S.A. | $1,985,715.00 |
| LLOYDS TSB BANK PLC | $7,022,556.11 |
| NCG BANCO, S.A. | $558,373.25 |
| QP SFM CAPITAL HOLDINGS LIMITED | $7,354,500.00 |
| PORTIGON AG, SUCURSAL EN ESPAÑA | $12,441,362.50 |

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| SCOTIABANK EUROPE PLC | $5,918,276.47 | | |
| THE GOVERNOR AND COMPANY OF THE BANK OF IRELAND | $4,903,000.00 | | |
| THE ROYAL BANK OF SCOTLAND PLC | $12,441,362.50 | | |
| **CEMEX España, S.A. US$6,000,000,000 (originally US$9,000,000,000) Rinker Acquisition Facilities Agreement dated 6 December, 2006 as amended** | **Current total exposure $435,201,374.16 $533,400,915.39 €199,565,988.97 €542,215,242.44 $517,034,790.94** | **CEMEX España, S.A.** | **N/A** |
| **FACILITY B1** | **$435,201,374.16** | **CEMEX España, S.A.** | **N/A** |
| ATLANTIC SECURITY BANK | $2,451,500.08 | | |
| BANCA MONTE DEI PASCHI DI SIENA LONDON BRANCH | $8,171,666.66 | | |
| BANCO BILBAO VIZCAYA ARGENTARIA, S.A. | $980,600.00 | | |
| BARCLAYS BANK PLC | $51,815,795.47 | | |
| BAYERISCHE LANDESBANK | $51,815,795.47 | | |
| CAIXA GERAL DE DEPOSITOS, S.A, SUCURSAL EN ESPAÑA | $6,047,033.35 | | |
| CITIBANK INTERNATIONAL PLC | $5,146,565.44 | | |
| CREDIT AGRICOLE CORPORATE & INVESTMENT BANK PARIS | $51,815,795.47 | | |
| CREDIT INDUSTRIEL ET COMMERCIAL, LONDON BRANCH | $11,848,916.67 | | |
| CREDIT SUISSE AG CAYMAN ISLANDS BRANCH | $4,399,412.63 | | |
| FORTIS BANK, S.A., SUCURSAL EN ESPAÑA | $51,815,795.47 | | |
| LIBERBANK, S.A. | $6,047,033.35 | | |
| MEDIOBANCA BANCA DI CREDITO FINANZIARIO SPA | $14,729,583.35 | | |

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| PORTIGON AG, SUCURSAL EN ESPAÑA | $51,815,794.73 | | |
| QP SFM CAPITAL HOLDINGS LIMITED | $20,935,515.60 | | |
| SCOTIABANK EUROPE PLC | $51,815,795.47 | | |
| THE GOVERNOR AND COMPANY OF THE BANK OF IRELAND | $16,343,333.35 | | |
| THORNBURG INVESTMENT INCOME BUILDER FUND | $5,000,000.00 | | |
| UBS AG, STAMFORD BRANCH | $18,119,608.26 | | |
| WESTPAC EUROPE LIMITED | $4,085,833.34 | | |
| **FACILITY B2** | **$533,400,915.39** | **CEMEX España, S.A.** | **N/A** |
| BANCO DE SABADELL, S.A. | $24,514,999.99 | | |
| BANCO ESPAÑOL DE CRÉDITO, S.A. | $18,713,116.68 | | |
| BANCO POPULAR ESPAÑOL, S.A. | $19,612,000.00 | | |
| BANCO SANTANDER (MEXICO), S.A., INSTITUCIÓN DE BANCA MÚLTIPLE, GRUPO FINANCIERO SANTANDER | $49,364,295.46 | | |
| BANK OF AMERICA N.A. | $51,815,795.46 | | |
| CAIXABANK S.A. | $4,085,833.34 | | |
| CITIBANK INTERNATIONAL PLC, SUCURSAL EN ESPAÑA | $42,982,966.65 | | |
| HSBC BANK PLC, SUCURSAL EN ESPAÑA | $51,815,795.46 | | |
| INSTITUTO DE CRÉDITO OFICIAL | $51,815,795.46 | | |
| JPMORGAN CHASE BANK N.A., SUCURSAL EN ESPAÑA | $47,434,054.21 | | |
| LLOYDS TSB BANK PLC | $51,815,795.46 | | |
| MORGAN STANLEY BANK INTERNATIONAL LIMITED | $4,085,833.34 | | |

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| NCG BANCO, S.A. | $21,370,467.19 | | | |
| THE ROYAL BANK OF SCOTLAND N.V. | $36,772,500.00 | | | |
| THE ROYAL BANK OF SCOTLAND PLC | $57,201,666.69 | | | |
| **FACILITY B3** | **€199,565,988.97** | | **CEMEX España, S.A.** | **N/A** |
| BANCO BILBAO VIZCAYA ARGENTARIA, S.A. | €43,164,553.81 | | | |
| BANKIA, S.A. | €39,100,358.79 | | | |
| BNP PARIBAS S.A., SUCURSAL EN ESPAÑA | €39,100,358.79 | | | |
| ING BELGIUM S.A., SUCURSAL EN ESPAÑA | €39,100,358.79 | | | |
| INTESA SANPAOLO SPA, SUCURSAL EN ESPAÑA | €39,100,358.79 | | | |
| **FACILITY C** | **€542,215,242.44** | **$517,034,790.94** | **CEMEX España, S.A.** | **N/A** |
| **€542,215,242.44** | | | | |
| BANCA MONTE DEI PASCHI DI SIENA LONDON BRANCH | €3,595,533.34 | | | |
| BANCO BILBAO VIZCAYA ARGENTARIA S.A. | €25,168,733.34 | | | |
| BANCO DE SABADELL, S.A. | €10,786,599.98 | | | |
| BANCO ESPAÑOL DE CRÉDITO, S.A. | €8,233,771.34 | | | |
| BANCO SANTANDER (MEXICO), S.A., INSTITUCIÓN DE BANCA MÚLTIPLE, GRUPO FINANCIERO SANTANDER | €21,720,290.01 | | | |
| BANK OF AMERICA N.A. | €22,798,950.00 | | | |
| BANKIA, S.A. | €22,798,950.00 | | | |
| BARCLAYS BANK PLC | €22,798,950.00 | | | |

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| BAYERISCHE LANDESBANK | €22,798,950.00 |
| BNP PARIBAS S.A., SUCURSAL EN ESPAÑA | €22,798,950.00 |
| CAIXA GERAL DE DEPOSITOS, S.A, SUCURSAL EN ESPAÑA | €2,660,694.66 |
| CAIXABANK S.A. | €1,797,766.67 |
| CITIBANK INTERNATIONAL PLC | €6,612,968.40 |
| CITIBANK INTERNATIONAL PLC, SUCURSAL EN ESPAÑA | €19,343,969.34 |
| CREDIT AGRICOLE CORPORATE & INVESTMENT BANK | €22,798,950.00 |
| CREDIT INDUSTRIEL ET COMMERCIAL, LONDON BRANCH | €5,213,523.35 |
| FORTIS BANK, S.A., SUCURSAL EN ESPAÑA | €22,798,950.00 |
| HSBC BANK PLC, SUCURSAL EN ESPAÑA | €22,798,949.99 |
| ING BELGIUM S.A., SUCURSAL EN ESPAÑA | €22,798,950.00 |
| INSTITUTO DE CRÉDITO OFICIAL | €22,798,950.00 |
| INTESA SANPAOLO SPA, SUCURSAL EN ESPAÑA | €22,798,950.00 |
| JPMORGAN CHASE BANK N.A., SUCURSAL EN ESPAÑA | €21,504,558.00 |
| LIBERBANK, S.A. | €2,660,694.66 |
| LLOYDS TSB BANK PLC | €22,798,950.00 |
| MEDIOBANCA BANCA DI CREDITO FINANZIARIO SPA | €10,867,755.86 |
| MIZUHO CORPORATE BANK NEDERLAND N.V. | €22,798,950.00 |
| MORGAN STANLEY BANK INTERNATIONAL LIMITED | €1,797,766.67 |
| NCG BANCO, S.A. | €7,928,900.18 |

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| PORTIGON AG, SUCURSAL EN ESPAÑA | €22,798,950.00 |
| SCOTIABANK EUROPE PLC | €22,798,950.00 |
| THE GOVERNOR AND COMPANY OF THE BANK OF IRELAND | €7,191,066.67 |
| THE ROYAL BANK OF SCOTLAND N.V. | €16,179,900.01 |
| THE ROYAL BANK OF SCOTLAND PLC | €25,168,733.30 |
| WESTPAC EUROPE LIMITED | €1,797,766.67 |
| **$517,034,790.94** | |
| BANCA MONTE DEI PASCHI DI SIENA LONDON BRANCH | $3,227,808.33 |
| BANCO BILBAO VIZCAYA ARGENTARIA, S.A. | $22,594,658.34 |
| BANCO DE SABADELL, S.A. | $9,683,424.99 |
| BANCO ESPAÑOL DE CRÉDITO, S.A. | $7,391,681.08 |
| BANCO SANTANDER (MEXICO), S.A., INSTITUCIÓN DE BANCA MÚLTIPLE, GRUPO FINANCIERO SANTANDER | $19,498,896.71 |
| BANK OF AMERICA N.A. | $20,467,239.21 |
| BANKIA, S.A. | $20,467,239.21 |
| BARCLAYS BANK PLC | $20,467,239.21 |
| BAYERISCHE LANDESBANK | $20,467,239.21 |
| BNP PARIBAS S.A., SUCURSAL EN ESPAÑA | $20,467,239.21 |
| CAIXA GERAL DE DEPOSITOS, S.A, SUCURSAL EN ESPAÑA | $2,388,578.16 |
| CAIXABANK S.A. | $1,613,904.18 |
| CITIBANK INTERNATIONAL PLC | $5,936,642.08 |

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| CITIBANK INTERNATIONAL PLC, SUCURSAL EN ESPAÑA | $17,365,608.84 |
| CREDIT AGRICOLE CORPORATE & INVESTMENT BANK PARIS | $20,467,239.21 |
| CREDIT INDUSTRIEL ET COMMERCIAL, LONDON BRANCH | $4,680,322.09 |
| FCOF III EUROPE UB SECURITIES LIMITED | $100,000.00 |
| FORTIS BANK, S.A., SUCURSAL EN ESPAÑA | $20,467,239.21 |
| HSBC BANK PLC, SUCURSAL EN ESPAÑA | $20,467,239.21 |
| ING BELGIUM S.A., SUCURSAL EN ESPAÑA | $20,467,239.21 |
| INSTITUTO DE CRÉDITO OFICIAL | $20,467,239.21 |
| INTESA SANPAOLO SPA, SUCURSAL EN ESPAÑA | $20,467,239.21 |
| JPMORGAN CHASE BANK N.A., SUCURSAL EN ESPAÑA | $19,305,228.20 |
| LIBERBANK, S.A. | $2,388,578.16 |
| LLOYDS TSB BANK PLC | $20,467,239.21 |
| MEDIOBANCA BANCA DI CREDITO FINANZIARIO SPA | $13,718,185.43 |
| MIZUHO CORPORATE BANK NEDERLAND N.V. | $20,467,239.21 |
| MORGAN STANLEY BANK INTERNATIONAL LIMITED | $1,613,904.18 |
| NCG BANCO, S.A. | $7,117,989.94 |
| PORTIGON AG, SUCURSAL EN ESPAÑA | $20,467,239.21 |
| QP SFM CAPITAL HOLDINGS LIMITED | $26,211,475.43 |
| SCOTIABANK EUROPE PLC | $20,467,239.21 |
| THE GOVERNOR AND COMPANY OF THE BANK OF IRELAND | $6,455,616.68 |

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| THE ROYAL BANK OF SCOTLAND N.V. | $14,525,137.51 | | |
| THE ROYAL BANK OF SCOTLAND PLC | $22,594,658.28 | | |
| WESTPAC EUROPE LIMITED | $1,613,904.18 | | |
| **CEMEX España, S.A. US$617,500,000 & EUR 587,500,000 Joint Bilateral Financing Facilities Agreement dated 27 January, 2009 (as amended)** | **Current total exposure $302,760,250.06 €288,051,250.04** | **CEMEX España, S.A.** | **CEMEX, Inc.** |
| **FACILITY A** | **$302,760,250.06** | **CEMEX España, S.A.** | **CEMEX, Inc.** |
| BANCO SANTANDER (MEXICO), S.A., INSTITUCIÓN DE BANCA MÚLTIPLE, GRUPO FINANCIERO SANTANDER | $51,481,500.01 | | |
| BANK OF AMERICA N.A. | $73,545,000.02 | | |
| THE ROYAL BANK OF SCOTLAND PLC | $177,733,750.03 | | |
| **FACILITY B** | **€288,051,250.04** | **CEMEX España, S.A.** | **CEMEX, Inc.** |
| BANCO BILBAO VIZCAYA ARGENTARIA, S.A. | €23,534,400.02 | | |
| BANCO ESPAÑOL DE CRÉDITO, S.A. | €19,612,000.00 | | |
| BANCO SANTANDER (MEXICO), S.A., INSTITUCIÓN DE BANCA MÚLTIPLE, GRUPO FINANCIERO SANTANDER | €150,522,100.02 | | |
| BANKIA, S.A. | €9,806,000.00 | | |
| CAIXA GERAL DE DEPOSITOS, S.A, SUCURSAL EN ESPAÑA | €24,514,999.99 | | |
| CAIXABANK S.A. | €34,321,000.01 | | |
| HSBC BANK PLC SUCURSAL EN ESPAÑA | €14,709,000.01 | | |
| LLOYDS TSB BANK PLC | €11,031,749.99 | | |
| **New Sunward Holding B.V. US$1,050,000,000 Senior Unsecured Dutch Loan "A & B" Agreement dated 31 December, 2008 (Club Loan)** | **Current total exposure $510,856,830.51** | **NEW SUNWARD HOLDING B.V.** | **CEMEX, S.A.B. de C.V.; CEMEX México, S.A. de C.V.** |

| | | | |
|---|---|---|---|
| **FACILITY A** | **$255,428,415.25** | | |
| BANCO SANTANDER (MEXICO) S.A. INSTITUTION DE BANCA MÚLTIPLE GRUPO FINANCIERO SANTANDER | $61,287,500.10 | | |
| BANKIA, S.A. MIAMI BRANCH | $36,772,500.00 | | |
| HSBC MEXICO, S.A., INSTITUCIÓN DE BANCA MÚLTIPLE, GRUPO FINANCIERO HSBC | $61,287,500.11 | | |
| ICE 1 EM CLO LTD | $10,809,835.96 | | |
| ING BANK N.V., DUBLIN BRANCH | $36,772,500.07 | | |
| THE ROYAL BANK OF SCOTLAND PLC | $48,498,579.01 | | |
| **FACILITY B** | **$255,428,415.26** | | |
| BANCO SANTANDER (MEXICO) S.A. INSTITUTION DE BANCA MÚLTIPLE GRUPO FINANCIERO SANTANDER | $61,287,500.10 | | |
| BANKIA, S.A. MIAMI BRANCH | $36,772,500.00 | | |
| HSBC MEXICO, S.A., INSTITUCIÓN DE BANCA MÚLTIPLE, GRUPO FINANCIERO HSBC | $61,287,500.11 | | |
| ICE 1 EM CLO LTD | $10,809,835.96 | | |
| ING BANK N.V., DUBLIN BRANCH | $36,772,500.07 | | |
| THE ROYAL BANK OF SCOTLAND PLC | $48,498,579.02 | | |
| **New Sunward Holding B.V. US$700,000,000 Facilities Agreement dated 27 June 2005 (as amended)** | **Current total exposure $143,932,568.90** | **NEW SUNWARD HOLDING B.V.** | **CEMEX, S.A.B. de C.V.; CEMEX México, S.A. de C.V.; Empresas Tolteca de México S.A. de C.V.** |
| **FACILITY B (Revolving Facility)** | | | |
| BANCO BILBAO VIZCAYA ARGENTARIA, S.A | $17,119,641.67 | | |
| BANCO DE SABADELL, S. A. | $4,903,000.00 | | |

| | | | |
|---|---|---|---|
| BANCO NACIONAL DE MÉXICO, S.A., INTEGRANTE DEL GRUPO FINANCIERO BANAMEX, ACTING THROUGH ITS NASSAU-BAHAMAS BRANCH | $17,119,641.67 | | |
| BANCO SANTANDER (MEXICO) S.A. INSTITUCIÓN DE BANCA MÚLTIPLE GRUPO FINANCIERO SANTANDER | $11,889,775.01 | | |
| BANK OF AMERICA N.A. | $7,138,868.78 | | |
| BNP PARIBAS (PARIS BRANCH) | $15,281,016.67 | | |
| CREDIT AGRICOLE CIB SUCURSAL EN ESPAÑA | $11,889,775.01 | | |
| FORTIS BANK, S.A./ N.V | $7,354,500.00 | | |
| ING BANK N.V. DUBLIN BRANCH | $11,889,775.01 | | |
| JPMORGAN CHASE BANK N.A. | $11,889,775.01 | | |
| LLOYDS TSB BANK PLC | $11,889,775.01 | | |
| THE GOVERNOR AND COMPANY OF THE BANK OF IRELAND | $3,677,250.00 | | |
| THE ROYAL BANK OF SCOTLAND PLC | $11,889,775.01 | | |
| **Part I.B (Bilateral Facilities)** | | | |
| US$500,000,000 Pez Loan between BBVA BANCOMER, S.A., Institución De Banca Múltiple, Grupo Financiero BBVA Bancomer and CEMEX, S.A.B. de C.V. dated 25 June 2008, as further amended | $245,150,000.03 | CEMEX, S.A.B. de C.V. | CEMEX México, S.A. de C.V. |
| US$170,000,000 Loan Facility Agreement between JPMorgan Chase Bank, N.A. and CEMEX Materials LLC, dated 1 October 2007 (as amended) | $83,351,000.19 | CEMEX Materials LLC | CEMEX España, S.A. |
| US$37,500,000 Facility Agreement between BNP Paribas (Sydney Branch) and CEMEX Materials LLC, dated 1 October 2007 (as amended) | $18,386,249.84 | CEMEX Materials LLC | CEMEX España, S.A. |
| €3,900,291 and $38,431,286 bilateral revolving loan agreements dated 29 September 2009 between Banco de Sabadell, S.A. and CEMEX España, S.A (replacing, respectively, a €3,900,291 bilateral loan agreement dated 13 August 2009 which in turn replaced a €32,000,000 bilateral loan agreement dated 24 June 2008, and a $38,431,286 bilateral loan agreement dated 13 August 2009 which in turn replaced a $51,000,000 bilateral loan agreement dated 24 June 2008 (as amended), each between the same parties) | | CEMEX España, S.A. | N/A |

| | | | |
|---|---|---|---|
| EURO TRANCHE | €1,912,312.68 | | |
| US DOLLAR TRANCHE | $18,842,859.53 | | |
| €40,000,000 Multidivisa Bilateral Loan Agreement between Fortis, S.A., Sucursal en España and CEMEX España, S.A., dated 28 August 2006 | | CEMEX España, S.A. | N/A |
| EURO TRANCHE | €5,227,662.45 | | |
| US DOLLAR TRANCHE | $12,069,229.23 | | |
| **Part I.C (Promissory Notes)** | | | |
| Promissory Note US$45,434,817 JPMorgan Chase Bank, N.A., dated 14 August 2009 | $22,276,690.99 | CEMEX, S.A.B. de C.V. | CEMEX México, S.A. de C.V. |
| Promissory Note US$20,000,000 JPMorgan Chase Bank, N.A., dated 14 August 2009 | $9,806,000.00 | CEMEX, S.A.B. de C.V. | CEMEX México, S.A. de C.V. |
| Promissory Note US$50,000,000 BNP Paribas S.A., dated 14 August 2009 | $24,514,999.99 | CEMEX, S.A.B. de C.V. | N/A |
| Promissory Note US$49,128,020 Barclays Bank plc, dated 14 August 2009 | $24,087,468.13 | CEMEX, S.A.B. de C.V. | N/A |
| Promissory Note US$50,000,000 BBVA Bancomer, S.A., Institución de Banca Múltiple Grupo Financiero BBVA Bancomer, dated 14 August 2009 | $24,514,999.99 | CEMEX, S.A.B. de C.V. | N/A |
| Promissory Note US$6,625,000 ABN AMRO Bank, N.V., (now Royal Bank of Scotland N.V.), dated 14 August 2009 | $3,248,237.50 | CEMEX, S.A.B. de C.V. | N/A |
| Promissory Note US$1,296,000 Calyon (now Credit Agricole Corporate and Investment Bank New York), dated 14 August 2009 | $635,428.80 | CEMEX, S.A.B. de C.V. | N/A |
| Promissory Note US$34,318,339 ING Bank N.V. Dublin Branch, dated 14 August 2009 | $16,826,281.47 | CEMEX, S.A.B. de C.V. | N/A |
| Promissory Note US$4,093,054 Bank of America N.A., dated 14 August 2009 | $2,006,824.37 | CEMEX, S.A.B. de C.V. | N/A |
| Promissory Note US$4,504,861 The Royal Bank of Scotland plc, dated 14 August 2009 | $2,208,733.35 | CEMEX, S.A.B. de C.V. | N/A |
| Promissory Note US$34,072,566 JPMorgan Chase Bank, N.A., dated 14 August 2009 | $16,705,779.12 | CEMEX, S.A.B. de C.V. | N/A |

| | | | |
|---|---|---|---|
| Promissory Note US$51,947,000 Citibank N.A. New York, dated 14 August 2009 | $25,469,614.11 | CEMEX, S.A.B. de C.V. | N/A |
| Promissory Note Mex$ 739,385,880 HSBC México, S.A., Institución de Banca Múltiple, Grupo Financiero HSBC, dated 14 August 2009 | Mex$362,520,896.98 | CEMEX, S.A.B. de C.V. | N/A. |
| **Part I.D (US Private Placements)** | | | |
| **US$882,407,495.57 Note Purchase Agreement** | **US$106,586,333.79** | **CEMEX Finance LLC** | **CEMEX España, S.A.** |
| **Noteholder** | | | |
| ALLSTATE LIFE INSURANCE COMPANY | $10,617,040.37 | | |
| COMMINGLED PENSION TRUST FUND (DISTRESSED DEBT OPPORTUNITIES) OF JPMORGAN CHASE BANK, N.A. | $1,500,000.00 | | |
| CVI GVF (LUX) MASTER S.A.R.L. | $372,274.40 | | |
| HARTFORD LIFE AND ACCIDENT INSURANCE COMPANY | $10,617,040.37 | | |
| HARTFORD LIFE INSURANCE COMPANY | $5,308,520.18 | | |
| INSIGHT LDI SOLUTIONS PLUS PLC, IN RESPECT OF THE INSIGHT LOAN FUND | $2,059,260.00 | | |
| INSIGHT LDI SOLUTIONS PLUS PLC, IN RESPECT OF THE INSIGHT LOAN FUND | $1,592,556.05 | | |
| INSIGHT LDI SOLUTIONS PLUS PLC, IN RESPECT OF THE INSIGHT LOAN FUND | $1,382,085.46 | | |
| JPMORGAN DISTRESSED DEBT OPPORTUNITIES MASTER FUND, LTD. | $500,000.00 | | |
| JPMORGAN CORE PLUS BOND FUND | $2,500,000.00 | | |
| JPMORGAN HIGH YIELD FUND | $5,000,000.00 | | |
| JPMORGAN HIGH YIELD FUND | $1,728,389.47 | | |
| JPMORGAN STRATEGIC INCOME OPPORTUNITIES FUND | $9,260,347.55 | | |

| | |
|---|---|
| NATIONAL BENEFIT LIFE INSURANCE COMPANY | $583,937.22 |
| PACHOLDER HIGH YIELD FUND, INC. | $500,000.00 |
| PHL VARIABLE INSURANCE COMPANY | $1,102,256.05 |
| PHL VARIABLE INSURANCE COMPANY | $734,837.37 |
| PHL VARIABLE INSURANCE COMPANY | $1,102,256.05 |
| PHL VARIABLE INSURANCE COMPANY | $734,837.37 |
| PHOENIX LIFE INSURANCE COMPANY | $1,837,093.43 |
| PRIMERICA LIFE INSURANCE COMPANY | $2,972,771.30 |
| QP SFM CAPITAL HOLDINGS LIMITED | $3,816,551.29 |
| QP SFM CAPITAL HOLDINGS LIMITED | $3,816,551.29 |
| QP SFM CAPITAL HOLDINGS LIMITED | $3,816,551.29 |
| QP SFM CAPITAL HOLDINGS LIMITED | $4,911,462.58 |
| QP SFM CAPITAL HOLDINGS LIMITED | $3,185,112.11 |
| QP SFM CAPITAL HOLDINGS LIMITED | $4,777,668.34 |
| QP SFM CAPITAL HOLDINGS LIMITED | $1,061,703.86 |
| QP SFM CAPITAL HOLDINGS LIMITED | $9,639,894.06 |
| SWISS RE LIFE & HEALTH AMERICA INC. | $4,246,816.15 |
| WESTPORT INSURANCE CORPORATION | $5,308,520.18 |

## Section B – Commitments of the Original Creditors

## Note – Base Currency Amounts of Facility B Commitments and Facility C Commitments are calculated using exchange rates provided by Reuters as at 14:20 London time on 7 September 2012

**Facility A Commitment**

| Name of Original Creditor | Facility A1 Commitment ($) | Facility A2 Commitment ($) | Facility A3 Commitment ($) | Facility A4 Commitment ($) | Facility A5 Commitment ($) | Facility A6 Commitment ($) | Facility A7 Commitment ($) | Facility A8 Commitment ($) |
|---|---|---|---|---|---|---|---|---|
| ATLANTIC SECURITY BANK | | | | $ 2,451,500.08 | | | | |
| BANAMEX USA | $ 4,903,000.00 | $ 12,257,493.17 | | | | | | |
| BANCA MONTE DEI PASCHI DI SIENA LONDON BRANCH | | | | $ 11,399,474.99 | | | | |
| BANCA MONTE DEI PASCHI DI SIENA-NEW YORK BRANCH | $ 7,354,500.00 | | | | | | | |
| BANCO BILBAO VIZCAYA ARGENTARIA, S.A. | | | | $ 67,989,147.34 | | $ 17,119,641.67 | | |
| BANCO DE SABADELL, S.A. | | | | $ 53,041,284.51 | | $ 4,903,000.00 | | |
| BANCO ESPAÑOL DE CRÉDITO S.A. | | | | $ 50,987,522.76 | | | | |
| BANCO NACIONAL DE COMERCIO EXTERIOR, S.N.C. | | $ 39,224,008.09 | | | | | | |
| BANCO NACIONAL DE MÉXICO, S.A. INTEGRANTE DEL GRUPO FINANCIERO BANAMEX, ACTING THROUGH ITS NASSAU BAHAMAS BRANCH | $ 53,442,700.03 | $ 23,289,254.67 | | | | $ 17,119,641.67 | | |

**Facility A Commitment**

| Name of Original Creditor | Facility A1 Commitment ($) | Facility A2 Commitment ($) | Facility A3 Commitment ($) | Facility A4 Commitment ($) | Facility A5 Commitment ($) | Facility A6 Commitment ($) | Facility A7 Commitment ($) | Facility A8 Commitment ($) |
|---|---|---|---|---|---|---|---|---|
| BANCO POPULAR ESPAÑOL S.A. | | | | $ 19,612,000.00 | | | | |
| BANCO SANTANDER (MEXICO) S.A., INSTITUCIÓN DE BANCA MÚLTIPLE GRUPO FINANCIERO SANTANDER | $ 63,739,000.05 | $ 26,966,497.80 | | $ 97,866,798.95 | $ 51,481,500.01 | $ 11,889,775.01 | $122,575,000.20 | |
| BANK OF AMERICA N.A SUCURSAL EN ESPAÑA | | | | $ 8,813,935.80 | | | | |
| BANK OF AMERICA NA | $ 38,013,819.12 | | | $ 72,283,034.67 | $ 73,545,000.02 | $ 7,138,868.78 | | |
| BANKIA, S.A. MIAMI BRANCH | $ 4,903,000.00 | | | | | | $ 73,545,000.00 | |
| BANKIA, S.A. | | | | $ 27,121,835.96 | | | | |
| BARCLAYS BANK PLC | $ 19,836,270.63 | | | $ 88,941,770.48 | | | | |
| BAYERISCHE LANDESBANK | | | | $ 72,283,034.68 | | | | |
| BAYERISCHE LANDESBANK, NEW YORK BRANCH | $ 39,224,000.05 | | | $ 10,889,238.42 | | | | |
| BBVA BANCOMER, S.A., INSTITUCIÓN DE BANCA MÚLTIPLE GRUPO FINANCIERO BBVA BANCOMER | $ 57,610,250.06 | $112,768,998.15 | $245,150,000.03 | | | | | |

**Facility A Commitment**

| Name of Original Creditor | Facility A1 Commitment ($) | Facility A2 Commitment ($) | Facility A3 Commitment ($) | Facility A4 Commitment ($) | Facility A5 Commitment ($) | Facility A6 Commitment ($) | Facility A7 Commitment ($) | Facility A8 Commitment ($) |
|---|---|---|---|---|---|---|---|---|
| BNP PARIBAS (PARIS BRANCH) | | | | | | $ 15,281,016.67 | | |
| BNP PARIBAS (SYDNEY BRANCH) | | | | | | | | $ 18,386,249.84 |
| BNP PARIBAS SA-NEW YORK BRANCH | $ 98,060,000.11 | | | | | | | |
| BNP PARIBAS S.A., SUCURSAL EN ESPAÑA | | | | $ 49,027,214.23 | | | | |
| CAIXA GERAL DE DEPOSITOS, S.A, SUCURSAL EN ESPAÑA | | | | $ 8,435,611.51 | | | | |
| CAIXABANK S.A. | | | | $ 5,699,737.52 | | | | |
| CITIBANK INTERNATIONAL PLC | | | | $ 11,083,207.52 | | | | |
| CITIBANK INTERNATIONAL PLC, SUCURSAL EN ESPAÑA | | | | $ 86,962,725.73 | | | | |
| CITIBANK N.A. | $ 5,738,165.93 | | | | | | | |
| COMERICA BANK | $ 6,700,479.03 | | | | | | | |
| COMMERZBANK AG, LONDON BRANCH | | | | $ 4,903,000.00 | | | | |
| COMMERZBANK AG, NEW YORK BRANCH | $ 9,806,000.01 | | | | | | | |

**Facility A Commitment**

| Name of Original Creditor | Facility A1 Commitment ($) | Facility A2 Commitment ($) | Facility A3 Commitment ($) | Facility A4 Commitment ($) | Facility A5 Commitment ($) | Facility A6 Commitment ($) | Facility A7 Commitment ($) | Facility A8 Commitment ($) |
|---|---|---|---|---|---|---|---|---|
| CREDIT AGRICOLE CIB SUCURSAL EN ESPAÑA | | | | $ 29,003,606.78 | | $ 11,889,775.01 | | |
| CREDIT AGRICOLE CORPORATE & INVESTMENT BANK PARIS | | | | $ 72,283,034.68 | | | | |
| CREDIT AGRICOLE CORPORATE & INVESTMENT BANK S.A. -NEW YORK BRANCH | $ 63,739,000.05 | | | | | | | |
| CREDIT INDUSTRIEL ET COMMERCIAL, LONDON BRANCH | | | | $ 16,529,238.76 | | | | |
| CREDIT SUISSE AG CAYMAN ISLANDS BRANCH | $ 2,199,706.31 | | | $ 4,399,412.63 | | | | |
| FCOF III EUROPE UB SECURITIES LIMITED | | | | $ 100,000.00 | | | | |
| FORTIS BANK, SA SUCURSAL EN ESPAÑA | | | | $ 115,731,463.91 | | | | |
| FORTIS BANK S.A./ N.V | | | | | | $ 7,354,500.00 | | |
| HSBC BANK PLC, SUCURSAL EN ESPAÑA | $ 24,515,000.04 | | | $ 94,714,259.67 | | | | |
| HSBC MEXICO, S.A., INSTITUCIÓN DE BANCA MÚLTIPLE, GRUPO FINANCIERO HSBC | $ 14,709,000.01 | | | | | | $122,575,000.22 | |

**Facility A Commitment**

| Name of Original Creditor | Facility A1 Commitment ($) | Facility A2 Commitment ($) | Facility A3 Commitment ($) | Facility A4 Commitment ($) | Facility A5 Commitment ($) | Facility A6 Commitment ($) | Facility A7 Commitment ($) | Facility A8 Commitment ($) |
|---|---|---|---|---|---|---|---|---|
| ICE 1 EM CLO LTD | | | | | | | $ 21,619,671.92 | |
| ING BANK N.V. DUBLIN BRANCH | $ 63,738,999.88 | | | | | $ 11,889,775.01 | $ 73,545,000.14 | |
| ING BELGIUM S.A, SUCURSAL EN ESPAÑA | | | | $ 35,029,373.77 | | | | |
| INSTITUTO DE CRÉDITO OFICIAL | | | | $102,926,784.67 | | | | |
| INTESA SANPAOLO SPA, SUCURSAL EN ESPAÑA | | | | $ 30,001,122.71 | | | | |
| INTESA SANPAOLO SPA, NEW YORK BRANCH | $ 22,063,500.02 | | | | | | | |
| JPMORGAN CHASE BANK N.A., SUCURSAL EN ESPAÑA | | | | $ 91,622,007.41 | | | | |
| JPMORGAN CHASE BANK, N.A. | $ 61,452,360.63 | | | | | $ 11,889,775.01 | | $ 83,351,000.19 |
| LIBERBANK, S.A | | | | $ 12,407,041.51 | | | | |
| LLOYDS TSB BANK PLC | | | | $ 86,328,146.89 | | $ 11,889,775.01 | | |
| MEDIOBANCA BANCA DI CREDITO FINANZIARIO SPA | | | | $ 28,447,768.78 | | | | |
| MIZUHO CORPORATE BANK, LTD. | $ 15,143,252.31 | | | | | | | |
| MIZUHO CORPORATE BANK NEDERLAND N.V. | | | | $ 20,467,239.21 | | | | |

**Facility A Commitment**

| Name of Original Creditor | Facility A1 Commitment ($) | Facility A2 Commitment ($) | Facility A3 Commitment ($) | Facility A4 Commitment ($) | Facility A5 Commitment ($) | Facility A6 Commitment ($) | Facility A7 Commitment ($) | Facility A8 Commitment ($) |
|---|---|---|---|---|---|---|---|---|
| MORGAN STANLEY BANK INTERNATIONAL LIMITED | | | | $ 5,699,737.52 | | | | |
| NCG BANCO, S.A. | | | | $ 29,605,203.63 | | | | |
| PORTIGON AG, SUCURSAL EN ESPAÑA | | | | $ 97,165,758.94 | | | | |
| QP SFM CAPITAL HOLDINGS LIMITED | $ 15,018,587.42 | | | $ 61,855,991.03 | | | | |
| SCOTIABANK EUROPE PLC | | | | $ 84,119,587.61 | | | | |
| STANDARD CHARTERED BANK | $ 2,451,500.03 | | | | | | | |
| THE BANK OF NOVA SCOTIA | $ 63,739,000.05 | | | | | | | |
| THE GOVERNOR AND COMPANY OF THE BANK OF IRELAND | | | | $ 32,604,950.03 | | $ 3,677,250.00 | | |
| THE ROYAL BANK OF SCOTLAND N.V. | | | | $ 51,297,637.51 | | | | |
| THE ROYAL BANK OF SCOTLAND PLC | | | | $ 104,679,049.97 | $ 177,733,750.03 | $ 11,889,775.01 | $ 96,997,158.03 | |

**Facility A Commitment**

| Name of Original Creditor | Facility A1 Commitment ($) | Facility A2 Commitment ($) | Facility A3 Commitment ($) | Facility A4 Commitment ($) | Facility A5 Commitment ($) | Facility A6 Commitment ($) | Facility A7 Commitment ($) | Facility A8 Commitment ($) |
|---|---|---|---|---|---|---|---|---|
| THORNBURG INVESTMENT INCOME BUILDER FUND | | | | $ 5,000,000.00 | | | | |
| UBS AG, STAMFORD BRANCH | $ 6,193,187.39 | | | $ 18,119,608.26 | | | | |
| WESTPAC EUROPE LIMITED | | | | $ 5,699,737.52 | | | | |
| **Total** | $764,294,279.16 | $214,506,251.88 | $245,150,000.03 | $1,985,629,839.27 | $302,760,250.06 | $143,932,568.85 | $510,856,830,63 | $101,737,250.03 |

**Facility B Commitments**

| Name of Original Creditor | Facility B1 Commitment (€) | Facility B1 Commitment (Base Currency Amount) | Facility B2 Commitment (€) | Facility B2 Commitment (Base Currency Amount) |
|---|---|---|---|---|
| BANCA MONTE DEI PASCHI DI SIENA LONDON BRANCH | € 3,595,533.34 | $ 4,590,057.86 | | |
| BANCO BILBAO VIZCAYA ARGENTARIA, S.A. | € 69,137,115.44 | $ 88.260,441.57 | € 23,534,400.02 | $ 30,044,015.07 |
| BANCO DE SABADELL, S. A. | € 12,698,912.66 | $ 16,211,431.90 | | |
| BANCO ESPAÑOL DE CREDITO S.A. | € 19,222,529.99 | $ 24,539,481.79 | € 19,612,000.00 | $ 25,036,679.20 |
| BANCO SANTANDER (MEXICO) S.A. INSTITUCIÓN DE BANCA MÚLTIPLE GRUPO FINANCIERO SANTANDER | € 28,815,777.22 | $ 36,786,221.20 | € 150,522,100.02 | $192,156,512.89 |

**Facility B Commitments**

| Name of Original Creditor | Facility B1 Commitment (€) | Facility B1 Commitment (Base Currency Amount) | Facility B2 Commitment (€) | Facility B2 Commitment (Base Currency Amount) |
|---|---|---|---|---|
| BANK OF AMERICA NA | € 22,798,950.00 | $ 29,105,139.57 | | |
| BANKIA, S.A. | € 61,899,308.79 | $ 79,020,657.60 | € 9,806,000.00 | $ 12,518,339.60 |
| BARCLAYS BANK PLC | € 22,798,950.00 | $ 29,105,139.57 | | |
| BAYERISCHE LANDESBANK | € 22,798,950.00 | $ 29,105,139.57 | | |
| BBVA BANCOMER, S.A., INSTITUCIÓN DE BANCA MÚLTIPLE GRUPO FINANCIERO BBVA BANCOMER | € 10,000,000.00 | $ 12,766,000.00 | | |
| BNP PARIBAS SUCURSAL EN ESPAÑA | € 68,994,796.00 | $ 88.078,756.57 | | |
| CAIXA GERAL DE DEPOSITOS, S.A, SUCURSAL EN ESPAÑA | € 2,660,694.66 | $ 3,396,642.80 | € 24,514,999.99 | $ 31,295,848.99 |
| CAIXABANK S.A. | € 1,797,766.67 | $ 2,295,028.93 | € 34,321,000.01 | $ 43,814,188.61 |
| CITIBANK INTERNATIONAL PLC | € 6,612,968.40 | $ 8,442,115.46 | | |
| CITIBANK INTERNATIONAL PLC, SUCURSAL EN ESPAÑA | € 19,343,969.34 | $ 24,694,511.26 | | |
| CREDIT AGRICOLE CORPORATE & INVESTMENT BANK | € 22,798,950.00 | $ 29,105,139.57 | | |
| CREDIT INDUSTRIEL ET COMMERCIAL, LONDON BRANCH | € 5,213,523.35 | $ 6,655,583.91 | | |
| FORTIS BANK, SA SUCURSAL EN ESPAÑA | € 30,213,829.00 | $ 38,570,974.10 | | |
| HSBC BANK PLC, SUCURSAL EN ESPAÑA | € 29,894,437.20 | $ 38,163,238.53 | € 14,709,000.01 | $ 18,777,509.41 |
| ING BELGIUM S.A, SUCURSAL EN ESPAÑA | € 68,994,796.00 | $ 88,078,756.57 | | |

**Facility B Commitments**

| Name of Original Creditor | Facility B1 Commitment (€) | Facility B1 Commitment (Base Currency Amount) | Facility B2 Commitment (€) | Facility B2 Commitment (Base Currency Amount) |
|---|---|---|---|---|
| INSTITUTO DE CRÉDITO OFICIAL | € 22,798,950.00 | $ 29,105,139.57 | | |
| INTESA SANPAOLO SPA SUCURSAL EN ESPAÑA | € 61,899,308.79 | $ 79,020,657.60 | | |
| JPMORGAN CHASE BANK NA | € 21,504,558.00 | $ 27,452,718.74 | | |
| LIBERBANK, S.A. | € 2,660,694.66 | $ 3,396,642.80 | | |
| LLOYDS TSB BANK PLC | € 22,798,950.00 | $ 29,105,139.57 | € 11,031,749.99 | $ 14,083,132.04 |
| MEDIOBANCA BANCA DI CREDITO FINANZIARIO, SPA | € 10,867,755.86 | $ 13,873,777.13 | | |
| MIZUHO CORPORATE BANK NEDERLAND N.V. | € 22,798,950.00 | $ 29,105,139.57 | | |
| MORGAN STANLEY BANK INTERNATIONAL LIMITED | € 1,797,766.67 | $ 2,295,028.93 | | |
| NCG BANCO, S.A. | € 7,928,900.18 | $ 10,122,033.97 | | |
| PORTIGON AG, MADRID BRANCH | € 22,798,950.00 | $ 29,105,139.57 | | |
| SCOTIABANK EUROPE PLC | € 22,798,950.00 | $ 29,105,139.57 | | |
| THE GOVERNOR AND COMPANY OF THE BANK OF IRELAND | € 7,191,066.67 | $ 9,180,115.71 | | |
| THE ROYAL BANK OF SCOTLAND N.V. | € 16,179,900.01 | $ 20,655,260.35 | | |
| THE ROYAL BANK OF SCOTLAND PLC | € 32,264,220.52 | $ 41,188,503.90 | | |
| WESTPAC EUROPE LIMITED | € 1,797,766.67 | $ 2,295,028.93 | | |
| **Total** | € 808,378,446.11 | $1,031,975,924.30 | € 288,051,250.04 | $367,726,225.80 |

**Facility C Commitment**

| Name of Original Creditor | Facility C Commitment (Mex$) | Facility C Commitment (Base Currency Amount) |
|---|---|---|
| BANCO NACIONAL DE MÉXICO, S.A. INTEGRANTE DEL GRUPO FINANCIERO BANAMEX | Mex$ 480,041,090.33 | $ 36,895,302.43 |
| BANCO SANTANDER (MEXICO), S.A., INSTITUCIÓN DE BANCA MÚLTIPLE, GRUPO FINANCIERO SANTANDER | Mex$ 364,169,066.82 | $ 27,989,536.99 |
| BBVA BANCOMER, S.A., INSTITUCIÓN DE BANCA MÚLTIPLE GRUPO FINANCIERO BBVA BANCOMER | Mex$1,111,195,951.19 | $ 85,405,002.82 |
| HSBC MEXICO, S.A., INSTITUCIÓN DE BANCA MÚLTIPLE, GRUPO FINANCIERO HSBC | Mex$ 384,934,522.87 | $ 29,585,541.57 |
| Total | Mex$ 2,340,340,631.21 | $179,875,383.81 |

**Derivatives Unwind Promissory Note Facility Commitment**

| Name of Original Creditor | Derivatives Unwind Promissory Note Facility 1 Commitment ($) | Derivatives Unwind Promissory Note Facility 2 Commitment ($) | Derivatives Unwind Promissory Note Facility 3 Commitment (Mex$) | Derivatives Unwind Promissory Note Facility 3 Commitment (Base Currency Amount) |
|---|---|---|---|---|
| BANK OF AMERICA N.A. | | $ 2,006,824.37 | | |
| BARCLAYS BANK PLC | | $ 24,087,468.13 | | |
| BBVA BANCOMER, S.A., INSTITUCIÓN DE BANCA MÚLTIPLE GRUPO FINANCIERO BBVA BANCOMER | | $ 24,514,999.99 | | |
| BNP PARIBAS S.A. | | $ 24,514,999.99 | | |
| CITIBANK N.A. NEW YORK | | $ 25,469,614.11 | | |
| CREDIT AGRICOLE CORPORATE AND INVESTMENT BANK NEW YORK | | $ 635,428.80 | | |
| HSBC MÉXICO, S.A., INSTITUCIÓN DE BANCA MÚLTIPLE, GRUPO FINANCIERO HSBC | | | Mex$362,520,896.98 | $ 27,862,860.91 |
| ING BANK N.V. DUBLIN | | $ 16,826,281.47 | | |
| JPMORGAN CHASE BANK, N.A. | $32,082,690.99 | $ 16,705,779.12 | | |
| THE ROYAL BANK OF SCOTLAND N.V. | | $ 3,248,237.50 | | |
| THE ROYAL BANK OF SCOTLAND PLC | | $ 2,208,733.35 | | |
| Total | $32,082,690.99 | $140,218,366.82 | Mex$362,520,896.98 | $ 27,862,860.91 |

**USPP Note Facility Commitment**

| Name of Original Creditor | USPP Note Facility Commitment |
|---|---|
| ALLSTATE LIFE INSURANCE COMPANY | $ 10,617,040.37 |
| COMMINGLED PENSION TRUST FUND (DISTRESSED DEBT OPPORTUNITIES) OF JPMORGAN CHASE BANK, N.A. | $ 1,500,000.00 |
| CVI GVF (LUX) MASTER S.A.R.L. | $ 372,274.40 |
| HARTFORD LIFE AND ACCIDENT INSURANCE COMPANY | $ 10,617,040.37 |
| HARTFORD LIFE INSURANCE COMPANY | $ 5,308,520.18 |
| INSIGHT LDI SOLUTIONS PLUS PLC, IN RESPECT OF THE INSIGHT LOAN FUND | $ 2,059,260.00 |
| INSIGHT LDI SOLUTIONS PLUS PLC, IN RESPECT OF THE INSIGHT LOAN FUND | $ 1,592,556.05 |
| INSIGHT LDI SOLUTIONS PLUS PLC, IN RESPECT OF THE INSIGHT LOAN FUND | $ 1,382,085.46 |
| JPMORGAN DISTRESSED DEBT OPPORTUNITIES MASTER FUND, LTD. | $ 500,000.00 |
| JPMORGAN CORE PLUS BOND FUND | $ 2,500,000.00 |
| JPMORGAN HIGH YIELD FUND | $ 5,000,000.00 |
| JPMORGAN HIGH YIELD FUND | $ 1,728,389.47 |
| JPMORGAN STRATEGIC INCOME OPPORTUNITIES FUND | $ 9,260,347.55 |
| NATIONAL BENEFIT LIFE INSURANCE COMPANY | $ 583,937.22 |
| PACHOLDER HIGH YIELD FUND, INC. | $ 500,000.00 |
| PHL VARIABLE INSURANCE COMPANY | $ 1,102,256.05 |
| PHL VARIABLE INSURANCE COMPANY | $ 734,837.37 |
| PHL VARIABLE INSURANCE COMPANY | $ 1,102,256.05 |

**USPP Note Facility Commitment**

| Name of Original Creditor | USPP Note Facility Commitment |
|---|---|
| PHL VARIABLE INSURANCE COMPANY | $ 734,837.37 |
| PHOENIX LIFE INSURANCE COMPANY | $ 1,837,093.43 |
| PRIMERICA LIFE INSURANCE COMPANY | $ 2,972,771.30 |
| QP SFM CAPITAL HOLDINGS LIMITED | $ 3,816,551.29 |
| QP SFM CAPITAL HOLDINGS LIMITED | $ 3,816,551.29 |
| QP SFM CAPITAL HOLDINGS LIMITED | $ 3,816,551.29 |
| QP SFM CAPITAL HOLDINGS LIMITED | $ 4,911,462.58 |
| QP SFM CAPITAL HOLDINGS LIMITED | $ 3,185,112.11 |
| QP SFM CAPITAL HOLDINGS LIMITED | $ 4,777,668.34 |
| QP SFM CAPITAL HOLDINGS LIMITED | $ 1,061,703.86 |
| QP SFM CAPITAL HOLDINGS LIMITED | $ 9,639,894.06 |
| SWISS RE LIFE & HEALTH AMERICA INC. | $ 4,246,816.15 |
| WESTPORT INSURANCE CORPORATION | $ 5,308,520.18 |
| Total | $ 106,586,333.79 |

**SCHEDULE 2**
**CONDITIONS PRECEDENT**

**PART I**
**INITIAL CONDITIONS PRECEDENT**

1. **Obligors**

(a) A copy (in the case of an Obligor incorporated in Mexico, certified by a notary public or otherwise authenticated) of the current constitutional documents of each Original Obligor other than a Dutch Obligor, a Swiss Obligor or a French Obligor (or, in the case of an Original Obligor incorporated in Spain, a certificate or excerpt from the relevant Mercantile Registry including the updated by-laws of the Original Obligor).

(b) A copy (or, in the case of an Original Obligor incorporated in Spain, a certificate issued by the secretary with the approval of the president and raised to public document status) of a resolution of the board of directors (or any other competent body) of each Original Obligor (except for any Dutch Obligor, Swiss Obligor or French Obligor and any Original Obligor (other than the Parent) incorporated in Mexico) and, if required under Mexican law, in the case of the Parent, a resolution of its shareholder's meeting:

(i) approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute the Finance Documents to which it is a party;

(ii) authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf (including, in the case of an Original Obligor incorporated in Spain, the authority to irrevocably appoint a process agent (" *mandatario ad litem*") unless such appointment has been made by other means by a duly authorised representative); and

(iii) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party.

(c) In the case of an Obligor incorporated in Mexico (to the extent not covered under paragraph (b) above), (i) powers of attorney duly notarised containing authority for acts of administration, for acts of disposition (in respect of any Transaction Security Document) and to execute negotiable instruments; and (ii) powers of attorney for the Process Agent, duly notarised before a Mexican notary public, together with any necessary appointment and acceptance letter.

(d) A specimen of the signature of each person authorised by the resolution referred to in paragraph (b) above in relation to the Finance Documents.

(e) In the case of Dutch Obligors:

(i) a copy of the articles of association (*statuten*) and deed of incorporation (*oprichtingsakte*) of each Dutch Obligor, as well as an extract (*uittreksel*) from the Dutch Commercial Register (*Handelsregister*) of such Dutch Obligor;

(ii) a copy of the resolution of the board of managing directors of each Dutch Obligor:

(A) approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute the Finance Documents to which it is a party;

(B) if applicable, authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf; and

(C) if applicable, authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party;

(iii) a specimen of the signature of each member of the board of managing directors of each Dutch Obligor and, if applicable, each person authorised by the resolutions referred to in paragraph (ii)(B) and/or (C) above in relation to the Finance Documents; and

(iv) such evidence as may be required (if any) to enable the Finance Parties to comply with the *Wet identificatie financiële dienstverlening*.

(f) In the case of a Swiss Obligor:

(i) a copy of the articles of association (*Statuten*) of the Swiss Obligor, as well as an extract from the Commercial Register (*Handelsregister*) of such Swiss Obligor;

(ii) a copy of a unanimous resolution of the board of directors of the Swiss Obligor:

(A) approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it executes the Finance Documents to which it is a party;

(B) resolving that the execution of the transactions contemplated by the Finance Documents to which it is a party is in the best interest of such Swiss Obligor;

(C) if applicable, authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf; and

(D) if applicable, authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party;

(iii) a copy of the unanimous shareholders' resolution of the Swiss Obligor approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that (i) it executes the Finance Documents to which it is a party and (ii) the execution of the transactions contemplated by the Finance Documents to which it is a party is in its best interest;

(iv) a specimen of the signature of each member of the board of directors of the Swiss Obligor and, if applicable, each person authorised by the resolutions referred to in paragraph (ii) (C) and/or (D) above in relation to the Finance Documents; and

(v) evidence to the effect that the Swiss Obligor's articles of association empower such Swiss Obligor to enter into upstream and/or cross-stream obligations.

(g) In the case of a French Obligor:

(i) a certified copy of its constitutive documents (*statuts*);

(ii) an original extract (*extrait K-bis*) provided by the commercial and companies registry (*registre du commerce et des sociétés*), not more than fifteen (15) days old;

(iii) a non-bankruptcy certificate (*certificat de recherche de procédures collectives*) provided by the commercial and companies registry (*registre du commerce et des sociétés*), not more than fifteen (15) days old;

(iv) a copy of the resolution of the shareholder(s) of each French Obligor approving:

(A) the terms of, and the transactions contemplated by, the Finance Documents to which it is a party; and

(B) the execution of the Finance Documents to which it is a party;

(v) a copy of the resolution of the board of directors (or any other competent body) of each French Obligor:

(A) approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it executes the Finance Documents to which it is a party;

(B) authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf; and

(C) authorising a specified person or persons on its behalf to sign and/or despatch all documents and notices to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party; and

(vi) evidence that the person(s) who has(ve) signed the Finance Documents on behalf of each French Obligor was duly authorised to sign.

(h) In the case of an English Obligor, a copy of a resolution signed by all the holders of the issued shares in that English Guarantor, approving the terms of, and the transactions contemplated by, the Finance Documents to which that English Obligor is a party.

(i) A certificate of each Original Obligor (signed by an Authorised Signatory) confirming that borrowing or guaranteeing or granting Security in respect of, as appropriate, the Total Commitments would not cause any borrowing, guarantee, security or similar limit binding on that Original Obligor to be exceeded.

(j) A certificate of an Authorised Signatory of the relevant Original Obligor certifying that each copy document relating to it specified in this Part I of Schedule 2 is correct, complete and in full force and effect as at a date no earlier than the date of this Agreement.

2. **Finance Documents**

(a) This Agreement executed by the members of the Group party to this Agreement, the Agent and each of the Original Creditors, whether by power of attorney or otherwise.

(b) The Intercreditor Agreement executed by all parties thereto.

(c) Each Promissory Note required to be issued pursuant to Clause 4.4 ( *Condition precedent to issue of promissory notes, enforcement and indemnification*) on the Effective Date executed by the relevant Borrower and, if applicable, the relevant Guarantor(s).

(d) The New USPP Note Agreement and New USPP Note Guarantee executed by all parties.

(e) Each USPP Note.

(f) The Fee Letters executed by the Parent.

(g) At least two originals of the following Transaction Security Documents (in form and substance satisfactory to the Security Agent) executed by the relevant Obligors:

(i) a deed of pledge of registered shares between Corporación Gouda, S.A. de C.V., Mexcement Holdings, S.A. de C.V., CEMEX International Finance Company and CEMEX TRADEMARKS HOLDING Ltd., as pledgors, the Security Agent as pledgee and New Sunward Holding B.V. as the company;

(ii) a share pledge agreement between CEMEX, S.A.B. de C.V., CEMEX México, S.A. de C.V., Interamerican Investments Inc. and Empresas Tolteca de México, S.A. de C.V. as pledgors, the Security Agent as security agent concerning 99.5674% of the shares of CEMEX TRADEMARKS HOLDING Ltd.; and

(iii) a Mexican security trust agreement entered into by the Parent, Empresas Tolteca de Mexico, S.A. de C.V., Impra Café S.A. de C.V., Interamerican Investments Inc., Centro Distribuidor de Cemento, S.A. de C.V. and CEMEX México substantially in the form distributed (in Spanish, together with an English translation) to the Creditors prior to the date of this Agreement, under which the shares each of them owns in CEMEX México, Centro Distribuidor de Cemento, S.A. de C.V., Corporación Gouda, S.A. de C.V. and Mexcement Holdings, S.A. de C.V. are, subject to the exceptions set out in Clause 22.27 ( *Transaction Security*), transferred to Banco Nacional de México, S.A., Integrante del Grupo Financiero Banamex, División Fiduciaria as trustee.

(h) A copy of all notices to be sent under the Transaction Security Documents.

(i) (Unless already held by Wilmington Trust (London) Limited in its capacity as security agent for the purposes of the Existing Transaction Security, and the relevant Security Document or any document referred to in paragraph 3(d) below directs Wilmington Trust (London) Limited to retain the same) a copy of all share certificates, transfers and stock transfer forms or equivalent duly executed by the relevant Obligor in blank in relation to the assets subject to or expressed to be subject to the Transaction Security and other documents of title to be provided under the Transaction Security Documents.

3. **2009 Financing Agreement**

(a) Evidence that Participating Creditors the Base Currency Amount of whose Exposures under the Facilities aggregate 91 per cent. or more of the Base Currency Amount of all of the aggregate Exposures of the Participating Creditors under all of the Facilities have either:

(i) executed this Agreement as an Original Creditor; or

(ii) exchanged their Exposures for New High Yield Notes,

where "Exposures" and "Facilities" and "Participating Creditors" have the meanings given to such terms in the 2009 Financing Agreement (prior to its amendment pursuant to the 2009 Financing Agreement Amendment Agreement).

(b) The 2009 Financing Agreement Amendment Agreement executed by the administrative agent under the 2009 Financing Agreement and the Parent.

(c) The Ancillary Agreement executed by all parties thereto.

(d) Evidence that the Existing Transaction Security will, contemporaneously with the grant of the Transaction Security referred to in paragraph 2(g) above, be released and discharged in full pursuant to:

(i) (with respect to the Existing Transaction Security governed by the laws of the Netherlands, the laws of Spain and the laws of Switzerland) a global deed of release to be executed by Wilmington Trust (London) Limited as security agent; and

(ii) (with respect to the Existing Transaction Security governed by the laws of Mexico) a termination and release agreement of the irrevocable security trust agreement number F/111388-5 (*contrato de fideicomiso irrevocable de garantía de acciones número F/111388-5*) dated 3 September 2009 to be entered into among the Parent, Empresas Tolteca, Impra Café, S.A. de C.V., Interamerican Investments, Inc., Cemex México, Centro Distribuidor de Cemento, S.A. de C.V., Mexcement Holdings, S.A. de C.V., Corporación Gouda, S.A. de C.V., Banco Nacional de México, S.A., Integrante del Grupo Financiero Banamex, División Fiduciaria as trustee and Wilmington Trust (London) Limited as security agent.

4. **Documents relating to New High Yield Notes**

(a) A copy of the New High Yield Notes Indenture.

(b) Evidence that the Parent has delivered or caused to be delivered to Citibank International Plc, in its capacity as exchange agent, through the facilities of The Depository Trust Company the aggregate principal amount of the New High Yield Notes that are required to be delivered to the New HY Note Recipients (as defined in the Ancillary Agreement) pursuant to the terms of the Invitation Memorandum (as defined in the Ancillary Agreement).

5. **Legal Opinions**

(a) A legal opinion of Clifford Chance LLP, legal advisers to the Agent in England, as to English law substantially in the form distributed to the Original Creditors and the Security Agent prior to signing this Agreement.

(b) An opinion with respect to the laws and regulations of the Kingdom of Spain from Clifford Chance, S.L., substantially in the form distributed to the Original Creditors and the Security Agent prior to signing this Agreement.

(c) An opinion with respect to the laws and regulations of The Netherlands from Clifford Chance LLP, substantially in the form distributed to the Original Creditors and the Security Agent prior to signing this Agreement.

(d) An opinion with respect to the laws and regulations of Mexico from Ritch Mueller S.C., substantially in the form distributed to the Original Creditors and the Security Agent prior to signing this Agreement.

(e) An opinion with respect to the laws and regulations of Delaware from Skadden, Arps, Slate, Meagher & Flom, LLP, substantially in the form distributed to the Original Creditors and the Security Agent prior to signing this Agreement.

(f) An opinion from in-house counsel of the Parent, substantially in the form distributed to the Original Creditors and the Security Agent prior to signing this Agreement.

(g) An opinion with respect to the laws and regulations of Ireland from A&L Goodbody, substantially in the form distributed to the Original Creditors and the Security Agent prior to signing this Agreement.

(h) An opinion with respect to the laws and regulations of Switzerland from Bär & Karrer AG, substantially in the form distributed to the Original Creditors and the Security Agent prior to signing this Agreement.

(i) An opinion with respect to the laws and regulations of Louisiana from Liskow & Lewis substantially in the form distributed to the Original Creditors and the Security Agent prior to signing this Agreement.

(j) An opinion with respect to the laws and regulations of France from Skadden, Arps, Slate, Meagher & Flom, LLP, substantially in the form distributed to the Original Creditors and the Security Agent prior to signing this Agreement.

6. **Other Documents and Evidence**

(a) The Group Structure Chart.

(b) The FTI Report.

(c) The Original Financial Statements of each Borrower and Guarantor.

(d) A copy of the monthly management accounts of the Parent and the monthly thirteen week management cash flow forecasts to be supplied by the Parent to the Agent under and in accordance with the terms of Clause 20.4 ( *Liquidity forecast*) of this Agreement verified by FTI Consulting Canada ULC.

(e) Evidence that the fees, costs and expenses due and payable under the Finance Documents on or before the Effective Date (or, in the case of a payment of fees in yen, on the first day following the Effective Date on which banks are open for general business in Tokyo) have been paid or will be paid on or before the Effective Date (or, in the case of a payment of fees in yen, on or before that date).

(f) A presentation detailing the proposed intra-Group reorganisation relating to Caliza and certain other members of the Group.

(g) In relation to CEMEX España, a copy of form PE-1 filed with the Bank of Spain.

**PART II**
**CONDITIONS PRECEDENT REQUIRED TO BE**
**DELIVERED BY AN ADDITIONAL OBLIGOR**

1. An Accession Letter, duly executed by the Additional Guarantor or Additional Security Provider and the Parent.

(a) A copy (in the case of an Obligor incorporated in Mexico, certified by a notary public or otherwise authenticated) of the constitutional documents of the Additional Guarantor or an Additional Security Provider (other than a Dutch Obligor, Swiss Obligor or French Obligor) (or, in the case of an Additional Guarantor or Additional Security Provider incorporated in Spain, a certificate or excerpt from the relevant Mercantile Registry including the updated by-laws of the Additional Guarantor or Additional Security Provider).

(b) A copy (or, in the case of an Additional Guarantor or Additional Security Provider incorporated in Spain, a certificate issued by the secretary with the approval of the president and raised to public document status) of a resolution of the board of directors (or any other competent body) of the Additional Guarantor or Additional Security Provider (other than a Dutch Obligor, Swiss Obligor or French Obligor) and, when applicable, in the case of any Additional Guarantor or Additional Security Provider incorporated in Mexico, a resolution of its shareholder's meeting:

(i) approving the terms of, and the transactions contemplated by, the Accession Letter and the Finance Documents and resolving that it execute the Accession Letter;

(ii) authorising a specified person or persons to execute the Accession Letter and other Finance Documents on its behalf (including, in the case of an Additional Guarantor or Additional Security Provider incorporated in Spain, the authority to irrevocably appoint a process agent ("mandatario ad litem") unless such appointment has been made by other means by a duly authorised representative); and

(iii) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party.

(c) In the case of an Additional Guarantor or Additional Security Provider incorporated in Mexico, (to the extent not covered or not applicable under paragraph (b) above) (i) powers of attorney duly notarised containing authority for acts of administration, for acts of disposition (in respect of any Transaction Security Document) and to execute negotiable instruments; and (ii) powers of attorney for the Process Agent, duly notarised before a Mexican notary public, together with any necessary appointment and acceptance letter.

(d) A specimen of the signature of each person authorised by the resolution referred to in paragraph (b) above.

(e) In the case of Dutch Obligors:

(i) a copy of the articles of association (*statuten*) and deed of incorporation (*oprichtingsakte*) of each Dutch Obligor, as well as an extract (*uittreksel*) from the Dutch Commercial Register (*Handelsregister*) of such Dutch Obligor;

(ii) a copy of the resolution of the board of managing directors of each Dutch Obligor:

(A) approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute the Finance Documents to which it is a party;

(B) if applicable, authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf; and

(C) if applicable, authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party;

(iii) if applicable, a copy of the resolution of the board of supervisory directors of each Dutch Obligor approving the resolutions of the board of managing directors referred to under (ii) above and, to the extent applicable, appointing an authorised person to represent the relevant Dutch Obligor in case of a conflict of interest;

(iv) if applicable, a copy of the resolution of the shareholder(s) of each Dutch Obligor approving the resolutions of the board of managing directors referred to under (ii) above and, to the extent applicable, appointing an authorised person to represent the relevant Dutch Obligor in case of a conflict of interest;

(v) if applicable, a copy of (i) the request for advice from each works council, or central or European works council with jurisdiction over the transactions contemplated by this Agreement, (ii) the positive advice from such works council which contains no condition, which if complied with, could result in a breach of any of the Finance Documents and (iii) positive advice in respect of the security to be granted by the Dutch Obligor as well as the conditional transfer of the voting rights attached to the shares which are subject to security.

(vi) a specimen of the signature of each member of the board of managing directors of each Dutch Obligor and, if applicable, each person authorised by the resolutions referred to in paragraph (ii) sub-paragraph (B) and/or (C) above in relation to the Finance Documents; and

(vii) such evidence as may be required to enable the Finance Parties to comply with the Wet identificatie financiële dienstverlening.

(f) In the case of a Swiss Obligor:

(i) a copy of the articles of association (*Statuten*) of the Swiss Obligor, as well as an extract from the Commercial Register (*Handelsregister*) of such Swiss Obligor;

(ii) a copy of a unanimous resolution of the board of directors of the Swiss Obligor:

(A) approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it executes the Finance Documents to which it is a party;

(B) resolving that the execution of the transactions contemplated by the Finance Documents to which it is a party is in the best interest of such Swiss Obligor;

(C) if applicable, authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf; and

(D) if applicable, authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party;

(iii) a copy of the unanimous shareholders' resolution of the Swiss Obligor approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that (i) it executes the Finance Documents to which it is a party and (ii) the execution of the transactions contemplated by the Finance Documents to which it is a party is in its best interest;

(iv) a specimen of the signature of each member of the board of directors of the Swiss Obligor and, if applicable, each person authorised by the resolutions referred to in paragraph (ii) (C) and/or (D) above in relation to the Finance Documents; and

(v) evidence to the effect that the Swiss Obligor's articles of association empower such Swiss Obligor to enter into upstream and/or cross-stream obligations.

(g) In the case of a French Obligor:

(i) a certified copy of its constitutive documents (*statuts*);

(ii) an original extract (*extrait K-bis*) provided by the commercial and companies registry ( *registre du commerce et des sociétés*), not more than fifteen (15) days old;

(iii) a non-bankruptcy certificate (*certificat de recherche de procédures collectives*) provided by the commercial and companies registry (*registre du commerce et des sociétés*), not more than fifteen (15) days old;

(iv) a copy of the resolution of the shareholder(s) of each French Obligor approving:

(A) the terms of, and the transactions contemplated by, the Finance Documents to which it is a party; and

(B) the execution of the Finance Documents to which it is a party;

(v) a copy of the resolution of the board of directors (or any other competent body) of each French Obligor:

(A) approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it executes the Finance Documents to which it is a party;

(B) authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf; and

(C) authorising a specified person or persons on its behalf to sign and/or despatch all documents and notices to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party; and

(vi) evidence that the person(s) who has(ve) signed the Finance Documents on behalf of each French Obligor was duly authorised to sign.

(h) Should the legal advisers of the Creditors consider it advisable, a copy of a resolution signed by all the holders of the issued shares of the Additional Guarantor or Additional Security Provider, approving the terms of, and the transactions contemplated by, the Finance Documents to which the Additional Guarantor or Additional Security Provider is a party.

(i) A certificate of the Additional Guarantor or Additional Security Provider (signed by an Authorised Signatory) confirming that guaranteeing the Total Commitments would not cause any guaranteeing or similar limit binding on it to be exceeded.

(j) A certificate of an Authorised Signatory of the Additional Guarantor or Additional Security Provider certifying that each copy document listed in this Part II of Schedule 2 is correct, complete and in full force and effect as at a date no earlier than the date of the Accession Letter.

2. Legal opinions

(a) A legal opinion of the legal advisers to the Additional Guarantor or Additional Security Provider in form and substance reasonably satisfactory to the legal advisers of the Creditors.

(b) A legal opinion of Clifford Chance, or other firm that can opine for the Additional Guarantor if not Clifford Chance, legal advisers to the Creditors.

3. Other documents and evidence

(a) Evidence that any process agent referred to in Clause 41.3 ( *Service of process*) has accepted its appointment and, in respect of each Additional Obligor that is incorporated in Mexico, that an irrevocable power of attorney has been granted before a Mexican notary public, appointing such process agent as its agent for service of process.

(b) A copy of any other Authorisation or other document, opinion or assurance which the Agent considers (after having taken appropriate legal advice) to be necessary or desirable (if it has notified the Additional Guarantor or Additional Security Provider and the Parent accordingly) in connection with the entry into and performance of the transactions contemplated by any Finance Document or for the validity and enforceability of any Finance Document.

(c) The Original Financial Statements of the Additional Guarantor.

(d) Any security documents that are required by the Agent to be executed by the proposed Additional Security Provider.

(e) Any notices or documents required to be given or executed under the terms of those security documents.

(f) An accession deed to the Intercreditor Agreement executed by the Additional Guarantor or Additional Security Provider.

**SCHEDULE 3**
**SELECTION NOTICE**

From: [*Borrower*] [*Parent*]*

To: [*Agent*]

Dated:

Dear Sirs

**CEMEX, S.A.B. de C.V. – Facilities Agreement**
**dated [•] 2012 (the "Facilities Agreement")**

1. We refer to the Facilities Agreement. This is a Selection Notice. Terms defined in the Facilities Agreement have the same meaning in this Selection Notice unless given a different meaning in this Selection Notice.

2. We refer to [the following [Facility [A][B][C] Loan[s]][Derivatives Unwind Promissory Notes under Derivatives Unwind Promissory Note Facility [1][2][3]][USPP Note Facility] with an Interest Period ending on [ •]**.

   [We request that the above Facility [A][B][C] Loan[s] be divided into [ •] Facility [A][B][C] Loans with the following Base Currency Amounts and Interest Periods:] *** or

   [We request that the next Interest Period for the above Facility [A1/[A2]/[A3]/[A4]/[A5]/[A6]/[A7]/[A8]/[B1]/[B2]/[C] Loan[s]][the above Derivatives Unwind Promissory Notes][USPP Note Facility] is [ •]].****

3. This Selection Notice is irrevocable.

Yours faithfully

_____
authorised signatory for
[the Parent on behalf of] [*insert name of relevant Borrower*] *****

**NOTES**:

* Amend as appropriate. The Selection Notice can be given by the Borrower or the Parent.

** Insert details of all Loans, Derivatives Unwind Promissory Notes for the relevant Facility or the USPP Facility which have/has an Interest Period ending on the same date.

*** Use this option if division of Loans is requested.

**** Use this option if sub-division is not required, and for Derivatives Unwind Promissory Notes or the USPP Note Facility.
***** Amend as appropriate. The Selection Notice can be given by the Borrower or the Parent.

**SCHEDULE 4**
**FORMS OF PROMISSORY NOTES**

**PART I**
**FORM OF PROMISSORY NOTE (DUAL LAW)**

**PAGARÉ NO NEGOCIABLE /**
**NON-NEGOTIABLE PROMISSORY NOTE**

US$

For value received, the undersigned, CEMEX, S.A.B. de C.V., by this Promissory Note unconditionally promises to pay to the order of (the "Creditor"), in dollars of the United States of America ( "Dollars"), the following principal sums payable on the following dates (each a "Principal Payment Date", and the last such date, the "Final Payment Date"):

| Principal Payment Date | Amount |
|---|---|
| 14 February 2014 | US$ |
| 30 June 2016 | US$ |
| 31 December 2016 | US$ |
| 14 February 2017 | US$ |

provided that, on the Final Payment Date, any and all principal amounts then due, shall be paid.

The undersigned also promises to pay interest on the outstanding and unpaid principal amount of this Promissory Note, from the date hereof, for each day during each Interest Period (as defined below), at a rate per annum equal to LIBOR (as defined below) plus the Margin (as defined below), payable in arrears, on each Interest Payment Date (as defined below), until payment in full of the outstanding principal amount hereof.

E.U.A. $

Por valor recibido, la suscrita, CEMEX, S.A.B. de C.V., por este Pagaré promete incondicionalmente pagar a la orden de (el "Acreedor"), en dólares de los Estados Unidos de América ("Dólares"), las siguientes sumas de principal pagaderas en las siguientes fechas (cada una, una "Fecha de Pago de Principal" y la última de dichas fechas, la "Fecha de Vencimiento"):

| Fecha de Pago de Principal | Monto |
|---|---|
| 14 febrero 2014 | EUA$ |
| 30 junio 2016 | EUA$ |
| 31 diciembre 2016 | EUA$ |
| 14 febrero 2017 | EUA$ |

en la inteligencia que, en la Fecha de Vencimiento, todas las sumas de principal pagaderas, deberán pagarse.

La suscrita promete, así mismo, pagar intereses sobre el saldo insoluto de la suma de principal de este Pagaré, a partir de la fecha de suscripción del presente Pagaré, por cada día respecto de cada Período de Interés (según este término se define a continuación), a una tasa anual igual a LIBOR (según este término se define a continuación) más el Margen (según este término se define a continuación), pagaderos en forma vencida, en cada Fecha de Pago de Interés (según este término se define a continuación), hasta que se efectúe el pago de la totalidad del saldo insoluto del presente.

Any principal amount and (to the extent permitted by applicable law) interest not paid when due under this Promissory Note, shall bear interest for each day until paid, payable on demand, at a rate per annum equal to the sum of two percent (2%) plus the interest rate then applicable hereunder as provided in the preceding paragraph.

Interest hereunder shall be calculated on the basis of the actual number of days elapsed, divided by three hundred and sixty (360).

For purposes of this Promissory Note, the following terms shall have the following meanings:

"Agent" means Citibank International Plc.

"Business Day" means a day (other than a Saturday or Sunday) on which banks are open for general business in London, United Kingdom, Madrid, Spain, New York, United States of America, Amsterdam, The Netherlands and Mexico City, United Mexican States.

"Interest Payment Date" means any of March 15, June 15, September 15 and December 15 occurring on or before the Final Payment Date.

"Interest Period" means (a) initially, the period commencing on the date hereof and ending on [1], and (b) thereafter, each period commencing on the last day of the next preceding Interest Period and ending on the next Interest Payment Date, provided, however, that any Interest Period which would otherwise end after the Final Payment Date shall end on the Final Payment Date.

Cualquier monto de principal y (en la medida permitida por legislación aplicable) de intereses que no sea pagada cuando sea debida conforme a este Pagaré, devengará intereses por cada día hasta que sea pagado, pagaderos a la vista, a una tasa anual igual a la suma de dos por ciento (2%) más la tasa de interés aplicable conforme a lo previsto en el párrafo anterior.

Los intereses conforme al presente serán calculados sobre la base del número de días efectivamente transcurridos, divididos entre trescientos sesenta (360).

Para efectos de éste Pagaré, los siguientes términos tendrán los significados indicados a continuación:

"Agente" significa Citibank International Plc.

"Día Hábil" significa cualquier día (que no sea sábado o domingo), en el cual los bancos comerciales en las ciudades de Londres, Reino Unido, Madrid, España, Nueva York, Estados Unidos de América, Amsterdam, Holanda y México, Estados Unidos Mexicanos estén abiertos para celebrar operaciones en general.

"Fecha de Pago de Interés" significa cualesquier 15 de marzo, 15 de junio, 15 de septiembre y 15 de diciembre que ocurran en o antes de la Fecha de Vencimiento.

"Período de Interés" significa (a) inicialmente, el período que inicie en la fecha del presente y que termine el , y (b) subsecuentemente, cada período que inicie el último día del Período de Interés inmediato anterior y que termine en la siguiente Fecha de Pago de Interés, en el entendido, sin embargo, que cualquier

[1] Date corresponding to the immediately following Interest Payment Date.

Periodo de Interés que terminaría después de la Fecha de Vencimiento, terminará en la Fecha de Vencimiento.

"LIBOR" means (a) the applicable Screen Rate, or (b) if no Screen Rate is available for Dollars or an applicable Interest Period, the Reference Bank Rate (as defined below), in both cases, as of approximately 11:00 a.m. (New York City time) on the Quotation Day for the offering of deposits in Dollars and for a period comparable to the Interest Period.

"LIBOR" significa (a) la Tasa de Pantalla aplicable, o (b) si la Tasa de Pantalla no estuviere disponible respecto de Dólares o por el Período de Interés de que se trate, la Tasa de los Bancos de Referencia (según este término se define a continuación), en ambos casos aproximadamente a las 11:00 a.m. (hora de la ciudad de Nueva York) en la Fecha de Cotización respecto de la oferta de depósitos en Dólares y por un período comparable al Período de Interés.

"Margin" means (a) from the date hereof and up to (but excluding) the date on which the undersigned has paid an aggregate principal amount equal to at least $[ ][2], five point twenty-five percent (5.25%) per annum, (b) from (and including) the date on which the undersigned has paid an aggregate principal amount equal to at least $[ ][3] to (but excluding) the date on which the undersigned has paid an aggregate principal amount equal to at least $[ ][4], five percent (5.00%) per annum, and (c) from (and including) the date on which the undersigned has paid an aggregate principal amount equal to at least $[ ][5] until the Final Payment Date, four point five percent (4.50%) per annum.

"Margen" significa (a) a partir de la fecha de suscripción del presente Pagaré y hasta (pero excluyendo) la fecha en la que la suscrita haya pagado por lo menos una cantidad total igual a $[ ] del monto de principal de este Pagaré, cinco punto veinticinco por ciento (5.25%) por año, (b) a partir de (e incluyendo) la fecha en la que la suscrita haya pagado por lo menos una cantidad total igual a $[ ] del monto de principal de este Pagaré hasta (pero excluyendo) la fecha en la que la suscrita haya pagado por lo menos una cantidad total igual a $[ ] del monto principal de este Pagaré, cinco por ciento (5.00%) por año, y (c) a partir de (e incluyendo) la fecha en la que la suscrita haya pagado por lo menos una cantidad total igual a $[ ] del monto de principal de este Pagaré hasta la Fecha de Vencimiento, cuatro punto cincuenta por ciento (4.50%) por año.

"Quotation Day" means, in relation to any period for which an interest rate for Dollars is to be determined, two (2) Business Days before the first day of that period.

"Fecha de Cotización" significa, respecto de cualquier período para el cual una tasa de interés en Dólares deba ser determinada, dos (2) Días Hábiles antes del primer día de tal período.

[2] To represent Creditor's pro rata share of $1,500,000,000.
[3] To represent Creditor's pro rata share of $1,500,000,000.
[4] To represent Creditor's pro rata share of $2,000,000,000.
[5] To represent Creditor's pro rata share of $2,000,000,000.

"Reference Banks" means the principal London offices of BNP Paribas, HSBC Bank Plc, ING Bank N.V. and J.P. Morgan.

"Reference Bank Rate" means the arithmetic mean of the rates (rounded upwards to four decimal places), as supplied to the Agent at its request by the Reference Banks, at which the relevant Reference Bank could borrow funds in the London interbank market in Dollars and for the relevant period, were it to do so by asking for and then accepting interbank offers for deposits in reasonable market size in Dollars and for that period.

"Screen Rate" means the British Bankers' Association Interest Settlement Rate for Dollars and the relevant period, displayed on the appropriate page of the Reuters screen. If the agreed page is replaced or service ceases to be available, the Agent may specify another page or service displaying the appropriate rate.

All payments by the undersigned of principal, interest and other payments hereunder, shall be made without setoff, deduction or counterclaim not later than 11:00 a.m., London time, on the due date for each such payment, in Dollars and in immediately available funds, at the office of the Agent located at Citibank International PLC, 5th Floor, Citigroup Centre, 25 Canada Square, Canary Wharf, London E14 5LB, United Kingdom, Attention: Loans Agency. The

"Bancos de Referencia" significa las oficinas principales de BNP Paribas, HSBC Bank Plc, ING Bank N.V. y J.P. Morgan en Londres.

"Tasa de los Bancos de Referencia" significa el promedio aritmético de las tasas (redondeadas hacia arriba, a cuatro decimales) que proporcionen los Bancos de Referencia a petición del Agente, de la tasa de interés a la cual el Banco de Referencia que corresponda podría recibir fondos en préstamo en el mercado interbancario de Londres en Dólares y por el periodo de que se trate, en caso que dicho Banco de Referencia obtuviera fondos en préstamo después de haber pedido y aceptado dichas ofertas interbancarias para depósitos en tamaños de mercado razonables, en Dólares y por ese mismo periodo.

"Tasa de Pantalla" significa la Tasa de Interés de Liquidación de la Asociación de Banqueros Británicos para Dólares y para el período de que se trate, que aparezca en la página correspondiente de la pantalla Reuters. Si la página convenida es reemplazada o el servicio deja de estar disponible, el Agente puede señalar otra página o servicio para que divulgue la tasa apropiada.

Todos los pagos que deban hacerse conforme a este Pagaré por la suscrita, de principal, intereses y por otros conceptos, serán efectuados sin compensación, deducción o defensa, antes de las 11:00 a.m., hora de la ciudad de Londres, en la fecha en que el pago de que se trate venza, en Dólares y en fondos disponibles inmediatamente, en la oficina del Agente ubicada en Citibank International PLC, 5th Floor, Citigroup Centre, 25 Canada Square, Canary Wharf, London E14 5LB, Reino Unido, Atención: Loans Agency. La

undersigned agrees to reimburse upon demand, in like manner and funds, all losses, costs and expenses of the holder hereof, incurred in connection with the enforcement of this Promissory Note.

suscrita conviene en reembolsar a la vista, en la misma forma y fondos, cualesquiera pérdidas, costos y gastos del tenedor del presente, incurridos en relación con el procedimiento de cobro del presente Pagaré.

Any payment which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not). During any extension of the due date of payment of any principal, interest is payable on the principal at the rate payable on the original due date.

Cualquier pago que deba hacerse conforme al presente en un día que no sea un Día Hábil, deberá hacerse en el siguiente Día Hábil durante el mismo mes calendario (si existe uno) o en el Día Hábil previo (si no existe uno). Respecto de cualquier extensión de cualquier fecha de pago de principal, los intereses que correspondan al pago de principal se devengarán a la tasa de interés pagadera en la fecha de pago original.

All payments by the undersigned hereunder, shall be made free and clear of, and without deduction for, any present or future income, excise, stamp or franchise taxes and other taxes, fees, duties, withholdings or other charges, of any nature whatsoever, imposed by the United Mexican States or any other jurisdiction from which any amount payable hereunder is made, or any taxing authority thereof or therein, unless required by law. In the event that the undersigned shall be compelled by law to make any such deduction or withholding, in respect of any payments hereunder, then the undersigned shall pay such additional amounts as may be necessary so that the holder hereof would receive the full amounts it would have received, if such deductions or withholdings would not have been made.

Todos los pagos que se efectúen por la suscrita en términos del presente, deberán hacerse libres de y sin deducción alguna por, cualquier impuesto sobre la renta, gravamen, impuesto del timbre o impuesto sobre franquicias y otros impuestos, contribuciones, derechos, retenciones u otras cargas, presentes o futuros, de cualquier naturaleza, establecidos o determinados por los Estados Unidos Mexicanos o por cualquier otra jurisdicción de la que se paguen cantidades adeudadas conforme al presente, a menos que sea requerido por ley. En caso que la suscrita esté obligada legalmente a llevar a cabo cualquier retención o deducción, respecto de cualesquiera pagos conforme al presente, la suscrita pagará las sumas adicionales que sean necesarias para asegurar que las sumas recibidas por el tenedor del presente sean iguales a la suma que el tenedor hubiera recibido, si tales retenciones o deducciones no se hubieren realizado.

This Promissory Note shall be governed by, and construed in accordance with, the laws of the State of New York, United States of America; provided, however that if any action or proceedings in connection with this Promissory Note were brought to

Este Pagaré se regirá e interpretará de acuerdo con las leyes del Estado de Nueva York, Estados Unidos de América; en el entendido, sin embargo que si cualquier acción o procedimiento en relación con este Pagaré se iniciara en los tribunales de los

any courts in the United Mexican States, this Promissory Note shall be deemed as governed under the laws of the United Mexican States.

Any legal action or proceeding arising out of or relating to this Promissory Note may be brought to the jurisdiction of the United States District Court for the Southern District of New York and of any New York State court located in the Borough of Manhattan in New York City and any appellate court thereof, or any federal court sitting in Mexico City, Federal District, United Mexican States; the undersigned waives the right to jurisdiction of any other courts.

The undersigned hereby waives diligence, demand, protest, presentment, notice of dishonor or any other notice or demand whatsoever.

This Promissory Note is executed in both English and Spanish versions. In the case of any conflict or doubt as to the proper construction of this Promissory Note, the English version shall govern; provided, however, that in any action or proceeding brought in any court in the United Mexican States, the Spanish version shall prevail.

If the laws of the United Mexican States apply, for the purposes of Article 128 of the General Law of Negotiable Instruments and Credit Transactions of the United Mexican States, the term of presentation of this Promissory Note is hereby irrevocably extended until the date that is six (6) months after the Final Payment Date, it being understood that such extension shall not be deemed to prevent presentation of this Promissory Note prior to such date.

Estados Unidos Mexicanos, este Pagaré se considerará regido de acuerdo con las leyes de los Estados Unidos Mexicanos.

Cualquier acción o procedimiento legal que derive o se relacione con este Pagaré podrá ser iniciado en los tribunales de Distrito de los Estados Unidos para el Distrito Sur de Nueva York y cualquier tribunal del Estado de Nueva York localizado en el condado de Manhattan, en la ciudad de Nueva York, o en cualquier tribunal de apelación de los mismos, o cualquier tribunal federal localizado en la ciudad de México, Distrito Federal, Estados Unidos Mexicanos, renunciando la suscrita a la jurisdicción de cualesquiera otros tribunales.

La suscrita en este acto renuncia a diligencia, demanda, protesto, presentación, notificación de no aceptación y a cualquier notificación o demanda de cualquier naturaleza.

El presente Pagaré se suscribe en versiones en inglés y español. En caso de conflicto o duda en relación con la debida interpretación de este Pagaré, la versión en inglés prevalecerá; en el entendido, sin embargo que en cualquier procedimiento iniciado en cualquier tribunal de los Estados Unidos Mexicanos, prevalecerá la versión en español.

Si la legislación de los Estados Unidos Mexicanos fuere aplicable, para los efectos del Artículo 128 de la Ley General de Títulos y Operaciones de Crédito de los Estados Unidos Mexicanos, por medio del presente se prorroga irrevocablemente el plazo de presentación de este Pagaré hasta la fecha que sea seis (6) meses después de la Fecha de Vencimiento, en el entendido de que dicha prórroga no impedirá la presentación de este Pagaré con anterioridad a dicha fecha.

IN WITNESS WHEREOF, the undersigned has duly executed this Promissory Note on the date indicated below.

EN VIRTUD DE LO CUAL, la suscrita ha firmado este Pagaré en la fecha abajo mencionada.

, , , 2012.

CEMEX, S.A.B. de C.V.

By/Por _____

Name/Nombre:
Title/Cargo:

Guaranteed/Por Aval:[6]

[CEMEX México, S.A. de C.V.]

By/Por _____

Name/Nombre:
Title/Cargo:

Guaranteed/Por Aval:

[CEMEX Concretos, S.A. de C.V.]

By/Por _____

Name/Nombre:
Title/Cargo:

Guaranteed/Por Aval:
[Empresas Tolteca de México, S.A. de C.V.]

By/Por _____

Name/Nombre:
Title/Cargo:

[6] To reflect Guarantors under Facility A1, A2, A3 or Derivatives Unwind Promissory Notes, as applicable

**FORM OF SIDE LETTER TO PROMISSORY NOTE (DUAL LAW)**

CEMEX, S.A.B. de C.V.
Av. Ricardo Margáin Zozaya # 325
Colonia Valle del Campestre
66265 San Pedro Garza García, Nuevo León
Mexico

, 2012

RE: PROMISSORY NOTE

Dear Sirs :

Reference is made to the promissory note (pagaré) (the "Promissory Note") issued by CEMEX, S.A.B. de C.V. (the "Issuer"), dated , 2012 for the amount of USD $ ( Dollars, currency of the United States of America 00/100) in favor of (the "Holder").

The parties to this letter agree that notwithstanding anything to the contrary in the Promissory Note, (i) interest payments in respect of the Promissory Note shall be made at the times, on the dates, in the amounts and in the manner provided for in the Facilities Agreement dated as of , 2012 between CEMEX, S.A.B. de C.V. and certain of its subsidiaries as borrowers, the financial institutions, noteholders and other entities named therein as original creditors, Citibank International plc as agent and Wilmington Trust (London) Limited as security agent (as amended from time to time in accordance with its terms, the "Facilities Agreement") and (ii) interest shall be calculated in the manner provided for in the Facilities Agreement. Without limiting the generality of the above, the parties to this letter agree that notwithstanding anything else to the contrary in the Promissory Note, the Loan represented by the Promissory Note may bear interest at the rates provided for in the Facilities Agreement. In the case of any inconsistency between the terms of the Facilities Agreement and the Promissory Note, the Facilities Agreement shall prevail.

Sincerely,
[ ]

By: _____
Name:
Title:

Accepted and agreed,
CEMEX, S.A.B. de C.V.

By: _____
Name:
Title:

[Accepted and agreed,
CEMEX México, S.A. de C.V., as
guarantor

By: _____
Name:
Title:]

[Accepted and agreed,
CEMEX Concretos, S.A. de C.V., as
guarantor

By: _____
Name:
Title:]

[Accepted and agreed,
Empresas Tolteca de México, S.A. de C.V.,
as guarantor

By: _____
Name:
Title:]

[Signature page to side letter to promissory note for loans.]

**Part II**
**FORM OF PROMISSORY NOTE UNDER FACILITY A6**

**PROMISSORY NOTE**

US$

For value received, the undersigned, NEW SUNWARD HOLDING B.V. (the "**Borrower**"), by this Promissory Note unconditionally promises to pay to the order of , (the "**Lender**") at the office of the Agent, in currency of the United States of America, on the following dates, the following principal amounts of the Facility A6 Loan made by the Lender to the undersigned pursuant to the Facilities Agreement (as defined below):

| Principal Payment Date | Amount |
|---|---|
| 14 February 2014 | US$ |
| 30 June 2016 | US$ |
| 31 December 2016 | US$ |
| Termination Date | Balance |

**provided that** if any such day is not a Business Day, the date for payment shall be the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case the date for payment shall be the immediately preceding Business Day.

The Borrower further promises to pay interest on the principal amount outstanding hereunder for each day during each Interest Period at a rate per annum applicable at such time to the Facility A6 Loan made by the Lender to the undersigned pursuant to the Facilities Agreement. Interest shall be payable on the Interest Payment Date.

The Borrower also promises to pay, to the fullest extent permitted by applicable law, default interest on any amount payable hereunder that is not paid when due, payable on demand, at a rate per annum applicable at such time pursuant to the Facilities Agreement.

Such interest and any default interest shall be payable in accordance with the Facilities Agreement and shall be subject to adjustment for any withholding or deduction provided for in the Facilities Agreement.

All computations of interest hereunder shall be made on the basis of a year of 360 days for the actual number of days elapsed in the period for which any such interest is payable (including the first day but excluding the last day).

All payments to be made on or in respect of this Promissory Note shall be made in accordance with clause 31 ( *Payment mechanics*) of the Facilities Agreement.

The undersigned agree to reimburse upon demand, in like manner and funds, all losses, costs and reasonable expenses of the holder hereof, if any, incurred in connection with the enforcement of this Promissory Note (including, without limitation, all reasonable legal costs and expenses).

This Promissory Note is one of the Promissory Notes referred to in the Facilities Agreement, dated 2012, between, amongst others, the undersigned, certain financial institutions, noteholders and other entities named therein as "Original Creditors", the Agent as agent and Wilmington Trust (London) Limited as Security Agent (as the same may from time to time be amended, supplemented or otherwise modified, the " **Facilities Agreement**") and is entitled to the benefits thereof and is subject to optional and mandatory prepayment in whole or in part as provided therein. This Promissory Note is subject to the terms of the Facilities Agreement.

For purposes of this Note, the following terms shall have the following meanings:

"**Agent**" means Citibank International plc.

"**Business Day**" means a day (other than a Saturday or Sunday) on which banks are open for general business in London, Madrid, New York City, Amsterdam and Mexico City (in the case of Mexico City, if applicable, as specified by a governmental authority) and (in relation to any date for payment or lending or purchase of, or the determination of an interest rate or rate of exchange in relation to, a currency other than euro) and the principal financial centre of the country of that currency.

"**Facility A6 Loan**" means a loan deemed to be made under "Facility A6" under the Facilities Agreement.

"**Interest Payment Date**" means the last day of each Interest Period.

"**Interest Period**" shall mean, the period commencing on the Effective Date and ending on the fifteenth day of the month occurring after the month in which the Effective Date occurs and thereafter, each period commencing on the last day of the immediately preceding Interest Period and ending one, three or six months thereafter; **provided that** (i) if any Interest Period would otherwise end on a day that is not a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such extension would carry such Interest Period into another calendar month, in which event such Interest Period shall end on the immediately preceding Business Day; and (ii) no Interest Period shall extend beyond the Termination Date.

"**Reference Banks**" means:

(a) for the period from the date hereof until 6 October 2012 or such other date on which Circular 8/1990 from the Bank of Spain on transparency of transactions and protection of clientele is replaced by Circular 5/2012 of 27 June from the Bank of Spain on transparency of banking services and responsibility in the granting of loans (such date, if not 6 October 2012, to be notified in writing by CEMEX, S.A.B. de C.V. to the Agent) (the "**Reference Bank Replacement Date**"), in relation to LIBOR, the principal London office of Rabobank and US Bancorp; and

(b) from (and including) the Reference Bank Replacement Date, in relation to LIBOR and Mandatory Cost, the principal London offices of BNP Paribas, HSBC Bank plc, ING Bank N.V. and J.P. Morgan,

or, in each case, such other banks as may be appointed in accordance with the Facilities Agreement.

"**Screen Rate**" means, in relation to LIBOR, the British Bankers' Association Interest Settlement Rate for the relevant currency and period displayed on the appropriate page of the Reuters screen. If the agreed page is replaced or service ceases to be available, the Agent may specify another page or service displaying the appropriate rate after consultation with the Borrower and the Creditors.

"**Termination Date**" means 14 February 2017 or, if applicable, such earlier date as determined by clause 5.1 ( *Spring Back Dates*) of the Facilities Agreement.

This Promissory Note and all non-contractual obligations arising out of or in connection with it shall in all respects be governed by, and construed in accordance with, the laws of England.

Any legal action or proceeding arising out of or relating to this Promissory Note (including any dispute regarding the existence, validity or termination of this Promissory Note or any non-contractual obligations arising from or connected with this Promissory Note) may be brought in the competent courts of England. The undersigned waive the jurisdiction of any other courts that may correspond for any other reason.

The undersigned hereby waive diligence, presentment, protest or notice of total or partial non- payment or dishonour with respect to this Promissory Note.

This Promissory Note consists of pages

[PLACE OF EXECUTION] 2012

NEW SUNWARD HOLDING B.V.

_____

By: _____

Title: Attorney-in-Fact

GUARANTORS

CEMEX, S.A.B. DE C.V.

_____

By: _____

Title: Attorney-in-Fact

CEMEX MÉXICO, S.A. DE C.V.

By: _____

Title: Attorney-in-Fact

EMPRESAS TOLTECA DE MÉXICO, S.A. DE C.V.

By: _____

Title: Attorney-in-Fact

**PART III**
**FORM OF PROMISSORY NOTE UNDER FACILITY A7**

U.S $ Date , 2012
New York, New York

FOR VALUE RECEIVED, the undersigned, NEW SUNWARD HOLDING B.V., a private company with limited liability formed under the laws of The Netherlands with its corporate seat in Amsterdam, The Netherlands (the "Borrower"), unconditionally promises to pay, without setoff or counterclaim, to the order of (the "Lender"), at the office of the Agent, in lawful money of the United States of America and in immediately available funds, on the following dates, the following principal amounts of the Facility A7 Loan made by the Lender to the undersigned pursuant to the Facilities Agreement (as defined below):

| Principal Payment Date | Amount |
|---|---|
| 14 February 2014 | US$ |
| 30 June 2016 | US$ |
| 31 December 2016 | US$ |
| Termination Date | Balance |

The undersigned further unconditionally agrees to pay, without setoff or counterclaim, interest in like money at such office from the date hereof until paid in full on the unpaid principal amount hereof from time to time outstanding at the interest rate per annum applicable at such time to the Facility A7 Loan made by the Lender to the undersigned pursuant to the Facilities Agreement. Such interest and any default interest shall be payable in accordance with the Facilities Agreement and shall be subject to adjustment for any withholding or deduction provided for in the Facilities Agreement. The Lender is authorized to record the date and amount of the Facility A7 Loan made by the Lender pursuant to the Facilities Agreement, the date and amount of each repayment of principal hereof and the principal amount subject thereto and the interest rate and interest period in respect thereto on the schedules annexed hereto and made a part hereof or on any other record customarily maintained by the Lender with respect to this Facility A7 Note and any such recordation shall constitute prima facie evidence of the accuracy of the information so recorded; provided, however, that the failure of the Lender to make such recordation (or any error in such recordation) shall not affect the obligations of the Borrower hereunder or under the Facilities Agreement.

This Facility A7 Note is one of the Promissory Notes referred to in the Facilities Agreement, dated as of , 2012, among the Borrower, CEMEX, S.A.B. de C.V. and CEMEX MÉXICO, S.A. de C.V. (together, the "Guarantors"), the other Original Obligors party thereto, the several financial institutions, noteholders and other entities named therein as "Original Creditors" party thereto, Citibank International Plc as Agent and Wilmington Trust (London) Limited as Security Agent (as the same may from time to time be amended, supplemented or otherwise modified, the "Facilities Agreement"; terms defined therein being used herein as so defined), and is entitled to the benefits thereof and is subject to optional and mandatory prepayment in whole or in part as provided therein and forms part of and is subject to the Facilities Agreement.

Upon the occurrence of an Event of Default specified in the Facilities Agreement, all amounts remaining unpaid on this Facility A7 Note may become, or may be declared to be, immediately due and payable, all as provided therein.

The Borrower agrees to pay all reasonable and documented out-of-pocket costs and expenses (including legal fees) incurred by the Lender in connection with the enforcement of and/or preservation of any rights under any Finance Document and this Facility A7 Note.

Each of the Borrower and each Guarantor hereby irrevocably and unconditionally submits for itself and its property in any legal action or proceeding relating to this Facility A7 Note and the Facilities Agreement or for recognition and enforcement of any judgment in respect thereof, to the non-exclusive jurisdiction of the United States District Court for the Southern District New York and of any New York State court located in the Borough of Manhattan in New York City and any appellate court thereof, to the jurisdiction of any competent court in the place of its corporate domicile and any appellate courts thereof, and consents that any such suit, action or proceeding may be brought in such courts and waives any objection that it may now or hereinafter have to the laying of venue of any such suit, action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same. Each of the Borrower and each Guarantor hereby appoints as its authorized agent, and irrevocably agrees that service of all writs, process and summonses in any such suit, action or proceeding brought in the State of New York may be made upon, CEMEX NY Corporation having offices on the date hereof at 590 Madison Avenue, 41st Floor, New York, New York 10022 (the "Process Agent"), and each of the Borrower and each Guarantor hereby irrevocably appoints the Process Agent as its authorized agent to accept such service of any and all such writs, process and summonses, designates such domicile as the conventional domicile to receive notices and agrees that the failure of the Process Agent to give any notice of any such service of process to each of the Borrower and each Guarantor shall not impair or affect the validity of such service or of any judgment based thereon.

The obligation of the Borrower hereunder to make payments in Dollars shall not be discharged or satisfied by any tender or recovery pursuant to any judgment expressed in or converted into any other currency except to the extent that such tender or recovery results in the effective receipt by the Lender of the full amount of Dollars payable hereunder and the Borrower shall be obligated to indemnify the Lender (and the Lender shall have an additional legal claim) for any difference between such full amount and the amount effectively received by the Lender pursuant to any such tender or recovery. The Lender's determination of amounts effectively received by it shall be presumptively correct in the absence of manifest error.

To the extent that the Borrower has or hereafter may acquire any immunity from jurisdiction of any court or from any legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise) with respect to itself or its property, the Borrower hereby irrevocably waives such immunity in respect of its obligations under this Facility A7 Note and the other Finance Documents. The foregoing waiver and consent are intended to be effective to the fullest extent now or hereafter permitted by applicable law of any jurisdiction in which any suit, action or proceeding with respect to this Facility A7 Note may be commenced.

THIS FACILITY A7 NOTE SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

NEW SUNWARD HOLDING B.V.

By: _____
Title: Attorney-in-fact

Guaranteed:

CEMEX, S.A.B. de C.V.
in its capacity as Guarantor
Under Clause 18 of the Facilities Agreement

By: _____
Title: Attorney-in-fact

Guaranteed:

CEMEX MÉXICO, S.A. de C.V.,
in its capacity as Guarantor
Under Clause 18 of the Facilities Agreement

By: _____
Title: Attorney-in-fact

Signature page to Facility A7 promissory note

**Schedule 1 to Facility A7 Note**

LOANS

| Date | Amount of Facility A7 Loan | Interest Period and Interest Rate Applicable Thereto | Amount of Principal Repaid | Notation Made By |
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**PART IV**
**FORM OF PROMISSORY NOTE (MEXICAN LAW)**

**PAGARÉ NO NEGOCIABLE/**
**NON-NEGOTIABLE PROMISSORY NOTE**

MXP$ Mexican pesos

For value received, the undersigned, CEMEX, S.A.B. de C.V., by this Promissory Note unconditionally promises to pay to the order of (the "Creditor"), the following principal sums payable on the following dates (each a "Principal Payment Date", and the last such date, the "Final Payment Date"):

| Principal Payment Date | Amount |
|---|---|
| 14 February 2014 | MXP$ |
| 30 June 2016 | MXP$ |
| 31 December 2016 | MXP$ |
| 14 February 2017 | MXP$ , |

provided that, on the Final Payment Date, any and all principal amounts then due, shall be paid.

The undersigned also promises to pay interest on the outstanding and unpaid principal amount of this Promissory Note from the date hereof, for each day during each Interest Period (as defined below), at a rate per annum equal to TIIE (as defined below) plus the Margin (as defined below), payable in arrears, on each Interest Payment Date (as defined below), until payment in full of the outstanding principal amount hereof.

Any principal amount and (to the extent permitted by applicable law) interest not paid when due under this Promissory Note,

MXP$ pesos

Por valor recibido, la suscrita, CEMEX, S.A.B. de C.V., por este Pagaré promete incondicionalmente pagar a la orden de (el "Acreedor"), las siguientes sumas de principal pagaderas en las siguientes fechas cada una, una "Fecha de Pago de Principal" y la última de dichas fechas, la "Fecha de Vencimiento"):

| Fecha de Pago de Principal | Monto |
|---|---|
| 14 febrero 2014 | MXP$ |
| 30 junio 2016 | MXP$ |
| 31 diciembre 2016 | MXP$ |
| 14 febrero 2017 | MXP$ , |

en la inteligencia que, en la Fecha de Vencimiento, todas las sumas de principal pagaderas, deberán pagarse.

La suscrita promete, así mismo, pagar intereses sobre el saldo insoluto de la suma de principal de este Pagaré, a partir de la fecha de suscripción del presente Pagaré, por cada día respecto de cada Período de Interés (según este término se define a continuación), a una tasa anual igual a la TIIE (según este término se define a continuación) más el Margen (según este término se define a continuación), pagaderos en forma vencida, en cada Fecha de Pago de Interés (según este término se define a continuación), hasta que se efectúe el pago de la totalidad del saldo insoluto del presente.

Cualquier monto de principal y (en la medida permitida por legislación aplicable) de intereses que no sea pagada

shall bear interest for each day until paid, payable on demand, at a rate per annum equal to the sum of two percent (2%) plus the interest rate then applicable hereunder as provided in the preceding paragraph.

Interest hereunder shall be calculated on the basis of the actual number of days elapsed, divided by three hundred and sixty (360).

For purposes of this Promissory Note, the following terms shall have the following meanings:

"Agent" means Citibank International Plc.

"Business Day" means a day (other than a Saturday or Sunday) on which banks are open for general business in London, United Kingdom, Madrid, Spain, New York, United States of America, Amsterdam, The Netherlands and Mexico City, United Mexican States.

"Interest Payment Date" means any of March 15, June 15, September 15 and December 15 occurring on or before the Final Payment Date.

"Interest Period" means (a) initially, the period commencing on the date hereof and ending on [7], and (b) thereafter, each period commencing on the last day of the next preceding Interest Period and ending on the next Interest Payment Date, provided, however, that any Interest Period which would otherwise end after the Final Payment Date shall end on the Final Payment Date.

cuando sea debida conforme a este Pagaré, devengará intereses por cada día hasta que sea pagado, pagaderos a la vista, a una tasa anual igual a la suma de dos por ciento (2%) más la tasa de interés aplicable conforme a lo previsto en el párrafo anterior.

Los intereses conforme al presente serán calculados sobre la base del número de días efectivamente transcurridos, divididos entre trescientos sesenta (360).

Para efectos de éste Pagaré, los siguientes términos tendrán los significados indicados a continuación:

"Agente" significa Citibank International Plc.

"Día Hábil" significa cualquier día (que no sea sábado o domingo), en el cual los bancos comerciales en las ciudades de Londres, Reino Unido, Madrid, España, Nueva York, Estados Unidos de América, Amsterdam, Holanda y México, Estados Unidos Mexicanos estén abiertos para celebrar operaciones en general.

"Fecha de Pago de Interés" significa cualesquier 15 de marzo, 15 de junio, 15 de septiembre y 15 de diciembre que ocurran en o antes de la Fecha de Vencimiento.

"Período de Interés" significa (a) inicialmente, el período que inicie en la fecha del presente y que termine el , y (b) subsecuentemente, cada período que inicie el último día del Período de Interés inmediato anterior y que termine en la siguiente Fecha de Pago de Interés, en el entendido, sin embargo, que cualquier Periodo de Interés que terminaría después de la Fecha de Vencimiento, terminará en la Fecha de Vencimiento.

[7] Date corresponding to the immediately following Interest Payment Date.

"Margin" means (a) from the date hereof and up to (but excluding) the date on which the undersigned has paid an aggregate principal amount equal to at least $[ ][8], five point twenty-five percent (5.25%) per annum, (b) from (and including) the date on which the undersigned has paid an aggregate principal amount equal to at least $[ ][9] to (but excluding) the date on which the undersigned has paid an aggregate principal amount equal to at least $[ ][10], five percent (5.00%) per annum, and (c) from (and including) the date on which the undersigned has paid an aggregate principal amount equal to at least $[ ][11] until the Final Payment Date, four point five percent (4.50%) per annum.

"TIIE" means the Tasa de Interés Interbancaria de Equilibrio (i) for a period of 91 days, or (ii) such other period published as is most nearly equal to the relevant Interest Period, as determined by the Agent, as quoted by the Mexican Central Bank (*Banco de Mexico*) and published in the Federal Official Gazette (*Diario Oficial de la Federación*), on the first day of the relevant Interest Period or, if such day is not a Business Day, on the immediately preceding Business Day; provided that in the event the "TIIE" shall cease to be published, TIIE shall mean any rate specified by the Mexican Central Bank (*Banco de Mexico*) as the substitute rate

"Margen" significa (a) a partir de la fecha de suscripción del presente Pagaré y hasta (pero excluyendo) la fecha en la que la suscrita haya pagado por lo menos una cantidad total igual a $[ ] del monto de principal de este Pagaré, cinco punto veinticinco por ciento (5.25%) por año, (b) a partir de (e incluyendo) la fecha en la que la suscrita haya pagado por lo menos una cantidad total igual a $[ ] del monto de principal de este Pagaré hasta (pero excluyendo) la fecha en la que la suscrita haya pagado por lo menos una cantidad total igual a $[ ] del monto principal de este Pagaré, cinco por ciento (5.00%) por año, y (c) a partir de (e incluyendo) la fecha en la que la suscrita haya pagado por lo menos una cantidad total igual a $[ ] del monto de principal de este Pagaré hasta la Fecha de Vencimiento, cuatro punto cincuenta por ciento (4.50%) por año.

"TIIE" significa la Tasa de Interés Interbancaria de Equilibrio (i) por un período de 91 días, o (ii) cualquier otro periodo que sea publicado y que sea más cercano al Periodo de Interés de que se trate, según sea determinado por el Agente, que calcule y publique Banco de México en el Diario Oficial de la Federación, el primer día del Periodo de Interés correspondiente o, en caso que dicho día no sea un Día Hábil, el Día Hábil inmediato anterior, en el entendido que en caso que la TIIE deje de ser publicada, "TIIE" significará cualquier tasa designada por el Banco de México como la tasa sustituta de la TIIE. Si respecto

[8] To represent Creditor's pro rata share of $1,500,000,000.
[9] To represent Creditor's pro rata share of $1,500,000,000.
[10] To represent Creditor's pro rata share of $2,000,000,000.
[11] To represent Creditor's pro rata share of $2,000,000,000.

therefor. If, for any Interest Period the Mexican Central Bank ( *Banco de Mexico*) does not publish or ceases to publish, as the case may be, in the Federal Official Gazette (*Diario Oficial de la Federación*) the TIIE or any substitute rate therefor, the Agent shall instead determine an alternate rate as of the date on which the TIIE or the substitute rate therefor ceased to be published and until such date on which the TIIE or a substitute rate is published or republished, by calculating the arithmetic mean (rounded upward to the nearest five decimal places) of the quotations advised to the Agent at approximately 12 noon, Mexico City time, on the first day of such Interest Period of the mid-market cost of funds for Mexican pesos for a period of 91 days or such other period as is most nearly equal to the relevant Interest Period, as applicable, by the Mexico City offices of three (3) major banks in the Mexican interbank market selected by the Agent in its sole discretion, provided that if fewer than two (2) quotations are provided, the rate will be determined by the Agent using a representative rate.

All payments by the undersigned of principal, interest and other payments hereunder, shall be made without setoff, deduction or counterclaim not later than 11:00 a.m., New York City time, on the due date for each such payment, in Mexican pesos and in immediately available funds, at the office of the Agent located at Citibank International PLC, 5th Floor, Citigroup Centre, 25 Canada Square, Canary Wharf, London E14 5LB, United Kingdom, Attention: Loans Agency. The undersigned agrees to reimburse upon demand, in like manner and funds, all losses, costs and expenses of the holder hereof, incurred in connection with the enforcement of this Promissory Note.

de cualquier Periodo de Interés, el Banco de México no publica o deja de publicar, según sea el caso, la TIIE o cualquier tasa sustituta de la TIIE en el Diario Oficial de la Federación, el Agente determinará una tasa sustituta a partir del día en que la TIIE o la tasa sustituta de la TIIE dejó de ser publicada y hasta la fecha en que la TIIE o la tasa sustituta de la TIIE sea nuevamente publicada, calculando el promedio aritmético (redondeado hacia arriba a los cinco decimales más cercanos) de las cotizaciones obtenidas por el Agente, aproximadamente a las 12:00 p.m., hora de México, Distrito Federal, del primer día de dicho Periodo de Interés, del costo de mercado de fondos (mid-market cost of funds) en pesos mexicanos a un plazo de 91 días o cualquier otro periodo que sea más cercano al Periodo de Interés de que se trate, según sea aplicable, de las oficinas en México, Distrito Federal, de tres (3) bancos de importancia en el mercado interbancario mexicano, que discrecionalmente seleccione el Agente, en el entendido que si el Agente recibe menos de dos (2) cotizaciones, la tasa será determinada por el Agente utilizando una tasa representativa.

Todos los pagos que deban hacerse conforme a este Pagaré por la suscrita, de principal, intereses y por otros conceptos, serán efectuados sin compensación, deducción o defensa, antes de las 11:00 a.m., hora de la ciudad de Nueva York, en la fecha en que el pago de que se trate venza, en pesos y en fondos disponibles inmediatamente, en la oficina del Agente ubicada en Citibank International PLC, 5th Floor, Citigroup Centre, 25 Canada Square, Canary Wharf, London E14 5LB, Reino Unido, Atención: Loans Agency. La suscrita conviene en reembolsar a la vista, en la misma forma y fondos, cualesquiera pérdidas, costos y gastos del tenedor del presente, incurridos en relación con el procedimiento de cobro del presente Pagaré.

Any payment which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not). During any extension of the due date of payment of any principal, interest is payable on the principal at the rate payable on the original due date.

All payments by the undersigned hereunder, shall be made free and clear of, and without deduction for, any present or future income, excise, stamp or franchise taxes and other taxes, fees, duties, withholdings or other charges, of any nature whatsoever, imposed by the United Mexican States or any other jurisdiction from which any amount payable hereunder is made, or any taxing authority thereof or therein, unless required by law. In the event that the undersigned shall be compelled by law to make any such deduction or withholding, in respect of any payments hereunder, then the undersigned shall pay such additional amounts as may be necessary so that the holder hereof would receive the full amounts it would have received if such deductions or withholdings would not have been made.

This Promissory Note shall be governed by, and construed in accordance with, the laws of the United Mexican States.

Any legal action or proceeding arising out of or relating to this Promissory Note, may be brought to the jurisdiction of any federal court sitting in Mexico City, Federal District, United Mexican States; the undersigned waives the right to jurisdiction of any other courts.

Cualquier pago que deba hacerse conforme al presente en un día que no sea un Día Hábil, deberá hacerse en el siguiente Día Hábil durante el mismo mes calendario (si existe uno) o en el Día Hábil previo (si no existe uno). Respecto de cualquier extensión de cualquier fecha de pago de principal, los intereses que correspondan al pago de principal se devengarán a la tasa de interés pagadera en la fecha de pago original.

Todos los pagos que se efectúen por la suscrita en términos del presente, deberán hacerse libres de y sin deducción alguna por cualquier impuesto sobre la renta, gravamen, impuesto del timbre o impuesto sobre franquicias y otros impuestos, contribuciones, derechos, retenciones u otras cargas, presentes o futuros, de cualquier naturaleza, establecidos o determinados por los Estados Unidos Mexicanos o por cualquier otra jurisdicción de la que se paguen cantidades adeudadas conforme al presente, a menos que sea requerido por ley. En caso que la suscrita esté obligada legalmente a llevar a cabo cualquier retención o deducción, respecto de cualesquiera pagos conforme al presente, la suscrita pagará las sumas adicionales que sean necesarias para asegurar que las sumas recibidas por el tenedor del presente, sean iguales a la suma que el tenedor hubiera recibido, si tales retenciones o deducciones no se hubieren realizado.

Este Pagaré se regirá e interpretará de acuerdo con las leyes de los Estados Unidos Mexicanos.

Cualquier acción o procedimiento legal que derive o se relacione con este Pagaré, podrá ser iniciado en cualquier tribunal federal localizado en la ciudad de México, Distrito Federal, Estados Unidos Mexicanos, renunciando la suscrita a la jurisdicción de cualesquiera otros tribunales.

The undersigned hereby waives diligence, demand, protest, presentment, notice of dishonor or any other notice or demand whatsoever.

This Promissory Note is executed in both English and Spanish versions. In the case of any conflict or doubt as to the proper construction of this Promissory Note, the English version shall govern; provided, however, that in any action or proceeding brought in any court in the United Mexican States, the Spanish version shall prevail.

For the purposes of Article 128 of the General Law of Negotiable Instruments and Credit Transactions of the United Mexican States, the term of presentation of this Promissory Note is hereby irrevocably extended until the date that is six (6) months after the Final Payment Date, it being understood that such extension shall not be deemed to prevent presentation of this Promissory Note prior to such date.

IN WITNESS WHEREOF, the undersigned has duly executed this Promissory Note on the date indicated below.

La suscrita en este acto renuncia a diligencia, demanda, protesto, presentación, notificación de no aceptación y a cualquier notificación o demanda de cualquier naturaleza.

El presente Pagaré se suscribe en versiones en inglés y español. En caso de conflicto o duda en relación con la debida interpretación de este Pagaré, la versión en inglés prevalecerá; en el entendido, sin embargo que en cualquier procedimiento iniciado en cualquier tribunal de los Estados Unidos Mexicanos, prevalecerá la versión en español.

Para los efectos del Artículo 128 de la Ley General de Títulos y Operaciones de Crédito de los Estados Unidos Mexicanos, por medio del presente se prorroga irrevocablemente el plazo de presentación de este Pagaré hasta la fecha que sea seis (6) meses después de la Fecha de Vencimiento, en el entendido que dicha prórroga no impedirá la presentación de este Pagaré con anterioridad a dicha fecha.

EN VIRTUD DE LO CUAL, la suscrita ha firmado este Pagaré en la fecha abajo mencionada.

, , a de de 2012.

, , , 2012.

CEMEX, S.A.B. de C.V.

By/Por _____

Name/Nombre:
Title/Cargo:

Guaranteed/Por Aval

CEMEX México, S.A. de C.V.

By/Por _____

Name/Nombre:

Title/Cargo:

Guaranteed/Por Aval

CEMEX Concretos, S.A. de C.V.

By/Por _____

Name/Nombre:
Title/Cargo:

**FORM OF SIDE LETTER TO PROMISSORY NOTE (MEXICAN LAW)**

CEMEX, S.A.B. de C.V.
Av. Ricardo Margáin Zozaya # 325
Colonia Valle del Campestre
66265 San Pedro Garza García, Nuevo León
Mexico

, 2012

RE: PROMISSORY NOTE

Dear Sirs :

Reference is made to the promissory note (pagaré) (the "Promissory Note") issued by CEMEX, S.A.B. de C.V. (the "Issuer"), dated , 2012 for the amount of MXP$ ( Pesos, currency of the United Mexican States 00/100) in favor of (the "Holder").

The parties to this letter agree that notwithstanding anything to the contrary in the Promissory Note, (i) interest payments in respect of the Promissory Note shall be made at the times, on the dates, in the amounts and in the manner provided for in the Facilities Agreement dated as of , 2012 between CEMEX, S.A.B. de C.V. and certain of its subsidiaries as borrowers, the financial institutions, noteholders and other entities named therein as original creditors, Citibank International plc as agent and Wilmington Trust (London) Limited as security agent (as amended from time to time in accordance with its terms, the "Facilities Agreement") and (ii) interest shall be calculated in the manner provided for in the Facilities Agreement. Without limiting the generality of the above, the parties to this letter agree that notwithstanding anything else to the contrary in the Promissory Note, the Loan represented by the Promissory Note may bear interest at the rates provided for in the Facilities Agreement. In the case of any inconsistency between the terms of the Facilities Agreement and the Promissory Note, the Facilities Agreement shall prevail.

Sincerely,

[ ]

By: _____
Name:
Title:

Accepted and agreed,
CEMEX, S.A.B. de C.V.

By: _____
Name:
Title:

Accepted and agreed,
CEMEX México, S.A. de C.V., as guarantor

By: _____
Name:
Title:

Accepted and agreed,
CEMEX Concretos, S.A. de C.V., as guarantor

By: _____
Name:
Title:

[Signature page to side letter to promissory note for loans.]

**SCHEDULE 5**
**MANDATORY COST FORMULA**

1. The Mandatory Cost is an addition to the interest rate to compensate Lenders for the cost of compliance with (a) the requirements of the Bank of England and/or the Financial Services Authority (or, in either case, any other authority which replaces all or any of its functions) or (b) the requirements of the European Central Bank.

2. On the first day of each Interest Period (or as soon as possible thereafter) the Agent shall calculate, as a percentage rate, a rate (the " **Additional Cost Rate**") for each Lender, in accordance with the paragraphs set out below. The Mandatory Cost will be calculated by the Agent as a weighted average of the Lenders' Additional Cost Rates (weighted in proportion to the percentage participation of each Lender in the relevant Loan) and will be expressed as a percentage rate per annum.

3. The Additional Cost Rate for any Lender lending from a Facility Office in a Participating Member State will be the percentage notified by that Lender to the Agent. This percentage will be certified by that Lender in its notice to the Agent to be its reasonable determination of the cost (expressed as a percentage of that Lender's participation in all Loans made from that Facility Office) of complying with the minimum reserve requirements of the European Central Bank in respect of loans made from that Facility Office.

4. The Additional Cost Rate for any Lender lending from a Facility Office in the United Kingdom will be calculated by the Agent as follows:

$$\frac{E \times 0.01}{300} \text{ per cent. per annum}$$

Where:

E is designed to compensate Lenders for amounts payable under the Fees Rules and is calculated by the Agent as being the average of the most recent rates of charge supplied by the Reference Banks to the Agent pursuant to paragraph 6 below and expressed in pounds per £1,000,000.

5. For the purposes of this Schedule:

(a) "**Eligible Liabilities**" and "**Special Deposits**" have the meanings given to them from time to time under or pursuant to the Bank of England Act 1998 or (as may be appropriate) by the Bank of England;

(b) "**Fees Rules**" means the rules on periodic fees contained in the FSA Fees Manual or such other law or regulation as may be in force from time to time in respect of the payment of fees for the acceptance of deposits;

(c) "**Fee Tariffs**" means the fee tariffs specified in the Fees Rules under the activity group A.1 Deposit acceptors (ignoring any minimum fee or zero rated fee required pursuant to the Fees Rules but taking into account any applicable discount rate); and

(d) "**Tariff Base**" has the meaning given to it in, and will be calculated in accordance with, the Fees Rules.

6. If requested by the Agent, each Reference Bank shall, as soon as practicable after publication by the Financial Services Authority, supply to the Agent, the rate of charge payable by that Reference Bank to the Financial Services Authority pursuant to the Fees Rules in respect of the relevant financial year of the Financial Services Authority (calculated for this purpose by that Reference Bank as being the average of the Fee Tariffs applicable to that Reference Bank for that financial year) and expressed in pounds per £1,000,000 of the Tariff Base of that Reference Bank.

7. Each Lender shall supply any information required by the Agent for the purpose of calculating its Additional Cost Rate. In particular, but without limitation, each Lender shall supply the following information on or prior to the date on which it becomes a Lender:

   (a) the jurisdiction of its Facility Office; and

   (b) any other information that the Agent may reasonably require for such purpose.

   Each Lender shall promptly notify the Agent of any change to the information provided by it pursuant to this paragraph.

8. The rates of charge of each Reference Bank for the purpose of E above shall be determined by the Agent based upon the information supplied to it pursuant to paragraphs 6 and 7 above and on the assumption that, unless a Lender notifies the Agent to the contrary, each Lender's obligations in relation to cash ratio deposits and Special Deposits are the same as those of a typical bank from its jurisdiction of incorporation with a Facility Office in the same jurisdiction as its Facility Office.

9. The Agent shall have no liability to any person if such determination results in an Additional Cost Rate which over or under compensates any Lender and shall be entitled to assume that the information provided by any Lender or Reference Bank pursuant to paragraphs 3, 6 and 7 above is true and correct in all respects.

10. The Agent shall distribute the additional amounts received as a result of the Mandatory Cost to the Lenders on the basis of the Additional Cost Rate for each Lender based on the information provided by each Lender and each Reference Bank pursuant to paragraphs 3, 6 and 7 above.

11. Any determination by the Agent pursuant to this Schedule in relation to a formula, the Mandatory Cost, an Additional Cost Rate or any amount payable to a Lender shall, in the absence of manifest error, be conclusive and binding on all Parties.

12. The Agent may from time to time, after consultation with the Parent and the Lenders, determine and notify to all Parties any amendments which are required to be made to this Schedule in order to comply with any change in law, regulation or any requirements from time to time imposed by the Bank of England, the Financial Services Authority or the European Central Bank (or, in any case, any other authority which replaces all or any of its functions) and any such determination shall, in the absence of manifest error, be conclusive and binding on all Parties.

**SCHEDULE 6**
**FORM OF TRANSFER CERTIFICATE**

To: [•] as Agent and [•] as Security Agent

From: [*The Existing Creditor*] (the "**Existing Creditor**") and [*The New Creditor*] (the "**New Creditor**")

Dated:

**CEMEX, S.A.B. de C.V.– Facilities Agreement**
**dated [•] 2012 (the "Facilities Agreement")**

1. We refer to the Facilities Agreement and to the Intercreditor Agreement (as defined in the Facilities Agreement). This agreement (the " **Agreement**") shall take effect as a Transfer Certificate for the purpose of the Facilities Agreement and as a Creditor/Agent/Security Agent Accession Undertaking for the purposes of the Intercreditor Agreement (and as defined in the Intercreditor Agreement). Terms defined in the Facilities Agreement have the same meaning in this Agreement unless given a different meaning in this Agreement.

2. We refer to Clause 25.5 (*Procedure for transfer*) of the Facilities Agreement:

   (a) The Existing Creditor and the New Creditor agree to the Existing Creditor transferring to the New Creditor by novation all or part of the Existing Creditor's Commitment, rights and obligations referred to in the Schedule in accordance with Clause 25.5 ( *Procedure for transfer*) of the Facilities Agreement.

   (b) The proposed Transfer Date is [•].

   (c) The Facility Office and address, fax number and attention details for notices of the New Creditor for the purposes of Clause 33.2 ( *Addresses*) of the Facilities Agreement are set out in the Schedule.

3. The New Creditor expressly acknowledges the limitations on the Existing Creditor's obligations set out in paragraph (c) of Clause 25.4 ( *Limitation of responsibility of Existing Creditors*) of the Facilities Agreement.

4. The New Creditor confirms, for the benefit of the Agent and without liability to any Obligor, that it is:

   (a) [a Spanish Qualifying Finance Party within paragraphs (a) or (c) of the definition of Spanish Qualifying Finance Party][a Spanish Treaty Finance Party][not a Spanish Qualifying Finance Party];

   (b) [a Mexican Qualifying Finance Party under paragraph [(a)] of the definition of Mexican Qualifying Finance Party][a Mexican Treaty Finance Party][not a Mexican Qualifying Finance Party]; and

   (c) [a US Qualifying Finance Party under paragraph [(a)] of the definition of US Qualifying Finance Party][a US Treaty Finance Party][not a US Qualifying Finance Party].*

5. We refer to clause 14.6 (*Creditor/Agent/Security Agent Accession Undertaking*) of the Intercreditor Agreement.

   In consideration of the New Creditor being accepted as a Facilities Creditor for the purposes of the Intercreditor Agreement (and as defined therein), the New Creditor confirms that, as from the Transfer Date, it intends to be party to the Intercreditor Agreement as a Facilities Creditor, and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by a Facilities Creditor and agrees that it shall be bound by all the provisions of the Intercreditor Agreement, as if it had been an original party to the Intercreditor Agreement.

6. For the purposes of articles 1278 *et seq.* of the French Civil Code, it is expressly agreed that the Security created under the Security Documents governed by French law shall be preserved and maintained for the benefit of the Security Agent, the New Creditor and the remaining Finance Parties.

7. The New Creditor may, in the case of an assignment of rights by the Existing Creditor under this Transfer Certificate, if it considers it necessary to make the assignment effective against third parties, arrange for it to be notified to any Obligor established or domiciled in France in accordance with the provisions of article 1690 of the French Civil Code.

8. This Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

9. This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

This Agreement has been entered into on the date stated at the beginning of this Agreement.

**Notes:** **The execution of this Transfer Certificate may not transfer a proportionate share of the Existing Creditor's interest in the Transaction Security in all jurisdictions. It is the responsibility of the New Creditor to ascertain whether any other documents or other formalities are required to perfect a transfer of such a share in the Existing Creditor's Transaction Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.**

**If in respect of any of the Commitment, rights and obligations transferred pursuant to this Transfer Certificate, the Existing Creditor holds a Promissory Note, it is the responsibility of the New Creditor to ensure that a new Promissory Note is issued in its name in accordance with paragraph (e) of Clause 25.2 (*Conditions of assignment or transfer*).**

**THE SCHEDULE**

**Commitment/rights and obligations to be transferred**

[*insert relevant details*]
[*Facility Office address, fax number and attention details for notices and account details for payments* ]

| [Existing Creditor] | [New Creditor] |
| --- | --- |
| By: | By: |

This Agreement is accepted as a Transfer Certificate for the purposes of the Facilities Agreement by the Agent, and as a Creditor/Agent/Security Agent Accession Undertaking for the purposes of the Intercreditor Agreement by the Security Agent, and the Transfer Date is confirmed as [ •].

[Agent]

By:

[Security Agent]

By:

**NOTES:**

***** Delete as applicable - each New Creditor is required to confirm which of these three categories it falls within.

**SCHEDULE 7**
**FORM OF ASSIGNMENT AGREEMENT**

To: [•] as Agent, [•] as Security Agent and CEMEX, S.A.B. de C.V. as Parent for and on behalf of each Obligor

From: [*the Existing Creditor*] (the "**Existing Creditor**") and [*the New Creditor*] (the "**New Creditor**")

Dated:

**CEMEX, S.A.B. de C.V.– Facilities Agreement dated [•] 2012 (the "Facilities Agreement")**

1. We refer to the Facilities Agreement and to the Intercreditor Agreement (as defined in the Facilities Agreement). This is an Assignment Agreement. This agreement (the "**Agreement**") shall take effect as an Assignment Agreement for the purpose of the Facilities Agreement and as a Creditor/Agent/Security Agent Accession Undertaking for the purposes of the Intercreditor Agreement (and as defined in the Intercreditor Agreement). Terms defined in the Facilities Agreement have the same meaning in this Agreement unless given a different meaning in this Agreement.

2. We refer to Clause 25.6 (*Procedure for assignment*) of the Facilities Agreement:

   (a) The Existing Creditor assigns absolutely to the New Creditor all the rights of the Existing Creditor under the Facilities Agreement, the other Finance Documents and in respect of the Transaction Security which correspond to that portion of the Existing Creditor's Commitments and participations in Utilisations under the Facilities Agreement as specified in the Schedule.

   (b) The Existing Creditor is released from all the obligations of the Existing Creditor which correspond to that portion of the Existing Creditor's Commitments and participations in Utilisations under the Facilities Agreement specified in the Schedule.

   (c) The New Creditor becomes a Party as a Creditor and is bound by obligations equivalent to those from which the Existing Creditor is released under paragraph (b) above.

3. The proposed Transfer Date is [•].

4. On the Transfer Date the New Creditor becomes:

   (a) party to the relevant Finance Documents (other than the Intercreditor Agreement) as a Creditor; and

   (b) party to the Intercreditor Agreement as a Facilities Creditor.

5. The Facility Office and address, fax number and attention details for notices of the New Creditor for the purposes of Clause 33.2 ( *Addresses*) of the Facilities Agreement are set out in the Schedule.

6. The New Creditor expressly acknowledges the limitations on the Existing Creditor's obligations set out in paragraph (c) of Clause 25.4 ( *Limitation of responsibility of Existing Creditors*) of the Facilities Agreement.

7. The New Creditor confirms, for the benefit of the Agent and without liability to any Obligor, that it is:

   (a) [a Spanish Qualifying Finance Party within paragraphs (a) or (c) of the definition of Spanish Qualifying Finance Party][a Spanish Treaty Finance Party][not a Spanish Qualifying Finance Party];

   (b) [a Mexican Qualifying Finance Party under paragraph [(a)] of the definition of Mexican Qualifying Finance Party][a Mexican Treaty Finance Party][not a Mexican Qualifying Finance Party]; and

   (c) [a US Qualifying Finance Party under paragraph [(a)] of the definition of US Qualifying Finance Party][a US Treaty Finance Party][not a US Qualifying Finance Party].*

8. We refer to clause 14.6 (*Creditor/Agent/Security Agent Accession Undertaking*) of the Intercreditor Agreement.

   In consideration of the New Creditor being accepted as a Facilities Creditor for the purposes of the Intercreditor Agreement (and as defined in the Intercreditor Agreement), the New Creditor confirms that, as from the Transfer Date, it intends to be party to the Intercreditor Agreement as a Facilities Creditor, and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by a Facilities Creditor and agrees that it shall be bound by all the provisions of the Intercreditor Agreement, as if it had been an original party to the Intercreditor Agreement.

9. This Agreement acts as notice to the Agent (on behalf of each Finance Party) and, upon delivery in accordance with Clause 25.7 ( *Copy of Transfer Certificate or Assignment Agreement to Parent*), to the Parent (on behalf of each Obligor) of the assignment referred to in this Agreement.

10. This Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

11. This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

This Agreement has been entered into on the date stated at the beginning of this Agreement.

**Notes:** **The execution of this Assignment Agreement may not transfer a proportionate share of the Existing Creditor's interest in the Transaction Security in all jurisdictions. It is the responsibility of the New Creditor to ascertain whether any other documents or other formalities are required to perfect a transfer of**

**such a share in the Existing Creditor's Transaction Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.**

**If in respect of any of the Commitment, rights and obligations transferred pursuant to this Assignment Agreement, the Existing Creditor holds a Promissory Note, it is the responsibility of the New Creditor to ensure that a new Promissory Note is issued in its name in accordance with paragraph (e) of Clause 25.2 (** ***Conditions of assignment or transfer*** **).**

**THE SCHEDULE**

**Commitment/rights and obligations to be transferred by assignment, release and accession**

[*insert relevant details*]

[*Facility office address, fax number and attention details for notices and account details for payments*]

[Existing Creditor] [New Creditor]

By: By:

This Agreement is accepted as an Assignment Agreement for the purposes of the Facilities Agreement by the Agent, and as a Creditor/Agent/Security Agent Accession Undertaking for the purposes of the Intercreditor Agreement by the Security Agent, and the Transfer Date is confirmed as [ •].

Signature of this Agreement by the Agent constitutes confirmation by the Agent of receipt of notice of the assignment referred to in this Agreement, which notice the Agent receives on behalf of each Finance Party.

[Agent]

By:

[Security Agent]

By:

NOTES:

* Delete as applicable - each New Creditor is required to confirm which of these three categories it falls within

**SCHEDULE 8**
**FORM OF ACCESSION LETTER**

To: [ ] as Agent and [ ] as Security Agent for itself and each of the other parties to the Intercreditor Agreement referred to below

From: [*Subsidiary*] and [*Parent*]

Dated:

Dear Sirs

**CEMEX, S.A.B. de C.V.– Facilities Agreement**
**dated [•] 2012 (the "Facilities Agreement")**

1. We refer to the Facilities Agreement and to the Intercreditor Agreement. This deed (the " **Accession Deed**") shall take effect as an Accession Letter for the purposes of the Facilities Agreement and as a Debtor/Security Provider Accession Deed for the purposes of the Intercreditor Agreement (and as defined in the Intercreditor Agreement). Terms defined in the Facilities Agreement have the same meaning in paragraphs 1 to 3 of this Accession Letter unless given a different meaning in this Accession Letter.

2. [*Subsidiary*] agrees to become an Additional [Guarantor]/[Security Provider] and to be bound by the terms of the Facilities Agreement and the other Finance Documents (other than the Intercreditor Agreement) as an Additional [Guarantor][Security Provider] pursuant to Clause 27.3 ( *Additional Guarantors and Additional Security Providers*)] of the Facilities Agreement. [ *Subsidiary*] is a company duly incorporated under the laws of [ *name of relevant jurisdiction*] and is a limited liability company and registered number [ ].

3. [*Subsidiary's*] administrative details for the purposes of the Facilities Agreement and the Intercreditor Agreement are as follows:

   Address:

   Fax No.:

   Attention:

4. [*Subsidiary*] (for the purposes of this paragraph 4, the "**Acceding Debtor**") intends to [incur Liabilities under the following documents]/[give a guarantee, indemnity or other assurance against loss in respect of Liabilities under the following documents]:

   *[Insert details (date, parties and description) of relevant documents]*

   the "**Relevant Documents**".

**IT IS AGREED** as follows:

(a) Terms defined in the Intercreditor Agreement shall, unless otherwise defined in this Accession Letter, bear the same meaning when used in this paragraph 4.

(b) The Acceding Debtor and the Security Agent agree that the Security Agent shall hold:

(i) [any Security in respect of Liabilities created or expressed to be created pursuant to the Relevant Documents;

(ii) all proceeds of that Security; and]

(iii) all obligations expressed to be undertaken by the Acceding Debtor to pay amounts in respect of the Liabilities to the Security Agent as trustee for the Secured Parties (in the Relevant Documents or otherwise) and secured by the Transaction Security together with all representations and warranties expressed to be given by the Acceding Debtor (in the Relevant Documents or otherwise) in favour of the Security Agent as trustee for the Secured Parties,

on trust, or as otherwise provided in the Finance Documents, for the Secured Parties on the terms and conditions contained in the Intercreditor Agreement.

(c) The Acceding Debtor confirms that it intends to be party to the Intercreditor Agreement as a Debtor, undertakes to perform all the obligations expressed to be assumed by a Debtor under the Intercreditor Agreement and agrees that it shall be bound by all the provisions of the Intercreditor Agreement as if it had been an original party to the Intercreditor Agreement.

[4]/[5] This Accession Letter and any non-contractual obligations arising out of or in connection with it is governed by English law.

**THIS ACCESSION LETTER** has been signed on behalf of the Security Agent (for the purposes of paragraph 4 above only), signed on behalf of the Parent and executed as a deed by [*Subsidiary*] and is delivered on the date stated above.

[***Subsidiary***]

[EXECUTED AS A DEED ]
By: [*Subsidiary*] )

_____ Director

_____ Director/Secretary

***OR***

[EXECUTED AS A DEED

By: [*Subsidiary*]

_____ Signature of Director

_____ Name of Director

in the presence of

_____ Signature of witness

_____ Name of witness

_____ Address of witness

_____

_____

_____

_____ Occupation of witness]

**The Parent**

[*Parent*]

By:

**The Security Agent**

[*Full Name of Current Security Agent*]

By:

Date:

NOTES:

**SCHEDULE 9**
**FORM OF RESIGNATION LETTER**

To: [•] as Agent

From: [*resigning Obligor*] and [*Parent*]

Dated:

Dear Sirs

**CEMEX, S.A.B. de C.V.– Facilities Agreement**
**dated [•] 2012 (the "Facilities Agreement")**

1. We refer to the Facilities Agreement. This is a Resignation Letter. Terms defined in the Facilities Agreement have the same meaning in this Resignation Letter unless given a different meaning in this Resignation Letter.

2. Pursuant to [Clause 27.2 (*Resignation of a Borrower*)][Clause 27.4 (*Resignation of a Guarantor*)][Clause 27.5 (*Resignation of a Security Provider*)], we request that [*resigning Obligor*] be released from its obligations as a [Borrower]/[Guarantor]/[Security Provider] under the Facilities Agreement and the Finance Documents (other than the Intercreditor Agreement).

3. We confirm that:

   (a) no Default is continuing or would result from the acceptance of this request; and

   (b) * [this request is given in relation to a Third Party Disposal of [ *resigning Obligor*];]

   (c) [the Disposal Proceeds have been or will be applied in accordance with Clause 7.3 ( *Disposal Proceeds*);]* *

   (d) [•]***

4. This Resignation Letter and any non-contractual obligations arising out of or in connection with it are governed by English law.

5. The Parent agrees to indemnify the Finance Parties and Secured Parties for any costs, expenses, or liabilities which would have been payable by [*resigning Obligor*] in connection with the Finance Documents but for the release set out in paragraph 1 above.

| | |
|---|---|
| [Parent] | [*resigning Obligor*] |
| By: | By: |

**NOTES:**

* Insert where resignation only permitted in case of a Third Party Disposal.

** Amend as appropriate, e.g. to reflect agreed procedure for payment of proceeds into a specified account.

*** Insert any other conditions required by the Facilities Agreement.

**SCHEDULE 10**
**FORM OF COMPLIANCE CERTIFICATE**

To: [•] as Agent

From: [*Parent*]

Dated:

Dear Sirs

**CEMEX, S.A.B. de C.V.– Facilities Agreement**
**dated [•] 2012 (the "Facilities Agreement")**

1. We refer to the Facilities Agreement. This is a Compliance Certificate. Terms defined in the Facilities Agreement have the same meaning when used in this Compliance Certificate unless given a different meaning in this Compliance Certificate.

2. We confirm that:

   (a) For the Reference Period ending [•], EBITDA was $[•] and Consolidated Interest Expense was $[•]. Therefore the Consolidated Coverage Ratio for such Reference Period was [•]:1 which [is/is not] in compliance with paragraph (a) of Clause 21.2 ( *Financial condition*) of the Facilities Agreement.

   (b) Consolidated Funded Debt as at the last day of the Reference Period ending [•] was $[•] and EBITDA for the Reference Period ending [•] was $[•]. Therefore the Consolidated Leverage Ratio for such Reference Period was [•]:1 which [is/is not] in compliance with paragraph (b) of Clause 21.2 (*Financial condition*) of the Facilities Agreement.

   (c) Capital Expenditure of the Group for the Financial Year ending [•] was $[•]. Therefore the requirements of paragraph (c) of Clause 21.2 (*Financial condition*) of the Facilities Agreement [have/have not] been complied with.

   (d) Caliza Capital Expenditure for the Financial Year ending [•] was $[•]. Therefore the requirements of paragraph (d) of Clause 21.2 ( *Financial condition*) of the Facilities Agreement [have/have not] been complied with.

Signed _____

[Parent]

**SCHEDULE 11**
**EXISTING FINANCIAL INDEBTEDNESS**

**(Figures as at 31 August 2012 except where indicated by *)**

| Obligation | Type | Outstanding Principal Amounts | Obligor | Guarantor(s) | Bank Party | Security | Maturity |
|---|---|---|---|---|---|---|---|
| **Part I.A - 2009 Financing Agreement** | | | | | | | |
| 2009 Financing Agreement dated 14 August 2009 (as amended) | Syndicated loan and private placement notes | $495,820,273.46 * as at Effective Date | Cemex, S.A.B. de C.V., Cemex España S.A., New Sunward Holding B.V. and CEMEX Finance LLC | Cemex, S.A.B. de C.V., Cemex España S.A., Cemex México, S.A. de C.V., Empresas Tolteca de México, S.A. de C.V., Cemex Concretos, S.A. de C.V., New Sunward Holding B.V., CEMEX Finance LLC and Cemex Corp. | | None | 14 February 2014 |
| 2009 Financing Agreement dated 14 August 2009 (as amended) | Syndicated loan and private placement notes | €22,526,041.53 * as at Effective Date | Cemex, S.A.B. de C.V., Cemex España S.A., New Sunward Holding B.V. and CEMEX Finance LLC | Cemex, S.A.B. de C.V., Cemex España S.A., Cemex México, S.A. de C.V., Empresas Tolteca de México, S.A. de C.V., Cemex Concretos, S.A. de C.V., New Sunward Holding B.V., CEMEX Finance LLC and Cemex Corp. | | None | 14 February 2014 |
| **Part II - Public Debt Instruments** | | | | | | | |
| **Part II.A** | | | | | | | |
| $149,897,000 Rinker 2025 Indenture, dated 1 April 2003 (as supplemented) | Public Debt Instruments | $149,897,000 | CEMEX Materials LLC | CEMEX Corp. | | None | 21 July 2025 |
| €900,000,000 4.75% Eurobond dated 5 March 2007 | Public Debt Instruments | €430,381,000 | CEMEX Finance Europe B.V. | CEMEX España, S.A. | | None | 5 March 2014 |
| NSHFV $900m Note Indenture dated 18 December 2006 (as supplemented) (C10) | Public Debt Instruments | $289,134,000 | New Sunward Holding Financial Ventures B.V. | CEMEX, S.A.B. de C.V., CEMEX México, S.A. de C.V. and New Sunward Holding B.V. | | Sharing in Transaction Security | Perpetual - Callable on 31 December 2016, and at each interest payment date thereafter |

| Obligation | Type | Outstanding Principal Amounts | Obligor | Guarantor(s) | Bank Party | Security | Maturity |
|---|---|---|---|---|---|---|---|
| NSHFV €730m Note Indenture dated 9 May 2007 (as supplemented) (C10-EUR) | Public Debt Instruments | €69,828,000 | New Sunward Holding Financial Ventures B.V. | CEMEX, S.A.B. de C.V., CEMEX México, S.A. de C.V. and New Sunward Holding B.V. | | Sharing in Transaction Security | Perpetual - Callable on 30 June 2017, and at each interest payment date thereafter |
| NSHFV $350m Note Indenture dated 18 December 2006 (as supplemented) (C5) | Public Debt Instruments | $104,152,000 | New Sunward Holding Financial Ventures B.V. | CEMEX, S.A.B. de C.V., CEMEX México, S.A. de C.V. and New Sunward Holding B.V. | | Sharing in Transaction Security | Perpetual - Callable on 31 December 2011, and at each interest payment date thereafter |
| NSHFV $750m Note Indenture dated 12 February 2007 (as supplemented) (C8) | Public Debt Instruments | $220,985,000 | New Sunward Holding Financial Ventures B.V. | CEMEX, S.A.B. de C.V., CEMEX México, S.A. de C.V. and New Sunward Holding B.V. | | Sharing in Transaction Security | Perpetual - Callable on 31 December 2014, and at each interest payment date thereafter |
| Obligaciones Forzosamente Convertibles en Acciones CEMEX 09 Mex$ 4,126,538,400 | Public Debt Instruments | Mex$4,126,538,400 | CEMEX, S.A.B. de C.V. | CEMEX México, S.A. de C.V. and Empresas Tolteca de México, S.A. de C.V. – (the guarantee limited to the payments of coupons) | | None | 28 November 2019 |
| $1,750,000,000 9.5% Senior Secured Notes due 2016; dated 14 December 2009 | Public Debt Instruments | $1,750,000,000 | CEMEX Finance LLC | Cemex, S.A.B. de C.V., Cemex España S.A., Cemex México, S.A., Empresas Tolteca de México, S.A. de C.V., Cemex Concretos, S.A. de C.V., New Sunward Holding B.V. and Cemex Corp. | | Sharing in Transaction Security | 14 December 2016 |
| €350,000,000 9.625% Senior Secured Notes due 2017; dated 14 December 2009 | Public Debt Instruments | €350,000,000 | CEMEX Finance LLC | Cemex, S.A.B. de C.V., Cemex España S.A., Cemex México, S.A., Empresas Tolteca de México, S.A. de C.V., Cemex Concretos, S.A. de C.V., New Sunward Holding B.V. and Cemex Corp. | | Sharing in Transaction Security | 14 December 2017 |
| $715,000,000 4.875% Convertible Subordinated Notes due 2015; dated 30 March 2010 | Public Debt Instruments | $715,000,000 | CEMEX, S.A.B. de C.V. | | | None | 15 March 2015 |

| Obligation | Type | Outstanding Principal Amounts | Obligor | Guarantor(s) | Bank Party | Security | Maturity |
|---|---|---|---|---|---|---|---|
| $1,192,996,000 9.25% Senior Secured Notes due 12 May 2020; dated 12 May 2010 | Public Debt Instruments | $1,192,996,000 | CEMEX España, S.A., acting through its Luxembourg Branch | CEMEX, S.A.B. de C.V., CEMEX México, S.A. de C.V. and New Sunward Holding B.V. | | Sharing in Transaction Security | 12 May 2020 |
| €115,346,000 8.875% Senior Secured Notes due 12 May 2017; dated 12 May 2010 | Public Debt Instruments | €115,346,000 | CEMEX España, S.A., acting through its Luxembourg Branch | CEMEX, S.A.B. de C.V., CEMEX México, S.A. de C.V. and New Sunward Holding B.V. | | Sharing in Transaction Security | 12 May 2017 |
| $1,650,000,000 9.00% Senior Secured Notes due 2018; dated 11 Jan 2011 | Public Debt Instruments | $1,650,000,000 | CEMEX, S.A.B. de C.V. | CEMEX México, S.A. de C.V., New Sunward Holding B.V. and CEMEX España, S.A. | | Sharing in Transaction Security | 11 January 2018 |
| $977,500,000 3.25% Convertible Subordinated Notes due 2016; dated 15 March 2011 | Public Debt Instrument | $977,500,000 | CEMEX, S.A.B. de C.V. | | | None | 15 March 2016 |
| $690,000,000 3.75% Convertible Subordinated Notes due 2018; dated 15 March 2011 | Public Debt Instrument | $690,000,000 | CEMEX, S.A.B. de C.V. | | | None | 15 March 2018 |
| $800,000,000 Floating Rate Senior Secured Notes due 2015; dated 5 April 2011 | Public Debt Instrument | $800,000,000 | CEMEX, S.A.B. de C.V. | CEMEX México, S.A. de C.V., New Sunward Holding B.V. and CEMEX España, S.A. | | Sharing in Transaction Security | 30 September 2015 |
| $703,861,000 9.875% Senior Secured Notes due 30 April 2019; dated 28 March 2012 | Public Debt Instrument | $703,861,000 | CEMEX España, S.A., acting through its Luxembourg Branch | CEMEX, S.A.B. de C.V., CEMEX México, S.A. de C.V. and New Sunward Holding B.V. | | Sharing in Transaction Security | 30 April 2019 |
| €179,219,000 9,875% Senior Secured Notes due 30 April 2019; dated 28 March 2012 | Public Debt Instrument | €179,219,000 | CEMEX España, S.A., acting through its Luxembourg Branch | CEMEX, S.A.B. de C.V., CEMEX México, S.A. de C.V. and New Sunward Holding B.V. | | Sharing in Transaction Security | 30 April 2019 |
| **Part II.B** | **Mexican Public Debt Instruments** | | | | | | |

Programa Dual Revolvente de Certificados Bursátiles dated 30 May 2011 for up to Mex$ 10,000,000,000 for short and long term issuances (and with a sublimit of Mex$ 2,500,000,000 in respect of short term issuances)

| Obligation | Type | Outstanding Principal Amounts | Obligor | Guarantor(s) | Bank Party | Security | Maturity |
|---|---|---|---|---|---|---|---|
| Certificado Bursátil UDIs 116,530,800 CEMEX 07-2U, dated 30 November 2007 | Mexican Public Debt Instrument | UDI116,530,800 | CEMEX, S.A.B. de C.V. | CEMEX México, S.A. de C.V. and Empresas Tolteca de México, S.A. de C.V. | | Sharing in Transaction Security | 17 November 2017 |
| **Part II.C** | **Bilateral Bank Facilities** | | | | | | |
| $250,000,000 Crédito Simple Bancomext, dated 14 October 2008 (as amended) | Bilateral Bank Facility | $117,000,000 | CEMEX, S.A.B. de C.V. | CEMEX México, S.A. de C.V. | Banco Nacional de Comercio Exterior, S.N.C. | Mortgage of cement plants in Merida, Yucatan and Ensenada, Baja California, México | 14 February 2014 |
| $8,000,000 Banco Industrial de Guatemala | Bilateral Bank Facility | $4,000,000 | Global Cement, S.A. | | Banco Industrial, S.A. | None | 15 June 2014 |

**SCHEDULE 12**
**EXISTING SECURITY AND QUASI-SECURITY**

**(Figures in Millions $ as of 31 August 2012)**

| CEMEX Subsidiary | Counterparty | Lien Concept | Maturity Date | Secured Amount | Agreement Type |
|---|---|---|---|---|---|
| CEMEX Austria AG | Raiffeisenbank Bruck an der Mur eg. Gen.& various other | Plant Equipment Lien | 1-Sep-2017 | 1.75 | Leasing agreement on movables entered by and between Raiffeisen-Leasing Mobilien und KFZ GmbH and Trans-Beton Ges.m.b.H. dated March 31, 2004. |
| Betonlift Betriebs GmbH | Oberbank | Cash Collateral | 31-Mar-2017 | 0.12 | Deposit of 10% due to leasing agreement |
| CEMEX Granulats Rhone-Mediterranne | SLIBAIL IMMOBILIER | Plant Equipment Lien | October-2012 | 0.01 | Leasing Agreement by and between Slibail Immobilier and Morrillon Corvol Rhone Mediterranee dated July 24, 2000. |
| CEMEX Betons Nord Quest | SLIBAIL IMMOBILIER | Plant Equipment Lien | April-2014 | 0.04 | Leasing Agreement by and between Slibil Immobilier - SAS Beton de France Normandie dated June 03, 2002. |
| CEMEX Granulats | Caisse d'épargne | Cash Collateral | Revolving | 0.50 | Guarantee for Drome Ardeche Granulats |
| CEMEX Kies Hamburg GmbH & Co. KG | Kreissparkasse Herzogfum Lauenburg | Land Lien | 30-Mar-2014 | 0.07 | Leasing Agreement Kreissparkasse Herzogfum Lauenburg - Wunder GmbH, Wunder Kiestransporte GmbH und Günter Wunder Baustoffhandel dated March 22, 1994. |
| CEMEX Deutschland AG | Private Investor Günter Wunder | Servitude | 31-Dec-2017 | 7.13 | Plant Investment + Operating Lease - Project Kieswerk Löwen GmbH |
| CEMEX Deutschland AG | HypoVereinsban (Unicredit) | Cash Collateral | Revolving | 4.86 | Bank Guarantees (several local governments: gravel and sand mining supply) |
| CEMEX Deutschland AG | HypoVereinsban (Unicredit) | Cash Collateral | Revolving | 3.01 | Daily Cash Operations (Direct Debit collections, unpaid return risk) |
| CEMEX Deutschland AG | Commerzbank | Cash Collateral | Revolving | 9.32 | Bank Guarantees (several local governments: gravel and sand mining supply) |

| CEMEX Subsidiary | Counterparty | Lien Concept | Maturity Date | Secured Amount | Agreement Type |
|---|---|---|---|---|---|
| CEMEX Deutschland AG | Bayern LB | Cash Collateral | Revolving | 0.25 | Bank Guarantees (several local governments: gravel and sand mining supply) |
| CEMEX Deutschland AG | Bayern LB | Cash Collateral | Revolving | 0.32 | Bank Guarantees (several local governments: gravel and sand mining supply) |
| CEMEX Deutschland AG | Bayern LB | Cash Collateral | Revolving | 0.49 | Bank Guarantees (several local governments: gravel and sand mining supply) |
| CEMEX Deutschland AG | Bayern LB | Cash Collateral | Revolving | 1.07 | Bank Guarantees (several local governments: gravel and sand mining supply) |
| CEMEX Deutschland AG | Bayern LB | Cash Collateral | Revolving | 0.75 | Bank Guarantees (several local governments: gravel and sand mining supply) |
| CEMEX Deutschland AG | Bayern LB | Cash Collateral | Revolving | 0.25 | Bank Guarantees (several local governments: gravel and sand mining supply) |
| CEMEX Deutschland AG | Bayern LB | Cash Collateral | Revolving | 0.20 | Bank Guarantees (several local governments: gravel and sand mining supply) |
| CEMEX Deutschland AG | Bayern LB | Cash Collateral | Revolving | 0.20 | Bank Guarantees (several local governments: gravel and sand mining supply) |
| Cemex Hungary Kft | Raiffeisen Bank | Cash Collateral | Revolving | 0.01 | Quarry recovery |
| Cemex Hungary Kft | Raiffeisen Bank | Cash Collateral | 31 Dec 2012 | 0.01 | Quarry Nyekladhaza on hold until 2012 |
| Timor Barat Batu | Tenaga Nasional Berhad | Cash Collateral | Revolving | 0.01 | Guarantee for payment of bills for supplying electricity to plant |
| Golden Plus Granite | Tenaga Nasional Berhad | Cash Collateral | Revolving | 0.03 | Guarantee for payment of bills for supplying electricity to plant |
| RMC Concrete | Tenaga Nasional Berhad | Cash Collateral | Revolving | 0.03 | Guarantee for payment of bills for supplying electricity to plant |
| RMC Aggregates | Tenaga Nasional Berhad | Cash Collateral | Revolving | 0.05 | Guarantee for payment of bills for supplying electricity to plant |

| CEMEX Subsidiary | Counterparty | Lien Concept | Maturity Date | Secured Amount | Agreement Type |
|---|---|---|---|---|---|
| Golden Plus Granite | Tenaga Nasional Berhad | Cash Collateral | Revolving | 0.05 | Guarantee for payment of bills for supplying electricity to plant |
| RMC Concrete | Bendahari Dewan bandaraya KL | Cash Collateral | 9-Mar-2013 | 0.08 | Bank Guarantees (supplier) |
| Cemex España | Autoridad Portuaria Motril | Cash Collateral | Revolving | 0.01 | Port authority guarantee |
| Cemex España | Autoridad Portuaria Alicante | Cash Collateral | Revolving | 0.35 | Port authority guarantee |
| Cemex España | Autoridad Portuaria Baleares | Cash Collateral | Revolving | 0.00 | Port authority guarantee |
| Cemex Thailand | Provincial Electricity Authority | Cash Collateral | Revolving | 0.98 | For use of electricity |
| CEMEX Topmix LLC | EPPCO | Cash Collateral | Revolving | 0.03 | Supply of Petroleum Products |
| CEMEX UK Operations Limited | Lloyds TSB Asset Finance | Cash Collateral | 1-Sep-2021 | 0.07 | Cash collateral required for extraction of mineral reserves. Supplemented by a performance bond. |
| Cemex Nicaragua, S.A. | LAFISE | Cash Collateral | 31-Oct-2012 | 0.14 | Bank Guarantees (supplier) |
| Cemex Panamá | Citibank | Cash Collateral | 1-Feb-2014 | 2.25 | Standby Letter of Credit (Supplier Agreement) |
| Cemex Construction Materials Florida | Lake Louisa, LLC | Land Lien | 1-Apr-2022 | 5.00 | Land lease |
| CEMEX INC & SUBS. | CAT Financial | Cash Collateral | 15-Jul-2017 | 0.81 | Operating lease cash deposit |
| Russell Developments Limited | Lloyds TSB Asset Finance | Cash Collateral | Revolving | 0.08 | For loan undertaking - Crowwood Grange estates |
| CEMEX, S.A.B. de C.V., guarantee by CEMEX México, S.A. de C.V. | Banco Nacional de Comercio Exterior , S.N.C: | Mortgage of Cement Plants in Mérida Yucatan and Ensenada, Baja California, México | 14-Feb-2014 | 117.00 | Credit Agreement. Lien permitted under clause 22.5 (K) |
| CEMEX Concretos, S.A. de C.V., guarantee by CEMEX México, S.A. de C.V. | Banco de Obras y Servicios, S.N.C. | Mortgage of Planta Yaqui in Hemosillo, Sonora, México | April-2014 | 12.81 | Revolving Credit Agreement. Lien Permitted under Clause 22.5 (F)(2) |

| CEMEX Subsidiary | Counterparty | Lien Concept | Maturity Date | Secured Amount | Agreement Type |
|---|---|---|---|---|---|
| Cemex International Finance Company | Gazprom Marketing & Trading Ltd | European Union Allowances | 20-Mar-2013 | 10.99 | Pemitted Lien under Clause 22.5 (F)(1) in relation with Treasury Transactions / See Annex 1 Excluded Position item (n) |
| CEMEX, S.A.B. de C.V. | Citigroup Global Markets Inc, as agent for Citibank N.A. | Cash Collateral | 17-Apr-2013 | 145.16 | Pemitted Lien under Clause 22.5 (F)(1) in relation with Treasury Transactions / See Annex 1 Excluded Position item (b) |
| CEMEX, S.A.B. de C.V. | Citigroup Global Markets Inc, as agent for Citibank N.A. | Capped Call transactions dated 24 March 2010 | 17-Apr-2013 | 32.16 | Pemitted Lien under Clause 22.5 (F)(1) in relation with Treasury Transactions / See Annex 1 Excluded Position item (b) |
| Centro Distribuidor de Cemento, S.A. de C.V. | Credit Suisse International | Cash Collateral | 15-Oct-2013 | 17.75 | Pemitted Lien under Clause 22.5 (F)(1) in relation with Treasury Transactions / See Annex 1 Excluded Position item (c) |

## SCHEDULE 13 EXISTING GUARANTEES

**(Figures as at 31 August 2012 except where indicated by *)**

| Obligation | Outstanding Principal Amounts | USD Amount | Obligor | CEMEX Guarantor(s) | Maturity | Security |
|---|---|---|---|---|---|---|
| 2009 Financing Agreement dated 14 August 2009 (as amended) | $495,820,273.46 * as at Effective Date | $495,820,273.46 * as at Effective Date | Cemex, S.A.B. de C.V., Cemex España S.A., New Sunward Holding B.V. and CEMEX Finance LLC | Cemex, S.A.B. de C.V., Cemex España S.A., Cemex México, S.A. de C.V., Empresas Tolteca de México, S.A. de C.V., Cemex Concretos, S.A. de C.V., New Sunward Holding B.V., CEMEX Finance LLC and Cemex Corp. | 14 February 2014 | None |
| 2009 Financing Agreement dated 14 August 2009 (as amended) | €22,526,041.53 * as at Effective Date | $28,756,744.62 * as at Effective Date | Cemex, S.A.B. de C.V., Cemex España S.A., New Sunward Holding B.V. and CEMEX Finance LLC . | Cemex, S.A.B. de C.V., Cemex España S.A., Cemex México, S.A. de C.V., Empresas Tolteca de México, S.A. de C.V., Cemex Concretos, S.A. de C.V., New Sunward Holding B.V., CEMEX Finance LLC and Cemex Corp. | 14 February 2014 | None |
| $149,897,000 Rinker 2025 Indenture, dated 1 April 2003 (as supplemented) | $149,897,000 | $149,897,000 | CEMEX Materials LLC | CEMEX Corp. | 21 July 2025 | None |
| €900,000,000 4.75% Eurobond dated 5 March 2007 | €430,381,000 | $538,245,373 | CEMEX Finance Europe B.V. | CEMEX España, S.A. | 5 March 2014 | None |
| NSHFV $900m Note Indenture dated 18 December 2006 (as supplemented) (C10) | $289,134,000 | $289,134,000 | New Sunward Holding Financial Ventures B.V. | CEMEX, S.A.B. de C.V., CEMEX México, S.A. de C.V. and New Sunward Holding B.V. | Perpetual - Callable on 31 December 2016, and at each interest payment date thereafter | Sharing in Transaction Security |
| NSHFV €730m Note Indenture dated 9 May 2007 (as supplemented) (C10-EUR) | €69,828,000 | $87,328,664 | New Sunward Holding Financial Ventures B.V. | CEMEX, S.A.B. de C.V., CEMEX México, S.A. de C.V. and New Sunward Holding B.V. | Perpetual - Callable on 30 June 2017, and at each interest payment date thereafter | Sharing in Transaction Security |

| Obligation | Outstanding Principal Amounts | USD Amount | Obligor | CEMEX Guarantor(s) | Maturity | Security |
|---|---|---|---|---|---|---|
| NSHFV US$750m Note Indenture dated 12 February 2007 (as supplemented) (C8) | $220,985,000 | $220,985,000 | New Sunward Holding Financial Ventures B.V. | CEMEX, S.A.B. de C.V., CEMEX México, S.A. de C.V. and New Sunward Holding B.V. | Perpetual - Callable on 31 December 2014, and at each interest payment date thereafter | Sharing in Transaction Security |
| Obligaciones Forzosamente Convertibles en Acciones CEMEX 09 Mex$ 4,126,538,400 | Mex$4,126,538,400 | $312,616,545 | CEMEX, S.A.B. de C.V. | CEMEX México, S.A. de C.V.and Empresas Tolteca de México, S.A. de C.V. (the guarantee is limited to the payments of coupons) | 28 November 2019 | None |
| $1,750,000,000 9.5% Senior Secured Notes due 2016; dated 14 December 2009 | $1,750,000,000 | $1,750,000,000 | CEMEX Finance LLC | Cemex, S.A.B. de C.V., Cemex España S.A., Cemex México, S.A., Empresas Tolteca de México, S.A. de C.V., Cemex Concretos, S.A. de C.V., New Sunward Holding B.V. and Cemex Corp. | 14 December 2016 | Sharing in Transaction Security |
| €350,000,000 9.625% Senior Secured Notes due 2017; dated 14 December 2009 | €350,000,000 | $437,718,859 | CEMEX Finance LLC | Cemex, S.A.B. de C.V., Cemex España S.A., Cemex México, S.A., Empresas Tolteca de México, S.A. de C.V., Cemex Concretos, S.A. de C.V., New Sunward Holding B.V. and Cemex Corp. | 14 December 2017 | Sharing in Transaction Security |
| $1,192,996,000 9.25% Senior Secured Notes due 12 May 2020; dated 12 May 2010 | $1,192,996,000 | $1,192,996,000 | CEMEX España, S.A., acting through its Luxembourg Branch | CEMEX, S.A.B. de C.V., CEMEX México, S.A. de C.V. and New Sunward Holding B.V. | 12 May 2020 | Sharing in Transaction Security |
| €115,346,000 8.875% Senior Secured Notes due 12 May 2017; dated 12 May 2010 | €115,346,000 | $144,254,627 | CEMEX España, S.A., acting through its Luxembourg Branch | CEMEX, S.A.B. de C.V., CEMEX México, S.A. de C.V. and New Sunward Holding B.V. | 12 May 2017 | Sharing in Transaction Security |
| $1,650,000,000 9.00% Senior Secured Notes due 2018; dated 11 Jan 2011 | $1,650,000,000 | $1,650,000,000 | CEMEX, S.A.B. de C.V. | CEMEX México, S.A. de C.V., New Sunward Holding B.V. and CEMEX España, S.A. | 11 January 2018 | Sharing in Transaction Security |
| $800,000,000 Floating Rate Senior Secured Notes due 2015; dated 5 April 2011 | $800,000,000 | $800,000,000 | CEMEX, S.A.B. de C.V. | CEMEX México, S.A. de C.V., New Sunward Holding B.V. and CEMEX España, S.A. | 30 September 2015 | Sharing in Transaction Security |

| Obligation | Outstanding Principal Amounts | USD Amount | Obligor | CEMEX Guarantor(s) | Maturity | Security |
|---|---|---|---|---|---|---|
| $703,861,000 9.875% Senior Secured Notes due 30 April 2019; dated 28 March 2012 | $703,861,000 | $703,861,000 | CEMEX España, S.A., acting through its Luxembourg Branch | CEMEX, S.A.B. de C.V., CEMEX México, S.A. de C.V. and New Sunward Holding B.V. | 30 April 2019 | Sharing in Transaction Security |
| €179,219,000 9,875% Senior Secured Notes due 30 April 2019; dated 28 March 2012 | €179,219,000 | $224,135,818 | CEMEX España, S.A., acting through its Luxembourg Branch | CEMEX, S.A.B. de C.V., CEMEX México, S.A. de C.V. and New Sunward Holding B.V. | 30 April 2019 | Sharing in Transaction Security |
| $500,000,000 Senior Secured Notes due 2018; dated on or about the date of this Agreement | $500,000,000 * as at Effective Date | $500,000,000 * as at Effective Date | CEMEX, S.A.B. de C.V. | Cemex España S.A., Cemex México, S.A. de C.V., Empresas Tolteca de México, S.A. de C.V., Cemex Concretos, S.A. de C.V., New Sunward Holding B.V., Cemex Corp., CEMEX Research Group, AG, CEMEX Shipping B.V., CEMEX Asia B.V., CEMEX France Gestion, CEMEX UK and CEMEX Egyptian Investments B.V. | 15 June 2018 | Sharing in Transaction Security |
| Certificado Bursátil UDIs 116,530,800 CEMEX 07-2U, dated 30 November 2007 | UDI 116,530,800 | $ 42,250,978 | CEMEX, S.A.B. de C.V. | CEMEX México, S.A. de C.V. and Empresas Tolteca de México, S.A. de C.V. | 17 November 2017 | Sharing in Transaction Security |
| Mex$5,000,000,000 Crédito Banobras, dated 22 April 2009 | Mex$169,116,498.9 | $12,811,856 | CEMEX Concretos, S.A. de C.V. | CEMEX México, S.A. de C.V. | 29 April 2014 | Mortgage of Planta Yaqui in Hemosillo, Sonora |
| $250,000,000 Crédito Simple Bancomext, dated 14 October 2008 (as amended) | $117,000,000 | $117,000,000 | CEMEX, S.A.B. de C.V. | CEMEX México, S.A. de C.V. | 14 February 2014 | Mortgage of cement plants in Merida, Yucatan and Ensenada, Baja California, México |
| Mex$ 126,562,263.59 Crédito Santander Nota Estructurada, dated 17 April 2008 | Mex$ 14,523,437 | $ 1,100,260 | CEMEX, S.A.B. de C.V. | CEMEX México, S.A. de C.V. | 16 April 2013 | None |
| $440,878.86 Promissory Note Hencorp Becstone Capital LC, dated October 1,2009 related to the purchase of equipment by Cemex Concretos, S.A. de C.V. | $176,352 | $176,352 | CEMEX Concretos, S.A. de C.V. | CEMEX México, S.A. de C.V. | 15 July 2014 | None |
| $939,795.57 Promissory Note Hencorp Becstone Capital LC, dated | $417,687 | $417,687 | CEMEX Concretos, S.A. de C.V. | CEMEX México, S.A. de C.V. | 30 April 2014 | None |

| | |
|---|---|
| October 19,2009 related to the purchase of equipment by Cemex Concretos, S.A. de C.V. | |

**SCHEDULE 14**
**PERMITTED JOINT VENTURES**

| Name | Investment (U.S. Dollars) | Country |
|---|---|---|
| Control Administrativo Mexicano, S.A. de C.V. | $ 334,643,000 | México |

## SCHEDULE 15
## PROCEEDINGS PENDING OR THREATENED

A description of material regulatory matter and legal proceedings affecting us is provided below.

**Anti-Dumping**

*Jamaica Anti-dumping Investigation*. On September 9, 2010, Jamaica's Anti-Dumping and Subsidies Commission (the "Jamaica Commission") issued a preliminary affirmative anti-dumping determination in its investigation of cement imported from the Dominican Republic. The Jamaica Commission based its determination on a preliminary finding of a threat of material injury to the only domestic cement company, Caribbean Cement Company Limited ("CCCL"). A majority of the Jamaica Commission preliminarily found that the case concerning present material injury was inconclusive. Also, the Jamaica Commission was not persuaded that provisional tariffs were necessary to prevent material injury to CCCL during the period between the preliminary determination and the final determination. Therefore, even though the Jamaica Commission preliminarily calculated an anti-dumping margin of 84.69% against cement imported from the Dominican Republic, no duties were imposed. On December 8, 2010, the Jamaica Commission issued a negative ruling in the case brought by CCCL against imports of cement from the Dominican Republic. The Jamaica Commission found no evidence of material injury to the domestic industry and has closed the investigation. However, on December 10, 2010, CCCL announced it needed to review the statement of reasons provided by the Jamaica Commission before deciding on its future actions on this matter. As of August 31, 2012, CCCL had not initiated any legal actions and we had no accrued liabilities for dumping duties related to cement imported from the Dominican Republic to Jamaica, and all liabilities accrued for past anti-dumping duties had been eliminated.

**Antitrust Proceedings**

*Polish Antitrust Investigation*. Between May 31, 2006 and June 2, 2006, officers of the Polish Competition and Consumer Protection Office (the "Protection Office"), assisted by police officers, conducted a search of the Warsaw office of CEMEX Polska, one of our indirect subsidiaries in Poland, and of the offices of other cement producers in Poland. These searches took place as a part of the exploratory investigation that the head of the Protection Office had started on April 26, 2006. On January 2, 2007, CEMEX Polska received a notification from the Protection Office informing it of the formal initiation of an antitrust proceeding against all cement producers in Poland, including CEMEX Polska and another of our indirect subsidiaries in Poland. The notification alleged that there was an agreement between all cement producers in Poland regarding prices and other sales conditions for cement, an agreed division of the market with respect to the sale and production of cement, and the exchange of confidential information, all of which limited competition in the Polish market with respect to the production and sale of cement. On December 9, 2009, the Protection Office delivered to CEMEX Polska its decision against Polish cement producers related to an investigation which covered a period from 1998 to 2006. The decision imposes fines on a number of Polish cement producers, including CEMEX Polska. The fine imposed on CEMEX Polska is approximately Polish Zloty 115.56 million (approximately U.S.$34.54 million as of August 31, 2012, based on an exchange rate of Polish Zloty 3.3454 to U.S.$1.00), which is approximately 10% of CEMEX Polska's total revenue in 2008. CEMEX Polska disagrees with the decision, denies that it committed the practices alleged by the Protection Office and

filed an appeal before the Polish Court of Competition and Consumer Protection on December 23, 2009. The Polish Court of Competition and Consumer Protection confirmed that CEMEX Polska's appeal met preliminary formal requirements and that it would conduct the case. On February 7, 2011, CEMEX Polska received a formal response to its appeal from the Protection Office in which the Protection Office made an application to the Polish Court of Competition and Consumer Protection to reject CEMEX Polska's appeal. The response from the Protection Office argued that CEMEX Polska's appeal is not justified, and it maintained all of the statements and arguments from the Protection Office's decision issued on December 9, 2009. On February 21, 2011, CEMEX Polska sent a letter to the Polish Court of Competition and Consumer Protection in which it kept its position and argumentation from the appeal and widely opposed to arguments and statements included in the response of the Protection Office. The decision on the fines will not be enforced until two appeal instances are exhausted. Based on the slow tracking of the case by the first instance court and on general Polish court practices, these two appeal proceedings could take at least three and a half years to be resolved. As of August 31, 2012, the accounting provision created in relation with this proceeding was approximately Polish Zloty 68.3 million (approximately U.S.$20.41 million as of July 31, 2012, based on an exchange rate of Polish Zloty 3.3454 to U.S.$1.00).

*Antitrust Investigations in Europe by the European Commission*. On November 4, 2008, officers of the European Commission, in conjunction with officials of the national competition enforcement authorities, conducted unannounced inspections at our offices in Thorpe, United Kingdom, and Ratingen, Germany. Further to these inspections, on September 22 and 23, 2009, CEMEX's premises at Madrid, Spain, were also subject to an inspection by the European Commission.

In conducting these investigations, the European Commission alleged that we may have participated in anti-competitive agreements and/or concerted practices in breach of Article 101 of the Treaty on the Functioning of the European Union (formerly Article 81 of the EC Treaty) and Article 53 of the European Economic Area ("EEA") Agreement in the form of restrictions of trade flows in the EEA, including restrictions on imports into the EEA from countries outside the EEA, market sharing, price coordination and connected anticompetitive practices in the cement and related products markets. Since the inspections began, we have received requests for information and documentation from the European Commission during 2009 and 2010 and we have fully cooperated by providing the relevant information and documentation on time.

On December 8, 2010, the European Commission informed us that it decided to initiate formal proceedings with respect to the investigation of the aforementioned anticompetitive practices. These proceedings would affect Austria, Belgium, the Czech Republic, France, Germany, Italy, Luxembourg, the Netherlands, Spain and the United Kingdom. The European Commission indicated that we, as well as seven other companies, would be included in these proceedings. These proceedings may lead to an infringement decision, or if the objections raised by the European Commission are not substantiated, the case might be closed. This initiation of proceedings relieves the competition authorities of the Member States of the European Union of their competence to apply Article 101 of the Treaty on the Functioning of the European Union to the same case. We intend to defend our position vigorously in this proceeding and are fully cooperating and will continue to cooperate with the European Commission in connection with this matter.

On April 1, 2011, the European Commission notified CEMEX, S.A.B. de C.V. of a decision under Article 18(3) of Council Regulation (EC) No 1/2003 of December 16, 2002 on the

implementation of the rules on competition set forth in Article 81 of the EC Treaty (current Articles 101 and 102 of the EC Treaty). The European Commission also requested that CEMEX, S.A.B. de C.V. deliver a material amount of information and documentation, which we effectively delivered on August 2, 2011, after requesting additional time.

CEMEX, S.A.B. de C.V. and several of its affiliates in Europe have filed an appeal before the General Court of the European Union for the annulment of the European Commission's decision for information and documentation on the grounds that such request is contrary to several principles of European Union Law. In addition, on June 17, 2011, CEMEX, S.A.B. de C.V. and several of its affiliates in Europe requested interim measures to the General Court of the European Union, asking for the suspension of the information and document request until the appeal was resolved. The President of the General Court of the European Union rejected the proposal for a suspension without considering the arguments of the main appeal. On December 21, 2011, CEMEX, S.A.B. de C.V. and several of its affiliates in Europe filed their reply to the European Commission's defense. The European Commission filed its rejoinder on March 27, 2012.

On November 29, 2011, the European Commission notified CEMEX, S.A.B. de C.V. of its decision that if, by December 15, 2011, the European Commission did not receive a confirmation that CEMEX, S.A.B. de C.V.'s reply submitted August 2, 2011 was complete, accurate and definitive, or if CEMEX, S.A.B. de C.V. did not submit a new reply with the necessary amendments and clarifications, the European Commission would impose a daily fine of €438,000 (approximately U.S.$547,773.89 as of August 31, 2012, based on an exchange rate of €0.7996 to U.S.$1.00). On December 15, 2011, we complied with the terms of this decision and submitted a new reply with the amendments and clarifications identified in the revision and audit process performed since August 2, 2011.

If the alleged infringements investigated by the European Commission are substantiated, significant penalties may be imposed on our subsidiaries operating in such markets. In that case, pursuant to European Union Regulation 1/2003, the European Commission may impose penalties of up to 10% of the total turnover of the relevant companies for the last year preceding the imposition of the fine for which the financial statements have been approved by the shareholders' meeting of the relevant companies. At this stage of the proceedings, as of August 31, 2012, the European Commission has not yet formulated a Statement of Objections against us and, as a result, the extent of the charges and the alleged infringements are unknown. Moreover, it is not clear which cement related products total turnover would be used as the basis for the determination of the possible penalties. As a consequence, we are not able to assess the likelihood of an adverse result or the amount of the potential fine, but if adversely resolved it may have a material adverse impact on our financial results.

*Antitrust Investigations in Spain by the CNC*. On September 22, 2009, the Investigative Department (Dirección de Investigación) of the Spanish Competition Commission (Comisión Nacional de la Competencia or "CNC"), applying exclusively national antitrust law, carried out another inspection, separate from the investigation conducted by the European Commission, in the context of possible anticompetitive practices in the production and distribution of mortar, ready-mix concrete and aggregates within the Chartered Community of Navarre ("Navarre"). We fully cooperated and provided the CNC inspectors all the information requested. On December 15, 2009, the CNC started a procedure against CEMEX España and four other companies with activities in Navarre for alleged practices prohibited under the Spanish competition law. The allegations against CEMEX España relate to several of our ready-mix plants located in Navarre, which we operated from January 2006 (as a result of the RMC acquisition) until September 2008, when we ceased operations for these plants.

On November 3, 2010, the CNC Investigative Department provided CEMEX España with a Statement of Facts (similar to a statement of objections under European Union competition law) that included allegations that could be construed as a possible infringement by CEMEX España of Spanish competition law in Navarre. The Statement of Facts was addressed to CEMEX España, but also indicated that its parent company, New Sunward, could be jointly and severally liable for the investigated behavior.

On December 10, 2010, after receiving CEMEX España's observations, the CNC Investigative Department notified CEMEX España of a proposed decision, summarizing its findings in the investigation. This proposed decision, which suggests the existence of an infringement, was submitted to the CNC Council, together with CEMEX España's opposition to all charges. On January 12, 2012, the CNC Council notified CEMEX España of its final decision on this matter, imposing a fine of approximately €500,000 (approximately U.S.$625,312.66 as of August 31, 2012, based on an exchange rate of €0.7996 to U.S.$1.00) against CEMEX España for price-fixing and market sharing in the concrete market of Navarre from June 2008 through September 2009.

CEMEX España denies any wrongdoing and on March 1, 2012 filed an appeal before the competent court ( *Audiencia Nacional*), requesting the interim suspension of the decision from the court until a final judgment is issued. To that effect, it has requested the CNC Council to suspend the implementation of its decision until the court has decided on the requested interim measure. On July 10, 2012, the court has issued a resolution agreeing to the suspension of payment of the fine.

*Investigations in the UK*. On January 20, 2012, the United Kingdom Competition Commission, or the UK Commission, commenced a Market Investigation, ("MIR"), into the supply or acquisition of cement, ready-mix concrete and aggregates. This referral to the UK Commission was made by the Office of Fair Trading following an investigation by them of the aggregates sector. Those companies and persons invited to participate in the MIR are required by law to comply with certain requests for information and, if necessary, to attend hearings. The UK Commission is required to report on this investigation by no later than January 17, 2014. Our subsidiaries in the UK have been invited to participate in the MIR and will fully cooperating in this MIR. At this stage of the MIR, as of August 31, 2012, we are not able to assess what would be the scope of the recommendations made by the UK Commission, if any, or if such recommendations would have a material adverse impact on our results of operations.

*Antitrust Investigations in Mexico*. In January and March 2009, we were notified of two findings of presumptive responsibility against CEMEX issued by the Mexican Competition Authority (Comisión Federal de Competencia or "CFC"), alleging certain violations of Mexican antitrust laws. We believe these findings contain substantial violations of rights granted by the Mexican Constitution.

In February 2009, we filed a constitutional challenge (*juicio de amparo*) before the Circuit Court in Monterrey, Mexico, as well as a denial of the allegations, with respect to the first case. The Monterrey Circuit Court determined that CEMEX lacked standing since the notice of presumptive responsibility did not affect any of CEMEX's rights; therefore, CEMEX should wait until the CFC concluded its proceeding and issued a final ruling before raising its

constitutional challenge again. However, in July 2010, in light of the possible violations to CEMEX's constitutional rights, the CFC terminated the existing proceeding and reinitiated a new proceeding against CEMEX to cure such violations. We believe that Mexican law does not entitle the CFC to reinitiate a new proceeding but only to continue with the original one. In August 2010, we filed a separate constitutional challenge (juicio de amparo) before the District Court in Monterrey, Mexico, to argue against the reinitiated proceeding. The Monterrey District Court determined that the order to reinitiate the proceeding and the notice of presumptive responsibility did not affect any of CEMEX's rights. CEMEX subsequently filed an appeal before the Monterrey District Court and the Monterrey Circuit Court determined that the CFC's termination of the proceedings in July 2010 was illegal and that it notified the CFC to the effect that it complies with the resolution issued. In February 2012, CEMEX was fined for anticompetitive practices approximately Ps10.2 million (approximately U.S.$772,727.27 as of August 31, 2012, based on an exchange rate of Ps13.20 to U.S.$1.00) plus ordered to implement certain measures. CEMEX has appealed the resolution and denies any wrongdoing. In June 2012, the CFC confirmed its resolution. On July 2, 2012, CEMEX filed a separate constitutional challenge (*juicio de amparo*) before the District Court in Mexico D.F. As of August 31, 2012, a resolution regarding this constitutional challenge has not been issued.

With respect to the second case, in April 2009, we filed a constitutional challenge ( *juicio de amparo*) before the Circuit Court in Monterrey, Mexico, and in May 2009, we filed a denial of the CFC's allegations. In November 2010, the Monterrey Circuit Court ordered the case to be heard by a District Court in Mexico City, Mexico claiming that it lacked appropriate jurisdiction. In December 2010, similar to the first case, the Mexico City District Court determined that CEMEX lacked standing with its constitutional challenge ( *juicio de amparo*) since the notice of presumptive responsibility did not affect any of CEMEX's rights; therefore, CEMEX should wait until the CFC concluded its proceeding and issued a final ruling before raising its constitutional challenge again. CEMEX filed an appeal before the Mexico City District Court to argue against such determination. On October 14, 2011, the CFC determined that the case should be closed due to a lack of evidence to impose any sanctions. Third parties subsequently filed an appeal before the CFC to reconsider its ruling. The CFC recently confirmed its resolution to not impose any sanctions due to a lack of evidence.

*Antitrust Cartel Litigation in Germany*. On August 5, 2005, Cartel Damages Claims, SA (the "CDC"), filed a lawsuit in the District Court in Düsseldorf, Germany against CEMEX Deutschland AG and other German cement companies. CDC originally sought €102 million (approximately U.S.$127.56 million as of August 31, 2012, based on an exchange rate of €0.7996 to U.S.$1.00) in respect of damage claims by 28 entities relating to alleged price and quota fixing by German cement companies between 1993 and 2002, which entities had assigned their claims to CDC. CDC is a Belgian company established by two lawyers in the aftermath of the German cement cartel investigation that took place from July 2002 to April 2003 by Germany's Federal Cartel Office, with the express purpose of purchasing potential damages claims from cement consumers and pursuing those claims against the alleged cartel participants. In January 2006, another entity assigned alleged claims to CDC, and the amount of damages being sought by CDC increased to €113.5 million plus interest (approximately U.S.$141.95 million plus interest as of August 31, 2012, based on an exchange rate of €0.7996 to U.S.$1.00). On February 21, 2007, the District Court allowed this lawsuit to proceed without going into the merits of this case by issuing an interlocutory judgment. All defendants appealed, but the appeal was dismissed on May 14, 2008. The lawsuit will proceed in a court of first instance.

In the meantime, CDC acquired new claims by assignment and announced an increase in the claim to €131 million (approximately U.S.$163.83 million as of August 31, 2012, based on an exchange rate of €0.7996 to U.S.$1.00). As of August 31, 2012, we had accrued liabilities regarding this matter for an amount of approximately €20 million (approximately U.S.$25.01 million as of August 31, 2012, based on an exchange rate of €0.7996 to U.S.$1.00), plus an additional €8.07 million (approximately U.S.$10.09 million as of August 31, 2012, based on an exchange rate of €0.7996 to U.S.$1.00) as interest over the principal amount of the claim.

In the first hearing on the merits of this case that was held on March 1, 2012, the District Court in Düsseldorf, Germany revealed several preliminary considerations on relevant legal questions and allowed the parties to submit their plea and reply on May 21, 2012. The decision was expected to be issued on July 20, 2012, but on that date, the court decided to postpone such decision until October 30, 2012. As of August 31, 2012, we are unable to assess the likelihood of an adverse result or, because of the number of defendants, the potential damages that would be borne by us; however, if the final decision is adverse to us, it could have a material adverse impact on our business results.

*Antitrust Cases in Egypt*. On July 29, 2009, two Egyptian contractors filed separate lawsuits against four cement producers, including CEMEX Egypt, demanding compensation of 20 million Egyptian Pounds (approximately U.S.$3.28 million as of August 31, 2012, based on an exchange rate of Egyptian Pounds 6.0930 to U.S.$1.00) from the four cement producers, or approximately 5 million Egyptian Pounds (approximately U.S.$820,613.82 as of July 31, 2012, based on an exchange rate of Egyptian Pounds 6.0930 to U.S.$1.00) from each defendant. The plaintiffs are using a 2007 Egyptian court decision convicting all cement producers in Egypt, including CEMEX Egypt, of antitrust activities and price fixing as a precedent and as proof of their allegation.

On December 16, 2009, at the hearing for one of the cases, the plaintiffs requested the court to release CEMEX Egypt from the claim. On May 11, 2010, the court released CEMEX Egypt from the claim, and this case is now closed.

On April 24, 2010, at the hearing for the other case, the court decided to refer the matter back to the prosecutor's office for further investigation and for a report on the investigations to be presented at the next hearing, which was held on January 11, 2011. Thereafter, this case was dismissed and all charges against CEMEX Egypt were dropped. The plaintiffs had 60 days to file their appeals, if any, to this ruling, which they subsequently filed before the Court of Cassation. As of August 31, 2012, the Court of Cassation has not yet scheduled the first hearing of cassation for this case.

These cases are the first of their kind in Egypt due to the recent enactment of the Law on Competition Protection and Prevention of Monopolistic Practices No. 3 in 2005. Even if we prevail in the ongoing case, these claims may have an adverse impact on us if they were to become a precedent and may create a risk of similar claims in the future.

*Antitrust Cases in Florida. In October 2009*, CEMEX Corp. and other cement and concrete suppliers were named as defendants in several purported class action lawsuits alleging price-fixing in Florida. The purported class action lawsuits are of two distinct types: The first type was filed by entities purporting to have purchased cement or ready-mix concrete directly

from one or more of the defendants. The second group of plaintiffs are entities purporting to have purchased cement or ready-mix concrete indirectly from one or more of the defendants. Underlying all proposed suits is the allegation that the defendants conspired to raise the price of cement and concrete and hinder competition in Florida. On January 7, 2010, both groups of plaintiffs independently filed consolidated amended complaints substituting CEMEX, Inc. and some of its subsidiaries for the original defendant, CEMEX Corp. The corresponding CEMEX subsidiaries in the U.S. and the other defendants moved to dismiss the consolidated amended complaints. On October 12, 2010, the court granted in part the defendants' motion, dismissing from the case all claims relating to cement and reducing the applicable time period of the plaintiffs' claims. On October 29, 2010, the plaintiffs filed further amended complaints pursuant to the court's decision. On December 2, 2010, the corresponding CEMEX subsidiaries in the U.S. moved to dismiss the amended complaint filed by the indirect purchaser plaintiffs based on lack of standing. The corresponding CEMEX subsidiaries in the United States also answered the complaint filed by the direct purchaser plaintiffs. On January 4, 2011, both the direct and indirect purchaser plaintiffs filed further amended complaints, which the corresponding CEMEX subsidiaries in the United States answered on January 18, 2011. In March 2011, the direct and indirect purchaser plaintiffs filed motions for certification under Federal Rule of Civil Procedure 54(b), seeking the entry of final judgment pursuant to the court's October 12, 2010 order so they may appeal the dismissals to the Court of Appeals for the 11th Circuit. The court denied those motions on April 15, 2011. On September 21, 2011, both groups of plaintiffs filed motions for class certification. On January 3, 2012, the court denied both motions, ruling that the cases cannot proceed as class actions. On January 5, 2012, the court stayed both cases pending the resolution of any potential appeal of the court's ruling denying the motions for class certification. On January 17, 2012, the plaintiffs in the action involving entities that purchased ready-mix concrete directly from one or more of the defendants filed a petition with the Eleventh Circuit Court of Appeals, requesting that the Eleventh Circuit exercise its discretion to immediately review the trial court's decision denying their class certification motion. In early March 2012, the corresponding CEMEX subsidiaries in the United States and the other remaining defendants effected a settlement of both cases resulting in us having to pay approximately U.S.$460,000. The corresponding CEMEX subsidiaries in the United States did not admit any wrongdoing as part of the settlements and deny allegations of misconduct.

On October 26, 2010, CEMEX, Inc. received an Antitrust Civil Investigative Demand from the Office of the Florida Attorney General, which seeks documents and information in connection with an antitrust investigation by the Florida Attorney General into the ready-mix concrete industry in Florida. As of August 31, 2012, CEMEX is working with the Office of the Florida Attorney General to comply with the civil investigative demand, and it is unclear at this stage whether any formal proceeding will be initiated by the Office of the Florida Attorney General.

**Environmental Matters**

We are subject to a broad range of environmental laws and regulations in each of the jurisdictions in which we operate. These laws and regulations impose increasingly stringent environmental protection standards regarding, among other things, air emissions, wastewater discharges, the use and handling of hazardous waste or materials, waste disposal practices and the remediation of environmental damage or contamination. These standards expose us to the risk of substantial environmental costs and liabilities, including liabilities associated with divested assets and past activities, even conducted by prior owners or operators and, in some jurisdictions, without regard to fault or the lawfulness of the original activity.

To prevent, control and remediate environmental problems and maintain compliance with regulatory requirements, we maintain an environmental policy designed to monitor and control environmental matters. Our environmental policy requires each subsidiary to respect local laws and meet our own internal standards to minimize the use of non-renewable resources and the generation of hazardous and other wastes. We use processes that are designed to reduce the impact of our operations on the environment throughout all the production stages in all our operations worldwide. We believe that we are in substantial compliance with all material environmental laws applicable to us.

We regularly incur capital expenditures that have an environmental component or that are impacted by environmental regulations. However, we do not keep separate accounts for such mixed capital and environmental expenditures. Environmental expenditures that extend the life, increase the capacity, improve the safety or efficiency of assets or are incurred to mitigate or prevent future environmental contamination may be capitalized. Other environmental costs are expensed when incurred. For the year ended December 31, 2009, our environmental capital expenditures were not material. For the year ended December 31, 2010 and 2011, our sustainability capital expenditures (including our environmental expenditures and investments in alternative fuels and cementitious materials) were approximately U.S.$93 million and approximately U.S.$95 million, respectively. However, our environmental expenditures may increase in the future.

The following is a discussion of environmental regulations and related matters in our major markets.

*Mexico*. We were one of the first industrial groups in Mexico to sign an agreement with the Secretaría del Medio Ambiente y Recursos Naturales, (the "SEMARNAT"), the Mexican government's environmental ministry, to carry out voluntary environmental audits in our 15 Mexican cement plants under a government-run program. In 2001, the Mexican environmental protection agency in charge of the voluntary environmental auditing program, the Procuraduría Federal de Protección al Ambiente (the "PROFEPA"), which is part of SEMARNAT, completed the audit of our cement plants and awarded all our plants a Certificado de Industria Limpia, or Clean Industry Certificate, certifying that our plants are in full compliance with environmental laws. The Clean Industry Certificates are subject to renewal every two years. As of July 31, 2012, our operating cement plants have Clean Industry Certificates or are in the process of renewing them. We expect the renewal of all currently expired Clean Industry Certificates.

For over a decade, the technology for recycling used tires into an energy source has been employed in our plants located in Ensenada and Huichapan. By the end of 2006, all our cement plants in Mexico were using tires as an alternative fuel. Municipal collection centers in the cities of Tijuana, Mexicali, Ensenada, Mexico City, Reynosa, Nuevo Laredo and Guadalajara currently enable us to recycle an estimated 10,000 tons of tires per year. Overall, approximately 15.20% of the total fuel used in our operating cement plants in Mexico during 2011 was comprised of alternative fuels.

Between 1999 and August 31, 2012, our operations in Mexico have invested approximately U.S.$92.15 million in the acquisition of environmental protection equipment and the implementation of the ISO 14001 environmental management standards of the International

Organization for Standardization ("ISO"). The audit to obtain the renewal of the ISO 14001 certification took place during January 2012. All our operating cement plants in Mexico have obtained the renewal of the ISO 14001 certification for environmental management systems.

On June 6, 2012 the General Law on Climate Change ( *Ley General de Cambio Climático* ) (the "Climate Change Law") was published on the Mexican Official Gazette. The Climate Change Law establishes a legal framework to regulate policies for climate change mitigation and adaptation. Many important provisions require the development of secondary legislation, and depend on the publication of subsequent implementing regulations, which shall be taken within the twelve months following the publication of the Climate Change Law. Due to the secondary legislation not being developed and to corresponding regulations not being implemented, at this stage we don't have sufficient information to determine if the measures that may be taken by the government in Mexico derived from Climate Change Law will cause or not have a material impact on our business or operations. For instance, the Law provides for the elaboration of a registry of the emissions that are generated by fixed sources. However, the detailed guidelines for reporting, including the scope and methodologies for calculation, shall be developed by implementing regulations yet to be developed. Companies that are bound to report their emissions and fail to do so or that report false information shall be fined. We do not expect any negative impact from this development as we already report our direct and indirect carbon dioxide emissions to SEMARNAT under a voluntary scheme. The Climate Change Law also allows for the establishment of specific greenhouse gas reduction targets in accordance with the respective contribution of each economic sector to the national greenhouse gas emissions. We cannot estimate at this time the impact that any measures related to this may have upon our operations in Mexico. Although the Law does not establish a program for emissions trading, it does vest on the Mexican federal government the power to create, authorize and regulate such a scheme, which may be voluntary of binding. We are observing closely the development of implementing regulations and cannot estimate at this time the impact that any measures related to this may have upon our operations in Mexico.

*United States*. Our operating subsidiaries in the United States are subject to a wide range of U.S. federal, state and local laws, regulations and ordinances dealing with the protection of human health and the environment. These laws are strictly enforced and can lead to significant monetary penalties for noncompliance. These laws regulate water discharges, noise, and air emissions, including dust, as well as the handling, use and disposal of hazardous and non-hazardous waste materials. These laws also create a shared liability by responsible parties for the cost of cleaning up or correcting releases to the environment of designated hazardous substances. We therefore may have to remove or mitigate the environmental effects of the disposal or release of these substances at our various operating facilities or elsewhere in the United States. We believe that our current procedures and practices for handling and managing materials are generally consistent with industry standards and legal and regulatory requirements, and that we take appropriate precautions to protect employees and others from harmful exposure to hazardous materials.

As of July 31, 2012, CEMEX, Inc. and its subsidiaries had accrued liabilities specifically relating to environmental matters in the aggregate amount of approximately U.S.$18.8 million. The environmental matters relate to (i) the disposal of various materials, in accordance with past industry practice, which might be categorized as hazardous substances or wastes, and (ii) the cleanup of sites used or operated by CEMEX, Inc., including discontinued operations, regarding the disposal of hazardous substances or wastes, either

individually or jointly with other parties. Most of the proceedings are in the preliminary stages, and a final resolution might take several years. For purposes of recording the provision, CEMEX, Inc. considers that it is probable that a liability has been incurred and the amount of the liability is reasonably estimable, whether or not claims have been asserted, and without giving effect to any possible future recoveries. Based on information developed to date, CEMEX, Inc. does not believe it will be required to spend significant sums on these matters, in excess of the amounts previously recorded. The ultimate cost that might be incurred to resolve these environmental issues cannot be assured until all environmental studies, investigations, remediation work, and negotiations with, or litigation against, potential sources of recovery have been completed.

In 2007, the EPA launched a CAA enforcement initiative against the U.S. cement industry. The primary goal of the initiative is to assess the industry's historic compliance with the CAA's New Source Review program and to reduce emissions from the industry through the installation of add-on controls. CEMEX has actively engaged with the EPA on its investigations, which involve multiple CEMEX facilities, and has entered into two settlements involving a total of $3.4 million in civil penalties and a commitment to incur certain capital expenditures for pollution control equipment at its Victorville, California and Fairborn, Ohio plants. Although some of these proceedings are still in the initial stages, based on our past experience with such matters and currently available information, we believe, although we cannot assure you that such cases will not have a material impact on our business or operations.

In 2002, CEMEX Construction Materials Florida, LLC (formerly Rinker Materials of Florida, Inc.) ("CEMEX Florida"), a subsidiary of CEMEX, Inc., was granted a federal quarry permit and was the beneficiary of another federal quarry permit for the Lake Belt area in South Florida. The permit held by CEMEX Florida covered CEMEX Florida's SCL and FEC quarries. CEMEX Florida's Kendall Krome quarry is operated under the permit of which it was a beneficiary. The FEC quarry is the largest of CEMEX Florida's quarries measured by volume of aggregates mined and sold. CEMEX Florida's Miami cement mill is located at the SCL quarry and is supplied by that quarry, while the FEC and Kendall Krome quarries have supplied aggregates to CEMEX and third party users. In response to litigation brought by environmental groups concerning the manner in which the federal quarry permits were granted, in January 2009, the U.S. District Court for the Southern District of Florida ordered the withdrawal of the federal quarry permits of CEMEX Florida's SCL, FEC and Kendall Krome quarries. The judge ruled that there were deficiencies in the procedures and analysis undertaken by the Army Corps of Engineers, or the Corps, in connection with the issuance of the permits. Upon appeal, on January 21, 2010, the Eleventh Circuit Court of Appeals affirmed the district court's ruling withdrawing the federal quarry permits of the three CEMEX Florida quarries as well as other third-party federal quarry permits subject to the litigation. On January 29, 2010, the Corps completed a multi-year review commenced as a result of the above-mentioned litigation and issued a Record of Decision (ROD) supporting the issuance of new federal quarry permits for the FEC and SCL quarries. Excavation of new aggregates was stopped at the FEC and SCL quarries from January 20, 2009 until new permits were issued. The FEC permit was issued on February 3, 2010, and the SCL permit on February 18, 2010. The ROD also indicated that a number of potential environmental impacts must be addressed at the wetlands located at the Kendall Krome site before a new federal quarry permit may be issued for mining at that quarry. It is unclear how long it will take to fully address the Corps' concerns regarding mining in the Kendall Krome wetlands. While no new aggregates will be quarried from wetland areas at Kendall Krome pending the resolution

of the potential environmental issues, the FEC and SCL quarries will continue to operate. If CEMEX Florida were unable to maintain the new Lake Belt permits, CEMEX Florida would need to source aggregates, to the extent available, from other locations in Florida or import aggregates. This would likely affect operating income from our Florida operations. Any adverse impacts on the Florida economy arising from the cessation or significant restriction of quarrying operations in the Lake Belt area could also have a material adverse effect on our financial results.

In 2006 the State of California adopted the Global Warming Solutions Act (Assembly Bill 32) setting into law a goal to reduce the State's carbon dioxide emissions to 1990 levels by 2020. As part of the measures derived from AB32 the California Air Resources Board developed a cap-and-trade program, to be enforced from 2013, that covers most industrial sources of greenhouse gas emissions in the State, including cement production facilities. The program involves allocating a number of allowances free of charge to covered installations which must subsequently surrender back to the regulator a number of allowances and accepted offset credits matching their verified emissions during the compliance period. We expect that our Victorville cement plant will receive enough free allowances to operate during the first compliance period (2013-2014).

*Europe*. In Great Britain, future expenditure on closed and current landfill sites has been assessed and quantified over the period in which the sites are considered to have the potential to cause environmental harm, generally consistent with the regulatory view of up to 60 years from the date of closure. The assessed expenditure relates to the costs of monitoring the sites and the installation, repair and renewal of environmental infrastructure. The costs have been quantified on a net present value basis in the amount of approximately £131.3 million (approximately U.S.$207.26 million as of August 31, 2012, based on an exchange rate of £0.6335 to U.S.$1.00) as of December 31, 2011, and we made an accounting provision for this amount at December 31, 2011.

In 2003, the European Union adopted a directive in order to help it fulfill its commitments under the Kyoto Protocol on climate change. This directive defines and establishes a GHG emissions allowance trading scheme within the European Union, i.e., it caps carbon dioxide emissions from installations involved in energy activities, the production and processing of ferrous metals, the cement and lime industries and the pulp, paper and board production businesses. Installations in these sectors have to monitor their emissions of CO2 and surrender every year allowances (the right to emit one metric ton of CO2) that cover their emissions. Allowances are issued by member states according to their National Allocation Plans, or NAPs. The NAPs not only set the total number of allowances for a given phase, but also define how they are allocated among participating installations. So far, most allowances have been allocated for free, but some member states sell up to 10% of their total allowance volume in auctions or on exchanges. Allowances are tradable so as to enable companies that manage to reduce their emissions to sell their excess allowances to companies that exceed their allocated quota. Failure to meet the emissions caps can subject a company to heavy penalties.

Companies can also use credits issued under the flexible mechanisms of the Kyoto protocol to fulfill their European obligations. Credits for emission reduction projects obtained under these mechanisms are recognized, up to specified levels, under the ETS as allowance substitutes. The main source of those credits are projects registered under the so-called Clean Development Mechanism ("CDM"), but Joint Implementation ("JI") credits are also eligible; the difference between these credits is dependent on which country is hosting the project: CDM projects are implemented in developing countries, JI projects in developed ones.

As required by the directive, each of the member states established a NAP that defines the free allocation to each industrial facility for Phase II (2008 through 2012). Although the overall yearly volume of allowances in Phase II is significantly lower than that during Phase I of the ETS (2005-2007), we do not see any significant risk that CEMEX will be short of allowances in Phase II. This assessment stems from various factors, notably a reasonable allocation policy in some countries, our efforts to reduce emissions per unit of clinker produced, reduced demand for our products due to the current economic circumstances, and the use of several risk-free financial instruments. We expect to be a net seller of allowances over Phase II. In addition, we are actively pursuing a strategy aimed at generating additional emission credits through the implementation of CDM projects in Latin America, North Africa and Southeast Asia.

The allocations made to our installations in Spain, United Kingdom, Germany, Poland and Latvia allow us to foresee a reasonable availability of allowances.

In the case of the United Kingdom, Germany, Poland and Latvia, NAPs have been approved by the European Commission, and allowances have been issued to our existing installations.

On January 9, 2009, we received a positive answer from United Kingdom authorities to a request we filed in late 2008 to retain the allocation of allowances for our Barrington plant after this facility was mothballed in November 2008 and its production moved to our South Ferriby plant.

On May 18, 2009, the Environment Ministry of the Republic of Latvia published the amount of allocation of EUAs from the New Entrants Reserve to our Broceni plant expansion project. On April 18, 2012, following a successful appeal by the Latvian Government against the European Commission's rejection of the initial version of the Latvian NAP, the Ministry of Environmental Protection and Regional Development of the Republic of Latvia adopted the Decision No. 46 increasing the allocation to our Broceni plant.

On May 29, 2007, the Polish government filed an appeal before the Court of First Instance in Luxembourg regarding the European Commission's rejection of the initial version of the Polish NAP. The Polish government has issued allowances at the level already accepted by the European Commission, which is lower than the Polish government proposal by 76 million EUA per year. However, on September 23, 2009, the same Court annulled the European Commission's decision that reduced the number of EUAs in the Polish NAP. The Court found that such reduction was not justified, arguing that the European Commission should not ignore the historical and forecasted data that Poland used to establish the basis of the NAP allocation. On March 19, 2010, the European Commission and the government of Poland reached an agreement to maintain the originally approved cap for 2010 through 2012 (the remainder of the EU ETS Phase II period). On December 4, 2009, the European Commission appealed the Court of First Instance in Luxembourg's decision to the European Supreme Court, as its resolution could impact similar cases against the European Commission raised by other Eastern European member states. On March 29, 2012, the European Supreme Court issued the final judgement in the case in favor of Poland, dismissing the European Commission's appeal. Taking into account the agreement on an approved cap for 2010 through 2012 reached between the European Commission and the government of Poland on March 19, 2010, the Court of First Instance in Luxembourg's decision has no impact on Poland's CO2 allowances in the EU ETS Phase II period.

Croatia has implemented an emissions trading scheme designed to be compatible with the one in force in the European Union, although no emission allowances can be exchanged between the two schemes. The first period of compliance is 2010-2012, and the final NAP was published in July 2009. We do not expect the commencement of the Croatian emissions trading scheme to substantially affect our overall position, particularly as the allocation to CEMEX Croatia is larger than previously anticipated.

In December 2008, the European Commission, Council and Parliament reached an agreement on a new Directive that will govern emissions trading after 2012. One of the main features of the Directive is that a European-wide benchmark will be used to allocate free allowances among installations in the cement sector, according to their historical clinker production.

On April 27, 2011, the European Commission adopted a Decision that states the rules, including the benchmarks of greenhouse gas emissions performance, to be used by the Member States in calculating the number of allowances to be annually allocated for free to industrial sectors (such as cement) that are deemed to be exposed to the risk of "carbon leakage". Based on the criteria contained in the adopted Decision we expect that the aggregate amount of allowances that will be annually allocated for free to CEMEX in Phase III of the ETS (2013 – 2020) will be sufficient to operate.

Despite having already sold a substantial amount of allowances for Phase II, we believe the overall volume of transactions is justified by our conservative emissions forecast, the stream of offset credits coming from our CDM projects and our expected long position in the initial years of Phase III, meaning that the risk of having to buy allowances in the market in the remainder of Phase II is very low. As of August 31, 2012, the price of carbon dioxide allowances for Phase II on the spot market was approximately €7.99 per ton (approximately U.S.$9.99 as of August 31, 2012, based on an exchange rate of €0.7996 to U.S.$1.00). We are taking measures intended to minimize our exposure to this market, while continuing to supply our products to our customers.

**Tariffs**

The following is a discussion of tariffs on imported cement in our major markets.

*Mexico*. Mexican tariffs on imported goods vary by product and have historically been as high as 100%. In recent years, import tariffs have been substantially reduced and currently range from none at all for raw materials to over 20% for finished products, with an average weighted tariff of approximately 3.7%. As a result of the North American Free Trade Agreement, or NAFTA, as of January 1, 1998, the tariff on cement imported into Mexico from the United States or Canada was eliminated. However, a tariff in the range of 7% ad valorem will continue to be imposed on cement produced in all other countries unless tariff reduction treaties are implemented or the Mexican government unilaterally reduces that tariff. While the reduction in tariffs could lead to increased competition from imports in our Mexican markets, we anticipate that the cost of transportation from most producers outside Mexico to central Mexico, the region of highest demand, will remain a barrier to entry.

*United States*. There are no tariffs on cement imported into the United States from any country, except Cuba and North Korea.

*Europe*. Member countries of the European Union are subject to the uniform European Union commercial policy. There is no tariff on cement imported into a country that is a member of the European Union from another member country or on cement exported from a European Union country to another member country. For cement imported into a member country from a non-member country, the tariff is currently 1.7% of the customs value. Any country with preferential treatment with the European Union is subject to the same tariffs as members of the European Union. Most Eastern European producers exporting cement into European Union countries currently pay no tariff.

**Tax Matters**

*Mexico*. Pursuant to amendments to the Mexican Income Tax Law (Ley del Impuesto sobre la Renta), which became effective on January 1, 2005, Mexican companies with direct or indirect investments in entities incorporated in foreign countries, whose income tax liability in those countries is less than 75% of the income tax that would be payable in Mexico, were required to pay taxes in Mexico on passive income, such as dividends, royalties, interest, capital gains and rental fees obtained by such foreign entities, except for income derived from entrepreneurial activities in such countries, which is not subject to tax under these amendments. We filed two motions in the Mexican federal courts challenging the constitutionality of the January 1, 2005 amendments to the Mexican Income Tax Law. Although we had obtained a favorable ruling from the lower Mexican federal court, on September 9, 2008, the Mexican Supreme Court, on appeal, ruled against our constitutional challenge of the controlled foreign corporation tax rules in effect in Mexico for tax years 2005 to 2007. Because the Mexican Supreme Court's decision did not pertain to an amount of taxes due or other tax obligations, we had the right to self-assess any taxes due through the submission of amended tax returns. On March 1, 2012, we self-assessed the taxes corresponding to the 2005 tax year for a total amount, inclusive of surcharges and carry-forward charges, of approximately Mexican Ps4.6 billion (approximately U.S.$348.48 million as of August 31, 2012, based on an exchange rate of Mexican Ps13.20 to U.S.$1.00), of which 20%, equivalent to approximately Mexican Ps928 million (approximately U.S.$70.30 million as of August 31, 2012, based on an exchange rate of Mexican Ps13.20 to U.S.$1.00), was paid in connection with the submission of amended tax returns, which were filed on March 1, 2012. The remaining 80% of such total amount is due in January 2013, plus additional surcharges and carry-forward charges if we elect to extend the payment date and pay in thirty-six monthly instalments, which can be prepaid at our option. Additionally, on July 5, 2012, we self-assessed the taxes corresponding to the 2006 tax year for a total amount, inclusive of surcharges and carry-forward charges, of approximately Mexican Ps1.1 billion (approximately U.S.$83.33 million as of August 31, 2012, based on an exchange rate of Mexican Ps13.20 to U.S.$1.00), of which 20%, equivalent to approximately Mexican Ps221 million (approximately U.S.$16.74 million as of August 31, 2012, based on an exchange rate of Mexican Ps13.20 to U.S.$1.00), was paid in connection with the submission of amended tax returns, which were filed on July 5, 2012. The remaining 80% of such total amount is due in July 2013, plus additional surcharges and carry-forward charges if we elect to extend the payment date and pay in thirty-six monthly instalments, which can be prepaid at our option. We believe we have adequate provisions to cover self-assessments for the years 2005 and 2006. For the 2007 tax year, there is no tax due. The tax authorities in Mexico agreed with our self-assessment and with the procedure to determine the taxes due for the 2005 and 2006 tax years and, as a result, the tax authorities in Mexico may not assess additional amounts of taxes past due for those years. The Mexican Income Tax Law was again amended in 2008, as a result of which we do not expect any material adverse effect from the controlled foreign corporation tax rules for years subsequent to 2007.

The Mexican Congress approved several amendments to the Mexican Asset Tax Law ( *Ley del Impuesto al Activo*) that came into effect on January 1, 2007. As a result of such amendments, all Mexican corporations, including us, were no longer allowed to deduct liabilities from calculation of the asset tax. We believed that the Asset Tax Law, as amended, was against the Mexican Constitution. We challenged the Asset Tax Law through appropriate constitutional action (*juicio de amparo*), and the Mexican Supreme Court ruled that the reform did not violate the Mexican Constitution. In addition, the Mexican Supreme Court ordered the lower courts to resolve all pending proceedings based upon criteria provided by the Mexican Supreme Court. However, we will not be affected by this resolution since we have already calculated and paid the applicable asset tax in accordance with the Mexican Asset Tax Law.

The asset tax was imposed at a rate of 1.25% on the value of most of the assets of a Mexican corporation. The asset tax was "complementary" to the corporate income tax (*impuesto sobre la renta*) and, therefore, was payable only to the extent it exceeded payable income tax.

In 2008, the Asset Tax Law was abolished and a new applicable to all Mexican corporations was enacted, known as the *Impuesto Empresarial a Tasa Única* (Single Rate Corporate Tax), which is a form of alternative minimum tax.

In November 2009, the Mexican Congress approved a general tax reform, effective as of January 1, 2010. Specifically, the tax reform requires CEMEX to retroactively pay Additional Consolidation Taxes. This tax reform requires CEMEX to pay taxes on certain previously exempt intercompany dividends, certain other special tax items and operating losses generated by members of the consolidated tax group not recovered by the individual company generating such losses within the succeeding 10-year period, which may have a material adverse effect on our cash flow, financial condition and net income. The Additional Consolidation Taxes must be paid over a five-year time period. This tax reform also increased the statutory income tax rate from 28% to 30% for the years 2010 to 2012, then lowered it to 29% for 2013 and 28% for 2014 and future years.

For the 2010 fiscal year, CEMEX was required to pay (at the new, 30% tax rate) 25% of the Additional Consolidation Taxes for the period between 1999 and 2004, with the remaining 75% payable as follows: 25% in 2011, 20% in 2012, 15% in 2013 and 15% in 2014. Additional Consolidation Taxes arising after the 2004 tax year are taken into account in the sixth fiscal year after such year and are payable over the succeeding five years in the same proportions (25%, 25%, 20%, 15% and 15%). Applicable taxes payable as a result of this tax reform are increased by inflation adjustments as required by Mexican Income Tax Law (*Ley del Impuesto Sobre la Renta*). In connection with these changes in the tax consolidation regime in Mexico, as of December 31, 2009, we recognized a liability of approximately Ps10.5 billion (approximately U.S.$795.45 million as of August 31, 2012, based on an exchange rate of Ps13.20 to U.S.$1.00), of which approximately Ps8.2 billion (approximately U.S.$621.21 million as of August 31, 2012, based on an exchange rate of Mexican Ps13.20 to U.S.$1.00) was recognized under "Other non-current assets" in connection with the net liability recognized under the new tax law and that we expect to realize in connection with the payment of this tax liability, and approximately Ps2.2 billion (approximately U.S.$166.67 million as of August 31, 2012, based on an exchange rate of Ps13.20 to U.S.$1.00) was recognized against "Retained earnings" upon adoption of IFRS according to the new law,

related to: (a) the difference between the sum of the equity of the controlled entities for tax purposes and the equity for tax purposes of the consolidated entity; (b) dividends from the controlled entities for tax purposes to CEMEX, S.A.B. de C.V.; and (c) other transactions among the companies included in the tax consolidation group that represented the transfer of resources within such group.

On February 15, 2010, we filed a constitutional challenge (*juicio de amparo*) against the January 1, 2010 tax reform described above. As of June 3, 2011, we were notified of a favorable verdict at the first stage of the trial; the Mexican tax authorities subsequently filed an appeal (recurso de revisión) before the Mexican Supreme Court, which is pending.

On March 31, 2010, additional tax rules (*miscelanea fiscal*) were published in connection with the general tax reform approved by the Mexican Congress in November 2009. These new rules provide certain taxpayers with benefits arising from the years 1999 to 2004.

On June 30, 2010, CEMEX paid approximately Ps325 million (approximately U.S.$24.36 million as of July 31, 2012, based on an exchange rate of Ps13.34 to U.S.$1.00) of Additional Consolidation Taxes. This first payment represented 25% of the Additional Consolidation Taxes for the "1999 to 2004" period. On March 31, 2011, CEMEX made a second payment of approximately Ps506 million (approximately U.S.$38.33 million as of August 31, 2012, based on an exchange rate of Ps13.20 to U.S.$1.00). This second payment, together with the first payment, represented 50% of the Additional Consolidation Taxes for the "1999-2004" period, and also included the first payment of 25% of the Additional Consolidation Taxes for the "2005" period. As of December 31, 2011, our estimated payment schedule of taxes payable resulting from changes in the tax consolidation regime was as follows: approximately Ps698 million in 2012 (approximately U.S.$52.88 million as of August 31, 2012, based on an exchange rate of Ps$13.20 to U.S.$1.00), which was paid on March 30, 2012; approximately Ps693 million (approximately U.S.$52.5 million as of August 31, 2012, based on an exchange rate of Ps$13.20 to U.S.$1.00) in 2013; approximately Ps2 billion (approximately U.S.$151.15 million as of August 31, 2012, based on an exchange rate of Ps$13.20 to U.S.$1.00) in 2014; and approximately Ps9 billion (approximately U.S.$681.81 million as of August 31, 2012, based on an exchange rate of Ps$13.20 to U.S.$1.00) in 2015 and thereafter. As of December 31, 2011, we have paid an aggregate amount of approximately Ps831 million (approximately U.S.$62.95 million as of August 31, 2012, based on an exchange rate of Ps$13.20 to U.S.$1.00) of Additional Consolidation Taxes.

In December 2010, pursuant to certain additional rules, the tax authorities granted the option to defer the calculation and payment of certain items included in the law in connection with the taxable amount for the difference between the sum of the equity of controlled entities for tax purposes and the equity of the consolidated entity for tax purposes. As a result, CEMEX reduced its estimated tax payable by approximately Ps2.9 billion (approximately U.S.$219.69 million as of August 31, 2012, based on an exchange rate of Ps13.20 to U.S.$1.00) against a credit to the income statement when the new tax enactment took place. In addition, after accounting for the following that took place in 2010: (a) cash payments of Ps325 million (approximately U.S.$24.62 million as of August 31, 2012, based on an exchange rate of Ps13.20 to U.S.$1.00); (b) income tax from subsidiaries paid to the parent company of Ps2.4 billion (approximately U.S.$181.81 million as of August 31, 2012, based on an exchange rate of Ps13.20 to U.S.$1.00); and (c) other adjustments of Ps358 million (approximately U.S.$27.12 million as of August 31, 2012, based on an exchange rate of Ps13.20 to U.S.$1.00), the estimated tax payable for tax consolidation in Mexico amounted to approximately Ps10.1 billion (approximately U.S.$765.15 million as of August 31, 2012,

based on an exchange rate of Ps13.20 to U.S.$1.00) as of December 31, 2010. Furthermore, after accounting for the following that took place in 2011: (a) cash payments in the amount of Ps506 million (approximately U.S.$38.33 million as of August 31, 2012, based on an exchange rate of Ps13.20 to U.S.$1.00); (b) income tax from subsidiaries paid to the parent company of Ps2.3 billion (approximately U.S.$174.24 million as of August 31, 2012, based on an exchange rate of Ps13.20 to U.S.$1.00); and (c) other adjustments of Ps485 million (approximately U.S.$36.74 million as of August 31, 2012, based on an exchange rate of Ps13.20 to U.S.$1.00), the estimated tax payable for tax consolidation in Mexico increased to approximately Ps12.4 billion (approximately U.S.$939.39 million as of August 31, 2012, based on an exchange rate of Ps13.20 to U.S.$1.00) as of December 31, 2011.

On January 21, 2011, the Mexican tax authorities notified CEMEX, S.A.B. de C.V. of a tax assessment for approximately Ps995.6 million (approximately U.S.$75.42 million as of August 31, 2012 based on an exchange rate of Ps13.20 to U.S.$1.00) pertaining to the 2005 tax year. The tax assessment is related to the corporate income tax in connection with the tax consolidation regime. As a result of a tax reform in 2005, instead of deducting purchases, the law allowed for the cost of goods sold to be deducted. However, since there were inventories as of December 31, 2004, a transition provision of the law allowed for the inventory to be accumulated as income (thus reversing the deduction via purchases) and then deducted from 2005 onwards as cost of goods sold. In order to compute the income resulting from the inventories in 2004, the law allowed this income to be offset against accumulated tax losses of some subsidiaries. The authorities argued that because of this offset, the right to use such losses at the consolidated level had been lost and, therefore, CEMEX had to increase its consolidated income or decrease its consolidated losses. CEMEX believes that there is no legal support for the conclusion of the authority and, on March 29, 2011, CEMEX challenged the assessment before the tax court.

On November 16, 2011, Mexican tax authorities notified Centro Distribuidor de Cemento, S.A. de C.V. and Mexcement Holdings, S.A. de C.V., both indirect subsidiaries of CEMEX, S.A.B. de C.V., of tax assessments, related to direct and indirect investments in entities considered to be preferential tax regimens for tax year 2004, in the amount of approximately Ps1.3 billion (approximately U.S.$98.48 million as of August 31, 2012, based on an exchange rate of Ps13.20 to U.S.$1.00) and approximately Ps759 million (approximately U.S.$57.5 million as of August 31, 2012, based on an exchange rate of Ps13.20 to U.S.$1.00).

On February 3, 2012, Centro Distribuidor de Cemento, S.A. de C.V. and Mexcement Holdings, S.A. de C.V. filed a claim against the November 16, 2011 assessments.

*United States*. As of August 16, 2012, our U.S. subsidiaries and the Internal Revenue Service (IRS) have reached a resolution regarding the income tax audits for the years 2005 through 2009 and also tax losses to applicable prior years to recover taxes previously paid. CEMEX expects a net refund from the IRS of approximately U.S.$25 million. CEMEX expects that the IRS audits for the years 2005 through 2009 will be settled and processed by December 31, 2012. In connection with this resolution, CEMEX expects to owe additional state and local income taxes and interest resulting from the IRS audit adjustments. The IRS has recently commenced an audit of years 2010 and 2011. CEMEX believes it has adequately reserved for these matters and that the amounts are not expected to be material to our financial results. However, we can not assure you that the outcome will not require further provisions for taxes.

*Colombia*. On November 10, 2010, the Colombian Tax Authority (*Dirección de Impuestos*) notified CEMEX Colombia of a proceeding (*requerimiento especial*) in which the Colombian

Tax Authority rejected certain tax losses taken by CEMEX Colombia in its 2008 year-end tax return. In addition, the Colombian Tax Authority assessed an increase in taxes to be paid by CEMEX Colombia in the amount of approximately 43 billion Colombian Pesos (approximately U.S.$23.49 million as of August 31, 2012, based on an exchange rate of 1,830.50 Colombian Pesos to U.S.$1.00) and imposed a penalty in the amount of approximately 69 billion Colombian Pesos (approximately U.S.$37.69 million as of August 31, 2012, based on an exchange rate of 1,830.50 Colombian Pesos to U.S.$1.00). The Colombian Tax Authority argues that CEMEX Colombia is limited in its use of prior year tax losses to 25% of such losses per subsequent year. We believe that the tax provision that limits the use of prior year tax losses does not apply in the case of CEMEX Colombia because the applicable tax law was repealed in 2006. Furthermore, we believe that the Colombian Tax Authority is no longer able to review the 2008 tax return because the time to review such returns has already expired pursuant to Colombian law. In February 2011, CEMEX Colombia presented its arguments to the Colombian Tax Authority. On July 27, 2011, the Colombian Tax Authority issued its final determination, which confirmed the information in the November 10, 2010 proceeding notice (*requerimiento especial*). The official assessment was appealed by CEMEX Colombia on September 27, 2011, and the Colombian Tax Authority has one year to resolve the appeal. On July 31, 2012, the Colombian Tax Authority notified CEMEX Colombia of the resolution confirming the official liquidation. CEMEX Colombia has until November 30, 2012 to file a lawsuit challenging the official assessment issued by the Colombian Tax.

On April 1, 2011, the Colombian Tax Authority notified CEMEX Colombia of a proceeding notice ( *requerimiento especial*) in which the Colombian Tax Authority rejected certain deductions taken by CEMEX Colombia in its 2009 year-end tax return. The Colombian Tax Authority assessed an increase in taxes to be paid by CEMEX Colombia in the amount of approximately 90 billion Colombian Pesos (approximately U.S.$49.16 million as of August 31, 2012, based on an exchange rate of 1,830.50 Colombian Pesos to U.S.$1.00) and imposed a penalty in the amount of approximately 144 billion Colombian Pesos (approximately U.S.$78.67 million as of August 31, 2012, based on an exchange rate of 1,830.50 Colombian Pesos to U.S.$1.00). The Colombian Tax Authority argues that certain expenses are not deductible for fiscal purposes because they are not linked to direct revenues recorded in the same fiscal year, without taking into consideration that future revenue will be taxed with income tax in Colombia. CEMEX Colombia responded to the proceeding notice (*requerimiento especial*) on June 25, 2011. On December 15, 2011, the Colombian Tax Authority issued its final determination, which confirmed the information in the special proceeding. CEMEX Colombia appealed the final determination on February 15, 2012 and the Colombian Tax Authority has one year to resolve the appeal.

At this stage, we are not able to assess the likelihood of an adverse result or potential damages which could be borne by CEMEX Colombia in either of the special proceedings described above, but if adversely resolved, they could have a material adverse impact on our financial results.

**Other Legal Proceedings**

*Expropriation of CEMEX Venezuela and ICSID Arbitration*. On August 18, 2008, Venezuelan officials took physical control of the facilities of CEMEX Venezuela, following the issuance of several governmental decrees purporting to authorize the takeover by the government of Venezuela of all of CEMEX Venezuela's assets, shares and business. Around the same time, the Venezuelan government removed the board of directors of CEMEX

Venezuela and replaced its senior management. On October 16, 2008, CEMEX Caracas, which held a 75.7% interest in CEMEX Venezuela, filed a request for arbitration against the government of Venezuela before the International Centre for Settlement of Investment Disputes, or ICSID, seeking relief for the expropriation of their interest in CEMEX Venezuela. In the ICSID proceedings against Venezuela, CEMEX Caracas was seeking: (a) a declaration that the government of Venezuela was in breach of its obligations under a bilateral investment treaty between the Netherlands and Venezuela (the "Treaty"), the Venezuelan Foreign Investment Law and customary international law; (b) an order that the government of Venezuela restore to CEMEX Caracas their interest in, and control over, CEMEX Venezuela; (c) in the alternative, an order that the government of Venezuela pay CEMEX Caracas full compensation with respect to its breaches of the Treaty, the Venezuelan Foreign Investment Law and customary international law, in an amount to be determined in the arbitration, together with interest at a rate not less than LIBOR, compounded until the time of payment; and (d) an order that the government of Venezuela pay all costs of and associated with the arbitration, including CEMEX Caracas's legal fees, experts' fees, administrative fees and the fees and expenses of the arbitral tribunal. The ICSID Tribunal was constituted on July 6, 2009. The arbitral tribunal issued its decision in favor of jurisdiction on December 30, 2010.

Separately, the government of Venezuela had claimed that three cement transportation vessels, which the former CEMEX Venezuela transferred to a third party before the expropriation, continue to be the property of the former CEMEX Venezuela and obtained interim measures before Venezuelan courts barring further transfer or disposition of those vessels. The government of Venezuela attempted to enforce these interim measures in the courts of Panama, and on October 13, 2010, the Panamanian Supreme Civil Court confirmed its prior rejection of such attempt to give the Venezuelan interim measures legal effect in Panama. In December of 2010, the Venezuelan Attorney General's office filed a complaint before the Maritime Court of the First Instance, Caracas, again seeking an order for the transfer of the vessels and damages for the allegedly unlawful deprivation of Venezuela's use and enjoyment of the vessels.

On November 30, 2011, following negotiations with the government of Venezuela and its public entity Corporación Socialista de Cemento, S.A., a settlement agreement was reached between CEMEX Caracas and the government of Venezuela that closed on December 13, 2011. Under this settlement agreement, CEMEX Caracas received compensation for the expropriation of CEMEX Venezuela in the form of (i) a cash payment of approximately U.S.$240 million and (ii) notes issued by PDVSA which nominal value and interest income to maturity totaled U.S.$360 million. Additionally, as part of the settlement, claims, including the above referenced claim regarding the three transportation vessels, among all parties and their affiliates were released, and all intercompany payments due (approximately U.S.$154 million) from or to CEMEX Venezuela to and from CEMEX affiliates, as the case may be, were cancelled. As a result of this settlement agreement, CEMEX Caracas and the government of Venezuela agreed to withdraw its ICSID arbitration.

*Colombian Construction Claims*. On August 5, 2005, the Urban Development Institute (Instituto de Desarrollo Urbano) and an individual filed a lawsuit in the Fourth Anti-Corruption Court of Bogotá (*Fiscalía Cuarta Anticorrupción de Bogotá*) against a subsidiary of CEMEX Colombia, S.A. claiming that it was liable, along with the other members of the *Asociación Colombiana de Productores de Concreto*, or ASOCRETO, a union formed by all the ready-mix concrete producers in Colombia, for the premature distress of the roads built

for the mass public transportation system of Bogotá using ready-mix concrete supplied by CEMEX Colombia and other ASOCRETO members. The plaintiffs allege that the base material supplied for the road construction failed to meet the quality standards offered by CEMEX Colombia and the other ASOCRETO members and/or that they provided insufficient or inaccurate information in connection with the product. The plaintiffs seek the repair of the roads in a manner which guarantees their service during the 20-year period for which they were originally designed, and estimate that the cost of such repair will be approximately 100 billion Colombian Pesos (approximately U.S.$54.62 million as of August 31, 2012, based on an exchange rate of 1,830.50 Colombian Pesos to U.S.$1.00). The lawsuit was filed within the context of a criminal investigation of two ASOCRETO officers and other individuals, alleging that the ready-mix concrete producers were liable for damages if the ASOCRETO officers were criminally responsible. On January 21, 2008, CEMEX Colombia was subject to a judicial order, issued by the court, sequestering a quarry called El Tunjuelo, as security for a possible future money judgment to be rendered against CEMEX Colombia in these proceedings. The court determined that in order to lift this attachment and prevent further attachments, CEMEX Colombia was required within a period of ten days to deposit with the court in cash 337.8 billion Colombian Pesos (approximately U.S.$184.53 million as of August 31, 2012, based on an exchange rate of 1,830.50 Colombian Pesos to U.S.$1.00), instead of being allowed to post an insurance policy to secure such recovery. CEMEX Colombia asked for reconsideration, and the court allowed CEMEX to present an insurance policy. Nevertheless, CEMEX appealed this decision, in order to reduce the amount of the insurance policy, and also requested that the guarantee be covered by all defendants in the case. On March 9, 2009, the Superior Court of Bogotá reversed this decision, allowing CEMEX to offer a security in the amount of 20 billion Colombian Pesos (approximately U.S.$10.92 million as of August 31, 2012, based on an exchange rate of 1,830.50 Colombian Pesos to U.S.$1.00). CEMEX gave the aforementioned security, and on July 27, 2009, the Superior Court of Bogotá lifted the attachment on the quarry. One of the plaintiffs appealed this decision, but the Supreme Court of Bogotá confirmed the lifting of the attachment. At this stage, as of August 31, 2012, we are not able to assess the likelihood of an adverse result or, because of the number of defendants, the potential damages which could be borne by CEMEX Colombia. The preliminary hearing to dismiss was unsuccessful and the final argument stage concluded on August 28, 2012. We expect for a final resolution to be made by the end of 2012. CEMEX Colombia has not recorded any accounting provisions as it feels it has sufficient arguments to overcome this action, but if adversely resolved it could have a material negative effect on our results of operation.

As a consequence of the prematurely faulty paving stones of " *Transmilenio—Autopista Norte*" in Colombia, six citizen actions were brought against CEMEX Colombia. The Colombian Administrative Court nullified five of such actions and currently, only the popular action brought by the citizen Félix Ocampo, remains outstanding. In addition, the Urban Development Institute ( *Instituto de Desarrollo Urbano*) filed another popular action alleging that CEMEX Colombia made deceiving advertisements on the characteristics of the fluid filling of the material used. In the " *Transmilenio—Autopista Norte*" project, CEMEX Colombia participated solely and exclusively as supplier of the fluid filling and ready-mix concrete, which were delivered and received to satisfaction of the contractor, fulfilling all the required technical specifications. Likewise, CEMEX Colombia did not participate nor had any responsibility on the design, materials and their corresponding technical specifications.

*Croatian Concession Litigation*. After an extended consultation period, in April 2006, the cities of Kaštela and Solin in Croatia published their respective Master (physical) Plans

defining the development zones within their respective municipalities, adversely impacting the mining concession granted to Cemex Hrvatska d.d., or CEMEX Croatia, our subsidiary in Croatia, by the Government of Croatia in September 2005. During the consultation period, CEMEX Croatia submitted comments and suggestions to the Master Plans, but these were not taken into account or incorporated into the Master Plans by Kaštela and Solin. Most of these comments and suggestions were intended to protect and preserve the rights of CEMEX Croatia's mining concession. Immediately after publication of the Master Plans, CEMEX Croatia filed a series of lawsuits and legal actions before the local and federal courts to protect its acquired rights under the mining concessions including: (i) on May 17, 2006, a constitutional appeal before the constitutional court in Zagreb, seeking a declaration by the court concerning CEMEX Croatia's constitutional claim for decrease and obstruction of rights earned by investment, and seeking prohibition of implementation of the Master Plans; this appeal is currently under review by the Constitutional Court in Croatia, and we cannot predict when it will be resolved; and (ii) on May 17, 2006, an administrative proceeding seeking a declaration from the Government of Croatia confirming that CEMEX Croatia acquired rights under the mining concessions. The ruling of the Croatian administrative body confirms that CEMEX Croatia acquired rights according to the previous decisions. The Administrative Court in Croatia has ruled in favor of CEMEX Croatia, validating the legality of the mining concession granted to CEMEX Croatia by the Government of Croatia, in September 2005. As of August 31, 2012, we have not been notified of an official declaration from the Constitutional Court regarding an open question that CEMEX Croatia has formally made as to whether the cities of Solin and Kaštela, within the scope of their Master Plans, can unilaterally change the borders of exploited fields. We believe that a declaration of the Constitutional Court will enable us to seek compensation for the losses caused by the proposed border changes.

*Florida Litigation Relating to the Brooksville South Project*. In November 2008, AMEC/Zachry, the general contractor for the Brooksville South expansion project in Florida, filed a lawsuit against CEMEX Florida in Florida State Court in Orlando (Complex Commercial Litigation Division), alleging delay damages, seeking an equitable adjustment to the Design/Build contract and payment of change orders. AMEC/Zachry seeks U.S.$60 million as compensation. In February 2009, AMEC/Zachry filed an amended complaint asserting a claim by AMEC E&C Services, Inc. against CEMEX Materials, LLC ("CEMEX Materials") as the guarantor of the Design/Build contract. CEMEX Florida answered the suit, denying any breach of contract and asserting affirmative defenses and counterclaims against AMEC/Zachry for breach of contract. CEMEX Florida also asserted certain claims against AMEC, plc as the guarantor for the contract and FLSmidth, Inc. ("FLS") as the equipment manufacturer. FLS filed a variety of motions challenging CEMEX Florida's claims against FLS. Based upon the court rulings on FLS's motions, on July 16, 2010, CEMEX Florida amended its counterclaim against AMEC/Zachry and its crossclaim against FLS. CEMEX Florida asserted new claims against AMEC/Zachry for negligent misrepresentation, and reasserted its claims for common law indemnity, negligent misrepresentation and breach of contract against FLS. FLS and AMEC/Zachry have filed new motions challenging CEMEX Florida's amended complaint. FLS also filed an amended answer asserting crossclaims against CEMEX Florida and CEMEX Materials for breach of contract and unjust enrichment. CEMEX filed a motion to dismiss FLS's crossclaims. On November 18, 2010, the Florida State court denied AMEC/Zachry's motion to dismiss against CEMEX Florida. The parties have since further amended their pleadings to add new claims and defenses and continue to conduct discovery. Motions seeking dismissal of discreet claims and defenses are pending before the court. A non-jury trial is presently scheduled to commence on October 22, 2012.

Until discovery is substantially complete, we remain unable to assess the likelihood of an adverse result or the potential damages which could be borne by CEMEX Florida or CEMEX Materials. As of September 7, 2012, the parties to this proceeding are finalizing the terms and conditions to a possible settlement. We have adequate accounting provisions for this matter.

*Panamanian Height Restriction Litigation*. On July 30, 2008, the Panamanian *Autoridad de Aeronáutica Civil* denied a request by our subsidiary Cemento Bayano to erect structures above the permitted height restriction applicable to certain areas surrounding Calzada Larga Airport. This height restriction is set according to applicable legal regulations and reaches the construction area of the cement plant's second line. According to design plans, ten of the planned structures would exceed the permitted height. Cemento Bayano has formally requested the above-mentioned authority to reconsider its denial. On October 14, 2008, The Panamanian *Autoridad de Aeronáutica Civil* granted permission to construct the tallest building of the second line, under the following conditions: (a) Cemento Bayano shall assume any liability arising out of any incident or accident caused by the construction of such building; and (b) there will be no further permissions for additional structures. Cemento Bayano filed an appeal with respect to the second condition and has submitted a request for permission in respect to the rest of the structures. On March 13, 2009, the *Autoridad de Aeronáutica Civil* issued a ruling stating that (a) should an accident occur in the perimeter of the Calzada Larga Airport, an investigation shall be conducted in order to determine the cause and further responsibility; and (b) there will be no further permissions for additional structures of the same height as the tallest structure already granted. Therefore, additional permits may be obtained as long as the structures are lower than the tallest building, on a case-by-case analysis to be conducted by the authority. On June 11, 2009, the Panamanian *Autoridad de Aeronáutica Civil* issued a ruling denying a permit for additional structures above the permitted height restriction applicable to certain areas surrounding Calzada Larga Airport. On June 16, 2009, Cemento Bayano, S.A. requested the abovementioned authority to reconsider its denial. As of August 31, 2012, the *Panamanian Autoridad de Aeronaútica Civil* had not yet issued a ruling pursuant to our request for reconsideration. We will continue the negotiations with officials at the *Panamanian Autoridad de Aeronaútica Civil* in hopes of attaining a negotiated settlement that addresses all their concerns.

*Texas General Land Office Litigation*. The Texas General Land Office ("GLO") alleged that CEMEX Construction Materials South, LLC failed to pay approximately U.S.$550 million in royalties related to mining by CEMEX and its predecessors since the 1940s on lands that, when transferred originally by the State of Texas, contained reservation of mineral rights. The petition filed by the GLO also sought injunctive relief, although the State did not pursue such relief. On December 17, 2009, the Texas state district court granted CEMEX's motion for summary judgment finding that the GLO's claims had no merit. The GLO filed a Motion for Reconsideration that was denied by the court. The court severed the parties' ancillary claims, including CEMEX's counter claims and third-party claims against Texas Land Commissioner Jerry Patterson and the State's trespass to try title claim against CEMEX, from the case's central claims of breach of contract, conversion and injunction, holding that these ancillary claims should be held in abeyance until resolution of the GLO's appeal. The GLO filed its appeal on March 25, 2010. Both parties submitted briefs and the Court of Appeals heard oral arguments on May 3, 2011. On August 31, 2011, the El Paso Court of Appeals reversed the trial court's judgment and rendered judgment in favor of the State of Texas with respect to the ownership of the materials on the lands mined by CEMEX and its predecessors in interest. On November 16, 2011, CEMEX petitioned the Texas Supreme Court for review of the El Paso Court of Appeals' decision. On February 23, 2012, the GLO and CEMEX

entered into an agreement to settle all claims, including claims for past royalties, without any admission of liability by CEMEX. Pursuant to the settlement, CEMEX will pay U.S.$750,000 in five equal installments of U.S.$150,000 per year and will enter into a royalty mining lease at the royalty rate required by the Texas Natural Resources Code on a going forward basis, beginning in September 2012. Further, CEMEX's pending appeal to the Texas Supreme Court has been withdrawn and all ancillary claims that were held in abeyance have been dismissed.

*Strabag Arbitration*. Following an auction process, CEMEX (through its subsidiary RMC Holding B.V.) entered into a share purchase agreement, dated July 30, 2008 (the "SPA"), to sell its operations in Austria (then consisting of 26 aggregates and 41 ready-mix concrete plants) and Hungary (then consisting of 6 aggregates, 29 ready-mix concrete and 4 paving stone plants) to Strabag SE, one of Europe's leading construction and building materials groups ("Strabag"), for €310 million (approximately U.S.$387.69 million as of August 31, 2012, based on an exchange rate of €0.7996 to U.S.$1.00). On February 10, 2009, the Hungarian Competition Council approved the sale of the Hungarian assets subject to the condition that Strabag sell the ready-mix concrete plant operating in Salgótarján to a third party within the next year. On April 28, 2009, the Austrian Cartel Court (Kartellgericht) (the "ACC") approved the sale of the Austrian assets subject to the condition that Strabag sell to a third party several ready-mix concrete plants, including the Nordbahnhof plant in Vienna. The Nordbahnhof plant had, however, already been dismantled by the time of the approval, so this condition could not be satisfied. Contrary to CEMEX's recommendation that a supplementary application should have been made to the ACC, Strabag and the Austrian competition authority appealed the decision of the ACC. On July 1, 2009, Strabag gave notice of its purported rescission of the SPA, arguing that the antitrust condition precedent under the SPA had not been satisfied before the contractual cut-off date of June 30, 2009. On the same day, CEMEX notified Strabag that CEMEX considered their purported rescission invalid. In the face of Strabag's continued refusal to cooperate in making a supplementary application to the ACC, CEMEX rescinded the SPA with effect from September 16, 2009. On October 19, 2009, we (through RMC Holding B.V.) filed a claim against Strabag before the International Arbitration Court of the International Chamber of Commerce, requesting a declaration that Strabag's rescission of the SPA was invalid, that CEMEX's rescission was lawful and effective and claiming damages in a substantial amount likely to exceed €150 million (approximately U.S.$187.59 million as of August 31, 2012, based on an exchange rate of €0.7996 to U.S.$1.00). On December 23, 2009, Strabag filed its answer to CEMEX's request for arbitration asking the tribunal to dismiss the claim and also filed a counterclaim for an amount of €800,000 (approximately U.S.$1 million as of August 31, 2012, based on an exchange rate of €0.7996 to U.S.$1.00) as damages and applied for security for costs in the amount of €1,000,000.00 (approximately U.S.$1.25 million as of August 31, 2012, based on an exchange rate of €0.7996 to U.S.$1.00) in the form of an on-demand bank guarantee. The security for costs application was withdrawn by Strabag on March 9, 2010. CEMEX considered Strabag's counterclaim to be unfounded. The arbitral tribunal was constituted on February 16, 2010 and a first procedural hearing was held on March 23, 2010 at which the parties agreed on the terms of reference and procedural rules in accordance with Article 18 of the ICC Rules of Arbitration. Pursuant to the procedural rules, on June 30, 2010, CEMEX submitted its statement of claim and its list of witnesses. On October 29, 2010, Strabag submitted its statement of defense and counterclaim. On January 14, 2011, CEMEX submitted its reply and answer to Strabag's counterclaim. On March 7, 2011, Strabag submitted its rejoinder. Pursuant to Article 21 of the ICC Rules of Arbitration, the evidentiary hearing took place from May 2 to May 9, 2011. The hearing on quantum (attended by the

quantum experts) took place on September 20, 2011. A second hearing on quantum was held on November 23 and 24, 2011. Post-hearing briefs were submitted on December 22, 2011, concluding that stage of the proceedings. The final award dated May 29, 2012, was notified to CEMEX on June 1, 2012. According to this final award, the arbitral tribunal declared that Strabag's rescission of the SPA was unlawful and ineffective, and ordered Strabag to pay to CEMEX: (i) damages in the amount of €30,000,000.00 (approximately U.S.$37.51 million as of August 31, 2012, based on an exchange rate of €0.7996 to U.S.$1.00) with interest thereon from the date of the Request for Arbitration (October 19, 2009) until payment in full at the rate of 8.32% per annum; (ii) default interest for the period of July 7, 2009 through September 16, 2009 in the amount of €4,946,182.00 (approximately U.S.$6.18 million as of August 31, 2012, based on an exchange rate of €0.7996 to U.S.$1.00) with interest thereon from the date of the statement of claim (June 30, 2010) until payment in full at the rate of 4% per annum; (iii) US$250,000.00 as partial compensation for CEMEX's ICC costs of arbitration and (iv) €750,551.00 (approximately U.S.$938,658.07 as of August 31, 2012, based on an exchange rate of €0.7996 to U.S.$1.00) as compensation for CEMEX's legal costs incurred in the proceedings. Also, Strabag's counterclaim was dismissed. Strabag has filed an annulment action before the Swiss Federal Court on July 2, 2012.

In relation to the annulment process with the Swiss Federal Court, on July 20, 2012, Strabag paid us, through RMC Holdings B.V., the amounts ordered by the arbitral tribunal on its final award dated May 29, 2012 (principal plus surplus accrued interest) totalling €42,977,921.66 (approximately U.S.$53.74 million as of August 31, 2012, based on an exchange rate of €0.7996 to U.S.$1.00) and U.S.$250,520.55, and, in order to secure the potential obligation for RMC Holdings B.V. to repay these amounts to Strabag in the event that the Swiss Federal Supreme Court resolves to annul the May 29, 2012 final award, RMC Holdings B.V. pledged in favour of Strabag 496,355 shares (representing approximately a 33% stake) in its subsidiary Cemex Austria AG. On September 6, 2012, we presented our reply to the annulment action before the Swiss Federal Court.

*Colombian Water Use Litigation*. On June 5, 2010, the District of Bogotá's environmental secretary ( *Secretaría Distrital de Ambiente de Bogotá*) issued a temporary injunction suspending all mining activities at CEMEX Colombia's El Tunjuelo quarry, located in Bogotá, Colombia. As part of the temporary injunction, Holcim Colombia and Fundación San Antonio (local aggregates producers which also have mining activities located in the same area as the El Tunjuelo quarry) have also been ordered to suspend mining activities in that area. The District of Bogotá's environmental secretary alleges that during the past 60 years, CEMEX Colombia and the other companies have illegally changed the course of the Tunjuelo River, have used the percolating waters without permission and have improperly used the edge of the river for mining activities. In connection with the temporary injunction, on June 5, 2010, CEMEX Colombia received a formal notification from the District of Bogotá's environmental secretary informing it of the initiation of proceedings to impose fines against CEMEX Colombia. CEMEX Colombia has requested that the temporary injunction be revoked, arguing that its mining activities are supported by all authorizations required pursuant to the applicable environmental laws and that all the environmental impact statements submitted by CEMEX Colombia have been reviewed and authorized by the Environmental Ministry ( *Ministerio del Medio Ambiente, Vivienda y Desarrollo Territorial*). On June 11, 2010, the local authorities in Bogotá, in compliance with the District of Bogotá's environmental secretary's decision, sealed off the mine to machinery and prohibited the extraction of our aggregates inventory. Although there is not an official quantification of the possible fine, the District of Bogotá's environmental secretary has publicly declared that the

fine could be as much as 300 billion Colombian Pesos (approximately U.S.$163.89 million as of August 31, 2012, based on an exchange rate of 1,830.50 Colombian Pesos to U.S.$1.00). The temporary injunction does not currently compromise the production and supply of ready-mix concrete to any of our clients in Colombia. CEMEX Colombia is analyzing its legal strategy to defend itself against these proceedings. At this stage, as of August 31, 2012, we are not able to assess the likelihood of an adverse result, but if adversely resolved, it could have a material adverse impact on our financial results.

*Israeli Class Action Litigation*. On June 21, 2012, one of our subsidiaries in Israel was notified about an application for the approval of a class action suit against it. The application was filed by a homeowner who built his house with concrete supplied by our subsidiary in Israel in October of 2010. According to the application, the plaintiff claims that the concrete supplied to him did not meet with the "Israel Standard for Concrete Strength No. 118" and that as a result our subsidiary in Israel acted unlawfully toward all of its customers who requested a specific type of concrete but that received concrete that did not comply with the Israeli standard requirements. As per the application, the plaintiff claims that the supply of the alleged non-conforming concrete has caused financial and non-financial damages to those customers, including the plaintiff. We presume that the class action would represent the claim of all the clients who purchased the alleged non-conforming concrete from our subsidiary in Israel during the past 7 years, the limitation period according to applicable laws in Israel. The damages that would be sought amount to approximately ILS 276 million (approximately U.S.$ 68.52 million as of August 31, 2012, based on an exchange rate of Israeli Shekel 4.028 to U.S.$1.00). Our subsidiary in Israel has until November 5, 2012 to submit a formal response to the corresponding court. At this stage, we believe the application is vexatious and should be dismissed without any expense to us. As of August 31, 2012 our subsidiary in Israel is analyzing the legal strategy to be employed and is also not able to assess the likelihood of the class action application being approved or, if approved, of an adverse result, but if adversely resolved, we do not believe the final resolutions would have a material adverse impact on our financial results.

*Egypt Share Purchase Agreement*. On September 13, 2012, Assiut Cement Company ("ACC"), through local media in Egypt, learned about a preliminary non-enforceable decision against ACC made by a court of first instance in Assiut, Egypt, regarding the annulment of a Share Purchase Agreement signed in November 1999 between CEMEX and state-owned Metallurgical Industries Company pursuant to which CEMEX acquired a controlling interest in ACC. The decision is preliminary and non-enforceable, but in any case, ACC intends in due course to appeal the Assiut Court's decision, and, if required, use any other legal resources it has available to protect its rights. As of September 13, 2012, ACC continues to operate normally, offering quality building materials and services to its customers in Egypt. At this stage, as ACC has not been formally notified and the decision is preliminary and not enforceable, we are not able to determine if the decision could have a material adverse impact on our financial results.

As of August 31, 2012, we are involved in various legal proceedings involving product warranty claims, environmental claims, indemnification claims relating to acquisitions and similar types of claims brought against us that have arisen in the ordinary course of business. We believe we have made adequate provisions to cover both current and contemplated general and specific litigation risks, and we believe these matters will be resolved without any significant effect on our operations, financial position or results of operations. We are sometimes able to make and disclose reasonable estimates of the expected loss or range of

possible loss, as well as disclose any provision accrued for such loss. However, for a limited number of ongoing legal proceedings, we may not be able to make a reasonable estimate of the expected loss or range of possible loss or may be able to do so but believe that disclosure of such information on a case-by-case basis would seriously prejudice our position in the ongoing legal proceedings or in any related settlement discussions. Accordingly, in these cases, we have disclosed qualitative information with respect to the nature and characteristics of the contingency, but have not disclosed the estimate of the range of potential loss.

**SCHEDULE 16**
**MATERIAL SUBSIDIARIES**

**As at 31 August 2012**

CEMEX, S.A.B. de C.V.

CEMEX España, S.A.

New Sunward Holding B.V.

CEMEX Materials LLC

CEMEX Finance LLC

CEMEX Mexico, S.A. de C.V.

CEMEX Concretos, S.A. de C.V.

Empresas Tolteca de Mexico, S.A. de C.V.

CEMEX Corp.

CEMEX, Inc.

Centro Distribuidor de Cemento, S.A. de C.V.

Impra Cafe, S.A. de C.V.

Interamerican Investments, Inc.

Mexcement Holdings, S.A. de C.V.

Corporacion Gouda, S.A. de C.V.

CEMEX International Finance Company

CEMEX Research Group AG

CEMEX Shipping B.V.

CEMEX Asia B.V.

CEMEX France Gestion (S.A.S.)

CEMEX UK

CEMEX Egyptian Investments B.V.

CEMEX UK Operations LTD

CEMEX Colombia, S.A.

Assiut Cement Company

CEMEX Construction Materials Florida LLC

CEMEX Polska Sp. Z O.O.

Cemento Bayano, S.A.

CEMEX Caribe II Investments B.V.

CEMEX Egypt for Distribution S.A.E.

Rugby Holding B.V.

CEMEX Investments Ltd

Sunbelt Investments, Inc.

CEMEX Trading LLC

CEMEX TRADEMARKS HOLDING Ltd

CEMEX Central, S.A. de C.V.

CEMEX Bogotá Investments B.V.

CEMEX Finance Europe B.V.

CEMEX Investments Africa and Middle East ApS

**SCHEDULE 17**
**HEDGING PARAMETERS**

1. No Obligor will (and the Parent will procure that no members of the Group will) engage in any Treasury Transaction, other than a Permitted Treasury Transaction in accordance with this Hedging Parameters Schedule. A "**Permitted Treasury Transaction**" means:

   (a) any Treasury Transaction that is an Excluded Position;

   (b) any Treasury Transaction entered into, sold or purchased at arm's length and in compliance with all applicable laws, rules and regulations, with respect to which all parties and credit support providers are members of the Group (each, a " **Permitted Intercompany Treasury Transaction**");

   (c) any Treasury Transaction entered into, sold or purchased at then prevailing market rates and not for speculative purposes that is solely an interest rate, currency or commodity derivative (or a combination thereof) or that is a Permitted Non-Bank Commodity Contract or a Permitted Compensation Plan Hedging Transaction, in each case (i) for the purpose of managing a specific risk associated with an asset, liability, income or expense owned, incurred, earned or made or reasonably likely to be owned, incurred, earned or made by a member of the Group and (ii) in its ordinary course of business (each, a "**Permitted Exposure Hedge**"); or

   (d) any call option, call spread, capped call transaction, put option, put spread, capped put transaction or any combination of the foregoing and/or any other Treasury Transaction or transactions having a similar effect to any of the foregoing, in each case entered into, sold or purchased not for speculative purposes but for the purposes of managing specific risks or exposures associated with any issuance of Relevant Convertible/Exchangeable Obligations (each, a "**Permitted Put/Call Transaction**").

   Where: "**Excluded Position**" means each of the positions set forth in Annex 1 hereto as in effect on the date of this Agreement and, with respect to the positions specified in paragraphs (a), (b) and (c) of Annex 1, any replacements, amendments or renewals thereof that are entered into on then prevailing market terms with the underlying amounts not greater than the original underlying amounts. " **Permitted Non-Bank Commodity Contract**" means any commodity contract or agreement with respect to which all parties and credit support providers are not financial institutions and any agreement incidental thereto. "**Commodity**" means raw materials and other inputs used in the Group's operations, energy, water, electric power, electric power capacity, generation capacity, power, heat rate, congestion, diesel fuel, fuel oil, other petroleum-based liquids or fuels, coal, commodity transportation, urea, financial transmission rights, emissions and other environmental credits, allowances or offsets, renewable energy credits, Certified Emission Reductions, European Union Allowances, natural gas, nuclear fuel and waste products or by-products thereof or other such tangible or intangible commodity of similar type or description. "**Permitted Compensation Plan Hedging Transaction**" means (a) an equity forward purchase transaction or an equity call option that hedges the Parent or any Obligor's obligations under an Executive Compensation Plan permitted by this Agreement, or

(b) an agreement that requires a counterparty to make payments or deliveries that are otherwise required to be made by the Parent or any Obligor under an Executive Compensation Plan permitted by this Agreement by exchange, repurchase or similar arrangements or a combination thereof.

2. The board of directors shall, from time to time, adopt policies governing the Group's entry into Permitted Treasury Transactions. The board of directors shall approve any Permitted Treasury Transactions that are required to be approved by the board of directors in accordance with applicable company regulations and by-laws. Management shall approve all other Permitted Treasury Transactions in accordance with such board of director policies.

3. The total amount of collateral or margin posted as of the date of this Agreement in respect of each Excluded Position or Permitted Non-Bank Commodity Contract is Permitted Security or Quasi-Security (as the case may be) as described in Schedule 12 ( *Existing Security and Quasi-Security*) to this Agreement. No Obligor will (and the Parent will procure that no members of the Group will) post additional collateral or margin in respect of an Excluded Position or a Permitted Non-Bank Commodity Contract for which collateral or margin is already posted, or any collateral or margin in respect of any other Treasury Transaction, except as permitted under paragraphs (L) and (Q) of the definition of Permitted Security set out in Clause 22.5 (*Negative pledge*) of this Agreement. Notwithstanding the foregoing, members of the Group may replace collateral or margin posted as of the date of this Agreement in respect of an Excluded Position as described in Schedule 12 ( *Existing Security and Quasi-Security*) with a Permitted Put/Call Transaction for the purpose of obtaining a Cash Collateral Release Amount, provided any amount of collateral or margin posted at any time in connection with such Excluded Position in excess of the amount described in Schedule 12 ( *Existing Security and Quasi-Security*) in respect of such Excluded Position complies with paragraphs (L) and (Q) of the definition of Permitted Security in Clause 22.5 ( *Negative pledge*) of this Agreement.

4. No Obligor will (and the Parent will procure that no members of the Group will) amend, modify or terminate a Permitted Treasury Transaction except in its ordinary course of business and not for speculative purposes.

**ANNEX 1**

**EXCLUDED POSITIONS**

The following are Excluded Positions:

(a) the IRT transactions, as amended, modified or supplemented from time to time, that are governed by the ISDA Master Agreement dated as of 14 February 2003 between Banco Santander S.A., Institución de Banca Múltiple, Grupo Financiero Santander and Centro Distribuidor de Cemento, S.A. de C.V. (Reference: 6032 – 1001834);

(b) the trust put options that are governed by the ISDA Master Agreement dated as 23 April 2008, as amended, modified or supplemented from time to time, between Citigroup Global Markets Inc, as agent for Citibank N.A., and Banco Nacional de Mexico, S. A., Integrante del Grupo Financiero Banamex, División Fiduciaria, acting solely as trustee under Trust No. 111339-7 (Reference: Trust Number 111339-7);

(c) the Axtel share forward transaction that is governed by a long form Confirmation dated 19 March 2012, as amended, modified or supplemented from time to time, between Credit Suisse International and Centro Distribuidor de Cemento S.A. de C.V. (References: External ID: 16059563R4 - Risk ID: 10008383);

(d) the interest rate swap governed by a Swap Agreement dated 24 September 2007 between Banco Nacional de México, S.A., Integrante del Grupo Financiero Banamex, División Fiduciaria, not in its individual capacity but acting solely as trustee on behalf of the Trust Number 111014-2 under the Restated Trust Agreement dated as of 26 March 1999, as amended, modified or supplemented from time to time and CEMEX, S.A.B. de C.V.;

(e) the Capped Call transactions that are governed by a long form Confirmation dated 24 March 2010, as amended, modified or supplemented from time to time, between Citibank, N.A. and CEMEX, S.A.B. de C.V. (Reference: Amended and Restated Confirmation dated 25 March 2011 documenting the capped call transactions with a Trade Date of 24 March 2010);

(f) the Capped Call transactions that are governed by a long form Confirmation dated 9 March 2011, as amended, modified or supplemented from time to time, between Citibank, N.A. and CEMEX, S.A.B. de C.V. (Reference: Amended and Restated Confirmation dated as of 11 March 2011 documenting the capped call transactions with a Trade Date of 9 March 2011);

(g) the Capped Call transactions that are governed by a long form Confirmation dated 9 March 2011, as amended, modified or supplemented from time to time, between Bank of America, N.A. and CEMEX, S.A.B. de C.V. (Reference: Amended and Restated Confirmations dated as of 11 March 2011 documenting the capped call transactions with a Trade Date of 9 March 2011);

(h) the Capped Call transactions that are governed by a long form Confirmation dated 9 March 2011, as amended, modified or supplemented from time to time, between BNP Paribas and CEMEX, S.A.B. de C.V. (Reference: Amended and Restated Confirmation dated as of 11 March 2011 documenting the capped call transactions with a Trade Date of 9 March 2011);

(i) the Capped Call transactions that are governed by a long form Confirmation dated 9 March 2011, as amended, modified or supplemented from time to time, between HSBC Bank USA, National Association and CEMEX, S.A.B. de C.V. (Reference: Amended and Restated Confirmation dated as of 11 March 2011 documenting the capped call transactions with a Trade Date of 9 March 2011);

(j) the Capped Call transactions that are governed by a long form Confirmation dated 9 March 2011, as amended, modified or supplemented from time to time, between JPMorgan Chase Bank, National Association, London Branch and CEMEX, S.A.B. de C.V. (Reference: Amended and Restated Confirmation dated as of 11 March 2011 documenting the capped call transactions with a Trade Date of 9 March 2011);

(k) the Capped Call transactions that are governed by a long form Confirmation dated 9 March 2011, as amended, modified or supplemented from time to time, between The Royal Bank of Scotland PLC and CEMEX, S.A.B. de C.V. (Reference: Amended and Restated Confirmation dated as of 11 March 2011 documenting the capped call transactions with a Trade Date of 9 March 2011);

(l) the Capped Call transactions that are governed by a long form Confirmation dated 9 March 2011, as amended, modified or supplemented from time to time, between Banco Santander, S.A. and CEMEX, S.A.B. de C.V. (Reference: Amended and Restated Confirmations dated as of 11 March 2011 documenting the capped call transactions with a Trade Date of 9 March 2011);

(m) all EU Emissions Allowance transactions under the "Contrato de Swap de CERs por EUAs", dated 23 September 2008, as amended, modified or supplemented from time to time, between Caleras de San Cucao, S. A. and CEMEX International Finance Company; and

(n) all EU Emissions Allowance and Certified Emission Reductions transactions under a series of "Emission Allowances Single Trade Agreements" dated 28 July 2011, 21 October 2011, 1 November 2011, and 15 March 2012, as amended, modified or supplemented from time to time, between Gazprom Marketing and Trading Limited and CEMEX International Finance Company.

**SCHEDULE 18**
**TIMETABLES**

| | **Utilisations in US dollars** | **Utilisations in euro** | **Utilisations in Mexican pesos** |
|---|---|---|---|
| Delivery of a duly completed Selection Notice (Clause 10.1 ( *Selection of Interest Periods*)) | U-3<br>9.30am | U-3<br>9.30am | U-3<br>9.30am |
| Agent determines (in relation to a Utilisation) the Base Currency Amount of the Utilisation, if required under Clause 4.1 ( *Amount of Utilisation*) and notifies the Creditors of the Utilisation in accordance with Clause 4.1 (*Amount of Utilisation*) | U-3<br>noon | U-3<br>noon | U-3<br>noon |
| LIBOR, EURIBOR or TIIE is fixed | Quotation Day as of 11:00 a.m. (London time) in respect of LIBOR | Quotation Day as of 11:00 a.m. (Brussels time) in respect of EURIBOR | Quotation Day as of 12:00 p.m. (Mexico City time) in respect of TIIE |
| (For Utilisations in Mexican pesos only) Agent notifies the Creditors of the TIIE rate | N/A | N/A | Quotation Day+1 |

"U" = date of utilisation or, if applicable, in the case of a Loan that has already been borrowed, the first day of the relevant Interest Period for that Loan.

"U – X" = X Business Days prior to date of utilisation

**SCHEDULE 19**
**FORM OF CONFIDENTIALITY UNDERTAKING**

**CONFIDENTIALITY UNDERTAKING**

**[Letterhead of Potential Purchaser]**

To: [*Insert name of Seller*]

From: [*Insert name of Potential Purchaser*]

Dated:

Dear Sirs

**CEMEX, S.A.B. de C.V. – Facilities Agreement**
**dated [ ] 2012 (the "Facilities Agreement")**

We are considering acquiring an interest in the Facilities Agreement which, subject to the terms of the Facilities Agreement, may be by way of novation, assignment, the entering into, whether directly or indirectly, of a sub-participation or any other similar transaction under which payments are to be made or may be made by reference to one or more relevant Finance Documents and/or one or more relevant Obligors or by way of investing in or otherwise financing, directly or indirectly, any such novation, assignment, sub-participation or other similar transaction (each, an " **Acquisition**"). In consideration of you agreeing to make available to us certain information in relation to each Acquisition, by our signature of this letter we agree as follows (acknowledged and agreed by you by your signature of a copy of this letter):

1. **Confidentiality Undertaking**

We undertake in relation to each Acquisition whether completed or not, (a) to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by paragraph 2 below and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to our own confidential information, (b) until that Acquisition is completed to use the Confidential Information only for the Permitted Purpose, (c) to keep confidential and not disclose to anyone except as provided for by paragraph 2 below the fact that the Confidential Information has been made available or that discussions or negotiations are taking place or have taken place between us in connection with the Facilities, and (d) to use all reasonable endeavours to ensure that any person to whom we pass any Confidential Information (unless disclosed under paragraph 2 below) acknowledges and complies with the provisions of this letter as if that person were also a party to it.

2. **Permitted Disclosure**

You agree that we may disclose:

2.1 to any of our Affiliates and any of our or their officers, directors, employees, professional advisers and auditors such Confidential Information as we shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph 2.1 is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information, except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;

2.2 subject to the requirements of the Facilities Agreement, to any person:

(a) to (or through) whom we assign or transfer (or may potentially assign or transfer) all or any of our rights and/or obligations which we may acquire under the Facilities Agreement such Confidential Information as we shall consider appropriate if the person to whom the Confidential Information is to be given pursuant to this sub-paragraph (a) of paragraph 2.2 has delivered a letter to you materially in equivalent form to this letter;

(b) with (or through) whom we enter into (or may potentially enter into) any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to the Facilities Agreement in relation to that Acquisition or any Obligor such Confidential Information as we shall consider appropriate if the person to whom the Confidential Information is to be given pursuant to this sub-paragraph (b) of paragraph 2.2 has delivered a letter to you in materially equivalent form to this letter;

(c) to whom information is required or requested to be disclosed by any governmental, banking, taxation or other regulatory authority or similar body, the rules of any recognised stock exchange or pursuant to any applicable law or regulation such Confidential Information as we shall consider appropriate; and

2.3 notwithstanding paragraphs 2.1 and 2.2. above, Confidential Information to such persons to whom, and on the same terms as, a Finance Party is permitted to disclose Confidential Information under the Facilities Agreement to which that Acquisition relates, as if such permissions were set out in full in this letter and as if references in those permissions to Finance Party were references to us for the purposes of that Acquisition.

3. **Notification of Disclosure**

We agree in relation to each Acquisition (whether completed or not), (to the extent permitted by law and regulation) to inform you:

3.1 of the circumstances of any disclosure of Confidential Information made pursuant to sub-paragraph (c) of paragraph 2.2 above except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and

3.2 upon becoming aware that Confidential Information has been disclosed in breach of this letter.

4. **Return of Copies**

If we do not enter into or complete the Acquisition and you so request in writing, we shall return all Confidential Information supplied by you to us in relation to that Acquisition and destroy or permanently erase (to the extent technically practicable) all copies of Confidential Information made by us and use all reasonable endeavours to ensure that anyone to whom we have supplied any Confidential Information destroys or permanently erases (to the extent technically practicable) such Confidential Information and any copies made by them, in each case save to the extent that we or the recipients are required to retain any such Confidential Information by any applicable law, rule or regulation or by any competent judicial, governmental, supervisory or regulatory body or in accordance with internal policy, or where the Confidential Information has been disclosed under sub-paragraph (c) of paragraph 2.2 above.

5. **Continuing Obligations**

The obligations in this letter are continuing and, in particular, shall survive and remain binding on us in relation to each Acquisition (whether completed or not) until (a) if we become a party to the Facilities Agreement as a lender of record, the date on which we become such a party to the Facilities Agreement; (b) if we enter into the Acquisition but it does not result in us becoming a party to the Facilities Agreement as a lender of record, the date falling twelve months after the date on which all of our rights and obligations contained in the documentation entered into to implement the Acquisition have terminated; or (c) in any other case the date falling twelve months after the date at which we have returned all Confidential Information supplied by you to us and destroyed or permanently erased (to the extent technically practicable) all copies of Confidential Information made by us (other than any such Confidential Information or copies which have been disclosed under paragraph 2 above (other than paragraph 2(a)) or which, pursuant to paragraph 4 above, are not required to be returned or destroyed).

6. **No Representation; Consequences of Breach, etc**

We acknowledge and agree that:

6.1 neither you, nor any member of the Group nor any of your or their respective officers, employees or advisers (each a " **Relevant Person**") (i) make any representation or warranty, express or implied, as to, or assume any responsibility for, the accuracy, reliability or completeness of any of the Confidential Information or any other information supplied by you in relation to the Acquisition or the assumptions on which it is based or (ii) shall be under any obligation to update or correct any inaccuracy in the Confidential Information or any other information supplied by you in relation to the Acquisition or be otherwise liable to us or any other person in respect of the Confidential Information or any such information; and

6.2 you or members of the Group may be irreparably harmed by the breach of the terms of this letter and damages may not be an adequate remedy; each Relevant Person may be granted an injunction or specific performance for any threatened or actual breach of the provisions of this letter by us.

7. **Entire Agreement: No Waiver; Amendments, etc**

7.1 This letter constitutes the entire agreement between us in relation to our obligations regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

7.2 No failure to exercise, nor any delay in exercising, any right or remedy under this letter will operate as a waiver of any such right or remedy or constitute an election to affirm this letter. No election to affirm this letter will be effective unless it is in writing. No single or partial exercise of any right or remedy will prevent any further or other exercise thereof or the exercise of any other right or remedy under this letter.

7.3 The terms of this letter and our obligations under this letter may only be amended or modified by written agreement between the parties and the Parent.

8. **Inside Information**

We acknowledge that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and we undertake not to use any Confidential Information for any unlawful purpose.

9. **Nature of Undertakings**

The undertakings given by us under this letter are given to you and are also given for the benefit of the Parent and each other member of the Group.

10. **Third Party Rights**

10.1 Subject to this paragraph 10 and to paragraphs 6 and 9, a person who is not a party to this letter has no right under the Contracts (Rights of Third Parties) Act 1999 (the "**Third Parties Act**") to enforce or to enjoy the benefit of any term of this letter.

10.2 The Relevant Persons may enjoy the benefit of the terms of paragraphs 6 and 9 subject to and in accordance with this paragraph 10 and the provisions of the Third Parties Act.

10.3 Notwithstanding any provisions of this letter, the parties to this letter do not require the consent of any Relevant Person (other than the Parent) to rescind or vary this letter at any time.

11. **Governing Law and Jurisdiction**

11.1 This letter (including the agreement constituted by your acknowledgement of its terms) (the " **Letter**") and any non-contractual obligations arising out of or in connection with it (including any non-contractual obligations arising out of the negotiation of the transaction contemplated by this Letter) are governed by English law.

11.2 The courts of England have non-exclusive jurisdiction to settle any dispute arising out of or in connection with this Letter (including a dispute relating to any non-contractual obligation arising out of or in connection with either this Letter or the negotiation of the transaction contemplated by this Letter).

12. **Definitions**

In this letter (including the acknowledgement set out below) terms defined in the Facilities Agreement shall, unless the context otherwise requires, have the same meaning and:

"**Confidential Information**" means, in relation to each Acquisition, all information relating to the Parent, any Obligor, the Group, the Finance Documents, the Facilities and/or the Acquisition which is provided to us in relation to the Finance Documents or the Facilities by you or any of your affiliates or advisers, in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes information that:

(a) is or becomes public information other than as a direct or indirect result of any breach by us of this letter; or

(b) is identified in writing at the time of delivery as non-confidential by you or your advisers; or

(c) is known by us before the date the information is disclosed to us by you or any of your affiliates or advisers or is lawfully obtained by us after that date, from a source which is, as far as we are aware, unconnected with the Group and which, in either case, as far as we are aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

"**Group**" means the Parent and each of its subsidiaries for the time being.

"**Permitted Purpose**" means considering and evaluating whether to enter into and complete the Acquisition.

Please acknowledge your agreement to the above by signing and returning the enclosed copy of this letter.

Yours faithfully

_____

For and on behalf of

[*Potential Purchaser*]

To: [*Potential Purchaser*]

We acknowledge and agree to the above:

_____

For and on behalf of

[*Seller*]

**SCHEDULE 20**
**FORM OF AFFIDAVIT OF LOSS**

AFFIDAVIT OF LOSS

The undersigned, [INSERT LENDER], (the "**Lender**") hereby certifies to [INSERT BORROWER] (the "**Borrower**") as follows:

1. The Borrower has delivered a Note, dated [ ●], a copy of which is attached hereto (the "**Promissory Note**") to the Lender [in connection with the [INSERT AGREEMENT] dated as of [INSERT DATE]) (as amended, restated, supplemented or otherwise modified from time to time), among the Borrower, [●], and the other financial institutions that are or may from time to time become a party thereto).]*

2. The Lender has caused a diligent search of its files and vault to be made in order to find the Promissory Note and the Promissory Note has not been found. The Promissory Note has been inadvertently lost, misplaced or destroyed.

3. The Lender has taken no action to give or further pledge, sell, assign, transfer, endorse in blank or otherwise or in any other manner dispose of the Promissory Note to any person, firm or corporation, nor has any record or correspondence been found which indicates that the Lender has entrusted the possession of the Promissory Note to any person, firm or corporation for safekeeping or for any other purpose.

4. The Lender hereby agrees to indemnify and hold harmless the Borrower and any Guarantor under the Promissory Note, and their respective successors and assigns, of and from any loss, damage or claim resulting from the Lender's loss or misplacement of the Promissory Note.

5. Insofar as this Certificate is executed before a foreign notary public, the Lender hereby agrees to docket this Certificate with an "Apostille" pursuant to the Hague convention of 5 October 1961, if requested by the Borrower in connection with a judicial action undertaken by the Borrower to cancel or replace the Promissory Note.

6. The Lender hereby agrees that if the Promissory Note is subsequently found by the Lender or come into the Lender's possession, the Lender will immediately surrender the Promissory Note to the Borrower for cancellation.

Dated:

[INSERT LENDER]

By: _____
Name:
Title:

By: _____
Name:
Title:

STATE OF )
)
COUNTY OF )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that , whose name as of , a , is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, s/he, as such and with full authority, executed the same voluntarily for and as the act of said .

Given under my hand and official seal this the day of , [ ]

Notary Public

My commission expires: _____

Note: * The wording in brackets will not necessarily be required for Existing Derivatives Unwind Promissory Notes which do not derive from a particular facility.

**SCHEDULE 21**
**FORM OF CREDITOR ACCESSION LETTER**

To: CEMEX, S.A.B. de C.V.

[ ] as Agent and [ ] as Security Agent for itself and each of the other parties to the Intercreditor Agreement referred to below

From: [*Acceding Creditor*]

Dated:

Dear Sirs

**CEMEX, S.A.B. de C.V.– Facilities Agreement**
**dated [•] 2012 (the "Facilities Agreement")**

1. We refer to the Facilities Agreement and to the Intercreditor Agreement. This accession letter (the " **Creditor Accession Letter**") shall take effect as a Creditor Accession Letter for the purposes of the Facilities Agreement and as a Creditor/Agent Accession Undertaking for the purposes of the Intercreditor Agreement (and as defined in the Intercreditor Agreement). Terms defined in the Facilities Agreement have the same meaning in paragraphs 1 to 4 of this Creditor Accession Letter unless given a different meaning in this Creditor Accession Letter.

2. By our signature of this Creditor Accession Letter, pursuant to Clause 25.11 ( *Acceding Creditors*) of the Facilities Agreement, it is agreed that, with effect from the date hereof:

   (a) we shall become a party to the Ancillary Agreement as an "Original Extinguishing Creditor" (as defined therein) and be subject in all respects to the provisions of the Ancillary Agreement as if we had been an Original Extinguishing Creditor on the date thereof, and we shall be treated for all purposes with respect to the Ancillary Agreement as if we had submitted an Acceptance Notice (as defined in the Ancillary Agreement) before the Effective Time (as defined in the Ancillary Agreement) and references in the Ancillary Agreement to the "Effective Date" shall be a reference to the date of this Creditor Accession Letter and the "Effective Time" shall be deemed to be a reference to the time at which the deemed Utilisation of each Facility by us is deemed to occur as set out in paragraph (b) below of this Creditor Accession Letter;

   (b) we shall become a party to the Facilities Agreement as an "Original Creditor" (as defined therein) with a Commitment in the Facility/ies and in the amounts set out below, and shall participate in the Utilisations under such Facility/ies in such amounts, and be subject in all respects to the provisions of the Facilities Agreement as if we had been an Original Creditor on the date thereof:

| | |
|---|---|
| Facility/ies: | [ ] |
| Amount of Commitment/ Outstanding Principal Amounts in currency of denomination | [ ] |
| Base Currency Amount (if not denominated in Base Currency)* | $ [•] |

such Utilisation(s) to be deemed made by us in the manner set out in Clause 3.4 ( *Deemed Utilisation*), but as if references to "on the date of this Agreement" and "on the Effective Date" were references to the date of this Creditor Accession Letter;

(c) the amount of the Total [*name of facility cited in table above*] Commitments and the amount of each Utilisation of [ *name of facility cited in table above*] shall be increased by the amount of our Commitment in that Facility as set out in the table above; and

(d) our Facility Office and address, fax number and attention details for notices for the purposes of Clause 33.2 ( *Addresses*) of the Facilities Agreement are:

*[insert details]*

3. We refer to clause 14.6 (*Creditor/Agent/Security Agent Accession Undertaking*) of the Intercreditor Agreement. In consideration of our being accepted as a Facilities Creditor for the purposes of the Intercreditor Agreement (and as defined therein), we confirm that, as from the date of this Creditor Accession Letter, we intend to be party to the Intercreditor Agreement as a Facilities Creditor, and undertake to perform all the obligations expressed in the Intercreditor Agreement to be assumed by a Facilities Creditor and agree that we shall be bound by all the provisions of the Intercreditor Agreement, as if we had been an original party to the Intercreditor Agreement.

4. We confirm, for the benefit of the Agent and without liability to any Obligor, that we are:

(a) [a Spanish Qualifying Finance Party within paragraphs (a) or (c) of the definition of Spanish Qualifying Finance Party][a Spanish Treaty Finance Party][not a Spanish Qualifying Finance Party];

(b) [a Mexican Qualifying Finance Party under paragraph [(a)] of the definition of Mexican Qualifying Finance Party][a Mexican Treaty Finance Party][not a Mexican Qualifying Finance Party]; and

(c) [a US Qualifying Finance Party under paragraph [(a)] of the definition of US Qualifying Finance Party][a US Treaty Finance Party][not a US Qualifying Finance Party].**

5. This Creditor Accession Letter and any non-contractual obligations arising out of or in connection with it are governed by English law.

This Creditor Accesion Letter has been entered into on the date stated at the beginning of this Creditor Accession Letter.

For and on behalf of [ ]

**Note: The execution of this Creditor Accession Letter may not provide the acceding Creditor with an interest in the Transaction Security in all jurisdictions. It is the responsibility of the acceding Creditor to ascertain whether any other documents or other formalities are required to perfect such interest in the acceding Creditor's Transaction Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.**

This Credit Accession Letter is accepted as a Creditor Accession Letter for the purposes of the Facilities Agreement by the Agent, and as a Creditor/Agent/Security Agent Accession Undertaking for the purposes of the Intercreditor Agreement by the Security Agent.

[Agent]

By:

[Security Agent]

By:

NOTES:

* Exchange rate will be calculated in accordance with paragraph (b) of the definition of Base Currency Amounts as if the Commitment and Outstanding Principal Amounts of the acceding Creditor had been Commitment and Outstanding Principal Amounts listed in Section B of Part II ( *The Original Creditors*) of Schedule 1 (*The Original Parties*) as at the date of this Agreement.

** Delete as applicable - each acceding Creditor is required to confirm which of these three categories it falls within.

**SIGNATURE PAGES**

**THE PARENT**

For and on behalf of

**CEMEX, S.A.B. DE C.V.**

By: JOSE A. GONZALEZ

Print name: JOSE A. GONZALEZ

**THE ORIGINAL BORROWERS**

For and on behalf of

**CEMEX, S.A.B. DE C.V.**

By: JOSE A. GONZALEZ

Print name: JOSE A. GONZALEZ

For and on behalf of

**CEMEX ESPAÑA, S.A.**

By: HECTOR J. VELA

Print name: HECTOR J. VELA

For and on behalf of

**NEW SUNWARD HOLDING B.V.**

By: HECTOR J. VELA

Print name: HECTOR J. VELA

For and on behalf of

**CEMEX MATERIALS LLC**

By: HECTOR J. VELA

Print name: HECTOR J. VELA

Title: ATTORNEY IN FACT

For and on behalf of

**CEMEX FINANCE LLC**

By: HECTOR J. VELA

Print name: HECTOR J. VELA

Title: ATTORNEY IN FACT

**THE ORIGINAL GUARANTORS**

For and on behalf of

**CEMEX, S.A.B. DE C.V.**

By: JOSE A. GONZALEZ

Print name: JOSE A. GONZALEZ

For and on behalf of

**CEMEX ESPAÑA, S.A.**

By: HECTOR J. VELA

Print name: HECTOR J. VELA

For and on behalf of

**CEMEX MÉXICO, S.A. DE C.V.**

By: JOSE A. GONZALEZ

Print name: JOSE A. GONZALEZ

For and on behalf of

**CEMEX CONCRETOS, S.A. DE C.V.**

By: JOSE A. GONZALEZ

Print name: JOSE A. GONZALEZ

For and on behalf of

**EMPRESAS TOLTECA DE MÉXICO, S.A. DE C.V.**

By: JOSE A. GONZALEZ

Print name: JOSE A. GONZALEZ

For and on behalf of

**NEW SUNWARD HOLDING B.V.**

By: HECTOR J. VELA

Print name: HECTOR J. VELA

For and on behalf of

**CEMEX CORP**

By: HECTOR J. VELA

Print name: HECTOR J. VELA

Title: ATTORNEY IN FACT

For and on behalf of

**CEMEX, INC.**

By: HECTOR J. VELA

Print name: HECTOR J. VELA

For and on behalf of

**CEMEX FINANCE LLC**

By: HECTOR J. VELA

Print name: HECTOR J. VELA

Title: ATTORNEY IN FACT

For and on behalf of

**CEMEX RESEARCH GROUP AG**

By: JAVIER GARCIA

Print name: JAVIER GARCIA

For and on behalf of

**CEMEX ASIA B.V.**

By: JAVIER GARCIA

Print name: JAVIER GARCIA

For and on behalf of

**CEMEX SHIPPING B.V.**

By: JAVIER GARCIA

Print name: JAVIER GARCIA

For and on behalf of

**CEMEX EGYPTIAN INVESTMENTS B.V.**

By: JAVIER GARCIA

Print name: JAVIER GARCIA

For and on behalf of

**CEMEX FRANCE GESTION (S.A.S)**

By: JAVIER GARCIA

Print name: JAVIER GARCIA

For and on behalf of

**CEMEX UK**

By: JAVIER GARCIA

Print name: JAVIER GARCIA

**THE SECURITY PROVIDERS**

For and on behalf of

**CEMEX, S.A.B. DE C.V.**

By: JOSE A. GONZALEZ

Print name: JOSE A. GONZALEZ

For and on behalf of

**CEMEX MÉXICO, S.A. de C.V.**

By: JOSE A. GONZALEZ

Print name: JOSE A. GONZALEZ

For and on behalf of

**CENTRO DISTRIBUIDOR DE CEMENTO, S.A. DE C.V.**

By: JOSE A. GONZALEZ

Print name: JOSE A. GONZALEZ

For and on behalf of

**EMPRESAS TOLTECA DE MÉXICO, S.A. DE C.V.**

By: JOSE A. GONZALEZ

Print name: JOSE A. GONZALEZ

For and on behalf of

**IMPRA CAFÉ, S.A. DE C.V.**

By: JOSE A. GONZALEZ

Print name: JOSE A. GONZALEZ

For and on behalf of

**INTERAMERICAN INVESTMENTS, INC.**

By: JOSE A. GONZALEZ

Print name: JOSE A. GONZALEZ

Title: ATTORNEY IN FACT

For and on behalf of

**MEXCEMENT HOLDINGS, S.A. DE C.V.**

By: JOSE A. GONZALEZ

Print name: JOSE A. GONZALEZ

For and on behalf of

**CORPORACIÓN GOUDA, S.A. DE C.V.**

By: JOSE A. GONZALEZ

Print name: JOSE A. GONZALEZ

For and on behalf of

**NEW SUNWARD HOLDING B.V.**

By: HECTOR J. VELA

Print name: HECTOR J. VELA

For and on behalf of

**CEMEX INTERNATIONAL FINANCE COMPANY**

By: JAVIER GARCIA

Print name: JAVIER GARCIA

Witness: ANGEL MÉNDEZ

Print name: ANGEL MÉNDEZ

Address: HERNANDEZ DE TEJADA, NO.1, 28027,
MADRID

Occupation: FINANCIAL MANAGER

For and on behalf of

**CEMEX TRADEMARKS HOLDING LTD.**

By: JAVIER GARCIA

Print name: JAVIER GARCIA

**THE AGENT**

For and on behalf of

**CITIBANK INTERNATIONAL PLC**

By: LISA LEE

Print name: LISA LEE

**THE SECURITY AGENT**

For and on behalf of

**WILMINGTON TRUST (LONDON) LIMITED**

By: PAUL BARTON

Print name: PAUL BARTON

**THE ORIGINAL CREDITORS**

For and on behalf of the Agent on behalf of

**ATLANTIC SECURITY BANK**

By: LISA LEE

Print name: LISA LEE

For and on behalf of

**BANAMEX USA**

By: JEFF HEALY and RAUL MUNOZ

Print name: JEFF HEALY and RAUL MUNOZ

For and on behalf of

**BANCA MONTE DEI PASCHI DI SIENA SPA,**
**LONDON BRANCH**

By: ENRICO VIGNOLI and WENDY A. JOHNSON

Print name: ENRICO VIGNOLI and WENDY A. JOHNSON

For and on behalf of

**BANCA MONTE DEI PASCHI DI SIENA SPA, NEW YORK BRANCH**

By: RENATO BASSI and BRIAN R. LANDY

Print name: RENATO BASSI and BRIAN R. LANDY

For and on behalf of

**BANCO BILBAO VIZCAYA ARGENTARIA, S.A.**

By: JORGE BURGALETA and JULIAN RINCON

Print name: JORGE BURGALETA and JULIAN RINCON

For and on behalf of

**BANCO DE SABADELL, S.A.**

By: SUSANA CONDE and JOAQUÍN LÓPEZ

Print name: SUSANA CONDE and JOAQUÍN LÓPEZ

For and on behalf of

**BANCO ESPAÑOL DE CRÉDITO, S.A.**

By: BORJA BERTRAN and CARLOS PORRAS

Print name: BORJA BERTRAN and CARLOS PORRAS

For and on behalf of

**BANCO NACIONAL DE COMERCIO EXTERIOR, S.N.C.**

By: LEONEL N. VASQUEZ GÓMEZ and
ADRIANA PÉREZ CÁCERES

Print name: LEONEL N. VASQUEZ GÓMEZ and
ADRIANA PÉREZ CÁCERES

For and on behalf of

**BANCO NACIONAL DE MÉXICO, S.A.**
**INTEGRANTE DEL GRUPO FINANCIERO**
**BANAMEX**

By: JULIO ALVAREZ GONZÁLEZ and
LEOPOLDO AMAYA GONZÁLEZ

Print name: JULIO ALVAREZ GONZÁLEZ and
LEOPOLDO AMAYA GONZÁLEZ

For and on behalf of

**BANCO NACIONAL DE MÉXICO, S.A.
INTEGRANTE DEL GRUPO FINANCIERO
BANAMEX, ACTING THROUGH ITS NASSAU
BAHAMAS BRANCH**

By: JULIO ALVAREZ GONZÁLEZ and
LEOPOLDO AMAYA GONZÁLEZ

Print name: JULIO ALVAREZ GONZÁLEZ and
LEOPOLDO AMAYA GONZÁLEZ

For and on behalf of

**BANCO POPULAR ESPAÑOL S.A.**

By: DAVID FOMBELLIDA and MIGUEL ANGEL PEREZ

Print name: DAVID FOMBELLIDA and MIGUEL ANGEL PEREZ

For and on behalf of

**BANCO SANTANDER (MEXICO) S.A. INSTITUCIÓN DE BANCA MÚLTIPLE GRUPO FINANCIERO SANTANDER**

By: WADE A. KIT and OCTAVIANO CARLOS COUTTOLENC MESTRE

Print name: WADE A. KIT and OCTAVIANO CARLOS COUTTOLENC MESTRE

For and on behalf of the Agent on behalf of

**BANK OF AMERICA N.A**

By: LISA LEE

Print name: LISA LEE

For and on behalf of the Agent on behalf of

**BANK OF AMERICA N.A SUCURSAL EN ESPAÑA**

By: LISA LEE

Print name: LISA LEE

For and on behalf of

**BANKIA, S.A.**

By: AITOR COHRS and LAURA SANZ

Print name: AITOR COHRS and LAURA SANZ

For and on behalf of

**BANKIA, S.A. MIAMI BRANCH**

By: AITOR COHRS and LAURA SANZ

Print name: AITOR COHRS and LAURA SANZ

For and on behalf of

**BARCLAYS BANK PLC**

By: MICHAEL MOZER

Print name: MICHAEL MOZER

For and on behalf of the Agent on behalf of

**BAYERISCHE LANDESBANK**

By: LISA LEE

Print name: LISA LEE

For and on behalf of the Agent on behalf of

**BAYERISCHE LANDESBANK, NEW YORK BRANCH**

By: LISA LEE

Print name: LISA LEE

For and on behalf of

**BBVA BANCOMER, S.A., INSTITUCIÓN DE BANCA MÚLTIPLE GRUPO FINANCIERO BBVA BANCOMER**

By: ALEJANDRO JOSE CARDENAS BORTONI
and LORENZO JOSE VALDES ELIZONDO

Print name: ALEJANDRO JOSE CARDENAS BORTONI
and LORENZO JOSE VALDES ELIZONDO

For and on behalf of

**BNP PARIBAS (PARIS BRANCH)**

By: KATHRYN B. QUINN and ALBERT A. YOUNG JR.

Print name: KATHRYN B. QUINN and ALBERT A. YOUNG JR.

For and on behalf of

**BNP PARIBAS S.A.**

By: KATHRYN B. QUINN and ALBERT A. YOUNG JR.

Print name: KATHRYN B. QUINN and ALBERT A. YOUNG JR.

For and on behalf of

**BNP PARIBAS SA-NEW YORK BRANCH**

By: KATHRYN B. QUINN and ALBERT A. YOUNG JR.

Print name: KATHRYN B. QUINN and ALBERT A. YOUNG JR.

For and on behalf of

**BNP PARIBAS S.A., SUCURSAL EN ESPAÑA**

By: KATHRYN B. QUINN and ALBERT A. YOUNG JR.

Print name: KATHRYN B. QUINN and ALBERT A. YOUNG JR.

For and on behalf of

**BNP PARIBAS (SYDNEY BRANCH)**

By: KATHRYN B. QUINN and ALBERT A. YOUNG JR.

Print name: KATHRYN B. QUINN and ALBERT A. YOUNG JR.

For and on behalf of

**CAIXA GERAL DE DEPOSITOS, S.A, SUCURSAL EN ESPAÑA**

By: PEDRO MC CARTHY DA CUNHA

Print name: PEDRO MC CARTHY DA CUNHA

For and on behalf of

**CAIXABANK S.A.**

By: FERNANDO ALVAREZ-QUIÑONES and
JAVIER GARCIA FAUBEL

Print name: FERNANDO ALVAREZ-QUIÑONES and
JAVIER GARCIA FAUBEL

For and on behalf of the Agent on behalf of

**CITIBANK INTERNATIONAL PLC**

By: LISA LEE

Print name: LISA LEE

For and on behalf of

**CITIBANK INTERNATIONAL PLC, SUCURSAL EN ESPAÑA**

By: MIGUEL TRUEBA

Print name: MIGUEL TRUEBA

For and on behalf of the Agent on behalf of

**CITIBANK NA**

By: LISA LEE

Print name: LISA LEE

For and on behalf of

**CITIBANK N.A. NEW YORK**

By: FLAVIO FIGUEIREDO and ELISEO SERDÁ
N

Print name: FLAVIO FIGUEIREDO and ELISEO SERDÁ
N

For and on behalf of the Agent on behalf of

**COMERICA BANK**

By: LISA LEE

Print name: LISA LEE

For and on behalf of the Agent on behalf of

**COMMERZBANK AG, LONDON BRANCH**

By: LISA LEE

Print name: LISA LEE

For and on behalf of the Agent on behalf of

**COMMERZBANK AG, NEW YORK BRANCH**

By: LISA LEE

Print name: LISA LEE

For and on behalf of

**CREDIT AGRICOLE CIB SUCURSAL EN ESPAÑA**

By: CARLOS ARANGUREN and JAVIER ALVAREZ-RENDUELES

Print name: CARLOS ARANGUREN and JAVIER ALVAREZ-RENDUELES

For and on behalf of

**CREDIT AGRICOLE CORPORATE & INVESTMENT BANK**

By: LUCILE GUBLER and FRANCK BENICHOU

Print name: LUCILE GUBLER and FRANCK BENICHOU

For and on behalf of

**CREDIT AGRICOLE CORPORATE & INVESTMENT BANK PARIS**

By: LUCILE GUBLER and FRANCK BENICHOU

Print name: LUCILE GUBLER and FRANCK BENICHOU

For and on behalf of

**CREDIT AGRICOLE CORPORATE & INVESTMENT BANK S.A. NEW YORK BRANCH**

By: KEVIN D. FLOOD and JEAN PHILIPPE ADAM

Print name: KEVIN D. FLOOD and JEAN PHILIPPE ADAM

For and on behalf of the Agent on behalf of

**CREDIT INDUSTRIEL ET COMMERCIAL, LONDON BRANCH**

By: LISA LEE

Print name: LISA LEE

For and on behalf of

**CREDIT SUISSE AG CAYMAN ISLANDS BRANCH**

By: DAVID FITZGERALD and STEVEN DWEK

Print name: DAVID FITZGERALD and STEVEN DWEK

For and on behalf of

**FCOF III EUROPE UB SECURITIES LIMITED**

By: TONY TRAYNOR

Print name: TONY TRAYNOR

For and on behalf of

**FORTIS BANK S.A./N.V**

By: ALFRED M. TORRES and JOHN W. BENTON

Print name: ALFRED M. TORRES and JOHN W. BENTON

For and on behalf of

**FORTIS BANK, SA SUCURSAL EN ESPAÑA**

By: ALFRED M. TORRES and JOHN W. BENTON

Print name: ALFRED M. TORRES and JOHN W. BENTON

For and on behalf of

**HSBC BANK PLC, SUCURSAL EN ESPAÑA**

By: ANTONIO VILELA and MARK J. HALL

Print name: ANTONIO VILELA and MARK J. HALL

For and on behalf of

**HSBC MEXICO, S.A., INSTITUCIÓN DE BANCA MÚLTIPLE, GRUPO FINANCIERO HSBC**

By: VICTOR MANUEL ELIZONDO and
CORDELIA GONZALEZ FLORES ARIAS

Print name: VICTOR MANUEL ELIZONDO and
CORDELIA GONZALEZ FLORES ARIAS

For and on behalf of

**ICE 1 EM CLO LTD**

By: NATHAN SANDLER

Print name: NATHAN SANDLER

For and on behalf of the Agent on behalf of

**ING BANK N.V., DUBLIN BRANCH**

By: LISA LEE

Print name: LISA LEE

For and on behalf of the Agent on behalf of

**ING BELGIUM S.A, SUCURSAL EN ESPAÑA**

By: LISA LEE

Print name: LISA LEE

For and on behalf of the Agent on behalf of

**INSTITUTO DE CRÉDITO OFICIAL**

By: LISA LEE

Print name: LISA LEE

For and on behalf of the Agent on behalf of

**INTESA SANPAOLO SPA, NEW YORK BRANCH**

By: LISA LEE

Print name: LISA LEE

For and on behalf of the Agent on behalf of

**INTESA SANPAOLO SPA, SUCURSAL EN ESPAÑA**

By: LISA LEE

Print name: LISA LEE

For and on behalf of the Agent on behalf of

**JPMORGAN CHASE BANK, N.A.**

By: LISA LEE

Print name: LISA LEE

For and on behalf of the Agent on behalf of

**JPMORGAN CHASE BANK, N.A., SUCURSAL EN ESPAÑA**

By: LISA LEE

Print name: LISA LEE

For and on behalf of

**LIBERBANK, S.A**

By: SONIA LUCILA GIL RANCHO

Print name: SONIA LUCILA GIL RANCHO

For and on behalf of the Agent on behalf of

**LLOYDS TSB BANK PLC**

By: LISA LEE

Print name: LISA LEE

For and on behalf of the Agent on behalf of

**MEDIOBANCA BANCA DI CREDITO FINANZIARIO SPA**

By: LISA LEE

Print name: LISA LEE

For and on behalf of

**MIZUHO CORPORATE BANK, LTD.**

By: DAVID NAPOLI COSTA

Print name: DAVID NAPOLI COSTA

For and on behalf of

**MIZUHO CORPORATE BANK NEDERLAND NV**

By: MR K. KATO and MR T. SUZUKI

Print name: MR K. KATO and MR T. SUZUKI

For and on behalf of

**MORGAN STANLEY BANK INTERNATIONAL LIMITED**

By: NAUMAN ANSARI

Print name: NAUMAN ANSARI

For and on behalf of the Agent on behalf of

**NCG BANCO, S.A.**

By: LISA LEE

Print name: LISA LEE

For and on behalf of

**PORTIGON AG SUCURSAL EN ESPAÑA**

By: BERTO NUVOLONI and RAUL CALVO

Print name: BERTO NUVOLONI and RAUL CALVO

For and on behalf of

**QP SFM CAPITAL HOLDINGS LIMITED**

By: THOMAS L. O'GRADY

Print name: THOMAS L. O'GRADY

For and on behalf of the Agent on behalf of

**SCOTIABANK EUROPE PLC**

By: LISA LEE

Print name: LISA LEE

For and on behalf of the Agent on behalf of

**STANDARD CHARTERED BANK**

By: LISA LEE

Print name: LISA LEE

For and on behalf of the Agent on behalf of

**THE BANK OF NOVA SCOTIA**

By: LISA LEE

Print name: LISA LEE

For and on behalf of the Agent on behalf of

**THE GOVERNOR AND COMPANY OF THE BANK OF IRELAND**

By: LISA LEE

Print name: LISA LEE

For and on behalf of the Agent on behalf of

**THE ROYAL BANK OF SCOTLAND NV**

By: LISA LEE

Print name: LISA LEE

For and on behalf of the Agent on behalf of

**THE ROYAL BANK OF SCOTLAND PLC**

By: LISA LEE

Print name: LISA LEE

For and on behalf of the Agent on behalf of

**THORNBURG INVESTMENT INCOME BUILDER FUND**

By: LISA LEE

Print name: LISA LEE

For and on behalf of the Agent on behalf of

**UBS AG, STAMFORD BRANCH**

By: LISA LEE

Print name: LISA LEE

For and on behalf of

**WESTPAC EUROPE LIMITED**

By: ANDREW VINEY

Print name: ANDREW VINEY

**THE USPP NOTEHOLDERS**

For and on behalf of

**ALLSTATE LIFE INSURANCE COMPANY**

By: ORLANDO PURPURA and MARK W. (SAM) DAVIS

Print name: ORLANDO PURPURA and MARK W. (SAM) DAVIS

For and on behalf of the Agent on behalf of

**COMMINGLED PENSION TRUST FUND (DISTRESSED DEBT OPPORTUNITIES) OF JPMORGAN CHASE BANK, N.A.**

By: LISA LEE

Print name: LISA LEE

For and on behalf of

**CVI GVF (LUX) MASTER S.A.R.L.**

By: TIFFANY PARR

Print name: TIFFANY PARR

For and on behalf of

**HARTFORD LIFE AND ACCIDENT INSURANCE COMPANY**

By: KENNETH W. DAY

Print name: KENNETH W. DAY

For and on behalf of

**HARTFORD LIFE INSURANCE COMPANY**

By: KENNETH W. DAY

Print name: KENNETH W. DAY

For and on behalf of the Agent on behalf of

**INSIGHT LDI SOLUTIONS PLUS PLC, IN RESPECT OF THE INSIGHT LOAN FUND**

By: LISA LEE

Print name: LISA LEE

For and on behalf of the Agent on behalf of

**JPMORGAN CORE PLUS BOND FUND**

By: LISA LEE

Print name: LISA LEE

For and on behalf of the Agent on behalf of

**JPMORGAN DISTRESSED DEBT OPPORTUNITIES MASTER FUND, LTD.**

By: LISA LEE

Print name: LISA LEE

For and on behalf of the Agent on behalf of

**JPMORGAN HIGH YIELD FUND**

By: LISA LEE

Print name: LISA LEE

For and on behalf of the Agent on behalf of

**JPMORGAN STRATEGIC INCOME OPPORTUNITIES FUND**

By: LISA LEE

Print name: LISA LEE

For and on behalf of

**NATIONAL BENEFIT LIFE INSURANCE COMPANY**

By: SAMUEL OTCHERE

Print name: SAMUEL OTCHERE

For and on behalf of the Agent on behalf of

**PACHOLDER HIGH YIELD FUND, INC.**

By: LISA LEE

Print name: LISA LEE

For and on behalf of

**PHL VARIABLE INSURANCE COMPANY**

By: NELSON CORREA

Print name: NELSON CORREA

For and on behalf of

**PHOENIX LIFE INSURANCE COMPANY**

By: NELSON CORREA

Print name: NELSON CORREA

For and on behalf of

**PRIMERICA LIFE INSURANCE COMPANY**

By: SAMUEL OTCHERE

Print name: SAMUEL OTCHERE

For and on behalf of

**QP SFM CAPITAL HOLDING LIMITED**

By: THOMAS L. O'GRADY

Print name: THOMAS L. O'GRADY

For and on behalf of

**SWISS RE LIFE & HEALTH AMERICA INC.**

By: SAMUEL OTCHERE

Print name: SAMUEL OTCHERE

For and on behalf of

**WESTPORT INSURANCE CORPORATION**

By: SAMUEL OTCHERE

Print name: SAMUEL OTCHERE

**Exhibit 4.32**

**C L I F F O R D**
**C H A N C E L L P**

**CLEARY GOTTLIEB STEEN &**
**HAMILTON LLP**

**EXECUTION COPY**

DATED 17 SEPTEMBER 2012

CITIBANK INTERNATIONAL PLC
as Facility Agent

The Facilities Agreement Creditors
(as named herein)

CEMEX, S.A.B. DE C.V. AND CERTAIN OF ITS SUBSIDIARIES
as Original Borrowers, Original Guarantors, Original Security Providers and Intra-Group Lenders

WILMINGTON TRUST (LONDON) LIMITED
acting as Security Agent

and others

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# INTERCREDITOR AGREEMENT

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**CONTENTS**

**THIS AGREEMENT** is dated 17 September 2012 and made between:

(1) **CITIBANK INTERNATIONAL PLC** as Facility Agent;

(2) **THE FINANCIAL INSTITUTIONS**, **PROMISSORY NOTEHOLDERS, USPP NOTEHOLDERS AND OTHER ENTITIES** named on the signing pages as Facilities Agreement Creditors (the "**Original Facilities Agreement Creditors**");

(3) **CEMEX, S.A.B. de C.V.** (the "**Parent**");

(4) **THE SUBSIDIARIES** of the Parent named on the signing pages as Original Borrowers (together with the Parent, the " **Original Borrowers**");

(5) **THE SUBSIDIARIES** of the Parent named on the signing pages as Original Guarantors (together with the Parent, the " **Original Guarantors**");

(6) **THE SUBSIDIARIES** of the Parent named on the signing pages as Original Security Providers (together with the Parent, the " **Original Security Providers**");

(7) **THE INTRA-GROUP LENDERS**; and

(8) **WILMINGTON TRUST (LONDON) LIMITED** as security trustee for the Secured Parties (the "**Security Agent**").

**WHEREAS**

(A) The Parent, the Original Debtors and the Original Security Providers are entering into this Agreement pursuant to the Facilities Agreement, and in connection with the grant by the Original Guarantors of certain guarantees in favour of the Facilities Agreement Creditors and the grant by the Original Security Providers of Security pursuant to the Transaction Security Documents in favour of the Facilities Agreement Creditors.

(B) Under the Existing Notes Documents the Parent and the other Original Debtors may not grant Security in favour of the Facilities Agreement Creditors unless the Parent and the Original Debtors have made effective provision to secure, whether by direct or third party Security, the Existing Notes Liabilities equally and rateably with the Facilities Agreement Creditor Liabilities.

**IT IS AGREED** as follows:

1. **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions**

In this Agreement:

"**2014 Eurobonds**" means the €900,000,000 4.75% Eurobonds issued by CEMEX Finance Europe B.V. and guaranteed by CEMEX España maturing 5 March 2014 (as amended from time to time).

"**2015 Floating Rate Notes**" means the US$800,000,000 floating rate senior secured notes maturing on 30 September 2015 issued by the Parent.

"**2015 Floating Rates Notes Indenture**" means the indenture dated as of 5 April 2011 among the Parent as issuer, CEMEX México, CEMEX España and NSH as guarantors and The Bank of New York Mellon as trustee pursuant to which the 2015 Floating Rate Notes were issued.

"**2016 Senior Notes**" means the US$1,750,000,000 9.5% senior secured notes maturing on 14 December 2016 issued by CEMEX Finance.

"**2016 Senior Notes Indenture**" means the indenture dated as of 14 December 2009 among CEMEX Finance as issuer, the Parent, CEMEX México, CEMEX España, CEMEX Corp., CEMEX Concretos, S.A. de C.V., Empresas Tolteca and NSH as guarantors and The Bank of New York Mellon as trustee pursuant to which the 2016 Senior Notes were issued.

"**2017 CEMEX España Senior Notes**" means the €115,346,000 8.875% senior secured notes maturing on 12 May 2017 issued by CEMEX España.

"**2017 CEMEX España Senior Notes Indenture**" means the indenture dated as of 12 May 2010 among CEMEX España as issuer, the Parent, CEMEX México, and NSH as guarantors and The Bank of New York Mellon as trustee pursuant to which the 2017 CEMEX España Senior Notes were issued.

"**2017 CEMEX Finance Senior Notes**" means the €350,000,000 9.625% senior secured notes maturing on 14 December 2017 issued by CEMEX Finance.

"**2017 CEMEX Finance Senior Notes Indenture**" means the indenture dated as of 14 December 2009 among CEMEX Finance as issuer, the Parent, CEMEX México, CEMEX España, CEMEX Corp., CEMEX Concretos, S.A. de C.V., Empresas Tolteca and NSH as guarantors and The Bank of New York Mellon as trustee pursuant to which the 2017 CEMEX Finance Senior Notes were issued.

"**2018 New Senior Notes**" means the $500,000,000 9.50% senior secured notes maturing on 15 June 2018 issued by the Parent.

"**2018 New Senior Notes Indenture**" means the indenture dated on or about the same date as this Agreement among the Parent as issuer, CEMEX México, CEMEX España and the Original Guarantors and The Bank of New York Mellon as trustee pursuant to which the 2018 Senior Notes were issued.

"**2018 Senior Notes**" means the US$1,650,000,000 9.000% senior secured notes maturing on 11 January 2018 and issued by the Parent.

"**2018 Senior Notes Indenture**" means the indenture dated as of 11 January 2011 among the Parent as issuer, CEMEX México, CEMEX España and NSH as guarantors and The Bank of New York Mellon as trustee pursuant to which the 2018 Senior Notes were issued.

"**2018 Subordinated Convertible Notes**" means the US$690,000,000 3.75% subordinated optional convertible securities maturing on 15 March 2018 and issued by the Parent.

"**2018 Subordinated Convertible Notes Indenture**" means the indenture dated as of 15 March 2011 among the Parent as issuer, The Bank of New York Mellon as trustee and The Bank of New York Mellon, S.A., Institución de Banca Múltiple as Mexican trustee pursuant to which the 2018 Subordinated Convertible Notes were issued.

"**2019 Euro Senior Notes**" means the €179,219,000 9.875% senior secured notes maturing on 30 April 2019 and issued by CEMEX España.

"**2019 Euro Senior Notes Indenture**" means the indenture dated as of 28 March 2012 among CEMEX España as issuer, the Parent, CEMEX México, and NSH as guarantors and The Bank of New York Mellon as trustee pursuant to which the 2019 Euro Senior Notes were issued.

"**2019 USD Senior Notes**" means the US$703,861,000 9.875% senior secured notes maturing on 30 April 2019 and issued by CEMEX España.

"**2019 USD Senior Notes Indenture**" means the indenture dated as of 28 March 2012 among CEMEX España as issuer, the Parent, CEMEX México, and NSH as guarantors and The Bank of New York Mellon as trustee pursuant to which the 2019 USD Senior Notes were issued.

"**2020 Senior Notes**" means the US$1,192,996,000 9.25% senior secured notes maturing on 12 May 2020 and issued by CEMEX España.

"**2020 Senior Notes Indenture**" means the indenture dated as of 12 May 2010 among CEMEX España as issuer, the Parent, CEMEX México, and NSH as guarantors and The Bank of New York Mellon as trustee pursuant to which the 2020 Senior Notes were issued.

"**Additional Guarantor**" means a company that becomes an Additional Guarantor as defined in the Facilities Agreement in accordance with clause 27 (*Changes to the Obligors*) thereof.

"**Additional Notes**" means any notes, *certificados bursátiles* (including any Certificados Bursátiles issued under and in accordance with the Certificados Bursátiles programme other than the Existing Certificados Bursátiles), bonds or other debt securities, convertible or exchangeable securities or loan facilities:

(a) the proceeds of which are applied (in each case, as permitted (or to the extent not prohibited) by the Facilities Agreement and at least to the extent required under the Facilities Agreement):

  (i) to refinance Existing Notes or existing Additional Notes which are secured equally and rateably with other Financial Indebtedness of the Debtors on the terms provided for in this Agreement;

  (ii) to refinance the Facilities; or

  (iii) to refinance any of the 2014 Eurobonds; and

(b) which are issued or, as the case may be, borrowed, after the date of this Agreement, by any Additional Notes Obligors, and which are permitted to be issued or, as the case may be, borrowed, in accordance with paragraph (f) of the definition of "Permitted Financial Indebtedness" in clause 1.1 (*Definitions*) of the Facilities Agreement,

other than any notes, bonds or other debt securities, convertible or exchangeable securities or loan facilities issued to or, as the case may be lent by a Creditor that is a Refinancing Creditor which constitute Refinancing Debt.

"**Additional Notes Creditor**" means each holder from time to time of Additional Notes.

"**Additional Notes Documents**" means any terms and conditions, indenture, loan agreement, *título único* or similar instrument entered into by any Additional Notes Obligor in relation to any Additional Notes and any other related documents.

"**Additional Notes Liabilities**" means the Liabilities owed by any Additional Notes Obligor (and, to the extent applicable in respect of the Transaction Security granted by it, any Security Provider) to the Additional Notes Creditors under or in connection with the Additional Notes Documents (or, in the case of a Security Provider, under or in connection with the Transaction Security Documents).

"**Additional Notes Obligor**" means any member of the Group or members of the Group (whether acting as co-issuers or guarantors or otherwise) which is, in accordance with paragraph (f) of the definition of "Permitted Financial Indebtedness" in clause 1.1 ( *Definitions*) of the Facilities Agreement, an issuer or a borrower or a guarantor under any Additional Notes Documents as permitted by the Facilities Agreement and, if not a Debtor under this Agreement, which has acceded to this Agreement as a Debtor in accordance with Clause 14.7 ( *New Debtor/Security Provider*).

"**Additional Notes Trustee**" means each noteholder trustee, *representante común*, indenture trustee, agent or any other entity which performs a similar role in relation to Additional Notes Creditors under any Additional Notes.

"**Additional Notes Trustee Liabilities**" means all present and future liabilities, actual and contingent, of any Additional Notes Obligor (and, to the extent applicable in respect of the Transaction Security granted by it, any Security Provider) to any Additional Notes Trustee under or in connection with any Additional Notes Documents (or, in the case of a Security Provider, under or in connection with the Transaction Security Documents).

"**Additional Security Provider**" means a company that becomes an Additional Security Provider as defined in the Facilities Agreement in accordance with clause 27 (*Changes to the Obligors*) thereof.

"**Affiliate**" means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company.

"**Agent**" means the Facility Agent and each Refinancing Creditor Representative.

"**Agent Liabilities**" means all present and future liabilities, actual and contingent, of any Debtor (and, to the extent applicable in relation to the Transaction Security granted by it, any Security Provider) to any Agent under the Debt Documents.
"**Base Currency**" means US dollars.

"**Base Currency Amount**" means, on any date:

(a) in relation to an amount or Exposure denominated in the Base Currency, that amount or the amount of that Exposure; and

(b) in relation to an amount or Exposure denominated in a currency other than the Base Currency, that amount or the amount of that Exposure converted into the Base Currency at:

(i) for the purposes of determining the Instructing Group or the Super Majority Instructing Group, the exchange rate displayed on

the appropriate Reuters screen at or about 11:00 a.m. on the date on which such determination is made (or if the agreed page is replaced or services cease to be available, the Security Agent may specify another page or service displaying the appropriate rate after consultation with the Parent, the Facility Agent and each Refinancing Creditor Representative); and

(ii) for all other purposes, the Security Agent's Spot Rate of Exchange on the date which is 5 Business Days before any payment is required to be made.

"**Borrower**" means an Original Borrower unless it has ceased to be a Borrower in accordance with Clause 14.9 ( *Resignation of a Debtor/Security Provider*) and, for the purposes of Clause 10.2 ( *Order of Application – Debt Claim Recoveries* ) only, shall be deemed to include a Refinancing Obligor to the extent of its Borrowing Liabilities.

"**Borrowing Liabilities**" means, in relation to a Debtor, the Liabilities (not being Specific Guarantee Liabilities or Cross Guarantee Liabilities) it may have as a principal debtor to a Facilities Agreement Creditor in respect of Financial Indebtedness arising under the Finance Documents or to a Refinancing Creditor in respect of Financial Indebtedness arising under the Refinancing Documents (whether incurred solely or jointly) and including, without limitation, liabilities as a Borrower under and as defined in the Facilities Agreement and liabilities as an issuer or as a borrower under any Refinancing Document.

"**Business Day**" means a day (other than a Saturday or Sunday) on which banks are open for general business in London, Madrid, New York City, Amsterdam and Mexico City (in the case of Mexico City, if applicable, as specified by a governmental authority), and:

(a) (in relation to any date for payment or lending or purchase of, or the determination of an interest rate or rate of exchange in relation to, a currency other than euro) the principal financial centre of the country of that currency; or

(b) (in relation to any date for payment or lending or purchase of, or the determination of an interest rate or rate of exchange in relation to, euro) any TARGET Day.

"**CEMEX España**" means CEMEX España, S.A.

"**CEMEX Finance**" means CEMEX Finance, LLC (formerly known as CEMEX España Finance, LLC).

"**CEMEX México**" means CEMEX México, S.A. de C.V.

"**Certificados Bursátiles**" means debt securities issued by the Parent and guaranteed ( *por aval*) by CEMEX México and Empresas Tolteca in the Mexican capital markets with the approval of the Mexican National Banking and Securities Banking and Securities Commission and listed on the Mexican Stock Exchange.

"**Charged Property**" means all of the assets which from time to time are, or are expressed to be, the subject of the Transaction Security.

"**Common Assurance**" means any guarantee, indemnity or other assurance against loss in respect of any of the Liabilities, the benefit of which (however conferred) is, to the extent legally possible, given to all the Secured Parties in respect of their Liabilities.

"**Compliance Certificate**" means a certificate substantially in the form of schedule 10 ( *Form of Compliance Certificate*) of the Facilities Agreement.

"**Consent**" means any consent, approval, release or waiver or agreement to any amendment.

"**Consolidated Leverage Ratio**" means, on any date of determination, the ratio of Consolidated Funded Debt on such date to EBITDA for the one (1) year period ending on such date (where "**Consolidated Funded Debt**" and "**EBITDA**" have the meaning given to such terms in the Facilities Agreement).

"**Creditor**" means an Agent, a Facilities Agreement Creditor or a Refinancing Creditor.

"**Creditor Secured Documents**" means each of the Finance Documents and the Refinancing Documents.

"**Creditor Secured Parties**" means each of the Secured Parties other than the Noteholder Trustees and the Noteholders from time to time.

"**Creditor/Agent/Security Agent Accession Undertaking** " means:

(a) an undertaking substantially in the form set out in Schedule 2 ( *Form of Creditor/Agent/Security Agent Accession Undertaking* ); or

(b) in the case of a Facilities Agreement Creditor only, a Transfer Certificate, Assignment Agreement or a Creditor Accession Letter (in each case as defined in the Facilities Agreement),

as the context may require.

"**Cross Guarantee Liabilities**" means, in relation to a member of the Group, the Liabilities it may have pursuant to a Guarantee Clause referred to in paragraphs (b) or (c) of the definition thereof to any Finance Party or Refinancing Party.

"**Debt Claim Recoveries**" has the meaning given to such term in Clause 10.2 ( *Order of application - Debt Claim Recoveries*).

"**Debt Documents**" means the Finance Documents, the Refinancing Documents and the Noteholder Documents.

"**Debtor**" means each Borrower and each Guarantor (where a Borrower or a Guarantor may also be an Existing Notes Obligor) and each Additional Notes Obligor and Refinancing Obligor which has acceded to this Agreement as a Debtor in accordance with Clause 14.7 ( *New Debtor/Security Provider*).

"**Debtor/Security Provider Accession Deed**" means:

(a) a deed substantially in the form set out in Schedule 1 ( *Form of Debtor/Security Provider Accession Deed*); or

(b) (only in the case of a member of the Group which is acceding as a Guarantor or a Security Provider) an Accession Letter (as defined in the Facilities Agreement).

"**Default**" means an Event of Default or any event or circumstance specified in clause 24 ( *Events of Default*) of the Facilities Agreement which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default.

"**Delegate**" means any delegate, agent, representative, *comisionista mercantil*, attorney or co-trustee appointed by the Security Agent.

"**Derivatives Unwind Promissory Note**" means a promissory note issued to a Facilities Agreement Creditor under a Derivatives Unwind Promissory Note Facility for the purposes of (and as defined in) the Facilities Agreement.

"**Disposal Proceeds**" has the meaning given to that term in Clause 8 ( *Proceeds of Disposals of Charged Property*) of this Agreement.

"**Distressed Disposal**" means a disposal of an asset of a member of the Group which is:

(a) being effected at the request of the Instructing Group in circumstances where the Transaction Security is being enforced; or

(b) being effected, after the occurrence of a Facilities Agreement Acceleration Event, by a Debtor or a Security Provider to a person or persons which is (or are) not a member (or members) of the Group.

"**Effective Date**" means the date on which the Facilities Agreement becomes effective in accordance with its terms.

"**Empresas Tolteca**" means Empresas Tolteca de México, S.A. de C.V.

"**Enforcement Action**" means:

(a) in relation to any Liabilities or Intra-Group Liabilities:

(i) the acceleration of any Liabilities or Intra-Group Liabilities or the making of any declaration that any Liabilities or Intra-Group Liabilities are prematurely due and payable (other than as a result of it becoming unlawful for a Facilities Agreement Creditor or a Refinancing Creditor to perform its obligations under, or of any voluntary or mandatory prepayment arising under, the Debt Documents);

(ii) the making of any declaration that any Liabilities or Intra-Group Liabilities are payable on demand;

(iii) the making of a demand in relation to a Liability or Intra-Group Liability that is payable on demand;

(iv) the making of any demand against any member of the Group in relation to any Cross Guarantee Liabilities or Specific Guarantee Liabilities of that member of the Group;

(v) the exercise of any right to require any member of the Group to acquire any Liability or Intra-Group Liability (including exercising any put or call option against any member of the Group for the redemption or purchase of any Liability or Intra-Group Liability);

(vi) the exercise of any right of set-off, account combination or payment netting against any member of the Group in respect of any Liabilities or Intra-Group Liabilities; and

(vii) the suing for, commencing or joining of any legal or arbitration proceedings against any member of the Group to recover any Liabilities or Intra-Group Liabilities;

(b) the taking of any steps to enforce or require the enforcement of any Transaction Security;

(c) the entering into of any composition, compromise, assignment or arrangement with any member of the Group which owes any Liabilities

or Intra-Group Liabilities, or has given any Security, guarantee or indemnity or other assurance against loss in respect of the Liabilities or Intra-Group Liabilities (other than any action permitted under Clause 14 ( *Changes to the Parties*)); or

(d) the petitioning, applying or voting for, or the taking of any steps (including the appointment of any liquidator, receiver, administrator, Irish law examiner or similar officer) in relation to, the winding up, dissolution, bankruptcy ( *faillissement*), administration, Irish law examinership, *onder bewindstelling* or reorganisation of any member of the Group which owes any Liabilities or Intra-Group Liabilities, or has given any Security, guarantee, indemnity or other assurance against loss in respect of any of the Liabilities or Intra-Group Liabilities, or any of such member of the Group's assets or any suspension of payments or moratorium of any indebtedness of any such member of the Group, or any analogous procedure or step in any jurisdiction,

except that the taking of any action falling within paragraphs (a)(vii) or (d) above which is necessary (but only to the extent necessary) to preserve the validity, existence or priority of claims in respect of Liabilities or Intra-Group Liabilities, including the registration of such claims before any court or governmental authority and the bringing, supporting or joining of proceedings to prevent any loss of the right to bring, support or join proceedings by reason of applicable limitation periods, shall not constitute Enforcement Action.

"**Enforcement Event**" means:

(a) the occurrence of a Facilities Agreement Acceleration Event; and

(b) receipt by the Security Agent of the written consent of the Instructing Group to the enforcement of Transaction Security.

"**EUR730M Perpetuals**" means the EUR 730,000,000 Callable Perpetual Dual Currency Notes issued by NSHFV.

"**EUR730M Perpetuals Indenture**" means the indenture dated as of 9 May 2007 among NSHFV as issuer, the Parent, CEMEX México and NSH as guarantors and The Bank of New York as trustee pursuant to which the EUR730M Perpetuals were issued.

"**Event of Default**" means any event or circumstance specified as such in the Facilities Agreement.

"**Existing Certificados Bursátiles**" means the Certificados Bursátiles issued in UDI in the amount of 116,530,800 UDIs (ref. CEMEX 07-2U) on 30 November 2007 and due on 17 November 2017.

"**Existing Notes**" means the 2015 Floating Rate Notes, the 2016 Senior Notes, the 2017 CEMEX Finance Senior Notes, the 2017 CEMEX España Senior Notes, the 2018 Senior Notes, the 2019 Euro Senior Notes, the 2019 USD Senior Notes, the 2020 Senior Notes, the US$350M Perpetuals, the EUR730M Perpetuals, the US$750M Perpetuals, the US$900M Perpetuals, the Existing Certificados Bursátiles and the 2018 New Senior Notes.

"**Existing Notes Creditor**" means each holder from time to time of Existing Notes.

"**Existing Notes Documents**" means the 2015 Floating Rate Notes Indenture, the 2016 Senior Notes Indenture, the 2017 CEMEX Finance Senior Notes Indenture, the 2017 CEMEX España Senior Notes Indenture, the 2018 Senior Notes Indenture, the 2019 Euro Senior Notes Indenture, the 2019 USD Senior Notes Indenture, the 2020 Senior Notes Indenture, the US$350M Perpetuals Indenture, the EUR730M Perpetuals Indenture, the US$750M Perpetuals Indenture, the US$900M Perpetuals Indenture, 2018 New Senior Notes Indenture and the *título únicos* pursuant to which the Existing Certificados Bursátiles were issued and, in each case, any other related document.

"**Existing Notes Liabilities**" means the Liabilities owed by the Debtors (and, to the extent applicable in relation to the Transaction Security granted by it, any Security Provider) to the Existing Notes Creditors under or in connection with the Existing Notes Documents.

"**Existing Notes Obligor**" means any issuer or guarantor under any Existing Notes Documents.

"**Existing Notes Trustee**" means each trustee *or representante común* under any Existing Notes.

"**Existing Notes Trustee Liabilities**" means all present and future liabilities and obligations, actual and contingent, of any Debtor (and, to the extent applicable in relation to the Transaction Security granted by it, any Security Provider) to any Existing Notes Trustee under the Existing Notes Documents.

"**Exposure**" means, as appropriate, a Facilities Agreement Creditor Exposure or a Refinancing Creditor Exposure.

"**Facility**" means a "Facility" as defined in the Facilities Agreement.

"**Facilities Agreement**" means the facilities agreement dated on or about the date of this Agreement entered into between, amongst others, the Parent, the Original Obligors (as defined therein), the Original Facilities Agreement Creditors as providers of certain term loan facilities, promissory note facilities and a private placement note facility, the Facility Agent as facility agent and the Security Agent as security agent.

"**Facilities Agreement Acceleration Event**" means the Facility Agent exercising any of its rights under any of paragraphs (a) to (e) of clause 24.16 (*Acceleration*) of the Facilities Agreement.

"**Facilities Agreement Creditor**" means:

(a) any Original Facilities Agreement Creditor; and

(b) any person which becomes a party to the Facilities Agreement in accordance with clause 25 ( *Changes to the Creditors*) thereof and which accedes to this Agreement in accordance with Clause 14.6 ( *Creditor/Agent/Security Agent Accession Undertaking*),

which in each case has not ceased to be a party to the Facilities Agreement in accordance with the terms thereof, and, for the avoidance of doubt, whether a Lender, a Derivatives Unwind Promissory Noteholder or a USPP Noteholder (in each case as defined in the Facilities Agreement).

"**Facilities Agreement Creditor Exposures**" means at any time:

(a) in relation to a Facilities Agreement Creditor and a Loan, that Facilities Agreement Creditor's participation in Loans made under the relevant Facility at that time (in the case of Facilities referred to in clause 4.3 ( *Promissory Notes under Loan Facilities*) of the Facilities Agreement, being the principal amount owed to that Lender under its Loan Facility Promissory Note);

(b) in relation to Facilities Agreement Creditor and a Derivatives Unwind Promissory Note, the principal amount owed to that Facilities Agreement Creditor under that Derivatives Unwind Promissory Note at that time; and

(c) in relation to a Facilities Agreement Creditor which holds a USPP Note, the principal amount owed to that Facilities Agreement Creditor under that USPP Note at that time.

"**Facilities Agreement Creditor Liabilities**" means the Liabilities owed by the Debtors (and, to the extent applicable in relation to the Transaction Security granted by it, any Security Provider) to the Facilities Agreement Creditors under the Finance Documents.

"**Final Discharge Date**" means the first date on which all Facilities Agreement Creditor Liabilities have been fully and finally discharged to the satisfaction of

the Facility Agent (acting reasonably), whether or not as the result of an enforcement, and none of the Facilities Agreement Creditors are under any further obligation to provide financial accommodation to any of the Debtors under the Finance Documents.

"**Finance Document**" means a "Finance Document" as defined in the Facilities Agreement.

"**Finance Parallel Debt**" has the meaning given to such term in Clause 11.2 ( *Finance Parallel Debt (Covenant to pay the Security Agent)* ).

"**Finance Party**" means the Facility Agent, the Security Agent or a Facilities Agreement Creditor.

"**Financial Indebtedness**" has the meaning given to the term "Financial Indebtedness" in the Facilities Agreement.

"**Financial Quarter**" means the period commencing on the day after one Quarter Date and ending on the next Quarter Date.

"**Group**" means the Parent and each of its Subsidiaries for the time being.

"**Guarantee Clause**" means:

(a) in relation to any Specific Guaranteed Facilities, clause 18.1 ( *Guarantee and indemnity – Specific Guaranteed Facilities* ) and all other clauses of clause 18 (*Guarantee and indemnity*) of the Facilities Agreement except for clause 18.2 ( *Guarantee and indemnity – all Finance Documents*) thereof;

(b) without prejudice to paragraph (a) above, in relation to the Finance Documents, clause 18.2 ( *Guarantee and indemnity – all Finance Documents*) and all other clauses of clause 18 ( *Guarantee and Indemnity*) of the Facilities Agreement except for clause 18.1 ( *Guarantee and indemnity – Specific Guaranteed Facilities* ) thereof; and

(c) in relation to any Guaranteed Refinancing Debt, any clause contained in the Refinancing Documents relating to that Guaranteed Refinancing Debt pursuant to which a Refinancing Guarantor has liabilities under such Refinancing Documents (present or future, actual or contingent and whether incurred solely or jointly) to any Refinancing Party as or as a result of its being a guarantor or surety (including, without limitation, liabilities arising by way of guarantee, indemnity, contribution or subrogation and in particular any guarantee or indemnity arising under or in respect of those Refinancing Documents).

"**Guaranteed Refinancing Debt**" means any bonds, notes or other debt securities, convertible or exchangeable securities issued, or loans borrowed under loan facilities, pursuant to a Refinancing in relation to which a Debtor owes Cross Guarantee Liabilities to a Refinancing Creditor.

"**Guarantors**" means the Original Guarantors and any Additional Guarantor other than any Original Guarantor or Additional Guarantor which has ceased to be a Guarantor pursuant to Clause 14.9 ( *Resignation of a Debtor/Security Provider*) and/or sub paragraph (ii) of paragraph (c) of Clause 20.1 (*Required consents*) and has not subsequently become an Additional Guarantor pursuant to Clause 14.7 ( *New Debtor/Security Provider*) and "**Guarantor**" means any of them.

"**Holding Company**" means, in relation to a company or corporation, any other company or corporation in respect of which it is a Subsidiary.

"**Insolvency Event**" means, in relation to any Debtor, Security Provider or Material Subsidiary:

(a) any resolution is passed or order made for the winding up, bankruptcy, dissolution, *concurso mercantil*, *quiebra*, *concurso*, administration, Irish law examinership or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise but excluding a solvent liquidation or reorganisation of a Material Subsidiary) of that Debtor, Security Provider or Material Subsidiary, a moratorium is declared in relation to any indebtedness of that Debtor, Security Provider or Material Subsidiary;

(b) any composition, assignment or arrangement is made with any class of its creditors;

(c) the appointment of any liquidator (other than in respect of a solvent liquidation of a Material Subsidiary), receiver, administrator, Irish law examiner, *conciliador*, administrative receiver, compulsory manager or other similar officer in respect of that Debtor, Security Provider or Material Subsidiary or any of its assets; or

(d) any analogous procedure or step is taken in any jurisdiction,

**provided that** no winding-up petition (or equivalent procedure in any jurisdiction) which is frivolous or vexatious and is discharged, stayed or dismissed within 60 days of commencement shall constitute an Insolvency Event.

"**Insolvency Proceedings**" means any of the matters described in the definition of " **Insolvency Event**".

"**Intercreditor Amendment**" means any amendment or waiver which is subject to Clause 20 ( *Consents, Amendments and Override*).

"**Intra-Group Debt Documents**" means any agreement evidencing the terms of the Intra-Group Liabilities.

"**Intra-Group Lenders**" means each Debtor or Security Provider which has made a loan available to, granted credit to or made any other financial arrangement having similar effect with another Debtor or Security Provider.

"**Intra-Group Liabilities**" means all present and future liabilities at any time of any Debtor or Security Provider to any Intra-Group Lender under the Intra-Group Debt Documents, both actual and contingent and whether incurred solely or jointly or in any other capacity together with any of the following matters relating to or arising in respect of those liabilities:

(a) any refinancing, novation, deferral or extension;

(b) any claim for breach of representation, warranty or undertaking or on an event of default or under any indemnity given under or in connection with any Intra-Group Debt Document;

(c) any claim for damages or restitution; and

(d) any claim as a result of any recovery by any Debtor or Security Provider of a Payment on the grounds of preference or otherwise,

and any amounts which would be included in any of the above but for any discharge, non-provability, unenforceability or non-allowance of those amounts in any insolvency or other proceedings.

"**Instructing Group**" means, at any time:

(a) a Creditor or Creditors the Base Currency Amount of whose Exposures under the Facilities and/or, as the case may be, the Refinancing Debt, at that time represent, in aggregate, 75 per cent. or more of the Base Currency Amount of all the Exposures of the Creditors under all of the Facilities and all Refinancing Debt (when aggregated) at that time; and

(b) a Facilities Agreement Creditor or Facilities Agreement Creditors the Base Currency Amount of whose Exposures under the Facilities at that time represent, in aggregate, more than 66 2/3 per cent. of the Base Currency Amount of all the Exposures of the Facilities Agreement Creditors under all of the Facilities at that time.

"**Liabilities**" means all present and future liabilities at any time of any Debtor (and, to the extent applicable in relation to the Transaction Security granted by it,

any Security Provider) to any Secured Party under the Debt Documents, both actual and contingent and whether incurred solely or jointly or in any other capacity together with any of the following matters relating to or arising in respect of those liabilities:

(a) any refinancing, novation, deferral or extension;

(b) any claim for breach of representation, warranty or undertaking or on an event of default or under any indemnity given under or in connection with any Debt Document;

(c) any claim for damages or restitution; and

(d) any claim as a result of any recovery by any Debtor (or, as the case may be, any Security Provider) of a Payment on the grounds of preference or otherwise,

and any amounts which would be included in any of the above but for any discharge, non-provability, unenforceability or non-allowance of those amounts in any insolvency or other proceedings.

"**Loan**" means a loan made or to be made under a Loan Facility pursuant to the terms of (and as defined in) the Facilities Agreement or the principal amount outstanding for the time being of that loan.

"**Loan Facility Promissory Note**" means a promissory note issued to a Facilities Agreement Creditor in connection with a Loan under certain of the Facilities as described in clause 4.3 (*Promissory Notes under Loan Facilities*) of the Facilities Agreement.

"**Material Subsidiary**" means, as at the date of the Facilities Agreement, those companies set out in schedule 16 ( *Material Subsidiaries*) thereto and, after the date of the Facilities Agreement, any other Subsidiary of the Parent which:

(a) has total gross assets representing 5 per cent. or more of the total consolidated assets of the Group;

(b) has revenues representing 5 per cent. or more of the consolidated turnover of the Group; and/or

(c) has earnings before interest, tax, depreciation and amortisation calculated on the same basis as EBITDA, representing 5 per cent. or more of the consolidated EBITDA of the Group (where "**EBITDA**" has the meaning given to such term in the Facilities Agreement),

in each case calculated on a consolidated basis (without duplication) and any Holding Company of any such Subsidiary or of a Borrower, Guarantor or Security Provider (and compliance with the conditions set out in paragraphs (a) to (c) shall be determined as set out in the Facilities Agreement).

"**Mexican Intra-Group Credit Rights**" has the meaning given to the term "*Derechos de Acreedor*" in the Voting Trust Agreement.

"**Mexican Security Trust Agreement**" means the Transaction Security described at paragraph (a) of the definition of Transaction Security Documents.

"**Mexican Security Trustee**" means Banco Nacional de México, S.A., Integrante del Grupo Financiero Banamex, División Fiduciaria, a Mexican *institución de banca múltiple*.

"**Noteholder**" means an Existing Notes Creditor or an Additional Notes Creditor.

"**Noteholder Documents**" means the Existing Notes Documents and any Additional Notes Documents.

"**Noteholder Liabilities**" means the Existing Notes Liabilities and any Additional Notes Liabilities.

"**Noteholder Trustee**" means each Existing Notes Trustee and each Additional Notes Trustee.

"**Noteholder Trustee Liabilities**" means the Existing Notes Trustee Liabilities and any Additional Notes Trustee Liabilities.

"**Notes**" means the Existing Notes and the Additional Notes.

"**Notes Parallel Debt**" has the meaning given to such term in paragraph (a) of Clause 11.3 ( *Notes Parallel Debt (Covenant to pay the Security Agent)*).

"**Notes Parallel Debt Recoveries**" has the meaning given to such term in paragraph (f) of Clause 11.3 ( *Notes Parallel Debt (Covenant to pay the Security Agent)*).

"**Notes Secured Documents**" means each of the Noteholder Documents and each of the Transaction Security Documents.

"**Notes Secured Parties**" means each of the Noteholder Trustees and each of the Noteholders from time to time.

"**NSH**" means New Sunward Holding B.V.

"**NSHFV**" means New Sunward Holding Financial Ventures B.V.

"**Original Debtor**" means an Original Borrower or an Original Guarantor.

"**Participating Member State**" means any member state of the European Union that has the euro as its lawful currency in accordance with legislation of the European Union relating to Economic and Monetary Union.

"**Party**" means a party to this Agreement.

"**Payment**" means, in respect of any Liabilities or Intra-Group Liabilities, a payment, prepayment, repayment, redemption, defeasance or discharge of those Liabilities or Intra-Group Liabilities.

"**Permitted Payments**" means any Payments:

(a) (in the case of any Facilities Agreement Creditor or the Facility Agent) permitted to be received in accordance with the Facilities Agreement (including, without limitation, any Payments received on a refinancing of the Facilities in accordance with the terms of the Facilities Agreement including, without limitation, in the case of a Facilities Agreement Creditor, any Payment received on terms agreed by it pursuant to clause 37.3 (*Facility Change*) of the Facilities Agreement);

(b) (in the case of any Refinancing Party) permitted in accordance with the terms and conditions relating to Payments as set out in the relevant Refinancing Documents; or

(c) (in the case of an Intra-Group Lender) permitted in accordance with Clause 3.2 ( *Permitted Payments: Intra-Group Liabilities* ).

"**Process Agent**" has the meaning given to the term "Process Agent" in the Facilities Agreement

"**Quarter Date**" means each of 31 March, 30 June, 30 September and 31 December.

"**Receiver**" means a receiver or receiver and manager or administrative receiver of the whole or any part of the Charged Property or its equivalent under any applicable law (not including a Dutch *curator* or *bewindvoerder*).

"**Reference Period**" means a period of four consecutive Financial Quarters.

"**Refinancing**" means an issuance or incurrence by a member or members (whether acting as co-issuers or otherwise) of the Group of bonds, notes or other debt securities, convertible or exchangeable securities or loan facilities:

(a) where such issuance or incurrence by that member (or by those members) of the Group is permitted under the Facilities Agreement;

(b) the proceeds of which are applied to refinance the Facilities to the extent required under the Facilities Agreement; and

(c) the terms of which are in accordance with paragraph (f) of the definition of "Permitted Financial Indebtedness" in clause 1.1 ( *Definitions*) of the Facilities Agreement,

other than any bonds, notes or other debt securities, convertible or exchangeable securities or loan facilities issued or, as the case may be, lent, which constitute Additional Notes.

"**Refinancing Creditor**" means any creditor which enters into a Refinancing Document and which accedes to this Agreement in accordance with Clause 14.3 (*Refinancing Creditors and Refinancing Creditors Representatives*).

"**Refinancing Creditor Exposures**" means, at any time:

(a) in relation to a Refinancing Creditor and a Refinancing by way of a loan facility, that Refinancing Creditor's participation in loans made under the relevant loan facility at that time; or

(b) in relation to Refinancing Creditor and a Refinancing by way of bonds, notes or other debt securities, or convertible or exchangeable securities, the principal amount owed to that Refinancing Creditor under such bonds, notes or other debt securities, or convertible or exchangeable securities, at that time.

"**Refinancing Creditor Liabilities**" means the Liabilities owed by the Debtors (and, to the extent applicable in relation to the Transaction Security granted by it, any Security Provider) to the Refinancing Creditors under the Refinancing Documents.

"**Refinancing Creditor Representative**" means, with respect to any Refinancing by way of:

(a) a syndicated loan facility, any person appointed under the relevant Refinancing Documents as the agent of the creditors in relation to that syndicated loan facility;

(b) a bilateral loan facility, the Refinancing Creditor which is a lender under that facility pursuant to the relevant Refinancing Documents; or

(c) bonds, notes or other debt securities, or convertible or exchangeable securities, any person appointed under the relevant Refinancing Documents as the trustee (or similar representative) of the creditors in relation thereto.

"**Refinancing Debt**" means any bonds, notes or other debt securities, convertible or exchangeable securities, or loan facilities issued or incurred pursuant to a Refinancing.

"**Refinancing Document**" means any document entered into by a Refinancing Obligor with a Refinancing Creditor in relation to a Refinancing.

"**Refinancing Guarantor**" means any member of the Group which has incurred Cross Guarantee Liabilities to a Refinancing Creditor pursuant to a Refinancing.

"**Refinancing Obligor**" means any member of the Group which, as permitted by the Facilities Agreement, enters into any Refinancing Documents as a borrower (in the case of a loan facility), an issuer (in the case of bonds, notes or other debt securities, or convertible or exchangeable securities) or as a Refinancing Guarantor (and, in each case, if not a Debtor under this Agreement, which accedes to this Agreement in accordance with Clause 14.7 ( *New Debtor/Security Provider*)).

"**Refinancing Party**" means each Refinancing Creditor and each Refinancing Creditor Representative.

"**Relevant Liabilities**" means:

(a) in the case of a Facilities Agreement Creditor:

(i) the Liabilities owed to Facilities Agreement Creditors ranking (in accordance with the terms of this Agreement) *pari passu* with or in priority to that Facilities Agreement Creditor (as the case may be) together with all Agent Liabilities owed to the Agent; and

(ii) all present and future liabilities, actual and contingent, of the Debtors (and, to the extent applicable in relation to the Transaction Security granted by it, of any Security Provider) to the Security Agent;

(b) in the case of a Noteholder:

(i) the Liabilities owed to Noteholders ranking (in accordance with the terms of this Agreement) *pari passu* with or in priority to that Noteholder (as the case may be) and, in the case of Noteholders represented by a Noteholder Trustee, together with all Noteholder Trustee Liabilities owed to the Noteholder Trustee of those Noteholders; and

(ii) all present and future liabilities, actual and contingent, of the Debtors (and, to the extent applicable in relation to the Transaction Security granted by it, of any Security Provider) to the Security Agent;

(c) in the case of a Refinancing Creditor:

(i) the Liabilities owed to Refinancing Creditors ranking (in accordance with the terms of this Agreement) *pari passu* with or in priority to that Refinancing Creditor (as the case may be) together with all Agent Liabilities owed to any Agent of those Refinancing Creditors; and

(ii) all present and future liabilities, actual and contingent, of the Debtors (and, to the extent applicable in relation to the Transaction Security granted by it, any Security Provider) to the Security Agent; and

(d) in the case of a Debtor or an Intra-Group Lender (or, to the extent applicable in relation to the Transaction Security granted by it, any Security Provider), the Liabilities owed to the Facilities Agreement Creditors or Refinancing Creditors together with the Agent Liabilities owed to any Agent of those Creditors, the Liabilities owed to the Noteholders together with, in the case of Noteholders represented by a Noteholder Trustee, the Noteholder Trustee Liabilities owed to the Noteholder Trustee of those Noteholders and all present and future liabilities and obligations, actual and contingent, of the Debtors (or, as the case may be, the Security Providers) to the Security Agent.

"**Retiring Security Agent**" has the meaning given to that term in Clause 12 ( *Change of Security Agent and Delegation* ).

"**Secured Obligations**" means all the Liabilities and all other present and future obligations at any time due, owing or incurred by any member of the Group and by each Debtor (and, to the extent applicable in relation to the Transaction Security granted by it, each Security Provider) to any Secured Party under the Debt Documents, both actual and contingent and whether incurred solely or jointly and as principal or surety or in any other capacity including the obligations set out in Clause 11.2 (*Finance Parallel Debt (Covenant to pay the Security Agent)* ) and Clause 11.3 (*Notes Parallel Debt (Covenant to pay the Security Agent)* ).

"**Secured Parties**" means:

(a) the Security Agent, any Receiver or Delegate (including any party expressly designated as a Secured Party under any Security Document);

(b) the Agents, the Facilities Agreement Creditors and Refinancing Creditors from time to time but, in the case of the Agents and each Facilities Agreement Creditor or Refinancing Creditor, only if it is a party to this Agreement or has acceded to this Agreement, in the appropriate capacity, pursuant to Clause 14.6 (*Creditor/Agent/Security Agent Accession Undertaking*); and

(c) each of the Noteholder Trustees and the Noteholders from time to time.

"**Security**" means a mortgage, charge, pledge, lien, security trust agreement or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

"**Security Agent's Spot Rate of Exchange**" means the spot rate of exchange obtained by the Security Agent from leading international banks for the purchase of the relevant currency with the Base Currency at or about 11:00 am (London time) on a particular day, which shall be notified by the Security Agent in accordance with paragraph (d) of Clause 11.9 (*Security Agent's obligations*).

"**Security Documents**" means:

(a) each of the Transaction Security Documents;

(b) any other document entered into at any time by any of the Debtors or Security Providers creating any Security or other assurance against financial loss in favour of any of the Secured Parties as security for any of the Secured Obligations owed to such Secured Parties; and

(c) any Security granted under any covenant for further assurance in any of the documents set out in paragraphs (a) and (b) above.

"**Security Property**" means:

(a) the Transaction Security expressed to be granted in favour of the Security Agent as trustee for the Secured Parties and all proceeds of that Transaction Security;

(b) all obligations expressed to be undertaken by a Debtor or a Security Provider to pay amounts in respect of the Liabilities to the Security Agent as trustee for the Secured Parties and secured by the Transaction Security together with all representations and warranties expressed to be given by a Debtor or Security Provider in favour of the Security Agent as trustee for the Secured Parties;

(c) the Security Agent's interest in any trust fund created pursuant to Clause 5 ( *Turnover of Receipts*); and

(d) any other amounts or property, whether rights, entitlements, choses in action or otherwise, actual or contingent, which the Security Agent is required by the terms of the Debt Documents to hold as trustee on trust for the Secured Parties.

"**Security Providers**" means the Original Security Providers and any Additional Security Provider other than any Original Security Provider or Additional Security Provider which has ceased to be a Security Provider pursuant to Clause 14.9 ( *Resignation of a Debtor/Security Provider*) and has not subsequently become an Additional Security Provider pursuant to Clause 14.7 ( *New Debtor/Security Provider*), and "**Security Provider**" means any of them.

"**Segregated Account**" has the meaning given to such term in the Facilities Agreement.

"**Specific Guaranteed Facilities**" has the meaning given to such term in the Facilities Agreement.

"**Specific Guarantee Liabilities**" means, in relation to a member of the Group, the Liabilities it may have pursuant to a Guarantee Clause referred to in paragraph (a) of the definition thereof to any Finance Party.

"**Super Majority Instructing Group**" means, at any time:

(a) a Creditor or Creditors the Base Currency Amount of whose Exposures under the Facilities and/or, as the case may be, the Refinancing Debt, at that time represent, in aggregate, 85 per cent. or more of the Base Currency Amount of all the Exposures of the Creditors under all of the Facilities and all Refinancing Debt (when aggregated) at that time; and

(b) a Facilities Agreement Creditor or Facilities Agreement Creditors the Base Currency Amount of whose Exposures under the Facilities at that time represent, in aggregate, more than 66 2/3 per cent. of the Base Currency Amount of all the Exposures of the Facilities Agreement Creditors under all of the Facilities at that time.

"**TARGET2**" means the Trans-European Automated Real-time Gross Settlement Express Transfer payment system, which utilises a single shared platform and which was launched on 19 November 2007.

"**TARGET Day**" means any day on which TARGET2 is open for the settlement of payments in euro.

"**Tax**" means any tax, levy, impost, duty or other charge, withholding or deduction of a similar nature (including any penalty, surcharge or interest payable in connection with any failure to pay or any delay in paying any of the same).

"**Transaction Security**" means the Security created or evidenced or expressed to be created or evidenced under or pursuant to the Transaction Security Documents.

"**Transaction Security Documents**" means:

(a) the irrevocable security trust agreement, entered into among (i) the Parent, Empresas Tolteca, Impra Café, S.A. de C.V., Interamerican Investments, Inc., Cemex México and Centro Distribuidor de Cemento, S.A. de C.V., as settlors, (ii) Cemex México, Centro Distribuidor de Cemento, S.A. de C.V., Mexcement Holdings, S.A. de C.V. and Corporación Gouda, S.A. de C.V., as issuers, (iii) the Mexican Security Trustee and (iv) the Security Agent;

(b) pledge of shares in the capital of NSH between Corporación Gouda, S.A. de C.V., Mexcement Holdings, S.A. de C.V., CEMEX International Finance Company and CEMEX TRADEMARKS HOLDING Ltd as pledgors and the Security Agent as pledgee, governed by Dutch law;

(c) pledge of shares in 99.5674 per cent. of the capital of CEMEX TRADEMARKS HOLDING Ltd. between the Parent, CEMEX México Interamerican Investments, Inc. and Empresas Tolteca as pledgors and the Security Agent as pledgee, governed by Swiss law; and

(d) a notarial deed (*póliza*) of pledge agreement over 99.6392 per cent. of the shares in CEMEX España, to be granted by NSH and the Parent before the notary of Madrid, Mr. Rafael Monjó Carrió or any notary public of the city of Madrid in Spain pursuant to paragraph (b) of clause 22.35 (*Conditions subsequent*) of the Facilities Agreement,

together with any other document entered into by any Debtor or a Security Provider creating or expressed to create any Security over all or any part of its assets in respect of the obligations of any of the Debtors (and, to the extent applicable in relation to the Transaction Security granted by them, the Security Providers) under any of the Finance Documents.

"**Transaction Security Recoveries**" has the meaning given to such term in Clause 10.1 ( *Order of application - Transaction Security Recoveries* ).

"**US$350M Perpetuals**" means the US$350,000,000 Callable Perpetual Dual-Currency Notes issued by NSHFV.

"**US$350M Perpetuals Indenture**" means the indenture dated as of 18 December 2006 among NSHFV as issuer, the Parent, CEMEX México and NSH as guarantors and The Bank of New York as trustee pursuant to which the US$350M Perpetuals were issued.

"**US$750M Perpetuals**" means the US$750,000,000 Callable Perpetual Dual-Currency Notes issued by NSHFV.

"**US$750M Perpetuals Indenture**" means the indenture dated as of 12 February 2007 among NSHFV as issuer, the Parent, CEMEX México and NSH as guarantors and The Bank of New York as trustee pursuant to which the US$750M Perpetuals were issued.

"**US$900M Perpetuals**" means the US$900,000,000 Callable Perpetual Dual-Currency Notes issued by NSHFV.

"**US$900M Perpetuals Indenture**" means the indenture dated as of 18 December 2006 among NSHFV as issuer, the Parent, CEMEX México and NSH as guarantors and The Bank of New York as trustee pursuant to which the US$900,000,000 Perpetuals were issued.

"**USPP Note**" means a note issued under the USPP Note Agreement.

"**USPP Note Agreement**" means the note purchase agreement described in Part II B of schedule 1 ( *The Original Parties*) to the Facilities Agreement.

"**USPP Note Guarantee**" means the note guarantee granted in favour of the USPP Noteholders.

"**USPP Noteholders**" means the holders from time to time of the notes issued pursuant to the USPP Note Agreement.

"**VAT**" means value added tax as provided for in the Value Added Tax Act 1994 and any other tax of a similar nature.

"**Voting Trust Agreement**" means the voting trust agreement, governed by Mexican law, entered into on or about the date of this Agreement between certain members of the Group listed therein as trustors (*fideicomitentes*), a Mexican bank acting as trustee (*fiduciario*), Wilmington Trust (London) Limited in its capacity as Security Agent and certain members of the Group listed therein as counterparties ( *contrapartes*).

1.2 **Construction**

(a) Unless a contrary indication appears, a reference in this Agreement to:

(i) any "**Agent**", "**Borrower**", "**Debtor**", "**Guarantor**", "**Noteholder**", "**Noteholder Trustee**", "**Parent**", "**Facilities Agreement Creditor**", "**Party**", "**Refinancing Creditor**", "**Security Provider**", "**Intra-Group Lender**" or "**Security Agent**" shall be construed to be a reference to it in its capacity as such and not in any other capacity;

(ii) any "**Agent**", "**Debtor**", "**Noteholder**", "**Noteholder Trustee**", "**Facilities Agreement Creditor**", "**Refinancing Creditor**", any "**Party**", "**Intra-Group Lender**" or the "**Security Agent**" or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees and, in the case of the Security Agent, any person for the time being appointed as Security Agent or Security Agents in accordance with this Agreement;

(iii) "**assets**" includes present and future properties, revenues and rights of every description;

(iv) a "**Debt Document**" or any other agreement or instrument is (other than a reference to a " **Debt Document**" or any other agreement or instrument in "**original form**") a reference to that Debt Document or other agreement or instrument, as amended, novated, supplemented, extended, varied or restated as permitted or not restricted by this Agreement;

(v) "**enforcing**" (or any derivation) the Transaction Security shall include (except in relation to a Debtor or Security Provider incorporated in Spain or Transaction Security granted over the shares of that Debtor or Security Provider) the appointment of an administrator (or, under Irish law, an examiner), a receiver or receiver and manager, of a Debtor or Security Provider by the Security Agent;

(vi) "**indebtedness**" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;

(vii) the "**original form**" of a "**Debt Document**" or any other agreement or instrument is a reference to that Debt Document, agreement or instrument as originally entered into;

(viii) a "**person**" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);

(ix) a "**regulation**" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of

any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;

(x) a provision of law is a reference to that provision as amended or re-enacted; and

(xi) words importing the plural shall include the singular and vice versa.

(b) Section, Clause and Schedule headings are for ease of reference only.

(c) A Default (including an Event of Default) is "**continuing**" if it has not been remedied or waived but, for the avoidance of doubt, no breach of any of the financial covenants set out in clause 21 (*Financial Covenants*) of the Facilities Agreement shall be capable of being or be deemed to be remedied by virtue of the fact that upon any subsequent testing of such covenants pursuant to clause 21 ( *Financial Covenants*) of the Facilities Agreement, there is no breach thereof.

1.3 **Currency Symbols and Definitions**

"**£**" and "**sterling**" denote lawful currency of the United Kingdom, "**€**", "**EUR**" and "**euro**" means the single currency unit of the Participating Member States and "**US$**", "**$**" and "**dollars**" denote lawful currency of the United States of America, "**¥**" and "**yen**" denote lawful currency of Japan, "**Mexican pesos**", "**Mex$**" and "**pesos**" denotes the lawful currency of Mexico and "**UDI**" denotes the Mexican *Unidad de Inversíon*.

1.4 **Third Party Rights**

(a) Unless expressly provided to the contrary in this Agreement, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the "**Third Parties Rights Act**") to enforce or to enjoy the benefit of any term of this Agreement.

(b) Except as expressly provided in this Agreement, the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.

(c) In the context of any rights of the Noteholders under Section 2(1) ( *Variation and rescission of contract)* of the Third Parties Rights Act, any amendments may be made to this Agreement, without the consent of the Noteholders, so long as such amendments are made in accordance with the provisions of this Agreement.

(d) Any Receiver, Delegate or any other person described in Clause 11.12 ( *No Proceedings*) may, subject to this Clause 1.4 (*Third Party Rights*) and the Third Parties Rights Act, rely on any Clause of this Agreement which expressly confers rights on it.

(e) Each Noteholder Trustee (for itself and on behalf of the Noteholders which it represents) and each Noteholder are:

(i) in the case of Existing Notes Trustees and Existing Notes Creditors, from the Effective Date; and

(ii) in the case of any Additional Notes Trustee or Additional Notes Creditor, from the date on which the Liabilities under the Additional Notes to which it is a party are issued or incurred,

Secured Parties and therefore are intended to have the rights and benefits of Secured Parties in relation to the Transaction Security subject to Clause 13.1 (*Rights of the Noteholder Trustees and Noteholders* ) and in accordance with the terms of this Agreement and, in the event that any of the Transaction Security is enforced, are entitled to receive payments from the realisation proceeds of the Transaction Security in accordance with Clause 10 (*Application of Proceeds*) notwithstanding that none of the Noteholder Trustees or Noteholders are party hereto at the date of this Agreement and will never accede to the terms hereof. Each of the Noteholder Trustees and the Noteholders (each in its capacity as a Secured Party) may enforce and take the benefit of this Agreement notwithstanding that the Noteholder Trustees and the Noteholders are not Parties hereto. The Third Parties Rights Act shall apply to this paragraph (e).

1.5 **Dutch Terms**

In this Agreement, where it relates to a Dutch entity, a reference to:

(a) a necessary action to authorise, where applicable, includes, without limitation:

(i) any action required to comply with the Dutch Works Council Act ( *Wet op de ondernemingsraden*); and

(ii) obtaining unconditional positive advice ( *advies*) from each competent works council;

(b) a winding-up, administration or dissolution includes a Dutch entity being:

(i) declared bankrupt (*failliet verklaard*);

(ii) dissolved (*ontbonden*);

(c) a moratorium includes *surseance van betaling* and granted a moratorium includes *surseance verleend*;

(d) a trustee in bankruptcy includes a *curator*;

(e) an administrator includes a *bewindvoerder*;

(f) a receiver or an administrative receiver does not include a *curator* or *bewindvoerder*; and

(g) an attachment includes a *beslag*.

## 2. RANKING AND PRIORITY

### 2.1 Liabilities to Facilities Agreement Creditors, Refinancing Creditors and Noteholders

Each of the Parties agrees that the Liabilities owed by the Debtors (and, with respect to Liabilities arising under Transaction Security Documents, the Security Providers) to the Facilities Agreement Creditors, the Refinancing Creditors and the Noteholders shall rank in right and priority of payment *pari passu* and, save as provided in this Agreement, without any preference between them.

### 2.2 Transaction Security

The Security Agent and each of the Facilities Agreement Creditors, the Refinancing Creditors and the Agents (including for the benefit of the Secured Parties) agree that the Transaction Security shall be treated, as among the Secured Parties, as being for the equal and rateable benefit of all of the Secured Parties, *pari passu* and without any preference between them, and shall, whilst the Transaction Security remains in force under the terms of this Agreement, be shared by the Secured Parties.

### 2.3 Intra-Group Liabilities

(a) Each of the Parties agrees that with effect from the date of this Agreement and until the Final Discharge Date, the Intra-Group Liabilities are, in any Insolvency Proceedings in relation to the relevant Debtor or Security Provider, postponed and subordinated to the Liabilities owed by that Debtor or Security Provider to the Facilities Agreement Creditors, the Refinancing Creditors and the Noteholders.

(b) This Agreement does not purport to rank any of the Intra-Group Liabilities as between themselves.

## 3. INTRA-GROUP LENDERS AND INTRA-GROUP LIABILITIES

### 3.1 Restriction on Payment: Intra-Group Liabilities

Until the Final Discharge Date, the Debtors and Security Providers shall not, and shall procure that no other member of the Group will, make any Payments of the Intra-Group Liabilities at any time unless that Payment is permitted under Clause 3.2 ( *Permitted Payments: Intra-Group Liabilities*).

### 3.2 Permitted Payments: Intra-Group Liabilities

(a) Subject to paragraph (b) below, the Debtors and Security Providers may make Payments in respect of the Intra-Group Liabilities (whether of principal, interest or otherwise) from time to time.

(b) Until the Final Discharge Date has occurred, if at the time of a Payment in respect of Intra-Group Liabilities, an Insolvency Event has occurred, Payments in respect of the Intra-Group Liabilities shall only be made:

(i) to effect Payment of the Liabilities owed to the Secured Parties prior to the making of any other Payments in respect of Intra-Group Liabilities; or

(ii) as otherwise consented to by an Instructing Group.

(c) Nothing in this Clause 3.2 shall prevent the Intra-Group Liabilities of a Debtor or Security Provider being reduced in accordance with the provisions of paragraph (c) of clause 18.16 ( *French guarantee limitation*) of the Facilities Agreement.

### 3.3 Payment obligations continue

No Debtor or Security Provider shall be released from the liability to make any Payment (including of default interest, which shall continue to accrue) under any Intra-Group Document by the operation of Clauses 3.1 ( *Restriction on Payment: Intra-Group Liabilities* ) and 3.2 (*Permitted Payments: Intra-Group Liabilities*) even if its obligation to make that Payment is restricted at any time by the terms of any of those Clauses.

### 3.4 Acquisition of Intra-Group Liabilities

(a) Subject to paragraph (b) below, the Debtors and Security Providers may purchase by way of assignment or transfer, enter into a sub-participation in respect of or enter into any other agreement or arrangement having the economic effect of a sub-participation in respect of the Intra-Group Liabilities.

(b) Until the Final Discharge Date has occurred, if at the time of an action described in paragraph (a) above, an Insolvency Event in relation to the relevant Debtor or Security Provider has occurred, that action shall only be taken:

(i) to effect Payment of the Liabilities owed to the Secured Parties prior to any such action being taken for any other purposes; or

(ii) as otherwise consented to by an Instructing Group.

3.5 **Security: Intra-Group Lenders**

After the occurrence of an Insolvency Event, and until the Final Discharge Date, the Intra-Group Lenders may not take, accept or receive the benefit of any Security, guarantee, indemnity or other assurance against loss in respect of the Intra-Group Liabilities unless:

(a) that Security, guarantee, indemnity or other assurance against loss is expressly permitted under the terms of the Facilities Agreement; and

(b) the prior consent of an Instructing Group is obtained.

3.6 **Restriction on enforcement: Intra-Group Lenders**

After the occurrence of an Insolvency Event and until the Final Discharge Date, none of the Intra-Group Lenders shall be entitled to take any Enforcement Action in respect of any of the Intra-Group Liabilities at any time prior to the Final Discharge Date.

3.7 **Mexican Intra-Group Credit Rights**

Each Debtor and Security Provider agrees (and the Parent accepts on behalf of all members of the Group) that, until the Final Discharge Date, Mexican Intra-Group Credit Rights will be subject to a voting trust, governed by the terms of the Voting Trust Agreement and with a Mexican bank acting as trustee, pursuant to which, each Debtor and Security Provider will, until the Final Discharge Date, from time to time transfer to such trustee applicable Mexican Intra-Group Credit Rights, and if any Debtor, Security Provider or other member of the Group is subject to any proceedings for *concurso mercantil* or other similar proceeding, (a) all Mexican Intra-Group Credit Rights will be held by the trustee, (b) all Mexican Intra-Group Credit Rights of that Debtor, Security Provider or other member of the Group will be voted by the trustee as instructed by the Security Agent (acting on the instructions of an Instructing Group) and (c) any proceeds received by the trustee under the voting trust in respect of such Mexican Intra-Group Credit Rights will be paid to the Security Agent to be applied in accordance with Clause 10 ( *Application of Proceeds*), **provided that** only Mexican Intra-Group Liabilities in an amount exceeding $25,000,000 (or its equivalent in other currencies) will be subject to ongoing disclosure obligations under such voting trust. The voting trust arrangements shall terminate on the Final Discharge Date.

## 4. EFFECT OF INSOLVENCY EVENT

### 4.1 Payment of distributions

(a) After the occurrence of an Insolvency Event, and until the Final Discharge Date, any Secured Party, Intra-Group Lender, Debtor or Security Provider entitled to receive a distribution out of the assets of the relevant Debtor, Security Provider or Material Subsidiary (as the case may be) the subject of that Insolvency Event in respect of Liabilities or Intra-Group Liabilities owed to that Secured Party, Intra-Group Lender, Debtor or Security Provider shall, to the extent it is able to do so, direct the person responsible for the distribution of the assets of that Debtor, Security Provider or Material Subsidiary (as the case may be) to pay that distribution to the Security Agent until the Final Discharge Date.

(b) The Security Agent shall apply distributions paid to it under paragraph (a) above in accordance with Clause 10 ( *Application of Proceeds*). For the avoidance of doubt, Noteholders have no benefit of the recoveries under Clause 10.2 ( *Order of application – Debt Claim Recoveries*).

### 4.2 Set-Off

Prior to the Final Discharge Date, to the extent that any Debtor, Security Provider or Material Subsidiary's Liabilities or Intra-Group Liabilities are discharged by way of set-off (mandatory or otherwise) after the occurrence of an Insolvency Event in relation to that Debtor, Security Provider or Material Subsidiary, any Creditor or, as the case may be, any Intra-Group Lender, which benefited from that set-off shall pay an amount equal to the amount of the Liabilities or Intra-Group Liabilities owed to it which are discharged by that set-off to the Security Agent for application in accordance with Clause 10 (*Application of Proceeds*).

### 4.3 Non-cash distributions

If the Security Agent or any Creditor receives a distribution in a form other than in cash in respect of any of the Liabilities, the Liabilities will not be reduced by that distribution until and except to the extent that the realisation proceeds are actually applied towards the Liabilities.

4.4 **Filing of claims**

After the occurrence of an Insolvency Event, each Creditor and Intra-Group Lender irrevocably authorises the Security Agent (acting in accordance with Clause 4.6 (*Security Agent instructions*)), on its behalf, to:

(a) take any Enforcement Action (in accordance with the terms of this Agreement) against the Debtor, Security Provider or Material Subsidiary the subject of that Insolvency Event (and for the avoidance of doubt, no Enforcement Action falling within paragraph (b) of the definition thereof may be taken against the Transaction Security except (i) for the actions required to be taken by a Creditor or Intra-Group Lender to give rise to an Enforcement Event and (ii) in accordance with Clause 7 ( *Enforcement of Transaction Security*));

(b) demand, sue, prove and give receipt for any or all of that Debtor's, Security Provider's or Material Subsidiary's Liabilities or Intra-Group Liabilities;

(c) collect and receive all distributions on, or on account of, any or all of that Debtor's, Security Provider's or Material Subsidiary's Liabilities or Intra-Group Liabilities; and

(d) file claims, take proceedings and do all other things the Security Agent considers reasonably necessary to recover that Debtor's, Security Provider's or Material Subsidiary's Liabilities or Intra-Group Liabilities.

4.5 **Actions of Creditors and Intra-Group Lenders**

Each Creditor and Intra-Group Lender will:

(a) do all things that the Security Agent (acting in accordance with Clause 4.6 ( *Security Agent instructions*)) reasonably requests in order to give effect to this Clause 3; and

(b) if the Security Agent is not entitled to take any of the actions contemplated by this Clause 3 or is otherwise prevented from taking or, in respect of any Creditor or Intra-Group Lender, unable to take, the actions contemplated by this Clause 3 and (acting in accordance with Clause 4.6 (*Security Agent instructions*)) requests that a Creditor or Intra-Group Lender take that action, undertake that action itself in accordance with the instructions of the Security Agent (acting in accordance with Clause 4.6 ( *Security Agent instructions*)) or grant a power of attorney to the Security Agent (on such terms as the Security Agent (acting in accordance with Clause 4.6 ( *Security Agent instructions*)) may

reasonably require) to enable the Security Agent to take such action under applicable law (any such power of attorney, with respect to any enforcement of Transaction Security governed by Spanish law or any claim against a Debtor or Security Provider incorporated in Spain, shall be notarised and apostilled).

4.6 **Security Agent instructions**

For the purposes of Clause 4.4 (*Filing of claims*) and Clause 4.5 (*Actions of Creditors and Intra-Group Lenders*) the Security Agent shall act:

(a) on the instructions of the Instructing Group; or

(b) (other than with respect to the enforcement of Transaction Security which, for the avoidance of doubt, shall be conducted in the manner contemplated by Clause 7.2 (*Enforcement instructions*)) in the absence of any such instructions but subject to Clause 11.10 ( *Excluded Obligations*), as the Security Agent sees fit.

## 5. TURNOVER OF RECEIPTS

5.1 **Turnover by the Creditors and Intra-Group Lenders**

Subject to Clause 5.3 (*Permitted assurance and receipts*), if at any time prior to the Final Discharge Date, any Creditor or, as the case may be, any Intra-Group Lender, receives or recovers:

(a) any Payment or distribution of, or on account of or in relation to, any of the Liabilities or Intra-Group Liabilities which is not either:

(i) a Permitted Payment; or

(ii) made in accordance with Clause 10 (*Application of Proceeds*);

(b) other than where Clause 4.2 (*Set-Off*) applies, any amount by way of set-off in respect of any of the Liabilities or Intra-Group Liabilities owed to it which does not give effect to a Permitted Payment;

(c) notwithstanding paragraphs (a) and (b) above, and other than where Clause 4.2 ( *Set-Off*) applies, any amount:

(i) on account of, or in relation to:

(A) any of the Liabilities or Intra-Group Liabilities after the occurrence of a Facilities Agreement Acceleration Event (but in the case of Intra-Group Liabilities, only after the occurrence of an Insolvency Event); or

(B) any of the Liabilities as a result of any other litigation or proceedings against a Debtor or a Security Provider (other than after the occurrence of an Insolvency Event); or

(ii) by way of set-off in respect of any of the Liabilities or Intra-Group Liabilities owed to it after the occurrence of a Facilities Agreement Acceleration Event (but in the case of Intra-Group Liabilities, only after the occurrence of an Insolvency Event);

(d) the proceeds of any enforcement of any Transaction Security except in accordance with Clause 10 ( *Application of Proceeds*); or

(e) other than where Clause 4.2 (*Set-Off*) applies, any distribution in cash or in kind or Payment of, or on account of or in relation to, any of the Liabilities or Intra-Group Liabilities owed by any Debtor or Security Provider which is not in accordance with Clause 10 ( *Application of Proceeds*) and which is made as a result of, or after, the occurrence of an Insolvency Event,

that Creditor or, as the case may be, that Intra-Group Lender, will promptly after becoming aware of the same, notify the Security Agent in writing and:

(i) in relation to receipts and recoveries not received or recovered by way of set-off:

(A) to the fullest extent permitted by applicable law, hold an amount of that receipt or recovery equal to the Relevant Liabilities (or if less, the amount received or recovered) on trust for the Security Agent and promptly pay that amount to the Security Agent for application in accordance with the terms of this Agreement or, alternatively, promptly pay an amount equal to that receipt to the Security Agent for application in accordance with the terms of this Agreement; and

(B) promptly pay an amount equal to the amount (if any) by which the receipt or recovery exceeds the Relevant Liabilities to the Security Agent for application in accordance with the terms of this Agreement; and

(ii) in relation to receipts and recoveries received or recovered by way of set-off, promptly pay an amount equal to that recovery to the Security Agent for application in accordance with the terms of this Agreement.

5.2 **Adjustments**

In the event that any Secured Party receives or recovers and retains any amount in satisfaction of any Liabilities other than as permitted by and under the terms of this Agreement the amounts to be received by it in accordance with Clause 10 ( *Application of Proceeds*) will be reduced by an amount equal to the amount of such receipt or recovery.

5.3 **Permitted assurance and receipts**

Nothing in this Agreement shall restrict the ability of any Secured Party to:

(a) arrange with any person which is not a member of the Group any assurance against loss in respect of, or reduction of its credit exposure to, a Debtor (including assurance by way of credit based derivative or sub-participation); or

(b) make any assignment or transfer permitted by Clause 14 ( *Changes to the Parties*),

which is not prohibited by the relevant Debt Documents and that Secured Party shall not be obliged to account to any other Secured Party, Debtor or Security Provider for any sum received by it as a result of that action.

5.4 **Sums received by Debtors or Security Providers**

If, prior to the Final Discharge Date, any of the Debtors or Security Providers receives or recovers any sum which, under the terms of any of the Debt Documents, should have been paid to the Security Agent, that Debtor or Security Provider will, promptly after becoming aware of the same, notify the Security Agent in writing and:

(a) to the fullest extent permitted by applicable law, hold an amount of that receipt or recovery equal to the Relevant Liabilities (or if less, the amount received or recovered) on trust for the Security Agent and promptly pay that amount to the Security Agent for application in accordance with the terms of this Agreement or, alternatively, promptly after becoming aware of such receipt or recovery, pay that amount to the Security Agent for application in accordance with this Agreement; and

(b) promptly after becoming aware of such receipt or recovery, pay an amount equal to the amount (if any) by which the receipt or recovery exceeds the Relevant Liabilities to the Security Agent for application in accordance with the terms of this Agreement.

5.5 **Saving provision**

If, for any reason, any of the trusts expressed to be created in this Clause 5 should fail or be unenforceable, the affected Creditor, Intra-Group Lender, Debtor or Security Provider will, promptly on becoming aware of such failure or unenforceability, notify the Security Agent in writing and pay an amount equal to that receipt or recovery to the Security Agent to be held on trust by the Security Agent for application in accordance with the terms of this Agreement.

6. **REDISTRIBUTION**

6.1 **Recovering Creditor's rights**

(a) Any amount paid by a Creditor or, as the case may be, an Intra-Group Lender (a " **Recovering Creditor**") to the Security Agent under Clause 4 (*Effect of Insolvency Event*) or Clause 5 (*Turnover of Receipts*) shall be treated as having been paid by the relevant Debtor (or, if applicable, the relevant Security Provider) and distributed to the Security Agent, Creditors, Intra-Group Lenders, Noteholder Trustees and Noteholders (each a "**Sharing Creditor**") in accordance with the terms of this Agreement.

(b) On a distribution by the Security Agent under paragraph (a) above of a Payment received by a Recovering Creditor from a Debtor (or, if applicable, a Security Provider), as between the relevant Debtor and the Recovering Creditor an amount equal to the amount received or recovered by the Recovering Creditor and paid to the Security Agent (the " **Shared Amount**") will be treated as not having been paid by that Debtor (or, as the case may be, that Security Provider).

6.2 **Reversal of redistribution**

(a) If any part of the Shared Amount received or recovered by a Recovering Creditor becomes repayable to a Debtor (or, if applicable, a Security Provider) and is repaid by that Recovering Creditor to that Debtor (or, as the case may be, Security Provider), then:

(i) each Sharing Creditor (other than the Security Agent) shall, upon request of the Security Agent, pay to the Security Agent for the account of that Recovering Creditor an amount equal to the appropriate part of its share of the Shared Amount (together with an amount as is necessary to reimburse that Recovering Creditor for its proportion of any interest on the Shared Amount which that Recovering Creditor is required to pay) (the " **Redistributed Amount**"); and

(ii) as between the relevant Debtor (or, as the case may be, Security Provider) and each relevant Sharing Creditor, an amount equal to the relevant Redistributed Amount will be treated as not having been paid by that Debtor (or, as the case may be, Security Provider).

(b) The Security Agent shall not be obliged to pay any Redistributed Amount to a Recovering Creditor under paragraph (a)(i) above until it has been able to establish to its reasonable satisfaction that it has actually received that Redistributed Amount from the relevant Sharing Creditor.

## 7. ENFORCEMENT OF TRANSACTION SECURITY

### 7.1 Enforcement Event

The Transaction Security shall be immediately enforceable on the occurrence of an Enforcement Event.

### 7.2 Enforcement instructions

(a) Following an Enforcement Event, the Security Agent shall not take any Enforcement Action against the Transaction Security unless expressly instructed to do so in writing by the Instructing Group.

(b) Following an Enforcement Event, the Security Agent may instruct the Mexican Security Trustee to take Enforcement Action only in accordance with the terms of the Mexican Security Trust Agreement.

(c) Subject to the Transaction Security having become enforceable in accordance with Clause 7.1 ( *Enforcement Event*) above, the Instructing Group may give or refrain from giving instructions to the Security Agent to enforce or refrain from enforcing the Transaction Security as it sees fit and:

(i) no other Secured Party shall have a right to request the enforcement of the Transaction Security; and

(ii) if the Instructing Group determines to enforce the Transaction Security, it shall direct the Security Agent (in writing) as to the method of enforcement it may pursue in enforcing the Transaction Security, as to whether all or part of the Transaction Security is to be enforced and give all other directions in respect of the enforcement of the Transaction Security as the Instructing Group sees fit.

(d) Having received such directions referred to in sub-paragraph (c)(ii) above as to the method of enforcement and the identity of the Transaction Security to be enforced (and in the absence of further written instructions from the Instructing Group), the Security Agent may act as it sees fit (including, without limitation, the selection of any administrator of any Debtor or Security Provider to be appointed by the Security Agent) and in accordance with applicable law and pursuant to the specific terms of the relevant Transaction Security Documents.

(e) The Security Agent is entitled conclusively to rely on and comply with instructions given in accordance with this Clause 7.2 ( *Enforcement instructions*).

7.3 **Exercise of voting rights**

(a) Each Creditor and Intra-Group Lender agrees with the Security Agent that it will cast its vote in any proposal put to the vote by or under the supervision of any judicial or supervisory authority in respect of any insolvency, pre-insolvency or rehabilitation or similar proceedings relating to any member of the Group insofar as such proceedings relate to the Transaction Security (or any enforcement or realisation thereof) as instructed by the Security Agent.

(b) The Security Agent shall give instructions for the purposes of paragraph (a) of this Clause 7.3 ( *Exercise of voting rights*) as directed by the Instructing Group.

7.4 **Waiver of rights**

To the extent permitted under applicable law and subject to Clause 7.2 ( *Enforcement instructions*), paragraph (c) of Clause 8.2 (*Distressed Disposals*) and Clause 10 (*Application of Proceeds*), each Creditor, each Debtor, each Intra-Group Lender and Security Provider waives all rights it may otherwise have to require that the Transaction Security be enforced in any particular order or manner or at any particular time or that any sum received or recovered from any person, or by virtue of the enforcement of any of the Transaction Security, which is capable of being applied in or towards discharge of any of the Secured Obligations is so applied.

8. **PROCEEDS OF DISPOSALS OF CHARGED PROPERTY**

8.1 **Non-Distressed Disposals**

(a) In this Clause 8.1:

"**Disposal Proceeds**" means the proceeds of a Non-Distressed Disposal (as defined in paragraph (b) below).

(b) Where, in respect of a disposal of an asset which is subject to the Transaction Security to a person or persons outside the Group, the Security Agent receives, in writing, notice from the Facility Agent that such disposal is permitted under the Facilities Agreement and notice from the relevant Debtor or Security Provider making the disposal that such disposal is not a Distressed Disposal, (a " **Non-Distressed Disposal**"), the Security Agent is irrevocably authorised (at the cost of the relevant Debtor, Security Provider or the Parent and without any consent, sanction, authority or further confirmation from any Secured Party, Debtor or Security Provider) but subject to paragraph (c) below to (or, in the case of the Mexican Security Trust Agreement, to instruct the Mexican Security Trustee to) with effect on and from the date of completion of such disposal:

(i) release (or permit the release of) the Transaction Security or any other claim (relating to a Debt Document) over that asset;

(ii) where that asset consists of shares in the capital of a Debtor (or, if applicable, a Security Provider), to release the Transaction Security or any other claim (relating to a Debt Document) over the assets of that Debtor (or, as the case may be, that Security Provider);

(iii) execute and deliver or enter into (or cause the execution, delivery or entry into) any release of the Transaction Security or any claim described in paragraphs (i) and (ii) above that may, in the discretion of the Security Agent, be considered necessary or desirable.

(c) If that Non-Distressed Disposal is not completed, no release of Transaction Security or any claim described in paragraph (b) above shall take effect and, with respect to the relevant asset, the Transaction Security or claim referred to in paragraph (b) above shall continue in such force and effect.

(d) Where any Disposal Proceeds are required to be deposited in a Segregated Account or, as the case may be, applied in mandatory prepayment of the Facilities Agreement Creditor Liabilities, then the Disposal Proceeds shall be:

(i) if required by clause 7 (*Mandatory Prepayment and Segregated Accounts*) of the Facilities Agreement, deposited in a Segregated Account; or

(ii) applied in or towards Payment of the Facilities Agreement Creditor Liabilities,

in each case in accordance with the terms of the Facilities Agreement and the consent of any other Secured Party, Debtor or Security Provider shall not be required for that application.

8.2 **Distressed Disposals**

(a) Subject to paragraph (d) below, where a Distressed Disposal is being effected, (and following receipt by the Security Agent, in writing, of notice of the same from, in the case of a Distressed Disposal under paragraph (a) of the definition thereof, the Instructing Group in accordance with Clause 7.2 (*Enforcement Instructions*) or, in the case of a Distressed Disposal under paragraph (b) of the definition thereof, from the relevant Debtor or Security Provider making such disposal) the Security Agent is irrevocably authorised (at the cost of the relevant Debtor, Security Provider, or the Parent and without any consent, sanction, authority or further confirmation from any Secured Party, Intra-Group Lender, Debtor or Security Provider) to (or, in the case of the Mexican Security Trust Agreement, to instruct the Mexican Security Trustee to):

(i) *release of Transaction Security*: (other than where sub-paragraphs (ii) or (iii) below apply) release (or cause the release of) the Transaction Security or any other claim over that asset and execute and deliver or enter into any release of that Transaction Security or claim that may, in the discretion of the Security Agent (or, as the case may be, the Mexican Security Trustee), be considered necessary or desirable;

(ii) *release of liabilities and Transaction Security on a share sale (Debtor/Security Provider)* : if the asset which is disposed of consists of shares in the capital of a Debtor (or, if applicable, a Security Provider), release (or cause the release of) any Transaction Security granted by that Debtor (or, if applicable, a

Security Provider) or any Subsidiary of that Debtor (or, if applicable, a Security Provider) over any of its assets and any other claim of another Debtor over assets of that Debtor or over the assets of any Subsidiary of that Debtor (or, if applicable, a Security Provider) (on behalf of the relevant Secured Parties, Intra-Group Lenders and Debtors) and that Debtor (or, if applicable, a Security Provider) and any Subsidiary of that Debtor (or, if applicable, a Security Provider) shall be automatically released from all or any part of:

(A) its Borrowing Liabilities;

(B) its Cross Guarantee Liabilities and Specific Guarantee Liabilities; and

(C) its Intra-Group Liabilities;

(iii) *release of liabilities and Transaction Security on a share sale (Holding Company of a Debtor or a Security Provider which is not itself a Debtor or a Security Provider):* if the asset which is disposed of consists of shares in the capital of any Holding Company of a Debtor or Security Provider, release (or cause the release of) any Transaction Security granted by any Subsidiary of that Holding Company over any of its assets and any other claim of another Debtor over the assets of any Subsidiary of that Holding Company (on behalf of the relevant Secured Parties, Intra-Group Lenders and Debtors) and that Holding Company and any Subsidiary of that Holding Company shall be automatically released from all or any part of:

(A) its Borrowing Liabilities; and

(B) its Cross Guarantee Liabilities and Specific Guarantee Liabilities; and

(C) its Intra-Group Liabilities.

(b) The net proceeds of each Distressed Disposal shall be paid (including by the Mexican Security Trustee) to the Security Agent for application in accordance with Clause 10 (*Application of Proceeds*) as if those proceeds were the proceeds of an enforcement of the Transaction Security. For the avoidance of doubt, Noteholders have no benefit of the recoveries under Clause 10.2 ( *Order of application – Debt Claim Recoveries* ).

(c) In the case of a Distressed Disposal effected by or at the request of the Security Agent (acting in accordance with paragraph (d) below), the Security Agent shall take reasonable care to obtain a fair market price having regard to the prevailing market conditions (though each of the other Parties to this Agreement acknowledges and agrees that the Security Agent shall have no obligation to postpone any such Distressed Disposal in order to achieve a higher price) (or, in respect of a disposition under the Mexican Security Trust Agreement shall observe the provisions set forth in the Mexican Security Trust Agreement in respect of foreclosure by the Mexican Security Trustee thereunder).

(d) For the purposes of paragraphs (a) and (c) above, the Security Agent shall act:

(i) if the relevant Distressed Disposal is being effected by way of enforcement of the Transaction Security, in accordance with paragraph (c) of Clause 7.2 (*Enforcement instructions*); and

(ii) in any other case:

(A) on the instructions of the Instructing Group; or

(B) in the absence of any such instructions but subject to Clause 11.10 ( *Excluded Obligations*), as the Security Agent sees fit.

(e) The Security Agent, directly or through any Delegate, shall have the right to instruct the Mexican Security Trustee (where the Security Agent itself is instructed as provided in this Agreement), to effect a Distressed Disposal as permitted under the terms of the Mexican Security Trust Agreement, and the Security Agent shall itself take any such action or execute and deliver or enter into any document that may, in the discretion of the Security Agent, be considered necessary or desirable to release the Transaction Security constituted by the Mexican Security Trust Agreement.

8.3 **Creditors', Debtors', Intra-Group Lenders' and Security Providers' actions**

Each Creditor, Intra-Group Lender, Debtor and Security Provider will:

(a) do all things that:

(i) in the case of a Debtor or a Security Provider in relation to a Distressed Disposal under Clause 8.2, the Security Agent requests; or

(ii) in any other case, the Security Agent reasonably requests,

in order to give effect to this Clause 8 (which shall include, without limitation, the execution of any assignments, transfers, releases or other documents that the Security Agent may consider to be necessary to give effect to the releases or disposals contemplated by this Clause 8); and

(b) if the Security Agent is not entitled to take any of the actions contemplated by this Clause 8 or is otherwise prevented from taking or, with respect to any Creditor or Intra-Group Lender, unable to take the actions contemplated by this Clause 8 and requests that a Creditor or Intra-Group Lender take that action, each Creditor or Intra-Group Lender will undertake that action itself in accordance with the instructions of the Security Agent or grant a power of attorney to the Security Agent (on such terms as the Security Agent may reasonably require) to enable the Security Agent to take such action under applicable law (any such power of attorney, with respect to any enforcement of Transaction Security governed by Spanish law or any claim against a Debtor or Security Provider incorporated in Spain, shall be notarised and apostilled);

(c) if the Security Agent is not entitled to take any of the actions contemplated by this Clause 8 with respect to any Debtor or Security Provider or requests that any Debtor or Security Provider take any such action, such Debtor or Security Provider shall take that action itself in accordance with the instructions of the Security Agent,

**provided that** the proceeds of those disposals are applied in accordance with Clause 8.1 ( *Non-Distressed Disposals)* or Clause 8.2 (*Distressed Disposals*) as the case may be.

## 9. AUTOMATIC RELEASE OF TRANSACTION SECURITY

### 9.1 Release of Mexican Security Trust Agreement

On the first Business Day falling after the Effective Date on which all of the following conditions are met:

(a) the Consolidated Leverage Ratio for any testing date falling during any Reference Period in respect of which a Compliance Certificate has been (or is required to have been) delivered under the Facilities Agreement (as each such term is defined therein) was not greater than 3.50:1; and

(b) no Default is continuing,

(and subject to receipt of written notice from the Facility Agent in accordance with Clause 9.3 ( *Notification by Facility Agent*)) the Security Agent is

irrevocably authorised (at the cost of the relevant Debtor, Security Provider or the Parent and without any consent, sanction, authority or further confirmation from any Secured Party, Debtor or Security Provider) to promptly instruct (and the Security Agent shall so instruct) the Mexican Security Trustee to release the Security over the assets of the Mexican Security Trust Agreement and any of the assets subject to the Mexican Security Trust Agreement, and to execute and deliver or enter into any termination or release of that Transaction Security and any assets affected thereunder if approved in exchange for a release from the other parties to the Mexican Security Trust Agreement.

9.2 **Release of Transaction Security - other jurisdictions**

On the first Business Day falling after the Effective Date on which all of the following conditions are met:

(a) the Consolidated Leverage Ratio for two consecutive testing dates falling during any Reference Period in respect of which Compliance Certificates have been (or are required to have been) delivered under the Facilities Agreement (as each such term is defined therein) was not greater than 3.50:1; and

(b) no Default is continuing,

(and subject to receipt of written notice from the Facility Agent in accordance with Clause 9.3 ( *Notification by Facility Agent*)) the Security Agent is irrevocably authorised (at the cost of the relevant Debtor, Security Provider or the Parent and without any consent, sanction, authority or further confirmation from any Secured Party, Debtor or Security Provider) to promptly release (and the Security Agent shall so release) the Transaction Security not already released pursuant to Clause 9.1 ( *Release of Mexican Security Trust Agreement*) and any other claim over the assets subject to that Transaction Security, and to execute and deliver or enter (and the Security Agent shall execute and deliver or enter into) into any release of that Transaction Security or claim that may, in the discretion of the Security Agent, be considered necessary or desirable.

9.3 **Notification by Facility Agent**

The Facility Agent shall promptly notify the Security Agent in writing on the date at which the conditions set out in Clause 9.1 ( *Release of Mexican Security Trust Agreement*) have been satisfied and on the date at which the conditions set out in Clause 9.2 ( *Release of Transaction Security - other jurisdictions*) have been satisfied.

9.4 **Creditors', Debtors', Intra-Group Lenders' and Security Providers' actions**

Each Creditor, Debtor, Intra-Group Lender and Security Provider will:

(a) do all things that the Security Agent reasonably requests in order to give effect to this Clause 9 (which shall include, without limitation, the execution of any assignments, transfers, releases or other documents that the Security Agent may consider to be necessary to give effect to the releases contemplated by Clause 9.1 (*Release of Mexican Security Trust Agreement*) and Clause 9.2 (*Release of Transaction Security - other jurisdictions*));

(b) if the Security Agent is not entitled to take any of the actions contemplated by this Clause 9 or is otherwise prevented from taking or, with respect to any Creditor or Intra-Group Lender, unable to take the actions contemplated by this Clause 9 and requests that a Creditor or Intra-Group Lender take that action, each Creditor and Intra-Group Lender will undertake that action itself in accordance with the instructions of the Security Agent or grant a power of attorney to the Security Agent (on such terms as the Security Agent may reasonably require) to enable the Security Agent to take such action under applicable law (any such power of attorney, with respect to any enforcement of Transaction Security governed by Spanish law or any claim against a Debtor or Security Provider incorporated in Spain, shall be notarised and apostilled); and

(c) if the Security Agent is not entitled to take any of the actions contemplated by this Clause 9 with respect to any Debtor, Intra-Group Lender or Security Provider or requests that any Debtor, Intra-Group Lender or Security Provider take any such action, such Debtor, Intra-Group Lender or Security Provider shall take that action itself in accordance with the instructions of the Security Agent.

## 10. APPLICATION OF PROCEEDS

10.1 **Order of application - Transaction Security Recoveries**

Subject to Clause 10.3 (*Prospective liabilities*), all amounts from time to time received or recovered by the Security Agent prior to the Final Discharge Date:

(a) in connection with the realisation or enforcement of all or any part of the Transaction Security (including, amounts received or recovered as a result of realisation or enforcement of all or part of the Transaction Security pursuant to Clause 11.2 *(Finance Parallel Debt (Covenant to pay the Security Agent))* or Clause 11.3 *(Notes Parallel Debt (Covenant to pay the Security Agent))* (for the purposes of this Clause 10.1, the "**Transaction Security Recoveries**");

(b) from (or on behalf of) any Intra-Group Lender as required by Clauses 4.1 ( *Payment of Distributions*), 4.2 (*Set-off*), 5.1 (*Turnover by the Creditors and Intra-Group Lenders*) or 5.5 (*Saving provision*); or

(c) from the Mexican bank acting as trustee under the voting trust referred to in Clause 3.7 ( *Mexican Intra-Group Credit Rights*) as required by paragraph (c) of that Clause 3.7 (*Mexican Intra-Group Credit Rights*) (together with the amounts referred to in paragraph (b) above, the "**Intra-Group Recoveries**"),

shall be held by the Security Agent on trust to apply them as soon as reasonably practicable after the Security Agent has made (to its sole satisfaction) the calculations necessary to perform the distributions required pursuant to this Clause 10.1, to the extent permitted by applicable law (and subject to the provisions of this Clause 10.1), in the following order of priority:

(i) in discharging any sums owing to the Security Agent (including, for the avoidance of doubt, any legal or other professional advisers' fees and all related taxes incurred thereon by the Security Agent), any Receiver or any Delegate, the Mexican Security Trustee or the Mexican bank acting as trustee under the voting trust referred to in Clause 3.7 ( *Mexican Intra-Group Credit Rights*);

(ii) in payment of all costs and expenses reasonably incurred by any Secured Party (without double-counting) in connection with any realisation or enforcement of the Transaction Security (including, without limitation, the reasonable fees of any adviser, trustee or agent) taken in accordance with the terms of this Agreement or any action taken at the request of the Security Agent under Clause 4.5 (*Actions of Creditors and Intra-Group Lender*s) or Clause 8.3 (*Creditors', Debtors', Intra-Group Lenders' and Security Providers' actions*);

(iii) in payment to:

(A) the Facility Agent on its own behalf and on behalf of the Facilities Agreement Creditors;

(B) each Refinancing Creditor Representative on its own behalf and on behalf of the Refinancing Creditors which it represents;

(C) each Noteholder Trustee on its own behalf and on behalf of the relevant Noteholders which it represents; and

(D) any Noteholder not represented by a Noteholder Trustee,

for application towards the discharge of the Agent Liabilities, the Facilities Agreement Creditor Liabilities and the Refinancing Creditor Liabilities (in accordance with the terms of the Finance Documents or, as the case may be, the Refinancing Documents) and the Noteholder Trustee Liabilities and the Noteholder Liabilities (in accordance with the terms of the Noteholder Documents), on a *pro rata* and *pari passu* basis;

(iv) if none of the Debtors is under any further actual or contingent liability under any Debt Document, in payment to any person to whom the Security Agent is obliged, as a matter of law, to pay in priority to any Debtor; and

(v) the balance, if any, in payment to the relevant Debtor.

10.2 **Order of application - Debt Claim Recoveries**

Subject to Clause 10.3 (*Prospective liabilities*), all amounts from time to time received or recovered by the Security Agent prior to the Final Discharge Date from a Borrower in respect of any Borrowing Liabilities or from a Guarantor pursuant to the terms of any Guarantee Clause, (including, in connection therewith, pursuant to Clause 11.2 (*Finance Parallel Debt (Covenant to pay the Security Agent)* ) but excluding:

(a) any amounts of Transaction Security Recoveries or Intra-Group Recoveries; and

(b) any amounts received from a Borrower which are required to be (i) deposited in a Segregated Account pursuant to clause 7 ( *Mandatory Prepayment and Segregated Accounts*) or applied in repayment or prepayment of the Facilities pursuant to clauses 5 ( *Repayment*), 6 (*Illegality and Voluntary Prepayment*) or clause 7 (*Mandatory Prepayment and Segregated Accounts*) of the Facilities Agreement or, as the case may be, (ii) applied in repayment or prepayment of the Refinancing Debt in accordance with the repayment or prepayment provisions of the relevant Refinancing Documents,

(for the purposes of this Clause 10.2, the "**Debt Claim Recoveries**") shall be held by the Security Agent on trust to apply such Debt Claim Recoveries as soon as reasonably practicable after the Security Agent has made (to its sole satisfaction) the calculations necessary to perform the distributions required

pursuant to this Clause 10.2, to the extent permitted by applicable law (and subject to the provisions of this Clause 10.2 ( *Application of Proceeds - Debt Claim Recoveries)* ), in the following order of priority:

(i) in the case of (x) a Borrower which owes Borrowing Liabilities only, or (y) a Guarantor which owes Cross Guarantee Liabilities (but not Specific Guarantee Liabilities), or (z) a Debtor which is a Borrower and a Guarantor and owes Borrowing Liabilities and Cross Guarantee Liabilities (but not Specific Guarantee Liabilities):

(A) in discharging any sums owing to the Security Agent (including, for the avoidance of doubt, any legal or other professional advisers' fees and all taxes incurred thereon by the Security Agent), any Receiver or any Delegate;

(B) in payment of all costs and expenses reasonably incurred by any Creditor (without double counting) in connection with any action taken at the request of the Security Agent under Clause 4.5 ( *Actions of Creditors* ), paragraph (a) of Clause 8.3 (*Creditors', Debtors', Intra-Group Lenders' and Security Providers' actions* ) or Clause 9.4 (*Creditors', Debtors', Intra-Group Lenders' and Security Providers' actions*);

(C) in payment to the Facility Agent (on its own behalf and on behalf of the Finance Parties) and to each Refinancing Creditor Representative (on its own behalf and on behalf of the Refinancing Creditors which it represents) for application towards the discharge of the Borrowing Liabilities owed to the Finance Parties or the Refinancing Parties by that Borrower (in accordance with the terms of the Finance Documents or, as the case may be, the Refinancing Documents) on a *pro rata* and *pari passu* basis;

(D) in payment to the Facility Agent (on its own behalf and on behalf of the Finance Parties) and to each Refinancing Creditor Representative (on its own behalf and on behalf of the Refinancing Creditors which it represents) for application towards the discharge of the Cross Guarantee Liabilities (if any) owed to the Finance Parties or the Refinancing Parties by that Guarantor (in accordance with the terms of the Finance Documents or, as the case may be, the Refinancing Documents) on a *pro rata* and *pari passu* basis;

(E) if none of the Debtors is under any further actual or contingent liability under any Debt Document, in payment to any person to whom the Security Agent is obliged, as a matter of law, to pay in priority to any Debtor; and

(F) the balance, if any, in payment to the relevant Debtor; and

(ii) in the case of (x) a Debtor which is a Borrower and a Guarantor and owes Borrowing Liabilities and Specific Guarantee Liabilities (in addition to (or, as the case may be, instead of) Cross Guarantee Liabilities), or (y) a Guarantor which owes Specific Guarantee Liabilities (in addition to (or, as the case may be, instead of) Cross Guarantee Liabilities):

(A) in discharging any sums owing to the Security Agent (including, for the avoidance of doubt, any legal or other professional advisers' fees and all taxes incurred thereon by the Security Agent), any Receiver or any Delegate;

(B) in payment of all costs and expenses reasonably incurred by any Agent or any Facilities Agreement Creditor (without double counting) in connection with any action taken at the request of the Security Agent under Clause 4.5 ( *Actions of Creditors*), paragraph (a) of Clause 8.3 (*Creditors', Debtors', Intra-Group Lenders' and Security Providers' actions*) or Clause 9.4 (*Creditors', Debtors', Intra-Group Lenders' and Security Providers' actions*);

(C) in payment to:

(1) the Facility Agent for application to those Finance Parties to which (in each case) such Borrower or Guarantor owes Borrowing Liabilities or Specific Guarantee Liabilities towards the discharge of such Liabilities in accordance with the terms of the relevant Finance Documents (including, for the avoidance of doubt and without limitation, clause 18.1 (*Guarantee and indemnity – Specific Guaranteed Facilities* ) of the Facilities Agreement); and

(2) each Refinancing Creditor Representative on its own behalf and for application to the Refinancing Creditors which it represents to which such Borrower owes Borrowing Liabilities towards the discharge of such Liabilities in accordance with the terms of the relevant Refinancing Documents,

on a *pro rata* and *pari passu* basis between paragraphs (1) and (2) above (but not, for the avoidance of doubt, towards the discharge of any other Liabilities owed by that Borrower or Guarantor or any other Debtor to those Finance Parties under any of the other Finance Documents);

(D) following the discharge in full of all Borrowing Liabilities or, as the case may be, Specific Guarantee Liabilities of such Borrower or Guarantor pursuant to sub paragraph (C) above, in payment to:

(1) the Facility Agent (on its own behalf and on behalf of the Finance Parties); and

(2) to each Refinancing Creditor Representative (on its own behalf and on behalf of the Refinancing Creditors which it represents),

for application towards the discharge of the Cross Guarantee Liabilities, owed to the Finance Parties or the Refinancing Parties by that Guarantor (in accordance with the terms of the Finance Documents or, as the case may be, the Refinancing Documents) on a *pro rata* and *pari passu* basis between paragraphs (1) and (2) above;

(iii) if none of the Debtors is under any further actual or contingent liability under any Debt Document, in payment to any person to whom the Security Agent is obliged, as a matter of law, to pay in priority to any Debtor; and

(iv) the balance, if any, in payment to the relevant Debtor.

For the avoidance of doubt, Noteholders shall not have the benefit of recoveries under this Clause 10.2.

10.3 **Prospective liabilities**

Following the occurrence of a Facilities Agreement Acceleration Event, the Security Agent may, in its sole discretion and to the fullest extent permitted by applicable law, hold any amount of the Debt Claim Recoveries in an interest bearing suspense or impersonal account(s) in the name of the Security Agent with a financial institution (including itself) which has a rating for its long-term unsecured and non credit-enhanced debt obligations of A- or higher by S&P or A- or higher by Fitch or A3 or higher by Moody's or a comparable rating from an internationally recognised credit rating agency and for so long as the Security Agent shall think fit (but no later than 180 days) (the interest being credited to the relevant account) for later application under Clause 10.1 (*Order of Application – Transaction Security Recoveries*) or Clause 10.2 (*Order of Application – Debt Claim Recoveries*) in respect of:

(a) any sum to any Security Agent (including, for the avoidance of doubt, any legal or other professional advisers' fees and all taxes incurred thereon by the Security Agent), any Receiver or any Delegate; and

(b) any part of the Facilities Agreement Creditor Liabilities, the Refinancing Creditor Liabilities, the Noteholder Liabilities, the Noteholder Trustee Liabilities or the Agent Liabilities,

that the Security Agent reasonably considers, in each case, might become due or owing at any time in the future.

10.4 **Investment of proceeds**

Prior to the application of the proceeds of the Security Property in accordance with Clause 10.1 ( *Order of Application - Transaction Security Recoveries*) or Clause 10.2 (*Order of Application - Debt Claim Recoveries*) the Security Agent may, in its sole discretion, hold all or part of those proceeds in an interest bearing suspense or impersonal account(s) in the name of the Security Agent with a financial institution (including itself) which has a rating for its long-term unsecured and non credit-enhanced debt obligations of A- or higher by S&P or A- or higher by Fitch or A3 or higher by Moody's or a comparable rating from an internationally recognised credit rating agency and for so long as the Security Agent shall deem necessary (the interest being credited to the relevant account) pending the application from time to time of those monies in the Security Agent's discretion in accordance with the provisions of this Clause 10.4.

10.5 **Currency Conversion**

(a) For the purpose of, or pending the discharge of, any of the Secured Obligations the Security Agent may convert any monies received or recovered by the Security Agent into the Base Currency, at the Security Agent's Spot Rate of Exchange.

(b) The obligations of any Debtor (or, to the extent applicable in relation to Transaction Security granted by it, any Security Provider) to pay amounts due in the specified currency shall only be satisfied to the extent of the amount in the specified currency purchased after deducting the costs of conversion.

10.6 **Permitted Deductions**

The Security Agent shall be entitled, in its sole discretion (acting reasonably), (a) to set aside by way of reserve amounts required to meet and (b) to make and pay, any deductions and withholdings (on account of taxes or otherwise) which it is or shall be required by any applicable law to make from any distribution or payment made by it under this Agreement, and to pay all Taxes which are assessed against it in respect of any of the Charged Property, or as a consequence of performing its duties (save where such duties are performed in such a way that loss is suffered through gross negligence or wilful default), or by virtue of its capacity as Security Agent under any of the Debt Documents or otherwise (other than in connection with its remuneration for performing its duties under this Agreement).

10.7 **Good Discharge**

(a) Any payment to be made in respect of the Secured Obligations by the Security Agent:

(i) may be made to the Facility Agent on behalf of the Facilities Agreement Creditors;

(ii) may be made to the relevant Refinancing Creditors' Representative on behalf of its Refinancing Creditors;

(iii) may be made, in the case of Noteholders represented by a Noteholder Trustee, to the relevant Noteholder Trustee on behalf of its Noteholders, and to any Noteholder not so represented, directly,

and any payment made in that way shall be a good discharge, to the extent of that payment, by the Security Agent.

(b) The Security Agent is under no obligation to make the payments to any Agent or any Noteholder Trustee under paragraph (a) of this Clause 10.7 in the same currency as that in which the Liabilities owing to the relevant Creditor or Noteholder are denominated.

(c) The Security Agent is under no obligation to make payments to any Noteholder not represented by a Noteholder Trustee, as contemplated

under paragraph (a) of this Clause 10.7, unless that Noteholder has provided evidence satisfactory to the Security Agent, in its sole discretion (but acting reasonably), of (i) its identity, (ii) its holding of, or entitlement under, the Notes and (iii) the amounts claimed to be owed to it under those Notes.

10.8 **Calculation of Amounts**

For the purpose of calculating any person's share of any sum payable to or by it, the Security Agent shall be entitled to:

(a) notionally convert the Liabilities owed to any person into the Base Currency (decided by the Security Agent in its discretion acting reasonably), that notional conversion to be made at the Security Agent's Spot Rate of Exchange; and

(b) assume that all moneys received or recovered as a result of the enforcement or realisation of the Security Property are applied in discharge of the Liabilities in accordance with the terms of the Debt Documents under which those Liabilities have arisen.

10.9 **Application and consideration**

In consideration for the covenants given to the Security Agent by each Debtor in Clause 11.2 ( *Finance Parallel Debt (Covenant to pay the Security Agent)*) and Clause 11.3 (*Notes Parallel Debt (Covenant to pay the Security Agent)* ), the Security Agent agrees with each Debtor to apply all moneys from time to time paid by such Debtor to the Security Agent in accordance with the provisions of Clause 10.1 ( *Order of Application - Transaction Security Recoveries*).

## 11. THE SECURITY AGENT

11.1 **Trust**

(a) The Security Agent declares that it shall hold the Security Property (save as provided in paragraph (b) below) on trust (in the case of the Transaction Security effected under the Mexican Security Trust Agreement, through the Mexican Security Trustee) for (or, if required by any Security Document, as an agent acting in the name and on behalf of) the equal and rateable benefit of the Secured Parties on the terms contained in this Agreement.

(b) The Security Agent declares that it, in the circumstances described in paragraph (g) of Clause 11.3 ( *Notes Parallel Debt (Covenant to pay the Security Agent)*) shall hold the Notes Parallel Debt Recoveries on trust for the Notes Secured Parties on the terms contained in this Agreement (and, with respect to such trust, as if references to "Secured Parties" in this Clause 11 were references to the Notes Secured Parties).

(c) By acceptance of the benefits of this Agreement, each Secured Party (whether or not a Party to this Agreement) (i) consents or, as the case may be, is deemed to consent, to the appointment of the Security Agent as trustee under this Agreement, (ii) confirms or, as the case may be, is deemed to confirm, that the Security Agent shall have the authority to act as the exclusive agent of such Secured Party for the enforcement of any remedies under or with respect to any Transaction Security Document and the giving or withholding of any consent or approval relating to any Charged Property or the Liabilities of any Debtor or Security Provider relating thereto, and (iii) agrees or, as the case may be, by accepting the benefits of this Agreement, is deemed to agree) that, except as provided in this Agreement, it shall not take any action to enforce any of such remedies or give any such consents or approvals.

(d) Each of the Parties to this Agreement agrees (and each Noteholder Trustee and Noteholder, by accepting the benefits of this Agreement, shall be deemed to agree) that the Security Agent shall have only those duties, obligations and responsibilities expressly specified in this Agreement or in the Security Documents to which the Security Agent is expressed to be a party (and no others shall be implied) subject at all times to the provisions of this Agreement limiting the responsibility or liability of the Security Agent.

(e) It is expressly understood and agreed by the Parties to this Agreement (and each Noteholder Trustee and Noteholder, by accepting the benefits of this Agreement, shall be deemed to agree) that:

(i) this Agreement is executed and delivered by the Security Agent not individually or personally but solely in its capacity as the Security Agent in the exercise of the powers and authority conferred and vested in it under this Agreement and the Debt Documents to which it is expressed to be a party;

(ii) in no case shall the Security Agent be (i) responsible or accountable in damages or otherwise to any other Secured Party, Debtor or Security Provider for any loss, damage or claim incurred by reason of any act or omission performed or omitted by the Security Agent in good faith in accordance with this Agreement and the Debt Documents in a manner within the scope of the authority conferred on it by this Agreement and the Debt Documents or by law (otherwise than as a result of its gross

negligence or wilful misconduct), or (ii) personally liable for or on account of any of the statements, representations, warranties, covenants or obligations stated to be those of any other Secured Party, Debtor or Security Provider all such liability, if any, being expressly waived by the Secured Parties, Debtors and Security Providers and any person claiming by, through or under such Secured Party, Debtor or Security Provider,

and it is also acknowledged that the Security Agent shall have no responsibility for the actions of any Creditor.

11.2 **Finance Parallel Debt (Covenant to pay the Security Agent)**

(a) Notwithstanding any other provision of this Agreement, each Debtor hereby, subject in each case to the limitations set out in clause 18 (*Guarantee and indemnity*) of the Facilities Agreement (if any), irrevocably and unconditionally undertakes to pay to the Security Agent, as creditor in its own right and not as representative of the other Creditor Secured Parties, sums equal to and in the currency of each amount payable by such Debtor to each of the Creditor Secured Parties under each of the Creditor Secured Documents as and when that amount falls due for payment under the relevant Creditor Secured Document or would have fallen due but for any discharge resulting from failure of another Creditor Secured Party to take appropriate steps, in Insolvency Proceedings affecting that Debtor, to preserve its entitlement to be paid that amount (in respect of each Debtor, its "**Finance Parallel Debt**").

(b) The Security Agent shall have its own independent right to demand payment of the amounts payable by each Debtor under this Clause 11.2, irrespective of any discharge of such Debtor's obligation to pay those amounts to the other Creditor Secured Parties resulting from failure by them to take appropriate steps, in Insolvency Proceedings affecting that Debtor, to preserve their entitlement to be paid those amounts.

(c) The rights of the Creditor Secured Parties (other than the Security Agent) to receive payment of amounts payable by each Debtor under the Creditor Secured Documents are several and are separate and independent from, and without prejudice to, the rights of the Security Agent to receive payment under this Clause 11.2.

(d) Any amount due and payable by a Debtor to the Security Agent under this Clause 11.2 shall be decreased to the extent that the other Creditor Secured Parties have received (and are able to retain) payment in full of the corresponding amount under the other provisions of the Creditor Secured Documents and any amount due and payable by a Debtor to the

other Creditor Secured Parties under those provisions shall be decreased to the extent that the Security Agent has received (and is able to retain) payment in full of the corresponding amount under this Clause 11.2.

(e) Each of the Parties to this Agreement accepts the provisions of this Clause 11.2.

11.3 **Notes Parallel Debt (Covenant to pay the Security Agent)**

(a) Notwithstanding any other provision of this Agreement, each Debtor hereby, subject in each case to the limitations set out in clause 18 (*Guarantee and indemnity*) of the Facilities Agreement (if any), irrevocably and unconditionally undertakes to pay to the Security Agent, as creditor in its own right and not as representative of the Notes Secured Parties, sums equal to and in the currency of each amount payable by such Debtor to each of the Notes Secured Parties under each of the Notes Secured Documents as and when that amount falls due for payment under the relevant Notes Secured Document or would have fallen due but for any discharge resulting from failure of another Notes Secured Party to take appropriate steps, in Insolvency Proceedings affecting that Debtor, to preserve its entitlement to be paid that amount (in respect of each Debtor, its "**Notes Parallel Debt**").

(b) The Security Agent shall have its own independent right to demand payment of the amounts payable by each Debtor under this Clause 11.3, irrespective of any discharge of such Debtor's obligation to pay those amounts to the Notes Secured Parties resulting from failure by them to take appropriate steps, in Insolvency Proceedings affecting that Debtor, to preserve their entitlement to be paid those amounts.

(c) The rights of the Notes Secured Parties (other than the Security Agent) to receive payment of amounts payable by each Debtor under the Notes Secured Documents are several and are separate and independent from, and without prejudice to, the rights of the Security Agent to receive payment under this Clause 11.3.

(d) Notwithstanding the foregoing, prior to an Enforcement Event, the Security Agent shall not be entitled to or demand payment of the amounts payable by each Debtor under this Clause 11.3 in connection with the realisation or enforcement of all or part of the Transaction Security.

(e) Each Notes Secured Party, by accepting the benefits of this Agreement, shall be deemed to accept the provisions of this Clause 11.3 and, where an amount is received by the Security Agent on its behalf under this

Clause 11.3, to have waived its rights to seek payment of the corresponding amount under the other provisions of the Notes Secured Documents.

(f) The Security Agent shall notify the Notes Secured Parties (in the case of any Noteholder represented by a Noteholder Trustee, via that Noteholder Trustee, and in the case of any Noteholder not so represented, directly) that it has received amounts pursuant to this Clause 11.3 (the "**Notes Parallel Debt Recoveries**") which are due to the Notes Secured Parties, and shall apply such Notes Parallel Debt Recoveries (subject, in the case of any Noteholder not represented by a Noteholder Trustee, to paragraph (c) of Clause 10.7 ( *Good Discharge*)) in accordance with Clause 10 (*Application of Proceeds*).

(g) Where, having given notice in accordance with paragraph (f) of this Clause 11.3, any amount of Notes Parallel Debt Recoveries has not been claimed by a Notes Secured Party, the Security Agent will hold such amounts on trust for the benefit of such Notes Secured Parties as set out in paragraph (b) of Clause 11.1 (*Trust*).

11.4 **Parallel debt recoveries**

Amounts received or recovered in connection with the realisation or enforcement of the Transaction Security pursuant to Clause 11.2 ( *Finance Parallel Debt (Covenant to pay the Security Agent)* ) and Clause 11.3 (*Notes Parallel Debt (Covenant to pay the Security Agent)* ) shall be held *pari passu* by the Security Agent and shall be distributed to the Creditor Secured Parties and Notes Secured Parties in accordance with Clause 10 (*Application of Proceeds*) (or, in the case of the Notes Secured Parties, held on trust as contemplated by paragraph (g) of Clause 11.3 ( *Notes Parallel Debt (Covenant to pay the Security Agent)* ) above).

11.5 **No independent power**

The Secured Parties shall not have any independent power to enforce, or have recourse to, any of the Transaction Security or to exercise any rights or powers arising under the Security Documents (other than in accordance with the terms of the Debt Documents) except through the Security Agent.

11.6 **Instructions to Security Agent and exercise of discretion**

(a) Subject to paragraphs (d) and (e) below, the Security Agent shall only act in accordance with any instructions given to it by the Instructing Group or, if so instructed by the Instructing Group, refrain from exercising any right, power, authority or discretion vested in it as Security Agent and

shall be entitled, without further enquiry, to assume that (i) any instructions or directions received by it from the Instructing Group or, (to the extent that such Parties are entitled to give instructions or directions to the Security Agent under this Agreement) from the Facility Agent, the Facilities Agreement Creditors, the Refinancing Creditors or the Super Majority Instructing Group, are duly given in accordance with the terms of the relevant Finance Documents and (ii) unless it has received actual written notice of revocation, that those instructions or directions have not been revoked.

(b) The Security Agent shall be entitled to request instructions, or clarification of any direction, from the Instructing Group or, (to the extent that such Parties are entitled to give instructions or directions to the Security Agent under this Agreement) from the Facility Agent, the Facilities Agreement Creditors, the Refinancing Creditors or the Super Majority Instructing Group, and as to whether, and in what manner, it should exercise or refrain from exercising any rights, powers, authorities and discretions and the Security Agent may refrain from acting unless and until those instructions or clarification are received by it.

(c) Save as provided in Clause 7 (*Enforcement of Transaction Security*), any instructions given to the Security Agent by the Instructing Group shall override any conflicting instructions given by any other Parties.

(d) Paragraph (a) above shall not apply:

(i) where a contrary indication appears in this Agreement;

(ii) where this Agreement requires the Security Agent to act in a specified manner or to take a specified action;

(iii) in respect of any provision which protects the Security Agent's own position in its personal capacity as opposed to its role of Security Agent for the Secured Parties including, without limitation, the provisions set out in Clauses 11.8 ( *Security Agent's discretions*) to Clause 11.24 (*Disapplication*);

(iv) in respect of the exercise of the Security Agent's discretion to exercise a right, power or authority under any of:

(A) Clause 8.1 (*Non-Distressed Disposals*);

(B) Clause 10.1 (*Order of application - Transaction Security Recoveries*);

(C) Clause 10.2 (*Order of application - Debt Claim Recoveries*);

(D) Clause 10.3 (*Prospective liabilities*);

(E) Clause 10.6 (*Permitted Deductions*);

(**provided that** the Security Agent may, if it so chooses, seek directions or instructions from, in respect of the discretions conferred on it under the clause referred to in paragraph (A) above, the Majority Creditors (as defined in the Facilities Agreement) via the Facility Agent or, in respect of the discretions conferred on it under the clauses referred to in paragraphs (B) to (E) above, the Instructing Group).

(e) If giving effect to instructions given by an Instructing Group would (in the Security Agent's opinion (acting reasonably)) have an effect equivalent to an Intercreditor Amendment, the Security Agent shall not act in accordance with those instructions unless consent to it so acting is obtained from each Secured Party (other than the Security Agent) whose consent would have been required in respect of that Intercreditor Amendment.

(f) In exercising any discretion to exercise a right, power or authority under this Agreement where either:

(i) it has not received any instructions from an Instructing Group as to the exercise of that discretion; or

(ii) the exercise of that discretion is subject to paragraph (d)(iv) above,

the Security Agent shall do so having regard to the interests of all the Secured Parties as a group and not individually.

11.7 **Security Agent's actions**

Without prejudice to the provisions of Clause 7 (*Enforcement of Transaction Security*) and Clause 11.6 (*Instructions to Security Agent and exercise of discretion*), the Security Agent may (but shall not be obliged to), in the absence of any instructions to the contrary, take such action in the exercise of any of its powers and duties under the Debt Documents as it considers in its sole discretion to be appropriate.

11.8 **Security Agent's discretions**

The Security Agent may:

(a) assume, without enquiry (unless it has received actual written notice to the contrary from the Facility Agent) that (i) no Default has occurred and no Debtor or Security Provider is in breach of or default under its obligations under any of the Finance Documents (except in relation to paragraph (b) of Clause 9.1 (*Release of Mexican Security Trust Agreement*) and paragraph (b) of Clause 9.2 (*Release of Transaction Security - other jurisdictions*), where the Security Agent shall be notified of the satisfaction of the condition set out in such paragraphs by the Facility Agent in accordance with Clause 9.3 (*Notification by the Facility Agent*)) and (ii) any right, power, authority or discretion vested by any Finance Document in any person has not been exercised;

(b) if it receives any instructions or directions under Clause 7 ( *Enforcement of Transaction Security*) to take any action or to cause action to be taken in relation to the Transaction Security, assume, without enquiry, that all applicable conditions under the Finance Documents for taking that action have been satisfied;

(c) engage, pay for and rely on the advice or services of any legal advisers, accountants, tax advisers, financial advisers, surveyors or other experts (whether obtained by the Security Agent or by any other Secured Party and regardless of any limitation (by way of a monetary cap or otherwise) that may be imposed on such advice) and incur such advisers' reasonable cost and expenses whose advice or services may at any time seem necessary or expedient;

(d) rely upon any communication or document believed by it to be genuine and, as to any matters of fact which might reasonably be expected to be within the knowledge of a Secured Party, a Debtor or a Security Provider, upon a certificate signed by or on behalf of that person; and

(e) refrain from acting in accordance with the instructions of any Party (including, but not limited to, bringing any legal action or proceeding arising out of or in connection with the Finance Documents) until it has received any indemnification and/or security satisfactory to it (acting reasonably) (whether by way of payment in advance or otherwise) for all costs, expenses, losses and liabilities which it may incur reasonably in so acting.

11.9 **Security Agent's obligations**

The Security Agent shall promptly:

(a) copy to the Facility Agent and each Refinancing Creditor Representative the contents of any notice or document received by it from any Debtor or Security Provider under any Debt Document and otherwise, directly or through any Delegate, give notice in respect of this Agreement or any Transaction Security Document, to any party it may deem appropriate;

(b) forward to a Secured Party, Debtor or Security Provider the original or a copy of any document which is delivered to the Security Agent for that Secured Party, Debtor or Security Provider by any other Party **provided that** such delivery by the Security Agent to the receiving party is expressly contemplated by the terms of this Agreement and **provided further that**, except where a Debt Document expressly provides otherwise, the Security Agent is not obliged to review or check the adequacy, accuracy or completeness of, or any mathematical calculations or other facts in, any document it forwards to another Secured Party or to a Debtor or Security Provider;

(c) inform the Facility Agent and each Refinancing Creditor Representative of any event notified to the Security Agent under paragraph (b) of Clause 17.3 (*Notification of prescribed events*) and of any default by a Debtor or Security Provider in the due performance of or compliance with its obligations under any Debt Document of which the Security Agent has received written notice from any other Secured Party, Debtor or Security Provider;

(d) notify the Noteholder Trustees (and any Noteholder not represented by a Noteholder Trustee, directly) of any event that materially and adversely affects the Charged Property under any Transaction Security Document; and

(e) to the extent that a Party (other than the Security Agent) is required to calculate a Base Currency Amount, and upon a request by that Party, notify that Party of the Security Agent's Spot Rate of Exchange.

11.10 **Excluded obligations**

Notwithstanding anything to the contrary expressed or implied in the Debt Documents, the Security Agent shall not:

(a) be bound to enquire as to (i) whether or not any Default has occurred or (ii) the performance, default or any breach by a Debtor or Security Provider of its obligations under any of the Debt Documents or Intra-Group Debt Documents;

(b) be bound to account to any other Secured Party, any Debtor or any Security Provider for any sum or the profit element of any sum received by it for its own account;

(c) be bound to disclose to any other person (including, but not limited to, any Secured Party) (i) any confidential information or (ii) any other information if disclosure would, or might in its reasonable opinion, constitute a breach of any law or be a breach of fiduciary duty;

(d) have or be deemed to have any relationship of trust or agency with, any Debtor or Security Provider;

(e) be liable for interest on any moneys received by it except as the Security Agent may agree in writing with the Party for whom it holds those moneys;

(f) be obliged to segregate money held on trust by the Security Agent from its other funds except to the extent required by law;

(g) be required to give any bond or surety or otherwise expend its own funds with respect to the performance of its duties or the exercise of its rights or powers under this Agreement or any of the other Debt Documents; or

(h) be under any obligation to take any action under this Agreement if it has sought, but not received, instructions from the Instructing Group, Facility Agent, the other Agents, Super Majority Instructing Group, Noteholder Trustees (or Noteholder where such Noteholder is not represented by a Noteholder Trustee) or other Party from whom it seeks instructions,

and the permissive rights of the Security Agent to take the actions or exercise the rights and discretions permitted or conferred by this Agreement shall not be construed as an obligation or duty for it to take those actions or exercise those rights and discretions.

11.11 **Exclusion of liability**

None of the Security Agent, any Receiver nor any Delegate shall accept responsibility or be liable for:

(a) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Security Agent or any other person in or in connection with any Debt Document or Intra-Group Debt Document or the transactions contemplated in the Debt Documents or the Intra-Group

Debt Documents, or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Debt Document or Intra-Group Debt Document;

(b) the legality, validity, effectiveness, efficacy, adequacy or enforceability of any Debt Document or Intra-Group Debt Document, the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Debt Document or Intra-Group Debt Document or the Security Property;

(c) any losses to any person or any liability arising as a result of taking or refraining from taking any action in relation to any of the Debt Documents or the Intra-Group Debt Documents, the Security Property or otherwise, whether in accordance with an instruction from the Facility Agent or otherwise unless directly caused by its gross negligence or wilful misconduct;

(d) the exercise of, or the failure to exercise, any judgment, discretion or power given to it by or in connection with any of the Debt Documents or the Intra-Group Debt Documents, the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, the Debt Documents or the Intra-Group Debt Documents or the Security Property unless directly caused by its gross negligence or wilful misconduct;

(e) any shortfall which arises on the enforcement or realisation of the Security Property; or

(f) any failure or delay in the performance of its obligations hereunder arising out of, or caused by, directly or indirectly, *force majeure* events, including, without limitation, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God; it being understood that the Security Agent, Receiver or Delegate shall use all commercially reasonable efforts that are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances; it being understood and agreed by the other Parties that, in carrying out all commercially reasonable efforts, the Security Agent is not required (i) to risk or expend its own funds; (ii) to disregard or otherwise compromise its own commercial interests; (iii) to do anything which might result in a breach of law; or (iv) to do anything which would in the Security Agent's opinion (acting reasonably) be unreasonable.

11.12 **No proceedings**

No Secured Party (other than the Security Agent, that Receiver or that Delegate), Debtor or Security Provider may take any proceedings against any officer, employee or agent of the Security Agent, a Receiver or a Delegate in respect of any claim it might have against the Security Agent, a Receiver or a Delegate or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Debt Document or Intra-Group Debt Document or any Security Property and any officer, employee or agent of the Security Agent, a Receiver or a Delegate may rely on this Clause subject to Clause 1.4 (*Third Party Rights*) and the provisions of the Third Parties Rights Act.

11.13 **Own responsibility**

Without affecting the responsibility of any Debtor or Security Provider for information supplied by it or on its behalf in connection with any Debt Document, each Creditor confirms (and each Noteholder Trustee and Noteholder, by accepting the benefits of this Agreement, shall be deemed to confirm) to the Security Agent that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Debt Document including but not limited to:

(a) the financial condition, status and nature of each Debtor or Security Provider;

(b) the legality, validity, effectiveness, efficacy, adequacy and enforceability of any Debt Document, the Security Property and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Debt Document or the Security Property;

(c) whether that Creditor has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Debt Document, the Security Property, the transactions contemplated by the Debt Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Debt Document or the Security Property;

(d) the adequacy, accuracy and/or completeness of any information provided by the Security Agent or by any other person under or in connection with any Debt Document, the transactions contemplated by any Debt Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Debt Document; and

(e) the right or title of any person in or to, or the value or sufficiency of any part of the Charged Property, the priority of any of the Transaction Security or the existence of any Security affecting the Charged Property,

and each Creditor warrants to the Security Agent that it has not relied on and will not at any time rely on the Security Agent in respect of any of these matters.

11.14 **No responsibility to perfect Transaction Security**

The Security Agent shall not be liable for any failure to:

(a) require the deposit with it of any deed or document certifying, representing or constituting the title of any Security Provider to any of the Charged Property;

(b) obtain any licence, consent or other authority for the execution, delivery, legality, validity, enforceability or admissibility in evidence of any of the Debt Documents or Intra-Group Debt Documents or the Transaction Security;

(c) register, file or record or otherwise protect any of the Transaction Security (or the priority of any of the Transaction Security) under any applicable laws in any jurisdiction or to give notice to any person of the execution of any of the Debt Documents or Intra-Group Debt Documents or of the Transaction Security;

(d) take, or to require any of the Security Provider to take, any steps to perfect its title to any of the Charged Property or to render the Transaction Security effective or to secure the creation of any ancillary Security under the laws of any jurisdiction; or

(e) require any further assurances in relation to any of the Security Documents.

11.15 **Insurance by Security Agent**

(a) The Security Agent shall not be under any obligation to insure any of the Charged Property, to require any other person to maintain any insurance or to verify any obligation to arrange or maintain insurance contained in the Debt Documents. The Security Agent shall not be responsible for any loss which may be suffered by any person as a result of the lack of or inadequacy of any such insurance.

(b) Where the Security Agent is named on any insurance policy as an insured party, it shall not be responsible for any loss which may be suffered by reason of, directly or indirectly, its failure to notify the insurers of any material fact relating to the risk assumed by such insurers or any other information of any kind, unless the Facility Agent shall have requested it to do so in writing and the Security Agent shall have failed to do so within fourteen days after receipt of that request.

11.16 **Custodians and nominees**

The Security Agent may (to the extent reasonably practicable, in consultation with the Parent) appoint and pay (or cause to be appointed and paid) any person to act as a custodian or nominee on any terms in relation to any assets of the trust as the Security Agent may determine, including for the purpose of depositing with a custodian this Agreement or any document relating to the trust created under this Agreement and the Security Agent shall, to the extent permitted by applicable law, not be responsible for any loss, liability, expense, demand, cost, claim or proceedings incurred by reason of the misconduct, omission or default on the part of any person appointed by it under this Agreement or be bound to supervise the proceedings or acts of any person.

11.17 **Acceptance of title**

The Security Agent shall be entitled to accept without enquiry, and shall not be obliged to investigate, any right and title that any of the Security Providers may have to any of the Charged Property and shall not be liable for or bound to require any Security Providers to remedy any defect in its right or title.

11.18 **Refrain from illegality**

Notwithstanding anything to the contrary expressed or implied in the Debt Documents or Intra-Group Debt Documents, the Security Agent may refrain from doing anything which in its opinion will or may be contrary to any relevant law, directive or regulation of any jurisdiction or otherwise expose it to personal liability, and the Security Agent may do anything which is, in its opinion, necessary to comply with any such law, directive or regulation.

11.19 **Business with the Debtors and Security Providers**

The Security Agent may accept deposits from, lend money to, and generally engage in any kind of banking or other business with any of the Debtors or Security Providers and shall be under no obligation to account for any profit to any Secured Party.

11.20 **Winding up of trust**

If the Security Agent, having made enquiry of the Agents (and, if an Enforcement Event has occurred, the Noteholder Trustees) determines that (a) all of the Secured Obligations owed to the Secured Parties (other than the Noteholder Trustee and the Noteholders, unless an Enforcement Event has occurred) and all other obligations secured by the Security Documents (other than those owed to a Noteholder Trustee or Noteholder, unless an Enforcement Event has occurred) have been fully, finally and irrevocably discharged and (b) none of the Secured Parties is under any commitment, obligation or liability (actual or contingent) to make advances or provide other financial accommodation to any Debtor pursuant to the Debt Documents:

(a) the trusts set out in this Agreement (with the exception of the trust created pursuant to paragraph (b) of Clause 11.1 ( *Trust*)) shall be wound up and the Security Agent shall release, without representation, recourse or warranty, all of the Transaction Security and the rights of the Security Agent under each of the Security Documents (other than any provision expressed to survive termination or discharge); and

(b) any Retiring Security Agent shall release, without representation, recourse or warranty, all of its rights under each of the Security Documents (other than any provision expressed to survive termination or discharge).

11.21 **Winding up of trust - Notes Secured Creditors**

The trust created pursuant to paragraph (b) of Clause 11.1 ( *Trust*) shall be wound up at the earlier of the first date following the Final Discharge Date on which:

(a) there are no Notes Parallel Debt Recoveries held under this Agreement; and

(b) the Security Agent, having made enquiry of the Noteholder Trustees, where relevant, determines that all of the Noteholder Liabilities and all of the Noteholder Trustee Liabilities have been fully, finally and irrevocably discharged,

and the Security Agent shall release from the terms of that trust, without representation, recourse or warranty, any amount of Notes Parallel Debt Recoveries held thereunder on such date, whereupon such amount shall be applied by the Security Agent in accordance with Clause 10 ( *Application of proceeds*).

11.22 **Powers supplemental**

The rights, powers and discretions conferred upon the Security Agent by this Agreement shall be supplemental to the Trustee Act 1925 and the Trustee Act 2000 and in addition to any which may be vested in the Security Agent by general law or otherwise.

11.23 **Trustee division separate**

(a) In acting as trustee for the Secured Parties, the Security Agent shall be regarded as acting through its trustee division which shall be treated as a separate entity from any of its other divisions or departments.

(b) If information is received by another division or department of the Security Agent, it may be treated as confidential to that division or department and the Security Agent shall not be deemed to have notice of it.

11.24 **Disapplication**

Section 1 of the Trustee Act 2000 shall not apply to the duties of the Security Agent in relation to the trusts constituted by this Agreement. Where there are any inconsistencies between the Trustee Act 1925 or the Trustee Act 2000 and the provisions of this Agreement, the provisions of this Agreement shall, to the extent allowed by law, prevail and, in the case of any inconsistency with the Trustee Act 2000, the provisions of this Agreement shall constitute a restriction or exclusion for the purposes of that Act.

11.25 **Debtors and Security Providers: Power of Attorney**

(a) Each Debtor, each Intra-Group Lender and each Security Provider by way of security for its obligations under this Agreement irrevocably appoints the Security Agent to be its attorney to do anything which that Debtor, Intra-Group Lender or, as the case may be, Security Provider, has authorised the Security Agent to do under this Agreement or is itself required to do under this Agreement but has failed to do (and the Security Agent may delegate that power on such terms as it sees fit), which authorisation permits the Security Agent to act as such Debtor, Intra-Group Lender or Security Provider's counterparty (*Selbsteintritt*).

(b) Each Debtor and Security Provider incorporated in Spain, and any Security Provider which has granted Transaction Security governed by Spanish law, shall, on the reasonable request of the Security Agent, promptly grant an irrevocable power of attorney (notarised and apostilled) to appoint the Security Agent in the manner described at paragraph (a) above.

11.26 **Consequential and Other Loss**

Notwithstanding anything to the contrary, the Security Agent shall under no circumstances be liable for any indirect or consequential losses (however described) to any Party or any liability or damages (including punitive damages) arising as a result of taking or refraining from taking any action in relation to any of the Debt Documents or Intra-Group Debt Documents, even if advised of the possibility of such losses, liability or damages.

11.27 **Payments**

Nothing in this Agreement shall prevent (i) payment by the Parent or any Debtor of fees, costs and expenses of the Security Agent (including any amount payable to the Security Agent by way of indemnity, remuneration or reimbursement for expenses reasonably incurred, including legal and other professional advisory fees and all VAT thereon) payable to the Security Agent for its own account pursuant to this Agreement, any Debt Document or any fee letter between the Security Agent and the Parent, and the costs of any actual or attempted Enforcement Action which is permitted by this Agreement or any Debt Document (collectively, "**Security Agent Amounts**"); or (ii) the receipt and retention of such Security Agent Amounts by the Security Agent.

11.28 **Provisions survive termination**

The provisions of Clauses 11.6 to 11.8 (inclusive) and 11.10 to 11.27 (inclusive) shall survive any termination or discharge of this Agreement.

12. **CHANGE OF SECURITY AGENT AND DELEGATION**

12.1 **Resignation of the Security Agent**

(a) The Security Agent may, without ascribing a reason and without being responsible for any cost or liability arising therefrom, resign and appoint one of its Affiliates as successor by giving notice to the Parent, the Facilities Agreement Creditors (via the Facility Agent), the Refinancing Creditors (via the relevant Refinancing Creditor Representative and each Noteholder (via, for any Noteholder represented by a Noteholder Trustee, the relevant Noteholder Trustee)).

(b) Alternatively the Security Agent may, without ascribing a reason and without being responsible for any cost or liability arising therefrom, resign by giving notice to the other Parties in which case the Instructing Group may (to the extent reasonably practicable, in consultation with the Parent), appoint a successor Security Agent.

(c) If the Instructing Group has not appointed a successor Security Agent in accordance with paragraph (b) above within 30 days after the notice of resignation was given, the Security Agent (after consultation with the Facility Agent (and unless a Default has occurred and is continuing, the Parent)) may appoint a successor Security Agent (such successor Security Agent to be a financial institution or trustee company of good standing with (to the extent applicable, a credit rating at least equivalent to that of the Security Agent)).

(d) The retiring Security Agent (the "**Retiring Security Agent**") shall, at its own cost, make available to the successor Security Agent such documents and records and provide such assistance as the successor Security Agent may reasonably request for the purposes of performing its functions as Security Agent under the Debt Documents.

(e) The Security Agent's resignation notice and the appointment of a successor Security Agent shall become effective upon satisfaction of the following conditions: (i) the successor Security Agent notifying the Parent and the retiring Security Agent that it accepts its appointment, (ii) the successor Security Agent acceding to this Agreement in accordance with Clause 14.5 ( *Change of Agent/Security Agent*), (iii) the Instructing Group confirming to the resigning Security Agent and the successor Security Agent that the credit rating of the successor Security Agent is satisfactory (such confirmation not to be unreasonably withheld or delayed and, where the credit rating of the successor Security Agent is at least equivalent to that of the retiring Security Agent, such confirmation shall, if it is not given to the retiring Security Agent and the successor Security Agent within ten Business Days, be deemed to have been given) and (iv) the making of any transfer of Transaction Security and/or amendments to Transaction Security Documents necessary to effect the change in Security Agent.

(f) Upon the appointment of a successor, the Retiring Security Agent shall be discharged from any further obligation in respect of the Debt Documents (other than its obligations under paragraph (b) of Clause 11.20 ( *Winding up of trust*) and under paragraph (d) above) but shall, in respect of any act or omission by it whilst it was the Security Agent, remain entitled to the benefit of Clauses 11 ( *The Security Agent*), 16.1 (*Debtors' indemnity*) and 16.3 (*Creditors' indemnity*). Its successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if that successor had been an original Party.

(g) The Instructing Group may, by written notice to the Security Agent, require it to resign in accordance with paragraph (b) above. In this event, the Security Agent shall resign in accordance with paragraph (b) above but the cost referred to in paragraph (d) above shall be for the account of the Parent.

12.2 **Delegation**

(a) Each of the Security Agent, any Receiver and any Delegate may (to the extent reasonably practicable, and except where a Default has occurred and is continuing, in consultation with the Parent), at any time, delegate by power of attorney or otherwise (including by providing an instruction in writing) and through a *comisión mercantil* under applicable law to any person for any period, all or any of the rights, powers and discretions vested in it by any of the Debt Documents, including the execution, performance or enforcement of any Debt Document.

(b) That delegation may be made upon any terms and conditions (including the power to sub-delegate) and subject to any restrictions that the Security Agent, that Receiver or that Delegate (as the case may be) may, in its discretion and after due consideration, think fit in the interests of the Secured Parties and it shall not be bound to supervise, or be in any way responsible for any loss incurred by reason of any misconduct or default on the part of any such delegate or sub-delegate.

12.3 **Additional Security Agents**

(a) The Security Agent may at any time appoint (and subsequently remove) any person to act as a separate trustee or as a co-trustee jointly with it (i) if it considers that appointment to be in the interests of the Secured Parties, (ii) if it considers that appointment to be in the interests of the Secured Parties for purposes of the execution, performance or enforcement of any Debt Document, (iii) for the purposes of conforming to any legal requirements, restrictions or conditions which the Security Agent deems to be relevant or (iv) for obtaining or enforcing any judgment in any jurisdiction, and the Security Agent shall give prior notice to the Parent and the Facility Agent of that appointment.

(b) Any person so appointed shall have the rights, powers and discretions (not exceeding those conferred on the Security Agent by this Agreement) and the duties and obligations that are conferred or imposed by the instrument of appointment.

(c) The remuneration that the Security Agent may pay to that person, and any costs and expenses (together with any applicable VAT) reasonably incurred by that person in performing its functions pursuant to that appointment shall, for the purposes of this Agreement, be treated as costs and expenses incurred by the Security Agent.

## 13. NOTEHOLDER TRUSTEES AND NOTEHOLDERS

### 13.1 Rights of the Noteholder Trustees and Noteholders

(a) Notwithstanding anything in this Agreement to the contrary, it is expressly understood, and the availability of the benefits of this Agreement to the Noteholder Trustee and each Noteholder are conditioned upon the understanding, that the sole right of the Noteholders shall be to be equally and rateably secured by the Transaction Security to the extent required by the Noteholder Documents and subject to the provisions of this Agreement.

(b) Notwithstanding anything in this Agreement to the contrary, to the extent that the rights and benefits conferred in this Agreement on the Noteholders or Noteholder Trustees shall be held to exceed the rights and benefits required so to be conferred by the equal and rateable provisions of the Existing Notes Documents or any Additional Notes Documents, such rights and benefits shall be limited so as to provide to such Noteholders and such Noteholder Trustees only those rights and benefits that are required by such provisions.

(c) Any and all rights not herein expressly given to the Noteholder Trustees are expressly reserved to the Security Agent and the Facilities Agreement Creditors, it being understood that in the absence of a requirement to provide equal and rateable security set forth in any Noteholder Document, the grant of rights and benefits in this Agreement to the Noteholders and Noteholder Trustees would not have been accepted by the Security Agent or the Facilities Agreement Creditors.

(d) Subject to paragraph (b) to (e) of Clause 1.4 ( *Third Party Rights*) and the Third Parties Rights Act, each of the Noteholders and Noteholder Trustee may enforce this Clause 13.1.

### 13.2 Determination under Noteholder Documents

(a) The Parent shall deliver to the Security Agent from time to time, upon request of the Security Agent, a list setting forth, by each Noteholder Document, (i) the aggregate principal amount outstanding thereunder, (ii) the interest rate or rates then in effect thereunder, and (iii) the name

of the holders thereof (if known) and the unpaid principal amount thereof owing to each such holder and, in the absence of manifest error, the Security Agent shall be entitled to make such determination on the basis of such information **provided however that** if, notwithstanding such request being made by the Security Agent, the Parent does not provide such information reasonably promptly, then the Security Agent shall in its discretion be entitled to determine such existence or amount of Noteholder Liabilities by such commercially reasonable method as the Security Agent may, in the exercise of its good faith judgment, determine (including by reliance upon a certificate of a Debtor).

(b) The Security Agent may rely conclusively, and shall be fully protected in so relying, on any determination made by it in accordance with the provisions of paragraph (a) above (or as otherwise directed by a court of competent jurisdiction) and shall have no liability to any Debtor, any Security Provider, any Secured Party or any other person as a result of such determination or any action taken pursuant thereto except to the extent such liability is determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence or wilful misconduct of the Security Agent.

## 14. CHANGES TO THE PARTIES

### 14.1 Assignments and transfers

(a) No Party may assign any of its rights and benefits or transfer any of its rights, benefits and obligations in respect of any Debt Documents or Intra-Group Debt Documents or the Liabilities or Intra-Group Liabilities except as permitted by this Clause 14.

(b) Nothing in this Agreement shall restrict the ability of a Noteholder to assign its rights and benefits or transfer any of its rights, benefits and obligations as permitted by the Noteholder Documents to which it is a party.

### 14.2 No assignment by Debtors or Security Providers

No Debtor or Security Provider may assign any of its rights and benefits or transfer any of its rights, benefits and obligations under this Agreement.

### 14.3 Refinancing Creditors and Refinancing Creditor Representatives

On a Refinancing, each Refinancing Creditor and Refinancing Creditor Representative party to such Refinancing shall accede to this Agreement as a Refinancing Creditor or, as the case may be, a Refinancing Creditor Representative, pursuant to Clause ( *Creditor/Agent/Security Agent Accession Undertaking*).

14.4 **Change of Facilities Agreement Creditor or Refinancing Creditor**

A Facilities Agreement Creditor or Refinancing Creditor may assign any of its rights and benefits or transfer by novation any of its rights, benefits and obligations in respect of any Debt Documents or the Liabilities if:

(a) that assignment or transfer is in accordance with the terms of the relevant Debt Documents to which it is a party; and

(b) any assignee or transferee has (if not already party to this Agreement as a Facilities Agreement Creditor or, as the case may be, Refinancing Creditor) acceded to this Agreement as a Creditor pursuant to Clause 14.6 ( *Creditor/Agent/Security Agent Accession Undertaking*).

14.5 **Change of Agent/Security Agent**

No person shall become a successor Agent or a successor Security Agent unless at the same time, it accedes to this Agreement as an Agent or as a Security Agent (as the case may be), pursuant to Clause 14.6 ( *Creditor/Agent/Security Agent Accession Undertaking*).

14.6 **Creditor/Agent/Security Agent Accession Undertaking**

With effect from the date of acceptance pursuant to Clause 14.8 ( *Additional parties*) by (i) the Security Agent and (ii) (in the case of a Facilities Agreement Creditor or a successor Security Agent) the Facility Agent or (iii) (in the case of a Refinancing Creditor) the relevant Refinancing Creditors Representative, of a Creditor/Agent/Security Agent Accession Undertaking duly executed and delivered to the Security Agent by the relevant acceding party or, if later, the date specified in that Creditor/Agent/Security Agent Accession Undertaking:

(a) any Party ceasing entirely to be a Creditor or Security Agent shall be discharged from further obligations towards (in the case of a Creditor) the Security Agent and (in the case of a Creditor or Retiring Security Agent (subject to paragraph (e) of Clause 12.1)) other Parties under this Agreement and their respective rights against one another shall be cancelled (except in each case for those rights which arose prior to that date); and

(b) as from that date, the replacement or new Facilities Agreement Creditor, Refinancing Creditor, Agent or Security Agent shall assume the same obligations, and become entitled to the same rights, as if it had been an original Party to this Agreement in that capacity.

14.7 **New Debtor/Security Provider**

(a) If any member of the Group:

(i) accedes to the Facilities Agreement as an Additional Guarantor or Additional Security Provider (in each case as defined therein) in accordance with clause 27.3 (*Additional Guarantors and Additional Security Providers*) thereof;

(ii) becomes a guarantor of any Existing Notes or becomes an issuer, borrower and/or guarantor of any Additional Notes; or

(iii) becomes an issuer, borrower and/or guarantor of Refinancing Debt,

the Parent will procure that such member of the Group accedes to this Agreement as a Debtor in accordance with paragraph (b) below, no later than, for an Additional Guarantor or Additional Security Provider contemporaneously with its accession to the Facilities Agreement (or, in the case of an Additional Security Provider, if earlier, the date on which it grants Transaction Security) and, for any member of the Group referred to in sub-paragraphs (ii) or (iii) above, contemporaneously with its entry into Existing Notes Documents, Additional Notes Documents or Refinancing Documents (as the case may be).

(b) With effect from the date of acceptance pursuant to Clause 14.8 (*Additional parties*) by the Security Agent of a Debtor/Security Provider Accession Deed duly executed and delivered to the Security Agent by the new Debtor or, if later, the date specified in the Debtor/Security Provider Accession Deed, the new Debtor shall assume the same obligations and become entitled to the same rights as if it had been an original Party to this Agreement as a Debtor.

14.8 **Additional parties**

(a) Each of the Parties appoints the Security Agent to receive on its behalf each Debtor/Security Provider Accession Deed and Creditor/Agent/Security Agent Accession Undertaking delivered to the Security Agent and the Security Agent shall, subject to paragraph (c) below, as soon as reasonably practicable after receipt by it, sign and accept the same if it appears on its face to have been completed, executed and, where applicable, delivered in the form contemplated by this Agreement or, where applicable, by the relevant Debt Document.

(b) The Security Agent shall only be obliged to sign and accept a Debtor/Security Provider Accession Deed or Creditor/Agent/Security Agent Accession Undertaking received by it once it is satisfied that it has complied with all necessary "know your customer" or similar other checks under all applicable laws and regulations in relation to the accession by the prospective party to this Agreement.

(c) Each Party shall promptly upon the request of the Security Agent supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Security Agent (for itself) from time to time in order for the Security Agent to carry out and be satisfied with the results of all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents and the Refinancing Documents.

14.9 **Resignation of a Debtor/Security Provider**

(a) Prior to the Final Discharge Date, if the Parent requests that a Debtor or a Security Provider cease to be a Borrower, Guarantor or Security Provider (as the case may be), in accordance with clause 27 ( *Changes to the Obligors*) of the Facilities Agreement, then in the Resignation Letter delivered by it to the Facility Agent and the Security Agent pursuant to that clause, it may also request that such Debtor or Security Provider ceases to be a Debtor or Security Provider hereunder.

(b) Provided that a Resignation Letter is delivered in accordance with clause 27 ( *Changes to the Obligors*) of the Facilities Agreement, and is accepted by the Facility Agent, the Security Agent shall accept a Resignation Letter and notify the Parent and each other Party of its acceptance.

(c) Upon notification by the Security Agent to the Parent of its acceptance of the resignation of a Debtor or a Security Provider, that member of the Group shall cease to be a Debtor (or, as the case may be, a Security Provider) and shall have no further rights or obligations under this Agreement as a Debtor (or, as the case may be, a Security Provider).

14.10 **Change of Intra-Group Lender**

Subject to Clause 3.4 (*Acquisition of Intra-Group Liabilities*) and to the terms of the other Debt Documents, any Intra-Group Lender may assign any of its rights or transfer any of its rights and obligations in respect of the Intra-Group Liabilities to another member of the Group and unless such Intra-Group Liabilities are extinguished, paid out or capitalised within 30 calendar days of such assignment or transfer, such member of the Group, if not an Intra-Group Lender, shall become a party to this Agreement as an Intra-Group Lender

## 15. COSTS AND EXPENSES

### 15.1 Security Agent's Fees

The Parent shall pay to the Security Agent (for its own account) the security agent fee in the amount and at the times agreed in the letter dated on or about the date of this Agreement between the Security Agent and the Parent.

### 15.2 Security Agent's ongoing costs

(a) In the event of (i) a Default or (ii) the Security Agent considering it necessary or expedient or (iii) the Security Agent being requested by a Debtor, a Security Provider or the Instructing Group to undertake duties which the Security Agent and the Parent agree to be of an exceptional nature and/or outside the scope of the normal duties of the Security Agent under the Debt Documents, the Parent shall pay to the Security Agent any additional remuneration (together with any applicable VAT) that may be agreed between them.

(b) If the Security Agent and the Parent fail to agree upon the nature of those duties or upon any additional remuneration, that dispute shall be determined by an investment bank (acting as an expert and not as an arbitrator) selected by the Security Agent and approved by the Parent or, failing approval, nominated (on the application of the Security Agent) by the President for the time being of the Law Society of England and Wales (the costs of the nomination and of the investment bank being payable by the Parent) and the determination of any investment bank shall be final and binding upon the parties to this Agreement.

### 15.3 Transaction expenses

The Parent shall, promptly on demand, pay the Security Agent (or any party specified by the Security Agent to the Parent for this purpose) the amount of all costs and expenses (including legal fees) (together with any applicable VAT) reasonably incurred by the Security Agent, any Receiver or Delegate or the Mexican Security Trustee in connection with the negotiation, preparation, printing, execution, syndication and perfection of:

(a) this Agreement and any other documents referred to in this Agreement and the Transaction Security; and

(b) any other Debt Documents to which the Security Agent is party executed after the date of this Agreement.

15.4 **Stamp taxes**

The Parent shall pay and, within three Business Days of demand, indemnify the Security Agent against any cost, loss or liability the Security Agent incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Debt Document.

15.5 **Interest on demand**

If any Secured Party or Debtor (or, to the extent applicable in relation to the Transaction Security granted by it, a Security Provider) fails to pay any amount payable by it under this Agreement on its due date, interest shall accrue on the overdue amount in accordance with the default interest provisions of the relevant Debt Document to which such amount relates.

15.6 **Enforcement and preservation costs**

The Parent shall, within three Business Days of demand, pay to the Security Agent (or any party specified by the Security Agent to the Parent for this purpose) the amount of all costs and expenses (including legal fees and together with any applicable VAT) incurred by it, any Receiver or Delegate or the Mexican Security Trustee in connection with the enforcement of or the preservation of any rights under any Debt Document or any Intra-Group Debt Documents and the Transaction Security and any proceedings instituted by or against the Security Agent as a consequence of taking or holding the Transaction Security or enforcing these rights.

16. **INDEMNITIES**

16.1 **Debtors' indemnity**

Each Debtor shall promptly indemnify the Security Agent, every Receiver and Delegate, the Mexican Security Trustee and the Mexican bank acting as trustee under the voting trust to which the Mexican Intra-Group Liabilities shall have been transferred in accordance with Clause **Error! Reference source not found.** (*Mexican Intra-Group Liabilities*) against:

(a) any cost, loss or liability incurred (together with any applicable VAT in each case) by any of them:

(i) in relation to or as a result of:

(A) any failure by the Parent to comply with obligations under Clause 15 ( *Costs and Expenses*);

(B) the taking, holding, protection or enforcement of the Transaction Security;

(C) the exercise of any of the rights, powers, discretions and remedies vested in each Receiver by the Debt Documents or Intra-Group Debt Documents or by law; or

(D) any default by any Debtor in the performance of any of the obligations expressed to be assumed by it in the Debt Documents or Intra-Group Debt Documents; and

(b) any cost reasonably incurred or any loss or liability incurred (together with any applicable VAT in each case) by any of them:

(i) in relation to or as a result of the exercise of any of the rights, powers, discretions and remedies vested in the Security Agent, each Delegate and the Mexican Security Trustee by the Debt Documents or by law; or

(ii) which otherwise relates to the performance by the Security Agent, each Receiver and each Delegate or the Mexican Security Trustee of its duties in connection with the Security Property or of the terms of this Agreement (otherwise than as a result of its gross negligence or wilful misconduct).

Each Debtor expressly acknowledges and agrees that the continuation of its indemnity obligations under this Clause 16.1 ( *Debtors' indemnity*) will not be prejudiced by any release or disposal under Clause 8.2 ( *Distressed Disposals*) taking into account the operation of that Clause 8.2, Clause 11.20 (*Winding up of trust*) or Clause 11.21 (*Winding up of trust - Notes Secured Creditors*). To the extent that the Security Agent, a Receiver, a Delegate, the Mexican Security Trustee or the Mexican bank acting as trustee under the voting trust to which the Mexican Intra-Group Liabilities shall have been transferred in accordance with Clause 3.7 ( *Mexican Intra-Group Creditor Rights*) recovers any amount pursuant to an indemnity contained in any other Finance Document, there shall be no double recovery under this Clause 16.1 of such amount.

16.2 **Priority of indemnity**

The Security Agent and every Receiver and Delegate may, in priority to any payment to the Secured Parties, indemnify itself out of the Charged Property in respect of, and pay and retain, all sums necessary to give effect to the indemnity in Clause 16.1 ( *Debtors' indemnity*) and shall have a lien on the Transaction Security and the proceeds of the enforcement of the Transaction Security for all moneys payable to it.

16.3 **Creditors' indemnity**

Each Creditor shall (in the proportion that the Liabilities due to it bears to the aggregate of the Liabilities due to all the Secured Parties for the time being (or, if the Liabilities due to each of those Secured Parties is zero, immediately prior to their being reduced to zero)), indemnify the Security Agent and every Receiver and every Delegate, within three Business Days of demand, against any cost reasonably incurred including legal fees and VAT thereon or any loss or liability incurred by any of them (otherwise than by reason of the relevant Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct) in acting as Security Agent, Receiver or Delegate under the Debt Documents or Intra-Group Debt Documents (unless the relevant Security Agent, Receiver or Delegate has been reimbursed by a Debtor or a Security Provider pursuant to a Debt Document or a Intra-Group Debt Document) and the Debtors shall jointly and severally indemnify each Creditor against any payment made by it under this Clause 16.

16.4 **Parent's indemnity to Secured Parties**

The Parent shall promptly and as principal obligor indemnify each Secured Party against any cost, loss or liability (together with any applicable VAT), whether or not reasonably foreseeable, incurred by any of them in relation to or arising out of the operation of Clause 8.2 ( *Distressed Disposals*).

16.5 **No financial assistance**

No indemnity given by any Debtor pursuant to this Clause 16 shall extend to obligations the indemnification of which would cause the relevant Debtor to act in breach of financial assistance legislation applicable to it under the laws of its jurisdiction of incorporation.

17. **INFORMATION**

17.1 **Information and dealing**

(a) The Creditors shall provide to the Security Agent from time to time (through (i) the Facility Agent in the case of a Facilities Agreement Creditor or (ii) the relevant Refinancing Creditor Representative in the case of a Refinancing Creditor) any information that the Security Agent may reasonably specify as being necessary or desirable to enable the Security Agent to perform its functions as trustee.

(b) Each Facilities Agreement Creditor shall deal with the Security Agent exclusively through the Facility Agent and each Refinancing Creditor shall deal with the Security Agent exclusively through the relevant Refinancing Creditor Representative.

(c) Prior to a Refinancing, the Instructing Group and the Super Majority Instructing Group shall deal with the Security Agent exclusively through the Facility Agent (and the Facility Agent shall, on request, provide the Security Agent with the aggregate amount of the Facilities Agreement Creditor Exposures and details of Facilities Agreement Creditor Exposures on an individual basis by Facilities Agreement Creditor to enable the Security Agent to calculate whether an Instructing Group or Super Majority Instructing Group has been formed).

(d) Following a Refinancing, the Facility Agent and each Refinancing Creditor Representative shall, on request, provide the Security Agent with details of the Exposures of the Creditors represented by it (on an aggregate basis under the Facilities or, as the case may be, each Refinancing Document and on an individual basis by Facilities Agreement Creditor or, as the case may be, Refinancing Creditor) to enable the Security Agent to calculate whether an Instructing Group or a Super Majority Instructing Group has been formed.

17.2 **Disclosure**

Notwithstanding any agreement to the contrary, each of the Debtors and each of the Security Providers consents, until the Final Discharge Date, to the disclosure by any of the Secured Parties to each other (whether or not through an Agent, a Noteholder Trustee or the Security Agent) of such information concerning the Debtors or the Security Providers as any Secured Party shall see fit.

17.3 **Notification of prescribed events**

(a) If a Facilities Agreement Creditors Acceleration Event occurs the Facility Agent shall notify the Security Agent in writing and the Security Agent shall, upon receiving that notification, notify each other Party.

(b) If, following an Enforcement Event, the Security Agent enforces, or takes formal steps to enforce, any of the Transaction Security it shall notify each Party and the Noteholders (via the relevant Noteholder Trustee or, in the case of any Noteholders not represented by a Noteholder Trustee, directly) of that action.

(c) If any Creditor exercises any right it may have, following an Enforcement Event, to enforce, or to take formal steps to enforce, any of the Transaction Security it shall notify the Security Agent in writing and the Security Agent shall, upon receiving that notification, notify each Party and the Noteholders (via the relevant Noteholder Trustee or, in the case of any Noteholders not represented by a Noteholder Trustee, directly) of that action.

(d) Each Derivatives Unwind Promissory Noteholder and each USPP Noteholder (each as defined in the Facilities Agreement) shall notify the Facility Agent promptly upon the occurrence of the full and final discharge of a Derivates Unwind Promossory Note or USPP Note in respect of which it is the Creditor that such Derivatives Unwind Promissory Noteholder or USPP Noteholder is under no further obligation to provide financial accommodation under a Derivatives Unwind Promissory Note or a USSP Note, as the case may be **provided that** no such notice shall be required to be given where the Facility Agent is already aware of the event which results in such full and final discharge.

## 18. NOTICES

### 18.1 Communications in writing

Any communication to be made under or in connection with this Agreement shall be made in writing and, unless otherwise stated, may be made by fax or letter.

### 18.2 Security Agent's communications with Creditors and Noteholders

The Security Agent shall be entitled to carry out all dealings:

(a) with the Facilities Agreement Creditors through the Facility Agent and may give to the Facility Agent, as applicable, any notice or other communication required to be given by the Security Agent to a Facilities Agreement Creditor;

(b) with the Refinancing Creditors through the relevant Refinancing Creditor Representative and may give to such Refinancing Creditor Representative, as applicable, any notice or other communication required to be given by the Security Agent to a Refinancing Creditor; and

(c) with each Noteholder represented by a Noteholder Trustee, through that Noteholder Trustee and, with each Noteholder not so represented, directly.

18.3 **Addresses**

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party, each Noteholder Trustee and each Noteholder not represented by a Noteholder Trustee for any communication or document to be made or delivered under or in connection with this Agreement is:

(a) in the case of the Parent and any Debtor incorporated in the Netherlands, that identified with its name below;

(b) in the case of the Security Agent, that identified with its name below;

(c) in the case of each other Party, that notified in writing to the Security Agent on or prior to the date on which it becomes a Party; and

(d) in the case of any Noteholder Trustee or any Noteholder not represented by a Noteholder Trustee, that notified in writing to the Security Agent by the Parent, in the case of an Existing Notes Trustee or Existing Notes Creditor, on or prior to the date of this Agreement or, in the case of an Additional Notes Trustee or Additional Notes Creditor, on or following the issue of the Additional Notes to which it is a party,

or any substitute address, fax number or department or officer which that Party or, in the case of a Noteholder Trustee or Noteholder, the Parent, may notify to the Security Agent (or the Security Agent may notify to the other Parties and the Noteholders (via the relevant Noteholder Trustee or, in the case of any Noteholders not represented by a Noteholder Trustee, directly), if a change is made by the Security Agent) by not less than five Business Days' notice. The Parent shall furnish to the Security Agent within 30 days of a request therefor a list setting forth the name and address of each party to whom notices must be sent under the Noteholder Documents, and the Parent agrees to furnish promptly to the Security Agent any changes or additions to such list if requested.

18.4 **Delivery**

(a) Except as otherwise provided in Clause 18.6 (*Electronic communication*), any communication or document made or delivered by one person to another under or in connection with this Agreement will only be effective:

(i) if by way of fax, when received in legible form; or

(ii) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under Clause 18.3 ( *Addresses*), if addressed to that department or officer.

(b) Any communication or document to be made or delivered to the Security Agent will be effective only when actually received by the Security Agent and then only if it is expressly marked for the attention of the department or officer identified with the Security Agent's signature below (or any substitute department or officer as the Security Agent shall specify for this purpose).

(c) Any communication or document made or delivered to the Parent in accordance with this Clause 18.4 will be deemed to have been made or delivered to each of the Debtors and the Security Providers (save that any Debtor incorporated in the Netherlands shall receive any communication or document directly).

18.5 **Notification of address and fax number**

Promptly upon receipt of notification of an address and fax number or change of address or fax number pursuant to Clause 18.3 ( *Addresses*) or changing its own address or fax number, the Security Agent shall notify the other Parties.

18.6 **Electronic communication**

(a) Any communication to be made between the Security Agent and a Creditor, a Noteholder or a Noteholder Trustee under or in connection with this Agreement may be made by electronic mail or other electronic means, if the Security Agent and the relevant Creditor, Noteholder or Noteholder Trustee:

(i) agree that, unless and until notified to the contrary, this is to be an accepted form of communication;

(ii) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and

(iii) notify each other of any change to their address or any other such information supplied by them.

(b) Any electronic communication made between the Security Agent and a Creditor, a Noteholder or an Noteholder Trustee will be effective only when actually received in readable form and in the case of any electronic communication made by a Creditor, Noteholder or Noteholder Trustee to the Security Agent only if it is addressed in such a manner as the Security Agent shall specify for this purpose.

(c) As at the date of this Agreement, the Security Agent has not agreed that electronic communication as contemplated by this Clause 17.6 is an accepted form of communication unless any communication from a Creditor, Noteholder or Noteholder Trustee to the Security Agent by electronic means is also made by fax, and such communication shall only be effective when such fax is received in legible form.

18.7 **English language**

(a) Any notice given under or in connection with this Agreement must be in English.

(b) All other documents provided under or in connection with this Agreement must be:

(i) in English; or

(ii) if not in English, accompanied by an English translation (and if so required by the Security Agent, by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document).

18.8 **Notice to Noteholder Trustees**

The Parent agrees to notify in writing, within ten Business Days of:

(a) the date of this Agreement, each Existing Notes Trustee of the entry into of the Transaction Security Documents and the rights arising from the Transaction Security Documents to each such Existing Notes Trustee and the Existing Notes Creditors which it represents; and

(b) the date of issue or incurrence of any Additional Notes, each Additional Notes Trustee of the entry into of the Transaction Security Documents and the rights arising from the Transaction Security Documents to each such Additional Notes Trustee and the Additional Notes Creditors which it represents,

by providing to each such Existing Notes Trustee a copy of this Agreement and of each of the Transaction Security Documents (and the Security Agent agrees, on the reasonable request of the Parent, to (subject to Clause 11 ( *The Security Agent*) and otherwise in accordance with, the terms of this Agreement) confirm, without representation, recourse or warranty, that any Transaction Security

Document to which it is a party has been executed by the other parties thereto, and to certify, as a true and complete copy of the original, a copy of any Transaction Security Document of which the Security Agent holds an original copy.

## 19. PRESERVATION

### 19.1 Partial invalidity

If, at any time, any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of that provision under the law of any other jurisdiction will in any way be affected or impaired.

### 19.2 No impairment

If, at any time after its date, any provision of a Debt Document (including this Agreement) is not binding on or enforceable in accordance with its terms against a person expressed to be a party to that Debt Document, neither the binding nature nor the enforceability of that provision or any other provision of that Debt Document will be impaired as against the other party(ies) to that Debt Document.

### 19.3 Remedies and waivers

No failure to exercise, nor any delay in exercising, on the part of any Secured Party, Debtor or Security Provider, any right or remedy under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

### 19.4 Waiver of defences

The provisions of this Agreement will not be affected by an act, omission, matter or thing which, but for this Clause 19.4, would reduce, release or prejudice the subordination and priorities expressed to be created by this Agreement including (without limitation and whether or not known to any Secured Party, Debtor or Security Provider):

(a) any time, waiver or consent granted to, or composition with, any Debtor, Security Provider or other person;

(b) the release of any Debtor, Security Provider or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;

(c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Debtor, Security Provider or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any Security;

(d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any Debtor, Security Provider or other person;

(e) any amendment, novation, supplement, extension (whether of maturity or otherwise) or restatement (in each case, however fundamental and of whatsoever nature, and whether or not more onerous) or replacement of a Debt Document or any other document or security;

(f) any unenforceability, illegality or invalidity of any obligation of any person under any Debt Document or any other document or security;

(g) any intermediate Payment of any of the Liabilities owing to the Secured Parties in whole or in part; or

(h) any insolvency or similar proceedings.

19.5 **Priorities not affected**

Except as otherwise provided in this Agreement the priorities referred to in Clause 2 ( *Ranking and Priority*) will, to the fullest extent permitted by mandatory provisions of applicable law:

(a) not be affected by any reduction or increase in the principal amount secured by the Transaction Security in respect of the Liabilities owing to the Secured Parties or by any intermediate reduction or increase in, amendment or variation to any of the Debt Documents, or by any variation or satisfaction of, any of the Liabilities or any other circumstances;

(b) apply regardless of the order in which or dates upon which this Agreement and the other Debt Documents are executed or registered or notice of them is given to any person; and

(c) secure the Liabilities owing to the Secured Parties in the order specified, regardless of the date upon which any of the Liabilities arise or of any fluctuations in the amount of any of the Liabilities outstanding.

## 20. CONSENTS, AMENDMENTS AND OVERRIDE

### 20.1 Required consents

(a) Subject to paragraphs (b) and (c) below and to Clause 20.4 ( *Exceptions*), this Agreement may be amended or waived only with the consent of the Instructing Group and the Security Agent.

(b) An amendment or waiver that has the effect of changing or which relates to the order of priority or subordination under this Agreement or the manner in which the proceeds of enforcement of Transaction Security are distributed or which relates to the definition of "Instructing Group" or "Super Majority Instructing Group" in Clause 1.1 ( *Definitions*), Clause 4.1 (*Payment of distributions*), Clause 4.4 (*Filing of claims*), Clause 4.6 (*Security Agent instructions*), Clause 5.1 (*Turnover by the Creditors*), Clause 5.2 (*Adjustments*), Clause 6 (*Redistribution*), Clause 10 (*Application of Proceeds*), paragraphs (d)(iii), (e) or (f) of Clause 11.6 ( *Instructions to Security Agent and exercise of discretion*) or this Clause 20 (*Consents, Amendments and Override*) shall not be made without the consent of the Facilities Agreement Creditors, the Refinancing Creditors and the Security Agent.

(c) Any amendment or waiver that has the effect of changing or that relates to:

(i) the nature or scope of the Charged Property or the manner in which the proceeds of enforcement of the Transaction Security are distributed (except insofar as it relates to a sale or disposal of an asset which is the subject of the Transaction Security where such sale or disposal is expressly permitted under the Facilities Agreement); or

(ii) the release of any guarantee and indemnity granted under the Facilities Agreement or of any Transaction Security unless permitted under the Facilities Agreement or relating to a sale or disposal of an asset which is the subject of the Transaction Security where such sale or disposal is expressly permitted under the Facilities Agreement,

may only be made with the consent of the Super Majority Instructing Group (and, if any amendment or waiver referred to in sub paragraph (i)

above involves an amendment or waiver of a Transaction Security Document, the consent of the Parent or the relevant Security Provider as set out in Clause 20.2 (*Amendments and waivers: Transaction Security Documents*)).

(d) Any amendment or waiver under this Agreement that has the effect of changing or that relates to any matter set out in paragraph (a) of clause 37.2 (*Exceptions*) of the Facilities Agreement shall not be made without the consent of the Facilities Agreement Creditors.

20.2 **Amendments and waivers: Transaction Security Documents**

(a) Subject to paragraph (b) below and to Clause 20.4 (*Exceptions*) and unless the provisions of any Debt Document expressly provide otherwise, the Security Agent may, if authorised by an Instructing Group, and if the Parent consents, amend the terms of, waive any of the requirements of or grant consents under, any of the Transaction Security Documents which shall be binding on each Secured Party and each other party thereto.

(b) Subject to paragraph (c) of Clause 20.4 (*Exceptions*), the prior consent of the Super Majority Instructing Group and the Parent or the relevant Security Provider is required to authorise any amendment or waiver of, or consent under, any Transaction Security Document which would affect the nature or scope of the Charged Property.

20.3 **Effectiveness**

Any amendment, waiver or consent given in accordance with this Clause 20 will be binding on all Parties and on each Noteholder and Noteholder Trustee and the Security Agent may effect, on behalf of any Creditor, Noteholder Trustee or Noteholder any amendment, waiver or consent permitted by this Clause 20 (and where necessary under any relevant applicable law in order to give effect to any such amendment, waiver or consent, the Security Agent will be entitled to request that each Creditor take that action or grant a power of attorney in favour of the Security Agent to authorise it to do so on that Creditor's behalf).

20.4 **Exceptions**

(a) Subject to paragraphs (c) and (d) below, if the amendment, waiver or consent may impose new or additional obligations on or withdraw or reduce the rights of any Party other than:

(i) in the case of a Creditor, in a way which affects or would affect Creditors generally; or

(ii) in the case of a Debtor or a Security Provider, to the extent consented to by the Parent under paragraph (a) of Clause 20.2 (*Amendments and waivers: Transaction Security Documents*),

the consent of that Party is required.

(b) Subject to paragraphs (c) and (d) below, an amendment, waiver or consent which relates to the rights, obligations, protections, immunities or indemnities of an Agent or the Security Agent (including, without limitation, any ability of the Security Agent to act in its discretion under this Agreement) may not be effected without the consent of that Agent or, as the case may be, the Security Agent.

(c) Neither paragraph (a) nor (b) above, nor paragraph (b) of Clause 20.2 ( *Amendments and waivers: Transaction Security Documents* ) shall apply:

(i) to any release of Transaction Security, claim or Liabilities (unless they are claims or Liabilities owed to the Security Agent in its capacity as such); or

(ii) to any consent,

which, in each case, the Security Agent gives in accordance with Clause 8 ( *Proceeds of Disposals of Charged Property)*.

(d) Paragraphs (a) and (b) above shall apply to a Refinancing Creditor Representative only to the extent that Agent Liabilities, are then owed to that Refinancing Creditor Representative.

(e) After the occurrence of an Enforcement Event, no amendment, supplement or waiver shall be made, without the written consent of each Noteholder Trustee (or, in the case of any Noteholder not represented by a Noteholder Trustee, that Noteholder), which would adversely affect the rights of the Noteholders to equal and rateable security to the extent and for the periods contemplated by this Agreement.

20.5 **Calculation of Exposures**

(a) For the purpose of ascertaining whether any relevant percentage of Facilities Agreement Creditor Exposures has been obtained under this Agreement, the Facility Agent shall provide the Security Agent, promptly on request, with a list of the Facilities Agreement Creditor Exposures notionally converted into their Base Currency Amounts.

(b) For the purpose of ascertaining whether any relevant percentage of Refinancing Creditor Exposures has been obtained under this Agreement, each Refinancing Creditor Representative shall provide the Security Agent, promptly on request, with a list of the Refinancing Creditor Exposures notionally converted into their Base Currency Amounts.

20.6 **Deemed consent**

If, at any time prior to the Final Discharge Date, the Facilities Agreement Creditors give a Consent in respect of the Finance Documents then, if that action was permitted by the terms of this Agreement, the Debtors, Intra-Group Lenders and Security Providers will (or will be deemed to):

(a) give a corresponding Consent in equivalent terms in relation to each of the Debt Documents and Intra-Group Debt Documents to which they are a party; and

(b) do anything (including executing any document) that the Facilities Agreement Creditors may reasonably require to give effect to paragraph (a) of this Clause 20.6.

20.7 **Excluded consents**

Clause 20.6 (*Deemed consent*) does not apply to any Consent which has the effect of:

(a) increasing or decreasing the Liabilities or Intra-Group Liabilities;

(b) changing the basis upon which any Permitted Payments are calculated (including the timing, currency or amount of such Payments); or

(c) changing the terms of this Agreement or of any Security Document.

20.8 **No liability**

None of the Facilities Agreement Creditors or the Facility Agent will be liable to any other Agent, Secured Party, Debtor or Security Provider for any Consent given or deemed to be given under this Clause 20.

20.9 **Agreement to override**

Unless expressly stated otherwise in this Agreement, this Agreement overrides anything in the Debt Documents and Intra-Group Debt Documents to the contrary (except for any Transaction Security Documents governed by Dutch law).

21. **COUNTERPARTS**

This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

22. **GOVERNING LAW**

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

If any of the Original Debtors or Original Security Providers is represented by an attorney or attorneys in connection with the signing and/or execution and/or delivery of this Agreement or any agreement or document referred to herein or made pursuant hereto and the relevant power or powers of attorney is or are expressed to be governed by the laws and regulations of a particular jurisdiction, it is hereby expressly acknowledged and accepted by the other parties hereto that such laws and regulations shall govern the existence and extent of such attorney's or attorney's authority and the effects of the exercise thereof.

23. **ENFORCEMENT**

23.1 **Jurisdiction in relation to actions brought against parties organised or incorporated in Mexico**

In relation to actions brought by or against any Party organised or incorporated in Mexico:

(a) each of the Parties agrees that the courts of England and the courts of each Party's corporate domicile, but only in respect of actions brought against such Party as a defendant, in respect of actions brought against such Party as a defendant, have jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute regarding the existence, validity or termination of this Agreement or any non-contractual obligations arising from or connected with this Agreement (a " **Dispute**"); and

(b) each of the Parties agrees that the courts of England and such courts of each Party's corporate domicile, but only in respect of actions brought against such Party as a defendant, in respect of actions brought against such Party as a defendant, are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary and hereby waive any right to which any of them may be entitled on account of place of residence or domicile.

23.2 **Jurisdiction of English Courts in other cases**

Subject to Clause 23.1 above:

(a) the courts of England have jurisdiction to settle any Dispute;

(b) the Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary and hereby waive any right to which any of them may be entitled on account of place of residence or domicile; and

(c) this Clause 23.2 is for the benefit of the Finance Parties and Secured Parties only. As a result, no Finance Party or Secured Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law or regulation, the Finance Parties and Secured Parties may take concurrent proceedings in any number of jurisdictions.

23.3 **Service of process**

(a) Without prejudice to any other mode of service allowed under any relevant law each Debtor and each Security Provider (unless incorporated in England and Wales):

(i) irrevocably appoints the Process Agent as its agent for service of process in relation to any proceedings before the English courts in connection with this Agreement (and the Process Agent by its execution of this Agreement accepts that appointment); and

(ii) agrees that failure by the Process Agent to notify the relevant Debtor or Security Provider of the process will not invalidate the proceedings concerned.

(b) If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Parent (in the case of an agent for service of process for a Debtor or a Security Provider), must immediately (and in any event within (5) Business Days of such event taking place) appoint another agent on terms acceptable to the Facility Agent. Failing this, the Facility Agent (as the case may be) may appoint another agent for this purpose.

(c) Each Debtor and each Security Provider (unless incorporated in England and Wales) expressly agrees and consents to the provisions of Clause 22 (*Governing Law*) and this Clause 23.

(d) The Parent, each Debtor and each Security Provider that is incorporated in Mexico shall grant an irrevocable power of attorney before a Mexican notary public appointing the Process Agent as its agent for service of process, as provided herein, on or before the date of this Agreement.

23.4 **Waiver of right to trial by jury**

To the extent permitted by applicable law, each party to this Agreement hereby expressly and irrevocably waives any right to trial by jury of any claim, demand, action or cause of action arising under any Debt Document or any Intra-Group Debt Document or in any way connected with or related or incidental to the dealings of the Parties hereto or any of them with respect to any Debt Document or any Intra-Group Debt Document, or the transactions related thereto, in each case whether now existing or hereafter arising, and whether founded in contract or tort or otherwise; and each party hereby agrees and consents that any such claim, demand, action or cause of action shall be decided by court trial without a jury, and that any Party to this Agreement may file an original counterpart or a copy of this Clause 23.4 with any court as written evidence of the consent of the signatories hereto to the waiver of their right to trial by jury.

**This Agreement has been entered into on the date stated at the beginning of this Agreement and executed as a deed by the Original Debtors and the Original Security Providers and is intended to be and is delivered by them as a deed on the date specified above.**

## SCHEDULE 1

### FORM OF DEBTOR/SECURITY PROVIDER ACCESSION DEED

**THIS AGREEMENT** is made on [ ] and made between:

(1) [*Insert full name of new Debtor/Security Provider*] (registration number [●] (if applicable)) (the "**Acceding [Debtor/Security Provider]**"); and

(2) [*Insert full name of current Security Agent*] (the "**Security Agent**"), for itself and each of the other parties to the Intercreditor Agreement referred to below.

This deed is made on [date] by the Acceding [Debtor/Security Provider] in relation to an intercreditor agreement (the " **Intercreditor Agreement**") dated [●] between, amongst others, Wilmington Trust (London) Limited as security agent, Citibank International plc as Facility Agent, the Facilities Agreement Creditors, the Original Debtors and Original Security Providers (each as defined in the Intercreditor Agreement).

[The Acceding Debtor intends to [incur Liabilities under the following documents]/[give a guarantee, indemnity or other assurance against loss in respect of Liabilities under the following documents]] [The Acceding Security Provider intends to grant Transaction Security under the following documents]:

[*Insert details (date, parties and description*) *of relevant documents*]

the "**Relevant Documents**".

**IT IS AGREED** as follows:

1. Terms defined in the Intercreditor Agreement shall, unless otherwise defined in this Agreement, bear the same meaning when used in this Agreement.

2. The Acceding [Debtor/Security Provider] and the Security Agent agree that the Security Agent shall hold:

   (a) [any Transaction Security in respect of Liabilities created or expressed to be created pursuant to the Relevant Documents;

   (b) all proceeds received following an Enforcement Event in respect of the shares and related rights the subject of that Transaction Security; and]

   (c) [all Liabilities expressed to be incurred by the Acceding [Debtor/ Security Provider (in relation to the Transaction Security granted by it pursuant to the Relevant Documents)] to pay amounts in respect of the Liabilities to the Security Agent as trustee for the Secured Parties (in the Relevant Documents or otherwise) and secured by the Transaction Security together with all representations and warranties expressed to be

given by the Acceding [Debtor/Security Provider] (in the Relevant Documents or otherwise) in favour of the Security Agent as trustee for the Secured Parties,]

on trust for (or, if required by any Security Document, as an agent acting in the name and on behalf of) the Secured Parties on the terms and conditions contained in the Intercreditor Agreement.

3. The Acceding [Debtor/Security Provider] confirms that it intends to be party to the Intercreditor Agreement as a [Debtor/Security Provider], undertakes to perform all the obligations expressed to be assumed by a [Debtor/Security Provider] under the Intercreditor Agreement and agrees that it shall be bound by all the provisions of the Intercreditor Agreement as if it had been an original party to the Intercreditor Agreement.

4. In consideration of the Acceding [Debtor/Security Provider] being accepted as an Intra-Group Lender for the purposes of the Intercreditor Agreement, the Acceding [Debtor/Security Provider] also confirms that it intends to be party to the Intercreditor Agreement as an Intra-Group Lender, and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by an Intra-Group Lender and agrees that it shall be bound by all the provisions of the Intercreditor Agreement, as if it had been an original party to the Intercreditor Agreement.

5. This deed and any non-contractual obligations arising out of or in connection with it are governed by, English law.

**THIS DEED** has been signed on behalf of the Security Agent and executed as a deed by the Acceding [Debtor/Security Provider] and is delivered on the date stated above.

**The Acceding [Debtor/Security Provider]**

EXECUTED AS A DEED )
By: [*Full Name of Acceding* [*Debtor/Security Provider*]] )

_____

_____

Address for notices:

Address:

Fax:

**The Security Agent**

[*Full Name of Current Security Agent*]

By:

Date:

## SCHEDULE 2

### FORM OF CREDITOR/AGENT/SECURITY AGENT ACCESSION UNDERTAKING

To: [*Insert full name of current Security Agent*] for itself and each of the other parties to the Intercreditor Agreement referred to below.

From: [*Acceding Facilities Agreement Creditor/Agent/Security Agent/Refinancing Party* ]]

THIS UNDERTAKING is made on [*date*] by [*insert full name of new Facilities Agreement Creditor/ Facility Agent*] (the "**Acceding [Facilities Agreement Creditor/Agent/Security Agent/Refinancing Creditor/Refinancing Creditor Representative** ]") in relation to the intercreditor agreement (the "**Intercreditor Agreement**") dated [•] between, among others, Wilmington Trust (London) Limited as security agent, Citibank International plc as Facility Agent, the Facilities Agreement Creditors, the Original Borrowers, Original Guarantors and Original Security Providers (each as defined in the Intercreditor Agreement). Terms defined in the Intercreditor Agreement shall, unless otherwise defined in this Undertaking, bear the same meanings when used in this Undertaking.

In consideration of the Acceding [Facilities Agreement Creditor/Facility Agent/Security Agent/Refinancing Creditor/Refinancing Creditor Representative] being accepted as a [Facilities Agreement Creditor/Agent/Security Agent/Refinancing Creditor/Refinancing Creditor Representative] for the purposes of the Intercreditor Agreement, the Acceding [Facilities Agreement Creditor/Agent/Security Agent/Refinancing Creditor/Refinancing Creditor Representative] confirms that, as from [date], it intends to be party to the Intercreditor Agreement as a [Facilities Agreement Creditor/Facility Agent/Security Agent/Refinancing Creditor/Refinancing Creditor Representative] and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by a [Facilities Agreement Creditor/Agent/Security Agent/Refinancing Creditor/Refinancing Creditor Representative] and agrees that it shall be bound by all the provisions of the Intercreditor Agreement, as if it had been an original party to the Intercreditor Agreement.

This Undertaking and any non-contractual obligations arising out of or in connection with it are governed by English law.

**THIS UNDERTAKING** has been entered into on the date stated above.

Acceding [Facilities Agreement Creditor/Agent/Security Agent/Refinancing Creditor/Refinancing Creditor Representative]

[**EXECUTED** as a **DEED**]
[*insert full name of Acceding Creditor*]

By:

Address:

Fax:

Accepted by the Security Agent

for and on behalf of

[*Insert full name of current Security Agent*]

Date:

[Accepted by the Facility Agent*

for and on behalf of

[*Insert full name of Facility Agent*]]

[Accepted by the Refinancing Creditor Representative †

for and on behalf of

[*Insert full name of Refinancing Creditor Representative*]]

* For change of Facilities Agreement Creditor and Security Agent.
† For change of Refinancing Creditor.

**SIGNATURE PAGES**

**THE PARENT**

**EXECUTED AS A DEED**

For and on behalf of

**CEMEX, S.A.B. DE C.V.**

By: JOSE A. GONZALEZ

Print name: JOSE A. GONZALEZ

Witness: THELMA RUTH DIAZ VALDEZ

Print name: THELMA RUTH DIAZ VALDEZ

Occupation: ANALYST

Address: AVENUE RICARDO MARGÁIN ZOZAYA,
NO. 325

SAN PEDRO GARZA, GARCIA, 66265
MÉXICO

**THE ORIGINAL BORROWERS**

**EXECUTED AS A DEED**

For and on behalf of

**CEMEX, S.A.B. DE C.V.**

By: JOSE A. GONZALEZ

Print name: JOSE A. GONZALEZ

Witness: THELMA RUTH DIAZ VALDEZ

Print name: THELMA RUTH DIAZ VALDEZ

Occupation: ANALYST

Address: AVENUE RICARDO MARGÁIN ZOZAYA,
NO. 325

SAN PEDRO GARZA, GARCIA, 66265
MÉXICO

**EXECUTED AS A DEED**

For and on behalf of

**CEMEX ESPAÑA, S.A.**

By: HECTOR J. VELA

Print name: HECTOR J. VELA

Witness: ANDRES BERNALDEZ CUEVAS

Print name: ANDRES BERNALDEZ CUEVAS

Occupation: ANALYST

Address: AVENUE RICARDO MARGÁIN ZOZAYA,
NO. 325

SAN PEDRO GARZA, GARCIA, 66265
MÉXICO

**EXECUTED AS A DEED**

For and on behalf of

**NEW SUNWARD HOLDING B.V.**

By: HECTOR J. VELA

Print name: HECTOR J. VELA

Witness: ANDRES BERNALDEZ CUEVAS

Print name: ANDRES BERNALDEZ CUEVAS

Occupation: ANALYST

Address: AVENUE RICARDO MARGÁIN ZOZAYA,
NO. 325

SAN PEDRO GARZA, GARCIA, 66265
MÉXICO

**EXECUTED AS A DEED**

For and on behalf of

**CEMEX MATERIALS LLC**

By: HECTOR J. VELA

Print name: HECTOR J. VELA

Witness: ANDRES BERNALDEZ CUEVAS

Print name: ANDRES BERNALDEZ CUEVAS

Occupation: ANALYST

Address: AVENUE RICARDO MARGÁIN ZOZAYA,
NO. 325

SAN PEDRO GARZA, GARCIA, 66265
MÉXICO

**EXECUTED AS A DEED**

For and on behalf of

**CEMEX FINANCE LLC**

By: HECTOR J. VELA

Print name: HECTOR J. VELA

Witness: ANDRES BERNALDEZ CUEVAS

Print name: ANDRES BERNALDEZ CUEVAS

Occupation: ANALYST

Address: AVENUE RICARDO MARGÁIN ZOZAYA,
NO. 325

SAN PEDRO GARZA, GARCIA, 66265
MÉXICO

**THE ORIGINAL GUARANTORS**

**EXECUTED AS A DEED**

For and on behalf of

**CEMEX, S.A.B. DE C.V.**

By: JOSE A. GONZALEZ

Print name: JOSE A. GONZALEZ

Witness: THELMA RUTH DIAZ VALDEZ

Print name: THELMA RUTH DIAZ VALDEZ

Occupation: ANALYST

Address: AVENUE RICARDO MARGÁIN ZOZAYA,
NO. 325

SAN PEDRO GARZA, GARCIA, 66265
MÉXICO

**EXECUTED AS A DEED**

For and on behalf of

**CEMEX ESPAÑA, S.A.**

By: HECTOR J. VELA

Print name: HECTOR J. VELA

Witness: ANDRES BERNALDEZ CUEVAS

Print name: ANDRES BERNALDEZ CUEVAS

Occupation: ANALYST

Address: AVENUE RICARDO MARGÁIN ZOZAYA,
NO. 325

SAN PEDRO GARZA, GARCIA, 66265
MÉXICO

**EXECUTED AS A DEED**

For and on behalf of

**CEMEX MÉXICO, S.A. DE C.V.**

By: JOSE A. GONZALEZ

Print name: JOSE A. GONZALEZ

Witness: THELMA RUTH DIAZ VALDEZ

Print name: THELMA RUTH DIAZ VALDEZ

Occupation: ANALYST

Address: AVENUE RICARDO MARGÁIN ZOZAYA,
NO. 325

SAN PEDRO GARZA, GARCIA, 66265
MÉXICO

**EXECUTED AS A DEED**

For and on behalf of

**CEMEX CONCRETOS, S.A. DE C.V.**

By: JOSE A. GONZALEZ

Print name: JOSE A. GONZALEZ

Witness: THELMA RUTH DIAZ VALDEZ

Print name: THELMA RUTH DIAZ VALDEZ

Occupation: ANALYST

Address: AVENUE RICARDO MARGÁIN ZOZAYA,
NO. 325

SAN PEDRO GARZA, GARCIA, 66265
MÉXICO

**EXECUTED AS A DEED**

For and on behalf of

**EMPRESAS TOLTECA DE MÉXICO, S.A. DE C.V.**

By: JOSE A. GONZALEZ

Print name: JOSE A. GONZALEZ

Witness: THELMA RUTH DIAZ VALDEZ

Print name: THELMA RUTH DIAZ VALDEZ

Occupation: ANALYST

Address: AVENUE RICARDO MARGÁIN ZOZAYA,
NO. 325

SAN PEDRO GARZA, GARCIA, 66265
MÉXICO

**EXECUTED AS A DEED**

For and on behalf of

**NEW SUNWARD HOLDING B.V.**

By: HECTOR J. VELA

Print name: HECTOR J. VELA

Witness: ANDRES BERNALDEZ CUEVAS

Print name: ANDRES BERNALDEZ CUEVAS

Occupation: ANALYST

Address: AVENUE RICARDO MARGÁIN ZOZAYA,
NO. 325

SAN PEDRO GARZA, GARCIA, 66265
MÉXICO

**EXECUTED AS A DEED**

For and on behalf of

**CEMEX CORP**

By: HECTOR J. VELA

Print name: HECTOR J. VELA

Witness: ANDRES BERNALDEZ CUEVAS

Print name: ANDRES BERNALDEZ CUEVAS

Occupation: ANALYST

Address: AVENUE RICARDO MARGÁIN ZOZAYA,
NO. 325

SAN PEDRO GARZA, GARCIA, 66265
MÉXICO

**EXECUTED AS A DEED**

For and on behalf of

**CEMEX, INC.**

By: HECTOR J. VELA

Print name: HECTOR J. VELA

Witness: ANDRES BERNALDEZ CUEVAS

Print name: ANDRES BERNALDEZ CUEVAS

Occupation: ANALYST

Address: AVENUE RICARDO MARGÁIN ZOZAYA,
NO. 325

SAN PEDRO GARZA, GARCIA, 66265
MÉXICO

Witness: THELMA RUTH DIAZ VALDEZ

Print name: THELMA RUTH DIAZ VALDEZ

Occupation: ANALYST

Address: AVENUE RICARDO MARGÁIN ZOZAYA,
NO. 325

SAN PEDRO GARZA, GARCIA, 66265
MÉXICO

**EXECUTED AS A DEED**

For and on behalf of

**CEMEX FINANCE LLC**

By: HECTOR J. VELA

Print name: HECTOR J. VELA

Witness: ANDRES BERNALDEZ CUEVAS

Print name: ANDRES BERNALDEZ CUEVAS

Occupation: ANALYST

Address: AVENUE RICARDO MARGÁIN ZOZAYA,
NO. 325

SAN PEDRO GARZA, GARCIA, 66265
MÉXICO

**EXECUTED AS A DEED**

For and on behalf of

**CEMEX RESEARCH GROUP AG**

By: JAVIER GARCIA

Print name: JAVIER GARCIA

Witness: ANGEL MÉNDEZ

Print name: ANGEL MÉNDEZ

Occupation: FINANCIAL MANAGER

Address: HERNANDEZ DE TEJADA, NO. 1, 28027,
MADRID

**EXECUTED AS A DEED**

For and on behalf of

**CEMEX SHIPPING B.V.**

By: JAVIER GARCIA

Print name: JAVIER GARCIA

Witness: ANGEL MÉNDEZ

Print name: ANGEL MÉNDEZ

Occupation: FINANCIAL MANAGER

Address: HERNANDEZ DE TEJADA, NO. 1, 28027,
MADRID

**EXECUTED AS A DEED**

For and on behalf of

**CEMEX ASIA B.V.**

By: JAVIER GARCIA

Print name: JAVIER GARCIA

Witness: ANGEL MÉNDEZ

Print name: ANGEL MÉNDEZ

Occupation: FINANCIAL MANAGER

Address: HERNANDEZ DE TEJADA, NO. 1, 28027,
MADRID

**EXECUTED AS A DEED**

For and on behalf of

**CEMEX FRANCE GESTION (S.A.S)**

By: JAVIER GARCIA

Print name: JAVIER GARCIA

Witness: ANGEL MÉNDEZ

Print name: ANGEL MÉNDEZ

Occupation: FINANCIAL MANAGER

Address: HERNANDEZ DE TEJADA, NO. 1, 28027,
MADRID

**EXECUTED AS A DEED**

For and on behalf of

**CEMEX UK**

By: JAVIER GARCIA

Print name: JAVIER GARCIA

Witness: ANGEL MÉNDEZ

Print name: ANGEL MÉNDEZ

Occupation: FINANCIAL MANAGER

Address: HERNANDEZ DE TEJADA, NO. 1, 28027,
MADRID

**EXECUTED AS A DEED**

For and on behalf of

**CEMEX EGYPTIAN INVESTMENTS B.V.**

By: JAVIER GARCIA

Print name: JAVIER GARCIA

Witness: ANGEL MÉNDEZ

Print name: ANGEL MÉNDEZ

Occupation: FINANCIAL MANAGER

Address: HERNANDEZ DE TEJADA, NO. 1, 28027,
MADRID

**THE ORIGINAL SECURITY PROVIDERS**

**EXECUTED AS A DEED**

For and on behalf of

**CEMEX, S.A.B. DE C.V.**

By: JOSE A. GONZALEZ

Print name: JOSE A. GONZALEZ

Witness: THELMA RUTH DIAZ VALDEZ

Print name: THELMA RUTH DIAZ VALDEZ

Occupation: ANALYST

Address: AVENUE RICARDO MARGÁIN ZOZAYA,
NO. 325

SAN PEDRO GARZA, GARCIA, 66265
MÉXICO

**EXECUTED AS A DEED**

For and on behalf of

**CEMEX MÉXICO, S.A. DE C.V.**

By: JOSE A. GONZALEZ

Print name: JOSE A. GONZALEZ

Witness: THELMA RUTH DIAZ VALDEZ

Print name: THELMA RUTH DIAZ VALDEZ

Occupation: ANALYST

Address: AVENUE RICARDO MARGÁIN ZOZAYA,
NO. 325

SAN PEDRO GARZA, GARCIA, 66265
MÉXICO

**EXECUTED AS A DEED**

For and on behalf of

**CENTRO DISTRIBUIDOR DE CEMENTO, S.A. DE C.V.**

By: JOSE A. GONZALEZ

Print name: JOSE A. GONZALEZ

Witness: THELMA RUTH DIAZ VALDEZ

Print name: THELMA RUTH DIAZ VALDEZ

Occupation: ANALYST

Address: AVENUE RICARDO MARGÁIN ZOZAYA, NO. 325

SAN PEDRO GARZA, GARCIA, 66265
MÉXICO

**EXECUTED AS A DEED**

For and on behalf of

**EMPRESAS TOLTECA DE MÉXICO, S.A. DE C.V.**

By: JOSE A. GONZALEZ

Print name: JOSE A. GONZALEZ

Witness: THELMA RUTH DIAZ VALDEZ

Print name: THELMA RUTH DIAZ VALDEZ

Occupation: ANALYST

Address: AVENUE RICARDO MARGÁIN ZOZAYA,
NO. 325

SAN PEDRO GARZA, GARCIA, 66265
MÉXICO

**EXECUTED AS A DEED**

For and on behalf of

**IMPRA CAFÉ, S.A. DE C.V.**

By: JOSE A. GONZALEZ

Print name: JOSE A. GONZALEZ

Witness: THELMA RUTH DIAZ VALDEZ

Print name: THELMA RUTH DIAZ VALDEZ

Occupation: ANALYST

Address: AVENUE RICARDO MARGÁIN ZOZAYA,
NO. 325

SAN PEDRO GARZA, GARCIA, 66265
MÉXICO

**EXECUTED AS A DEED**

For and on behalf of

**INTERAMERICAN INVESTMENTS, INC.**

By: JOSE A. GONZALEZ

Print name: JOSE A. GONZALEZ

Witness: THELMA RUTH DIAZ VALDEZ

Print name: THELMA RUTH DIAZ VALDEZ

Occupation: ANALYST

Address: AVENUE RICARDO MARGÁIN ZOZAYA,
NO. 325

SAN PEDRO GARZA, GARCIA, 66265
MÉXICO

**EXECUTED AS A DEED**

For and on behalf of

**MEXCEMENT HOLDINGS, S.A. DE C.V.**

By: JOSE A. GONZALEZ

Print name: JOSE A. GONZALEZ

Witness: THELMA RUTH DIAZ VALDEZ

Print name: THELMA RUTH DIAZ VALDEZ

Occupation: ANALYST

Address: AVENUE RICARDO MARGÁIN ZOZAYA,
NO. 325

SAN PEDRO GARZA, GARCIA, 66265
MÉXICO

**EXECUTED AS A DEED**

For and on behalf of

**CORPORACIÓN GOUDA, S.A. DE C.V.**

By: JOSE A. GONZALEZ

Print name: JOSE A. GONZALEZ

Witness: THELMA RUTH DIAZ VALDEZ

Print name: THELMA RUTH DIAZ VALDEZ

Occupation: ANALYST

Address: AVENUE RICARDO MARGÁIN ZOZAYA,
NO. 325

SAN PEDRO GARZA, GARCIA, 66265
MÉXICO

**EXECUTED AS A DEED**

For and on behalf of

**NEW SUNWARD HOLDING B.V.**

By: HECTOR J. VELA

Print name: HECTOR J. VELA

Witness: ANDRES BERNALDEZ CUEVAS

Print name: ANDRES BERNALDEZ CUEVAS

Occupation: ANALYST

Address: AVENUE RICARDO MARGÁIN ZOZAYA,
NO. 325

SAN PEDRO GARZA, GARCIA, 66265
MÉXICO

**EXECUTED AS A DEED**

For and on behalf of

**CEMEX INTERNATIONAL FINANCE COMPANY**

By: JAVIER GARCIA

Print name: JAVIER GARCIA

Witness: ANGEL MÉNDEZ

Print name: ANGEL MÉNDEZ

Address: HERNANDEZ DE TEJADA, NO. 1, 28027,
MADRID

Occupation: FINANCIAL MANAGER

**EXECUTED AS A DEED**

For and on behalf of

**CEMEX TRADEMARKS HOLDING LTD.**

By: JAVIER GARCIA

Print name: JAVIER GARCIA

Witness: ANGEL MÉNDEZ

Print name: ANGEL MÉNDEZ

Occupation: FINANCIAL MANAGER

Address: HERNANDEZ DE TEJADA, NO. 1, 28027,
MADRID

**THE INTRA-GROUP LENDERS**

**EXECUTED AS A DEED**

For and on behalf of

**CEMEX, S.A.B. DE C.V.**

By: JOSE A. GONZALEZ

Print name: JOSE A. GONZALEZ

Witness: THELMA RUTH DIAZ VALDEZ

Print name: THELMA RUTH DIAZ VALDEZ

Occupation: ANALYST

Address: AVENUE RICARDO MARGÁIN ZOZAYA,
NO. 325

SAN PEDRO GARZA, GARCIA, 66265
MÉXICO

**EXECUTED AS A DEED**

For and on behalf of

**CEMEX ESPAÑA, S.A.**

By: HECTOR J. VELA

Print name: HECTOR J. VELA

Witness: ANDRES BERNALDEZ CUEVAS

Print name: ANDRES BERNALDEZ CUEVAS

Occupation: ANALYST

Address: AVENUE RICARDO MARGÁIN ZOZAYA,
NO. 325

SAN PEDRO GARZA, GARCIA, 66265
MÉXICO

**EXECUTED AS A DEED**

For and on behalf of

**NEW SUNWARD HOLDING B.V.**

By: HECTOR J. VELA

Print name: HECTOR J. VELA

Witness: ANDRES BERNALDEZ CUEVAS

Print name: ANDRES BERNALDEZ CUEVAS

Occupation: ANALYST

Address: AVENUE RICARDO MARGÁIN ZOZAYA,
NO. 325

SAN PEDRO GARZA, GARCIA, 66265
MÉXICO

**EXECUTED AS A DEED**

For and on behalf of

**CEMEX MATERIALS LLC**

By: HECTOR J. VELA

Print name: HECTOR J. VELA

Witness: ANDRES BERNALDEZ CUEVAS

Print name: ANDRES BERNALDEZ CUEVAS

Occupation: ANALYST

Address: AVENUE RICARDO MARGÁIN ZOZAYA,
NO. 325

SAN PEDRO GARZA, GARCIA, 66265
MÉXICO

**EXECUTED AS A DEED**

For and on behalf of

**CEMEX MÉXICO, S.A. DE C.V.**

By: JOSE A. GONZALEZ

Print name: JOSE A. GONZALEZ

Witness: THELMA RUTH DIAZ VALDEZ

Print name: THELMA RUTH DIAZ VALDEZ

Occupation: ANALYST

Address: AVENUE RICARDO MARGÁIN ZOZAYA,
NO. 325

SAN PEDRO GARZA, GARCIA, 66265
MÉXICO

**EXECUTED AS A DEED**

For and on behalf of

**CEMEX CONCRETOS, S.A. DE C.V.**

By: JOSE A. GONZALEZ

Print name: JOSE A. GONZALEZ

Witness: THELMA RUTH DIAZ VALDEZ

Print name: THELMA RUTH DIAZ VALDEZ

Occupation: ANALYST

Address: AVENUE RICARDO MARGÁIN ZOZAYA,
NO. 325

SAN PEDRO GARZA, GARCIA, 66265
MÉXICO

**EXECUTED AS A DEED**

For and on behalf of

**EMPRESAS TOLTECA DE MÉXICO, S.A. DE C.V.**

By: JOSE A. GONZALEZ

Print name: JOSE A. GONZALEZ

Witness: THELMA RUTH DIAZ VALDEZ

Print name: THELMA RUTH DIAZ VALDEZ

Occupation: ANALYST

Address: AVENUE RICARDO MARGÁIN ZOZAYA,
NO. 325

SAN PEDRO GARZA, GARCIA, 66265
MÉXICO

**EXECUTED AS A DEED**

For and on behalf of

**CEMEX CORP**

By: HECTOR J. VELA

Print name: HECTOR J. VELA

Witness: ANDRES BERNALDEZ CUEVAS

Print name: ANDRES BERNALDEZ CUEVAS

Occupation: ANALYST

Address: AVENUE RICARDO MARGÁIN ZOZAYA,
NO. 325

SAN PEDRO GARZA, GARCIA, 66265
MÉXICO

**EXECUTED AS A DEED**

For and on behalf of

**CEMEX, INC.**

By: HECTOR J. VELA

Print name: HECTOR J. VELA

Witness: ANDRES BERNALDEZ CUEVAS

Print name: ANDRES BERNALDEZ CUEVAS

Occupation: ANALYST

Address: AVENUE RICARDO MARGÁIN ZOZAYA,
NO. 325

SAN PEDRO GARZA, GARCIA, 66265
MÉXICO

Witness: THELMA RUTH DIAZ VALDEZ

Print name: THELMA RUTH DIAZ VALDEZ

Occupation: ANALYST

Address: AVENUE RICARDO MARGÁIN ZOZAYA,
NO. 325

SAN PEDRO GARZA, GARCIA, 66265
MÉXICO

**EXECUTED AS A DEED**

For and on behalf of

**CEMEX FINANCE, LLC**

By: HECTOR J. VELA

Print name: HECTOR J. VELA

Witness: ANDRES BERNALDEZ CUEVAS

Print name: ANDRES BERNALDEZ CUEVAS

Occupation: ANALYST

Address: AVENUE RICARDO MARGÁIN ZOZAYA,
NO. 325

SAN PEDRO GARZA, GARCIA, 66265
MÉXICO

**EXECUTED AS A DEED**

For and on behalf of

**CEMEX RESEARCH GROUP AG**

By: JAVIER GARCIA

Print name: JAVIER GARCIA

Witness: ANGEL MÉNDEZ

Print name: ANGEL MÉNDEZ

Occupation: FINANCIAL MANAGER

Address: HERNANDEZ DE TEJADA, NO. 1, 28027,
MADRID

**EXECUTED AS A DEED**

For and on behalf of

**CEMEX SHIPPING B.V.**

By: JAVIER GARCIA

Print name: JAVIER GARCIA

Witness: ANGEL MÉNDEZ

Print name: ANGEL MÉNDEZ

Occupation: FINANCIAL MANAGER

Address: HERNANDEZ DE TEJADA, NO. 1, 28027,
MADRID

**EXECUTED AS A DEED**

For and on behalf of

**CEMEX ASIA B.V.**

By: JAVIER GARCIA

Print name: JAVIER GARCIA

Witness: ANGEL MÉNDEZ

Print name: ANGEL MÉNDEZ

Occupation: FINANCIAL MANAGER

Address: HERNANDEZ DE TEJADA, NO. 1, 28027,
MADRID

**EXECUTED AS A DEED**

For and on behalf of

**CEMEX FRANCE GESTION (S.A.S)**

By: JAVIER GARCIA

Print name: JAVIER GARCIA

Witness: ANGEL MÉNDEZ

Print name: ANGEL MÉNDEZ

Occupation: FINANCIAL MANAGER

Address: HERNANDEZ DE TEJADA, NO. 1, 28027,
MADRID

**EXECUTED AS A DEED**

For and on behalf of

**CEMEX UK**

By: JAVIER GARCIA

Print name: JAVIER GARCIA

Witness: ANGEL MÉNDEZ

Print name: ANGEL MÉNDEZ

Occupation: FINANCIAL MANAGER

Address: HERNANDEZ DE TEJADA, NO. 1, 28027,
MADRID

**EXECUTED AS A DEED**

For and on behalf of

**CEMEX EGYPTIAN INVESTMENTS B.V.**

By: JAVIER GARCIA

Print name: JAVIER GARCIA

Witness: ANGEL MÉNDEZ

Print name: ANGEL MÉNDEZ

Occupation: FINANCIAL MANAGER

Address: HERNANDEZ DE TEJADA, NO. 1, 28027,
MADRID

**THE FACILITY AGENT**

For and on behalf of

**CITIBANK INTERNATIONAL PLC**

By: EKOUE KANGNI

Print name: EKOUE KANGNI

*Signature page to the Intercreditor Agreement*

**THE SECURITY AGENT**

For and on behalf of

**WILMINGTON TRUST (LONDON) LIMITED**

By: PAUL BARTON

Print name: PAUL BARTON

*Signature page to the Intercreditor Agreement*

**THE ORIGINAL FACILITIES AGREEMENT CREDITORS**

*Signature page to the Intercreditor Agreement*

For and on behalf of the Facility Agent on behalf of

**ATLANTIC SECURITY BANK**

By: EKOUE KANGNI

Print name: EKOUE KANGNI

For and on behalf of

**BANAMEX USA**

By: JEFF HEALY and RAUL MUNOZ

Print name: JEFF HEALY and RAUL MUNOZ

For and on behalf of

**BANCA MONTE DEI PASCHI DI SIENA SPA,**
**LONDON BRANCH**

By: ENRICO VIGNOLI and WENDY A. JOHNSON

Print name: ENRICO VIGNOLI and WENDY A. JOHNSON

*Signature page to the Intercreditor Agreement*

For and on behalf of

**BANCA MONTE DEI PASCHI DI SIENA SPA, NEW YORK BRANCH**

By: RENATO BASSI and BRIAN R. LANDY

Print name: RENATO BASSI and BRIAN R. LANDY

*Signature page to the Intercreditor Agreement*

For and on behalf of

**BANCO BILBAO VIZCAYA ARGENTARIA, S.A.**

By: JORGE BURGALETA and JULIAN RINCON

Print name: JORGE BURGALETA and JULIAN RINCON

*Signature page to the Intercreditor Agreement*

For and on behalf of

**BANCO DE SABADELL, S.A.**

By: SUSANA CONDE and JOAQUÍN LÓPEZ

Print name: SUSANA CONDE and JOAQUÍN LÓPEZ

For and on behalf of

**BANCO ESPAÑOL DE CRÉDITO, S.A.**

By: BORJA BERTRAN and CARLOS PORRAS

Print name: BORJA BERTRAN and CARLOS PORRAS

*Signature page to the Intercreditor Agreement*

For and on behalf of

**BANCO NACIONAL DE COMERCIO EXTERIOR, S.N.C.**

By: LEONEL N. VASQUEZ GÓMEZ and
ADRIANA PÉREZ CÁCERES

Print name: LEONEL N. VASQUEZ GÓMEZ and
ADRIANA PÉREZ CÁCERES

*Signature page to the Intercreditor Agreement*

For and on behalf of

**BANCO NACIONAL DE MÉXICO, S.A.**
**INTEGRANTE DEL GRUPO FINANCIERO**
**BANAMEX**

By: JULIO ALVAREZ GONZÁLEZ and
LEOPOLDO AMAYA GONZÁLEZ

Print name: JULIO ALVAREZ GONZÁLEZ and
LEOPOLDO AMAYA GONZÁLEZ

*Signature page to the Intercreditor Agreement*

For and on behalf of

**BANCO NACIONAL DE MÉXICO, S.A.
INTEGRANTE DEL GRUPO FINANCIERO
BANAMEX, ACTING THROUGH ITS NASSAU
BAHAMAS BRANCH**

By: JULIO ALVAREZ GONZÁLEZ and
LEOPOLDO AMAYA GONZÁLEZ

Print name: JULIO ALVAREZ GONZÁLEZ and
LEOPOLDO AMAYA GONZÁLEZ

*Signature page to the Intercreditor Agreement*

For and on behalf of

**BANCO POPULAR ESPAÑOL S.A.**

By: DAVID FOMBELLIDA and MIGUEL ANGEL PEREZ

Print name: DAVID FOMBELLIDA and MIGUEL ANGEL PEREZ

*Signature page to the Intercreditor Agreement*

For and on behalf of

**BANCO SANTANDER (MEXICO) S.A. INSTITUCIÓN DE BANCA MÚLTIPLE GRUPO FINANCIERO SANTANDER**

By: WADE A. KIT and OCTAVIANO CARLOS COUTTOLENC MESTRE

Print name: WADE A. KIT and OCTAVIANO CARLOS COUTTOLENC MESTRE

*Signature page to the Intercreditor Agreement*

For and on behalf of the Facility Agent on behalf of

**BANK OF AMERICA N.A**

By: EKOUE KANGNI

Print name: EKOUE KANGNI

*Signature page to the Intercreditor Agreement*

For and on behalf of the Facility Agent on behalf of

**BANK OF AMERICA N.A., CHARLOTTE BRANCH**

By: EKOUE KANGNI

Print name: EKOUE KANGNI

*Signature page to the Intercreditor Agreement*

For and on behalf of the Facility Agent on behalf of

**BANK OF AMERICA N.A – SAN FRANCISCO BRANCH**

By: EKOUE KANGNI

Print name: EKOUE KANGNI

*Signature page to the Intercreditor Agreement*

For and on behalf of the Facility Agent on behalf of

**BANK OF AMERICA N.A SUCURSAL EN ESPAÑA**

By: EKOUE KANGNI

Print name: EKOUE KANGNI

*Signature page to the Intercreditor Agreement*

For and on behalf of

**BANKIA, S.A.**

By: AITOR COHRS and LAURA SANZ

Print name: AITOR COHRS and LAURA SANZ

*Signature page to the Intercreditor Agreement*

For and on behalf of

**BANKIA, S.A. MIAMI BRANCH**

By: AITOR COHRS and LAURA SANZ

Print name: AITOR COHRS and LAURA SANZ

*Signature page to the Intercreditor Agreement*

For and on behalf of

**BARCLAYS BANK PLC**

By: MICHAEL MOZER

Print name: MICHAEL MOZER

For and on behalf of the Facility Agent on behalf of

**BAYERISCHE LANDESBANK**

By: EKOUE KANGNI

Print name: EKOUE KANGNI

For and on behalf of the Facility Agent on behalf of

**BAYERISCHE LANDESBANK, NEW YORK BRANCH**

By: EKOUE KANGNI

Print name: EKOUE KANGNI

*Signature page to the Intercreditor Agreement*

For and on behalf of

**BBVA BANCOMER, S.A., INSTITUCIÓN DE BANCA MÚLTIPLE GRUPO FINANCIERO BBVA BANCOMER**

By: ALEJANDRO JOSE CARDENAS BORTONI
and LORENZO JOSE VALDES ELIZONDO

Print name: ALEJANDRO JOSE CARDENAS BORTONI
and LORENZO JOSE VALDES ELIZONDO

*Signature page to the Intercreditor Agreement*

For and on behalf of

**BNP PARIBAS (PARIS BRANCH)**

By: KATHRYN B. QUINN and ALBERT A. YOUNG JR.

Print name: KATHRYN B. QUINN and ALBERT A. YOUNG JR.

*Signature page to the Intercreditor Agreement*

For and on behalf of

**BNP PARIBAS S.A.**

By: KATHRYN B. QUINN and ALBERT A. YOUNG JR.

Print name: KATHRYN B. QUINN and ALBERT A. YOUNG JR.

*Signature page to the Intercreditor Agreement*

For and on behalf of

**BNP PARIBAS SA-NEW YORK BRANCH**

By: KATHRYN B. QUINN and ALBERT A. YOUNG JR.

Print name: KATHRYN B. QUINN and ALBERT A. YOUNG JR.

*Signature page to the Intercreditor Agreement*

For and on behalf of

**BNP PARIBAS S.A., SUCURSAL EN ESPAÑA**

By: KATHRYN B. QUINN and ALBERT A. YOUNG JR.

Print name: KATHRYN B. QUINN and ALBERT A. YOUNG JR.

*Signature page to the Intercreditor Agreement*

For and on behalf of

**BNP PARIBAS (SYDNEY BRANCH)**

By: KATHRYN B. QUINN and ALBERT A. YOUNG JR.

Print name: KATHRYN B. QUINN and ALBERT A. YOUNG JR.

*Signature page to the Intercreditor Agreement*

For and on behalf of

**CAIXA GERAL DE DEPOSITOS, S.A, SUCURSAL EN ESPAÑA**

By: PEDRO MC CARTHY DA CUNHA

Print name: PEDRO MC CARTHY DA CUNHA

*Signature page to the Intercreditor Agreement*

For and on behalf of

**CAIXABANK S.A.**

By: FERNANDO ALVAREZ-QUIÑONES and
JAVIER GARCIA FAUBEL

Print name: FERNANDO ALVAREZ-QUIÑONES and
JAVIER GARCIA FAUBEL

*Signature page to the Intercreditor Agreement*

For and on behalf of the Facility Agent on behalf of

**CITIBANK INTERNATIONAL PLC**

By: EKOUE KANGNI

Print name: EKOUE KANGNI

*Signature page to the Intercreditor Agreement*

For and on behalf of

**CITIBANK INTERNATIONAL PLC, SUCURSAL EN ESPAÑA**

By: MIGUEL TRUEBA

Print name: MIGUEL TRUEBA

*Signature page to the Intercreditor Agreement*

For and on behalf of the Facility Agent on behalf of

**CITIBANK NA**

By: EKOUE KANGNI

Print name: EKOUE KANGNI

*Signature page to the Intercreditor Agreement*

For and on behalf of

**CITIBANK N.A. NEW YORK**

By: FLAVIO FIGUEIREDO and ELISEO SERDÁ
N

Print name: FLAVIO FIGUEIREDO and ELISEO SERDÁ
N

*Signature page to the Intercreditor Agreement*

For and on behalf of the Facility Agent on behalf of

**COMERICA BANK**

By: EKOUE KANGNI

Print name: EKOUE KANGNI

*Signature page to the Intercreditor Agreement*

For and on behalf of the Facility Agent on behalf of

**COMMERZBANK AG, LONDON BRANCH**

By: EKOUE KANGNI

Print name: EKOUE KANGNI

For and on behalf of the Facility Agent on behalf of

**COMMERZBANK AG, NEW YORK BRANCH**

By: EKOUE KANGNI

Print name: EKOUE KANGNI

For and on behalf of

**CREDIT AGRICOLE CIB SUCURSAL EN ESPAÑA**

By: CARLOS ARANGUREN and JAVIER ALVAREZ-RENDUELES

Print name: CARLOS ARANGUREN and JAVIER ALVAREZ-RENDUELES

*Signature page to the Intercreditor Agreement*

For and on behalf of

**CREDIT AGRICOLE CORPORATE & INVESTMENT BANK**

By: LUCILE GUBLER and FRANCK BENICHOU

Print name: LUCILE GUBLER and FRANCK BENICHOU

*Signature page to the Intercreditor Agreement*

For and on behalf of

**CREDIT AGRICOLE CORPORATE & INVESTMENT BANK PARIS**

By: LUCILE GUBLER and FRANCK BENICHOU

Print name: LUCILE GUBLER and FRANCK BENICHOU

*Signature page to the Intercreditor Agreement*

For and on behalf of

**CREDIT AGRICOLE CORPORATE & INVESTMENT BANK S.A. NEW YORK BRANCH**

By: KEVIN D. FLOOD and JEAN PHILIPPE ADAM

Print name: KEVIN D. FLOOD and JEAN PHILIPPE ADAM

For and on behalf of the Facility Agent on behalf of

**CREDIT INDUSTRIEL ET COMMERCIAL, LONDON BRANCH**

By: EKOUE KANGNI

Print name: EKOUE KANGNI

*Signature page to the Intercreditor Agreement*

For and on behalf of

**CREDIT SUISSE AG CAYMAN ISLANDS BRANCH**

By: DAVID FITZGERALD and STEVEN DWEK

Print name: DAVID FITZGERALD and STEVEN DWEK

*Signature page to the Intercreditor Agreement*

For and on behalf of

**FCOF III EUROPE UB SECURITIES LIMITED**

By: TONY TRAYNOR

Print name: TONY TRAYNOR

For and on behalf of

**FORTIS BANK S.A./N.V**

By: ALFRED M. TORRES and JOHN W. BENTON

Print name: ALFRED M. TORRES and JOHN W. BENTON

*Signature page to the Intercreditor Agreement*

For and on behalf of

**FORTIS BANK, SA SUCURSAL EN ESPAÑA**

By: ALFRED M. TORRES and JOHN W. BENTON

Print name: ALFRED M. TORRES and JOHN W. BENTON

*Signature page to the Intercreditor Agreement*

For and on behalf of

**HSBC BANK PLC, SUCURSAL EN ESPAÑA**

By: ANTONIO VILELA and MARK J. HALL

Print name: ANTONIO VILELA and MARK J. HALL

For and on behalf of

**HSBC MEXICO, S.A., INSTITUCIÓN DE BANCA MÚLTIPLE, GRUPO FINANCIERO HSBC**

By: VICTOR MANUEL ELIZONDO and
CORDELIA GONZALEZ FLORES ARIAS

Print name: VICTOR MANUEL ELIZONDO and
CORDELIA GONZALEZ FLORES ARIAS

*Signature page to the Intercreditor Agreement*

For and on behalf of

**ICE 1 EM CLO LTD**

By: NATHAN SANDLER

Print name: NATHAN SANDLER

For and on behalf of the Facility Agent on behalf of

**ING BANK N.V., DUBLIN BRANCH**

By: EKOUE KANGNI

Print name: EKOUE KANGNI

*Signature page to the Intercreditor Agreement*

For and on behalf of the Facility Agent on behalf of

**ING BELGIUM S.A, SUCURSAL EN ESPAÑA**

By: EKOUE KANGNI

Print name: EKOUE KANGNI

*Signature page to the Intercreditor Agreement*

For and on behalf of the Facility Agent on behalf of

**INSTITUTO DE CRÉDITO OFICIAL**

By: EKOUE KANGNI

Print name: EKOUE KANGNI

*Signature page to the Intercreditor Agreement*

For and on behalf of the Facility Agent on behalf of

**INTESA SANPAOLO SPA, NEW YORK BRANCH**

By: EKOUE KANGNI

Print name: EKOUE KANGNI

*Signature page to the Intercreditor Agreement*

For and on behalf of the Facility Agent on behalf of

**INTESA SANPAOLO SPA, SUCURSAL EN ESPAÑA**

By: EKOUE KANGNI

Print name: EKOUE KANGNI

For and on behalf of the Facility Agent on behalf of

**JPMORGAN CHASE BANK, N.A.**

By: EKOUE KANGNI

Print name: EKOUE KANGNI

For and on behalf of the Facility Agent on behalf of

**JPMORGAN CHASE BANK, N.A., SUCURSAL EN ESPAÑA**

By: EKOUE KANGNI

Print name: EKOUE KANGNI

*Signature page to the Intercreditor Agreement*

For and on behalf of

**LIBERBANK, S.A**

By: SONIA LUCILA GIL RANCHO

Print name: SONIA LUCILA GIL RANCHO

*Signature page to the Intercreditor Agreement*

For and on behalf of the Facility Agent on behalf of

**LLOYDS TSB BANK PLC**

By: EKOUE KANGNI

Print name: EKOUE KANGNI

*Signature page to the Intercreditor Agreement*

For and on behalf of the Facility Agent on behalf of

**MEDIOBANCA BANCA DI CREDITO FINANZIARIO SPA**

By: EKOUE KANGNI

Print name: EKOUE KANGNI

*Signature page to the Intercreditor Agreement*

For and on behalf of

**MIZUHO CORPORATE BANK, LTD.**

By: DAVID NAPOLI COSTA

Print name: DAVID NAPOLI COSTA

*Signature page to the Intercreditor Agreement*

For and on behalf of

**MIZUHO CORPORATE BANK NEDERLAND NV**

By: MR K. KATO and MR T. SUZUKI

Print name: MR K. KATO and MR T. SUZUKI

*Signature page to the Intercreditor Agreement*

For and on behalf of

**MORGAN STANLEY BANK INTERNATIONAL LIMITED**

By: NAUMAN ANSARI

Print name: NAUMAN ANSARI

*Signature page to the Intercreditor Agreement*

For and on behalf of the Facility Agent on behalf of

**NCG BANCO, S.A.**

By: EKOUE KANGNI

Print name: EKOUE KANGNI

*Signature page to the Intercreditor Agreement*

For and on behalf of

**PORTIGON AG SUCURSAL EN ESPAÑA**

By: BERTO NUVOLONI and RAUL CALVO

Print name: BERTO NUVOLONI and RAUL CALVO

*Signature page to the Intercreditor Agreement*

For and on behalf of

**QP SFM CAPITAL HOLDINGS LIMITED**

By: THOMAS L. O'GRADY

Print name: THOMAS L. O'GRADY

*Signature page to the Intercreditor Agreement*

For and on behalf of the Facility Agent on behalf of

**SCOTIABANK EUROPE PLC**

By: EKOUE KANGNI

Print name: EKOUE KANGNI

For and on behalf of the Facility Agent on behalf of

**STANDARD CHARTERED BANK**

By: EKOUE KANGNI

Print name: EKOUE KANGNI

For and on behalf of the Facility Agent on behalf of

**THE BANK OF NOVA SCOTIA**

By: EKOUE KANGNI

Print name: EKOUE KANGNI

*Signature page to the Intercreditor Agreement*

For and on behalf of the Facility Agent on behalf of

**THE GOVERNOR AND COMPANY OF THE BANK OF IRELAND**

By: EKOUE KANGNI

Print name: EKOUE KANGNI

*Signature page to the Intercreditor Agreement*

For and on behalf of the Facility Agent on behalf of

**THE ROYAL BANK OF SCOTLAND NV**

By: EKOUE KANGNI

Print name: EKOUE KANGNI

*Signature page to the Intercreditor Agreement*

For and on behalf of the Facility Agent on behalf of

**THE ROYAL BANK OF SCOTLAND PLC**

By: EKOUE KANGNI

Print name: EKOUE KANGNI

*Signature page to the Intercreditor Agreement*

For and on behalf of the Facility Agent on behalf of

**THORNBURG INVESTMENT INCOME BUILDER FUND**

By: EKOUE KANGNI

Print name: EKOUE KANGNI

*Signature page to the Intercreditor Agreement*

For and on behalf of the Facility Agent on behalf of

**UBS AG, STAMFORD BRANCH**

By: EKOUE KANGNI

Print name: EKOUE KANGNI

*Signature page to the Intercreditor Agreement*

For and on behalf of

**WESTPAC EUROPE LIMITED**

By: ANDREW VINEY

Print name: ANDREW VINEY

**THE USPP NOTEHOLDERS**

*Signature page to the Intercreditor Agreement*

**ALLSTATE LIFE INSURANCE COMPANY**

For and on behalf of

By: ORLANDO PURPURA and MARK W. (SAM) DAVIS

Print name: ORLANDO PURPURA and MARK W. (SAM) DAVIS

*Signature page to the Intercreditor Agreement*

For and on behalf of the Facility Agent on behalf of

**COMMINGLED PENSION TRUST FUND (DISTRESSED DEBT OPPORTUNITIES) OF JPMORGAN CHASE BANK, N.A.**

By: EKOUE KANGNI

Print name: EKOUE KANGNI

For and on behalf of

**CVI GVF (LUX) MASTER S.A.R.L.**

By: TIFFANY PARR

Print name: TIFFANY PARR

*Signature page to the Intercreditor Agreement*

For and on behalf of

**HARTFORD LIFE AND ACCIDENT INSURANCE COMPANY**

By: KENNETH W. DAY

Print name: KENNETH W. DAY

*Signature page to the Intercreditor Agreement*

For and on behalf of

**HARTFORD LIFE INSURANCE COMPANY**

By: KENNETH W. DAY

Print name: KENNETH W. DAY

*Signature page to the Intercreditor Agreement*

For and on behalf of the Facility Agent on behalf of

**INSIGHT LDI SOLUTIONS PLUS PLC, IN RESPECT OF THE INSIGHT LOAN FUND**

By: EKOUE KANGNI

Print name: EKOUE KANGNI

*Signature page to the Intercreditor Agreement*

For and on behalf of the Facility Agent on behalf of

**JPMORGAN CORE PLUS BOND FUND**

By: EKOUE KANGNI

Print name: EKOUE KANGNI

*Signature page to the Intercreditor Agreement*

For and on behalf of the Facility Agent on behalf of

**JPMORGAN DISTRESSED DEBT OPPORTUNITIES MASTER FUND, LTD.**

By: EKOUE KANGNI

Print name: EKOUE KANGNI

*Signature page to the Intercreditor Agreement*

For and on behalf of the Facility Agent on behalf of

**JPMORGAN HIGH YIELD FUND**

By: EKOUE KANGNI

Print name: EKOUE KANGNI

*Signature page to the Intercreditor Agreement*

For and on behalf of the Facility Agent on behalf of

**JPMORGAN STRATEGIC INCOME OPPORTUNITIES FUND**

By: EKOUE KANGNI

Print name: EKOUE KANGNI

*Signature page to the Intercreditor Agreement*

For and on behalf of

**NATIONAL BENEFIT LIFE INSURANCE COMPANY**

By: SAMUEL OTCHERE

Print name: SAMUEL OTCHERE

*Signature page to the Intercreditor Agreement*

For and on behalf of the Facility Agent on behalf of

**PACHOLDER HIGH YIELD FUND, INC.**

By: EKOUE KANGNI

Print name: EKOUE KANGNI

*Signature page to the Intercreditor Agreement*

For and on behalf of

**PHL VARIABLE INSURANCE COMPANY**

By: NELSON CORREA

Print name: NELSON CORREA

For and on behalf of

**PHOENIX LIFE INSURANCE COMPANY**

By: NELSON CORREA

Print name: NELSON CORREA

For and on behalf of

**PRIMERICA LIFE INSURANCE COMPANY**

By: SAMUEL OTCHERE

Print name: SAMUEL OTCHERE

*Signature page to the Intercreditor Agreement*

For and on behalf of

**QP SFM CAPITAL HOLDING LIMITED**

By: THOMAS L. O'GRADY

Print name: THOMAS L. O'GRADY

*Signature page to the Intercreditor Agreement*

For and on behalf of

**SWISS RE LIFE & HEALTH AMERICA INC.**

By: SAMUEL OTCHERE

Print name: SAMUEL OTCHERE

*Signature page to the Intercreditor Agreement*

For and on behalf of

**WESTPORT INSURANCE CORPORATION**

By: SAMUEL OTCHERE

Print name: SAMUEL OTCHERE

*Signature page to the Intercreditor Agreement*

C L I F F O R D
C H A N C E

**CLIFFORD CHANCE LLP**
ADVOCATEN SOLICITORS NOTARIS
BELASTINGADVISEURS

**TRUE COPY**
of the deed of pledge
of registered shares in the capital of:

**New Sunward Holding B.V.**,
with seat in Amsterdam,

executed on 17 September 2012, before
Dr T.P. van Duuren, civil law notary in Amsterdam

**DEED OF PLEDGE OF REGISTERED SHARES**

On the seventeenth day of September two thousand twelve appeared before me, Dr Thomas Pieter van Duuren, civil law notary ( *notaris*) in Amsterdam, The Netherlands:

1. (a) Ms Dorien Christianne de Voogd, in this matter with residence at the offices of Warendorf, Koningslaan 42, 1075 AE Amsterdam, The Netherlands, born in Amsterdam, The Netherlands, on the fifth day of November nineteen hundred seventy-seven, holder of a passport with number NY62LHJH7; and

   (b) Ms Sophie Karin Barones van der Feltz, in this matter with residence at the offices of Warendorf, Koningslaan 42, 1075 AE Amsterdam, The Netherlands, born in The Hague, The Netherlands, on the fifth day of January nineteen hundred eighty-four, holder of a driving licence with number 4657191906, both acting in this respect as attorneys-in-fact, duly authorised in writing, of:

   (i) **CEMEX INTERNATIONAL FINANCE COMPANY**, a company incorporated under the laws of the Republic of Ireland, having its registered office at 70 Sir John Rogerson's Quay, Dublin 2, The Republic of Ireland, registered with Companies Registration Office under number 226652 ("**Cemex International Finance Company**");

   (ii) **CORPORACIÓN GOUDA, S.A. DE C.V.,** a company incorporated under the laws of Mexico, having its registered office at Avenida Constitución 444 Pte, CP 64000 Monterrey, Nuevo León, Mexico, registered with the Registro Público de la Propiedad y del Comercio de Monterrey, Estado de Nuevo León in Mexico under number 25012002-113 ("**Corporación Gouda S.A. de C.V.**");

   (iii) **MEXCEMENT HOLDINGS, S.A. DE C.V.,** a company incorporated under the laws of Mexico, having its registered office at Avenida Constitución 444 Pte, C.P. 64000, Monterrey, Nuevo León, México, registered at the Registro Público de la Propiedad y del Comercio de Monterrey, Estado de Nuevo León in México under the number 5457, Volume 2, Book First ("**Mexcement Holdings S.A. de C.V.**");

   (iv) **CEMEX TRADEMARKS HOLDING LTD.**, a company incorporated under the laws of Switzerland, having its registered office at Römerstrasse 13, 2555 Brügg bei Biel, Switzerland registered with the commercial register of the Canton of Berne under number CH-035.3.029.636-0 (the "**Swiss Pledgor**"); and

(v) **NEW SUNWARD HOLDING B.V.,** a private company with limited liability ( *besloten vennootschap met beperkte aansprakelijkheid*), incorporated under Dutch law, having its seat (*statutaire zetel*) at Amsterdam, The Netherlands, and its registered office at Amsteldijk 166, 1079 LH Amsterdam, The Netherlands and registered with the Dutch Commercial Register ( *Handelsregister*) under number 34133556 (the "**Company**");

2. Mr Krishna van Zundert, in this matter with residence at the offices of Clifford Chance LLP, Droogbak 1a, 1013 GE Amsterdam, The Netherlands, born in Amravati, India, on the twenty-ninth day of September nineteen hundred seventy-five, in this respect acting as attorney-in-fact, duly authorised in writing, of:

**WILMINGTON TRUST (LONDON) LIMITED**, a company with limited liability, incorporated under the laws of England and Wales, having its registered office at Third Floor, 1 King's Arms Yard, London EC2R 7AF, United Kingdom and registered with Companies House under number 05650152, except as expressly provided herein acting in its capacity of Security Agent (and where acting in such capacity acting on behalf of the Secured Parties) (all as defined below) (the "**Pledgee**").

The authorisation of the persons appearing appears from six (6) written powers of attorney, (photocopies of) which will be attached to this Deed.

The persons appearing declared that:

**IT IS HEREBY AGREED AS FOLLOWS:**

1. **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions**

1.1.1 Unless a contrary indication appears, capitalised terms not defined in this Deed (as defined below) shall have the same meaning given to such terms in the Intercreditor Agreement (as defined below).

1.1.2 In addition the following terms shall have the following meaning:

"**Articles of Association**" means the articles of association (*statuten*) of the Company as they currently stand and/or, as the case may be, as they may be amended from time to time.

"**Debt Documents**" has the meaning given to it in the Intercreditor Agreement.

"**Deed**" means this deed of pledge.

"**Depository Receipts**" means depository receipts of shares in the capital of the Company issued with the co-operation of the Company ( *met medewerking van de vennootschap uitgegeven certificaten van aandelen* ).

"**Dividends**" means cash dividends, distribution of reserves, repayments of capital and all other distributions and payments in any form which at any time during the existence of the right of pledge created hereby, become payable in respect of any one of the Shares.

"**Enforcement Event**" has the meaning given to it in the Intercreditor Agreement.

"**Facilities Agreement**" means the facilities agreement dated the seventeenth day of September two thousand twelve entered into among, *inter alios*, CEMEX, S.A.B. de C.V. as the Parent, the Original Borrowers, the Original Guarantors, the Original Security Providers, the Original Creditors, the Agent and the Security Agent (all as defined therein).

"**Free Reserves Available for Distribution**" has the meaning ascribed thereto in Clause 1.5.

"**Future Shares**" means all shares in the capital of the Company acquired by a Pledgor after the date of this Deed.

"**Intercreditor Agreement**" means the intercreditor agreement dated on or about the date of the Facilities Agreement and made between, *inter alios*, the Facility Agent, the Original Facilities Agreement Creditors, CEMEX, S.A.B. de C.V. as the Parent, the Original Borrowers, the Original Guarantors, the Original Security Providers, the Intra-Group Lenders and the Security Agent (all as defined therein).

"**Merger Deed**" means a notarial deed of merger (*akte van fusie*) executed on the twenty-second day of October two thousand nine before a deputy of K. Stelling, civil law notary (*notaris*) in Amsterdam, The Netherlands, between the Company (as acquiring entity ( *verkrijgende rechtspersoon*)) and Sunward Acquisitions N.V. (as disappearing entity (*verdwijnende rechtspersoon*)).

"**Parallel Debts**" means a collective reference to the Finance Parallel Debt and the Notes Parallel Debt (each as defined in the Intercreditor Agreement).

"**Pledgors**" means Cemex International Finance Company, Corporación Gouda S.A. de C.V., Mexcement Holdings S.A. de C.V. and the Swiss Pledgor and "**Pledgor**" means, individually, any one of them.

"**Present Shares**" means:

(a) in the case of Corporación Gouda S.A. de C.V., all of the shares issued and paid-up in the capital of the Company and registered in the name of Corporación Gouda S.A. de C.V., being one hundred twenty-eight thousand sixty-four (128,064) ordinary shares, numbered 884,873 through 1,012,936, with a nominal value of ten eurocent (EUR 0.10) each;

(b) in the case of Mexcement Holdings S.A. de C.V., all of the shares issued and paid-up in the capital of the Company and registered in the name of Mexcement Holdings S.A. de C.V., being four hundred fifty-three thousand seven hundred eighty (453,780) ordinary shares, numbered 431,093 through 884,872, with a nominal value of ten eurocent (EUR 0.10) each;

(c) in the case of the Swiss Pledgor, all of the shares issued and paid-up in the capital of the Company and registered in the name of the Swiss Pledgor, being four hundred thirty-one thousand ninety-two (431,092) ordinary shares, numbered 1 through 431,092, with a nominal value of ten eurocent (EUR 0.10) each; and

(d) in the case of Cemex International Finance Company, all of the shares issued and paid-up in the capital of the Company and registered in the name of Cemex International Finance Company, being one hundred ninety-nine thousand seven hundred sixty-two (199,762) ordinary shares, numbered 1,012,937 through 1,212,698, with a nominal value of ten eurocent (EUR 0.10) each.

"**Principal Obligations**" means all the Liabilities and all other present and future obligations at any time due, owing or incurred by any member of the Group and by each Debtor (and, to the extent applicable in relation to the Transaction Security granted by it, each Security Provider) to any Secured Party under the Debt Documents, both actual and contingent and whether incurred solely or jointly and as principal or surety or in any other capacity including the obligations set out in clause 11.2 ( *Finance Parallel Debt (Covenant to pay the Security Agent)* ) and clause 11.3 (*Notes Parallel Debt (Covenant to pay the Security Agent)* ) of the Intercreditor Agreement.

"**Related Rights**" means the Dividends, all present and future rights of the Pledgors to acquire shares in the capital of the Company and all other present and future rights arising out of or in connection with the Shares, other than the Voting Rights.

"**Release Date**" means the date on which the Transaction Security (as defined in the Intercreditor Agreement) shall be released pursuant to and in accordance with clause 9.2 of the Intercreditor Agreement.

"**Restricted Obligations**" has the meaning ascribed thereto in Sub-clause 1.6.

"**Secured Obligations**" means all present and future obligations owed by the Debtors to the Pledgee pursuant to the Parallel Debts and all Principal Obligations that are secured obligations pursuant to paragraph 3.1.3.

"**Security Assets**" means the Shares and the Related Rights.

"**Shares**" means the Present Shares and the Future Shares.

"**Voting Rights**" means the voting rights in respect of any of the Shares.

1.2 **Interpretation**

Subject to any contrary indication, any reference in this Deed to a " **Clause**", "**Sub-clause**" or "**paragraph**" shall be interpreted as a reference to a clause, sub-clause or paragraph hereof.

1.3 **Continuing security**

Any reference made in this Deed to any Debt Document or to any agreement or document (under whatever name), where applicable, shall be deemed to be a reference to such Debt Document or such other agreement or document as the same may have been, or at any time may be, extended, prolonged, amended, restated, supplemented, renewed or novated, as persons may accede thereto as a party or withdraw therefrom as a party in part or in whole or be released thereunder in part or in whole, and/or as facilities and/or amounts and/or financial services are or at any time may be granted, extended, prolonged, increased, reduced, cancelled, withdrawn, amended, restated, supplemented, renewed or novated thereunder including, without limitation:

(a) any:

(i) increase or reduction in any amount available thereunder or any alteration of or addition to the purpose for which any such amount, or increased or reduced amount may be used,

(ii) facility or note provided in substitution of, or in addition to, the facilities originally made available thereunder or notes originally issued thereunder,

(iii) rescheduling of the indebtedness incurred thereunder whether in isolation or in connection with any of the foregoing, and

(iv) combination of the foregoing, and/or

(b) any document designated as a Debt Document by the Agent and the Parent.

1.4 **Unlawful financial assistance**

No obligations shall be included in the definition of "Secured Obligations" to the extent that, if they were included, the security interest granted pursuant to this Deed or any part thereof would be void as a result of violation of the prohibition on financial assistance contained in Articles 2:98c and/or 2:207c of the Dutch Civil Code or any other applicable financial assistance rules under any relevant jurisdiction (the " **Prohibition**") and all provisions hereof shall be interpreted accordingly. For the avoidance of doubt, this Deed shall continue to secure those obligations which, if included in the definition of "Secured Obligations", shall not constitute a violation of the Prohibition.

1.5 **Limitation of the Swiss Pledgor under Swiss law**

The obligations and liabilities of the Swiss Pledgor under this Deed in relation to the obligations, undertakings, indemnities or liabilities of an Obligor other than that Swiss Pledgor or any of its fully owned and controlled subsidiaries (the " **Restricted Obligations**") shall be limited to the amount of the Swiss Pledgor's Free Reserves Available for Distribution at the time payment is requested, provided that such limitation is a requirement under applicable law (including any case law) at that point in time and that such limitation shall not free the Swiss Pledgor from its obligations in excess thereof, but merely postpone the performance date until such time as performance is permitted notwithstanding such limitation.

For the purpose of this clause, "**Free Reserves Available for Distribution**" means an amount equal to the maximal amount in which the Swiss Pledgor can make a dividend payment to its shareholder(s) (being the balance sheet profit and any freely disposable reserves available for this purpose, in each case in accordance with applicable Swiss law).

As soon as possible after having been requested to discharge a Restricted Obligation, the Swiss Pledgor shall, if it cannot discharge the full amount of the Restricted Obligations, provide the Pledgee with an interim statutory balance sheet audited by the statutory auditors of the Swiss Pledgor setting out the Free Reserves Available for Distribution and, immediately thereafter, pay the amount corresponding to the Free Reserves Available for Distribution to the Pledgee (save to the extent provided below).

In respect of the Restricted Obligations, the Swiss Pledgor shall:

(a) if and to the extent required by applicable law in force at the relevant time:

(i) subject to any applicable double taxation treaties, deduct Swiss withholding tax at the rate of thirty-five percent (35%) (or such other rate as is in force at that time) from any payment made by it;

(ii) pay any such deduction to the Swiss Federal Tax Administration; and

(iii) notify and provide evidence to the Pledgee that the Swiss withholding tax has been paid to the Swiss Federal Tax Administration;

(b) to the extent such deduction is made, not be required to make a gross-up, indemnify or otherwise hold harmless the Secured Parties for the deduction of the Swiss withholding tax notwithstanding anything to the contrary contained in the Debt Documents, unless grossing up is permitted under the laws of Switzerland then in force and provided that this should not in any way limit any obligations of any non-Swiss Pledgors under the Debt Documents to indemnify the Secured Parties in

respect of the deduction of the Swiss withholding tax, including, without limitation, in accordance with clause 13 of the Facilities Agreement (*Tax Gross-Up and Indemnities*). The Swiss Pledgor shall use all reasonable efforts to procure that any person which is entitled to a full or partial refund of any Swiss withholding tax paid pursuant to paragraph (a) above will, as soon as possible after the deduction of the Swiss withholding tax, (y) request a refund of the Swiss withholding tax under any applicable law (including double taxation treaties) and (z) pay to the Pledgee upon receipt any amount so refunded.

The Swiss Pledgor will take, and cause to be taken, all and any other action, including, without limitation, the passing of any shareholders' resolutions to approve any payment or other performance under the Debt Documents and the receipt of any confirmations from the Swiss Pledgor's auditors, whether following a request to discharge a Restricted Obligation, or which may be required as a matter of mandatory Swiss law in force at the time it is required to make a payment or perform other obligations under the Debt Documents in order to allow a prompt payment or performance of other obligations under the Debt Documents. If the enforcement of the Restricted Obligations would be limited due to the effects referred to in this Sub-clause 1.5 and if any asset of the Swiss Pledgor has a book value that is less than its market value (an "**Undervalued Asset**"), the Swiss Pledgor shall, to the extent permitted by applicable law and its accounting standards (i) write up the book value of such Undervalued Asset such that its balance sheet reflects a book value that is equal to the market value of such Undervalued Asset, and (ii) make reasonable efforts to realise the Undervalued Asset for a sum which is at least equal to the market value of such asset. Without prejudice to the rights of the Pledgee under the Debt Documents, the Swiss Pledgor will only be required to realise an Undervalued Asset if such asset is not necessary for the Swiss Pledgor's business (*nicht betriebsnotwendig*).

1.6 **Separate agreements**

1.6.1 For the purpose of efficiency this Deed is entered into between the Pledgee of the one part and each of the individual entities defined as a "Pledgor" of the other part.

1.6.2 This Deed shall be interpreted so as to constitute a separate pledge agreement between each of the individual entities defined as a "Pledgor" of the one part and the Pledgee of the other part, and if any of the separate pledge agreements of any of such entities become(s) invalid or unenforceable, is terminated, rescinded, released, void, voidable, amended, restated, renewed, novated, supplemented or otherwise

affected, the Secured Obligations of any of such entities are satisfied or any of the rights of pledge created hereby is or are ineffective, to the fullest extent permitted by law the foregoing shall not affect the validity or enforceability of the other agreement(s) between the Pledgee of the one part and such other entity of the other part.

1.7 **Pledgee Provisions**

1.7.1 Subject to the mandatory provisions of Dutch law the Pledgee shall not, whether by virtue of this Deed or by exercising any of its rights thereunder, owe any duty of care to the Pledgors or the Company.

1.7.2 The permissive rights of the Pledgee to take action under this Deed shall not be construed as an obligation or duty for it to do so.

1.7.3 In acting as Pledgee, the Pledgee shall be treated as acting through its agency division which shall be treated as a separate entity from its other divisions and departments. Any information received or acquired by the Pledgee which is received or acquired by some other division or department or otherwise than in its capacity as Pledgee may be treated as confidential by the Pledgee and will not be treated as information possessed by the Pledgee in its capacity as such.

1.7.4 In acting or otherwise exercising its rights or performing its duties under any provision of this Deed, the Pledgee shall act in accordance with the provisions of the Intercreditor Agreement and parties to this Deed acknowledge and agree that in so acting the Pledgee shall have the rights, benefits, protections, indemnities and immunities set out in the Intercreditor Agreement and shall not incur any liability to the Pledgors or the Company, other than as expressly provided for in the Intercreditor Agreement.

## 2. UNDERTAKING TO PLEDGE AND PARALLEL DEBTS

### 2.1 Undertaking to pledge

Each Pledgor has agreed, or, as the case may be, hereby agrees with the Pledgee that it shall grant to the Pledgee a right of pledge over its Security Assets as security for the payment of the Secured Obligations.

### 2.2 Parallel Debts

Pursuant to the Parallel Debts the Pledgee has its own claim in respect of the payment obligations of the Debtors to the Secured Parties. In connection with the creation of the rights of pledge pursuant hereto each Pledgor and the Pledgee acknowledge that, with respect to this claim, the Pledgee acts in its own name and not as representative (*vertegenwoordiger*) of the Secured Parties or any of them and consequently the Pledgee is the sole pledgee under this Deed.

## 3. PLEDGE

### 3.1 Pledge of Security Assets

3.1.1 To secure the payment of the Secured Obligations, each Pledgor hereby

grants to the Pledgee a right of pledge over its Present Shares and the Related Rights pertaining thereto (where applicable) and grants in advance (*bij voorbaat*) to the Pledgee a right of pledge over its Future Shares and the Related Rights pertaining thereto, which rights of pledge are hereby accepted by the Pledgee.

3.1.2 To the extent the pledge in advance referred to in paragraph 3.1.1 is not effective under Dutch law, each Pledgor will forthwith grant a supplemental right of pledge by executing, before a Dutch civil law notary, a deed of pledge substantially in the form of this Deed or such other form as the Pledgee may reasonably require in order to perfect the pledge over the relevant Future Shares and the Related Rights pertaining thereto.

3.1.3 If and to the extent that at the time of creation of this right of pledge, or at any time hereafter, a Principal Obligation owed to the Pledgee cannot be validly secured through the Parallel Debts, such Principal Obligation itself shall be a Secured Obligation.

3.2 **Registration**

The Pledgee shall be entitled to present this Deed and any other document in connection herewith for registration to any office, registrar or governmental body in any jurisdiction the Pledgee deems necessary or useful to protect its interests.

3.3 **Related Rights**

3.3.1 Subject to paragraph 3.3.2 below, only the Pledgee is entitled to receive and exercise the Related Rights pledged pursuant hereto.

3.3.2 The Pledgee hereby authorises each Pledgor (as envisaged by Article 3:246 paragraph 4 of the Dutch Civil Code) to receive Dividends in accordance with the terms of the Facilities Agreement. The authorisation shall automatically cease to exist upon the occurrence of an Enforcement Event.

3.4 **Voting Rights**

3.4.1 In accordance with Article 2:198 paragraph 3 of the Dutch Civil Code, in conjunction with the relevant provisions of the Articles of Association, the Pledgors, constituting the general meeting of shareholders of the Company, hereby approve by means of a written resolution adopted outside a meeting in accordance with Article 2:238 of the Dutch Civil Code and Article 21 of the Articles of Association, the granting of a right of pledge in respect of the Shares with the conditional transfer to the Pledgee of the Voting Rights and other rights and powers attached to the Shares.

3.4.2 The Voting Rights are hereby transferred to the Pledgee, subject to the cumulative conditions precedent *(opschortende voorwaarden*) of:

(a) the occurrence of an Enforcement Event; and

(b) the delivery of a notice by the Pledgee to the Company that it, the Pledgee, will exercise the Voting Rights (whereby it is agreed and acknowledged by the parties to this Deed that such notice may only be given by the Pledgee upon receipt by the Pledgee of express written instructions to this effect from the Instructing Group or otherwise in accordance with the Intercreditor Agreement).

The Pledgee shall send to each Pledgor, for information purposes only, a copy of any notice to the Company as referred to in paragraph 3.4.2 sub (b) above.

3.4.3 Prior to receipt by the Company of a notice as referred to in paragraph 3.4.2(b) above:

(a) each Pledgor shall have the right to exercise its Voting Rights; and

(b) the Pledgee shall not have the rights attributed by law to the holders of Depository Receipts.

3.4.4 Forthwith upon receipt by the Company of a notice as referred to in paragraph 3.4.2(b) above no Pledgor shall be entitled any longer to exercise its Voting Rights.

## 4. DELIVERY OF DOCUMENTS

On the date hereof, the Swiss Pledgor shall deliver to the Pledgee the following documents:

(a) an up-to-date excerpt of it from the Register of Commerce ( *Handelsregister*);

(b) a certified copy of its current articles of incorporation ( *Statuten*) evidencing in the object clause that it is empowered to enter into up-stream and cross-stream obligations;

(c) a photocopy of a unanimous resolution of its shareholders wherein the entry into this Deed and the granting of the Pledge as provided for hereunder is duly approved; and

(d) a photocopy of a unanimous resolution of its board of directors wherein the entry into this Deed and the granting of the Pledge as provided for hereunder is duly approved.

## 5. REPRESENTATIONS, WARRANTIES AND COVENANTS

### 5.1 Representations and warranties

5.1.1 Each Pledgor hereby represents and warrants to the Pledgee that the following are true and correct on the date hereof and on each date on which Security Assets are acquired by the relevant Pledgor:

(a) it is entitled to pledge the Security Assets as envisaged hereby;

(b) the right of pledge created hereby over its Security Assets is a

first ranking right of pledge (*pandrecht eerste in rang*), its Security Assets have not been encumbered with limited rights ( *beperkte rechten*) or otherwise and no attachment (*beslag*) on its Security Assets has been made;

(c) its Security Assets have not been transferred, encumbered or attached in advance, nor has it agreed to such a transfer or encumbrance in advance; and

(d) no depository receipts have been issued with respect to its Present Shares.

5.1.2 Furthermore, each Pledgor hereby represents and warrants to the Pledgee that the following are true and correct on the date hereof:

(a) its Present Shares have been validly issued and fully paid and, together with the Present Shares of the other Pledgors, constitute one hundred percent (100%) of the share capital of the Company; and

(b) it has acquired on the twenty-third day of October two thousand nine the relevant Present Shares as set out below:

(i) Corporación Gouda S.A. de C.V. has acquired its Present Shares pursuant to the Merger Deed;

(ii) Mexcement Holdings S.A. de C.V. has acquired its Present Shares pursuant to the Merger Deed;

(iii) the Swiss Pledgor has acquired its Present Shares pursuant the Merger Deed; and

(iv) Cemex International Finance Company has acquired its Present Shares pursuant to the Merger Deed.

5.2 **Covenants**

Each Pledgor hereby covenants that it will:

(a) other than as explicitly permitted under the terms of the other Debt Documents, not release, settle or subordinate any Related Rights without the Pledgee's prior written consent;

(b) at its own expense execute all such documents, exercise any right, power or discretion exercisable, and perform and do all such acts and things as the Pledgee may request (acting reasonably) for creating, perfecting, protecting and/or enforcing the rights of pledge envisaged hereby;

(c) not pledge, otherwise encumber or transfer any of its Security Assets, whether or not in advance, or permit to subsist any kind of encumbrance other than as envisaged hereby or as explicitly permitted under the terms of the other Debt Documents, or perform any act that may harm the rights of the Pledgee, or permit to subsist any kind of attachment over its Security Assets;

(d) immediately inform the Pledgee in writing of any event or circumstance

which may be of importance to the Pledgee for the preservation or exercise of the Pledgee's rights pursuant hereto and provide the Pledgee, upon its written request, with any other information in relation to its Security Assets or the pledge thereof as the Pledgee may request from time to time;

(e) immediately inform in writing persons such as a liquidator ( *curator*) in bankruptcy (*faillissement*), an administrator (*bewindvoerder*) in a suspension of payment (*surseance van betaling*) or preliminary suspension of payment ( *voorlopige surseance van betaling*) or a person making an attachment (*beslaglegger*) or an Irish law examiner, of the existence of the rights of the Pledgee pursuant hereto;

(f) not procure the issue of any shares in the capital of the Company or any Depository Receipts or rights to acquire the same, except to the extent explicitly permitted under the terms of the other Debt Documents; and

(g) except as explicitly permitted under the terms of any other Debt Documents, not vote on any of its Shares without the prior written consent of the Pledgee in favour of a proposal to (i) amend the Articles of Association, (ii) dissolve the Company (other than as a consequence of a Permitted Reorganisation (as defined in the Facilities Agreement)), (iii) apply for the bankruptcy ( *faillissement*) or a suspension of payments (*surseance van betaling*) or preliminary suspension of payments ( *voorlopige surseance van betaling*) of the Company, (iv) convert (*omzetten*), merge (*fuseren*) or demerge (*splitsen*) the Company (other than as part of a Permitted Reorganisation (as defined in the Facilities Agreement)) or (v) distribute Related Rights.

## 6. ENFORCEMENT

6.1 Without prejudice to the provision of Sub-clause 6.2 below, any failure to satisfy the Secured Obligations when due shall constitute a default ( *verzuim*) in the performance of the Secured Obligations, without any reminder letter ( *sommatie*) or notice of default (*ingebrekestelling*) being required.

6.2 Following, cumulatively:

(a) the occurrence of an Enforcement Event; and

(b) the Pledgee having been expressly instructed to take such enforcement action in writing by the Instructing Group or otherwise in accordance with the Intercreditor Agreement,

the Pledgee may enforce its rights of pledge and take recourse against the proceeds of enforcement.

6.3 None of the Pledgors shall be entitled to request the court to determine that the Security Assets pledged pursuant hereto shall be sold in a manner deviating from the provisions of Article 3:250 of the Dutch Civil Code.

6.4 The Pledgee shall not be obliged to give notice to any Pledgor of any intention

to sell the relevant pledged Security Assets (as provided in Article 3:249 of the Dutch Civil Code) or, if applicable, of the fact that it has sold the same Security Assets (as provided in Article 3:252 of the Dutch Civil Code).

6.5 All monies received or realised by the Pledgee in connection with the Security Assets shall be applied by the Pledgee in accordance with the relevant provisions of the Intercreditor Agreement, subject to the mandatory provisions of Dutch law on enforcement ( *uitwinning*).

## 7. MISCELLANEOUS PROVISIONS

### 7.1 Waivers

7.1.1 To the fullest extent allowed by applicable law, each Pledgor waives (*doet afstand van*) any right it may have of first requiring the Pledgee to proceed against or claim payment from any other person or enforce any guarantee or security granted by any other person before exercising its rights pursuant hereto.

7.1.2 Each Pledgor hereby irrevocably and unconditionally waives ( *doet afstand van*) any rights it has under or pursuant to any Dutch law provisions for the protection of grantors of security for the debts of third parties, including, to the extent relevant, any rights it may have pursuant to Articles 3:233, 3:234 and 6:139 of the Dutch Civil Code, which waiver is hereby accepted by the Pledgee.

7.1.3 Each Pledgor hereby irrevocably and unconditionally waives ( *doet afstand van*), to the extent necessary in advance, any and all rights of recourse (*regres*) or subrogation (*subrogatie*) vis-à-vis any Debtor that it has or may obtain or acquire after the date of this Deed as a result of any enforcement action in respect of the rights of pledge granted under or in connection with this Deed (and, to the extent such waiver is not enforceable in whole or in part, any rights of recourse or subrogation to which it is or may become entitled under or pursuant to enforcement of any rights of pledge created under or pursuant to this Deed and hereby pledged to the Pledgee by way of a non disclosed pledge governed by the terms of this Deed), which waiver is hereby accepted by the Pledgee.

### 7.2 Evidence of indebtedness

An excerpt from the records of the Pledgee and/or Agent shall serve as conclusive evidence ( *dwingend bewijs*) of the existence and the amounts of the Secured Obligations.

### 7.3 Unenforceability

Each Pledgor and the Pledgee hereby agree that they will negotiate in good faith to replace any provision hereof that may be held unenforceable with a provision that is enforceable and which is as similar as possible in substance to the unenforceable provision.

7.4 **Power of attorney**

Each Pledgor hereby grants an irrevocable power of attorney to the Pledgee to – following the occurrence of an Enforcement Event - act in such Pledgor's name and on its behalf, authorising the Pledgee to – following the occurrence of an Enforcement Event - execute all such documents and to perform and do all such acts and things as the Pledgee may deem necessary or useful in order to have the full benefit of the rights granted or to be granted to the Pledgee pursuant hereto, including (i) the exercise of any ancillary rights ( *nevenrechten*) as well as any other rights it has in relation to the relevant Security Assets and (ii) the performance of any obligations of the relevant Pledgor hereunder, which authorisation permits the Pledgee to act or also act as the relevant Pledgor's counterparty within the meaning of Article 3:68 of the Dutch Civil Code.

7.5 **Costs**

With respect to costs and expenses, clause 17 ( *Costs and Expenses*) of the Facilities Agreement shall apply and the provisions thereof are incorporated herein by reference.

8. **TRANSFER**

8.1 **Power to transfer**

The Pledgee is entitled to transfer all or part of its rights and/or obligations pursuant hereto to any transferee and each Pledgor hereby in advance gives its irrevocable consent to, and hereby in advance irrevocably co-operates with, any such transfer (within the meaning of Articles 6:156 and 6:159 of the Dutch Civil Code).

8.2 **Transfer of information**

Subject to the terms of the Facilities Agreement and the Intercreditor Agreement, the Pledgee is entitled to impart any information concerning the Pledgors and/or the Security Assets to any transferee or proposed transferee.

9. **TERMINATION**

9.1 **Termination of pledge**

Unless terminated by operation of law, the Pledgee's rights of pledge created pursuant hereto shall be in full force and effect vis-à-vis each Pledgor until they shall have terminated, in part or in whole, as described in Sub-clause 9.2 ( *Termination by notice* (*opzegging*) *and waiver* (*afstand*)) below.

9.2 **Termination by notice (*opzegging*) and waiver (*afstand*)**

The Pledgee will be entitled to terminate by notice ( *opzegging*), in part or in whole, the rights of pledge created pursuant hereto in respect of all or part of the Security Assets and/or all or part of the Secured Obligations. If and insofar as the purported effect of any such termination requires a waiver (*afstand van recht*) by the Pledgee, each Pledgor hereby in advance agrees to such waiver. The Pledgee shall furthermore terminate by notice ( *opzegging*) the rights of pledge created pursuant hereto in respect of all of the Security Assets on the Release Date.

10. **GOVERNING LAW AND JURISDICTION**

10.1 **Governing law**

This Deed is governed by and shall be interpreted in accordance with Dutch law.

10.2 **Jurisdiction**

Each of the parties to this Deed agrees that any disputes arising from or in connection with this Deed shall be submitted to the competent court in Amsterdam, The Netherlands.

10.3 **Domicile (*woonplaats*)**

10.3.1 Pursuant to Article 1:15 of the Dutch Civil Code each Pledgor hereby designates the offices of the Company as its domicile ( *woonplaats*) for service of process in any proceedings in connection with this Deed.

10.3.2 The designation provided for in paragraph 10.3.1 above shall be without prejudice to any other method of service of process permitted by law.

10.4 **Power of attorney**

If a party to this Deed is represented by an attorney or attorneys in connection with the execution of this Deed or any agreement or document pursuant hereto and the relevant power of attorney is expressed to be governed by Dutch law, such choice of law is hereby accepted by each other party, in accordance with Article 14 Hague Convention on the Law Applicable to Agency of the fourteenth day of March nineteen hundred and seventy-eight.

11. **THE COMPANY**

The Company:

(a) acknowledges the right of pledge created over the Security Assets;

(b) confirms that it has been notified of the right of pledge created over the Related Rights;

(c) undertakes to register in its shareholders' register:

(i) the right of pledge over the Shares;

(ii) the conditional transfer of Voting Rights to the Pledgee; and

(iii) that, upon the occurrence of an Enforcement Event and notice to the Company, as set out in more detail in this Deed, the Pledgee shall have the rights attributed by law to the holders of depository receipts issued with the company's co-operation ( *rechten die door de wet zijn toegekend aan de houders van met medewerking ener vennootschap uitgegeven certificaten van aandelen* ),

and to provide the Pledgee, as soon as practicable, with a copy of the relevant entries in its shareholders' register;

(d) represents and warrants that no Depository Receipts have been issued with respect to the Present Shares; and

(e) covenants that it shall not co-operate in the issue of any Depository Receipts or issue any shares, or rights to acquire shares, in the capital of the Company, except to the extent explicitly permitted under the terms of the other Debt Documents.

12. **CIVIL LAW NOTARY**

Each of the parties to this Deed acknowledges that:

(a) Dr T.P. van Duuren, civil law notary (*notaris*) in Amsterdam, The Netherlands, is a partner of Clifford Chance LLP; and

(b) Clifford Chance LLP acts as the Dutch legal adviser to the Pledgee and that Warendorf in Amsterdam, The Netherlands, acts as the Dutch legal adviser to the Pledgors and the Company in this transaction; and,

having consulted its legal advisers, confirms its agreement and accepts that Dr T.P. van Duuren, aforementioned, or one of his deputies ( *kandidaat-notarissen*) shall execute this Deed and that this shall not prevent Clifford Chance LLP from continuing to act as Dutch legal adviser to the Pledgee.

Each person appearing before me is known to me, civil law notary and the identity of each of the persons appearing under 1 has been established by me, civil law notary, by means of a document intended for that purpose.

This deed, drawn up to be kept in the civil law notary's custody was executed in Amsterdam, The Netherlands, on the date first above written.

The contents of this deed were given and explained to the persons appearing before me, who then declared to have noted and approved the contents and not to require a full reading thereof. Thereupon, after limited reading, this deed was signed by the persons appearing before me and by me, civil law notary.

[SEAL]

/s/ Dr Thomas Pieter van Duuren
ISSUED AS A TRUE COPY
by Dr Thomas Pieter van Duuren,
civil law notary (*notaris*) in Amsterdam,
on 17 September 2012

**Share Pledge Agreement**

dated 17 September 2012

between **CEMEX S.A.B. de C.V.**
Av Constitución 444 Pte. Col., Centro, C.P. 64000, Monterrey, N.L. Mexico

hereinafter: "**CEMEX**"

and **CEMEX México, S.A. de C.V.**
Av Constitución 444 Pte. Col., Centro, C.P. 64000, Monterrey, N.L. Mexico

hereinafter: "**CEMEX Mexico**"

and **Interamerican Investments Inc.**
1209 Orange Street, Wilmington, County of New Castle, 19801 Delaware USA

hereinafter: "**Interamerican**"

and **Empresas Tolteca de Mexico, S.A. de C.V.**
Av Constitución 444 Pte., Col. Centro, C.P. 64000, Monterrey, N.L., Mexico

hereinafter: "**Tolteca**"

(CEMEX, CEMEX Mexico, Interamerican and Tolteca collectively referred to as the " **Pledgors**")

*on the one side*

and **Wilmington Trust (London) Limited**
1 Kings Arms Yard
Third Floor
London EC2R 7AF
United Kingdom

acting in its capacity as security agent and acting in the name and for the account of the Pledgees (as defined herein)

hereinafter: the **"Security Agent"**

*on the other side*

concerning 1'938'958'014 shares of CEMEX TRADEMARKS HOLDING Ltd.

**Table of Contents**

**List of Annexes**

| | |
|---|---|
| Annex 1 | Details of Existing Shares |

This share pledge agreement (the "**Agreement**") is made by and between CEMEX, CEMEX Mexico, Interamerican and Tolteca (the " **Pledgors**") and Wilmington Trust (London) Limited (the "**Security Agent**"), acting in its capacity as security agent and acting in the name and for the account of the Pledgees.

**Whereas**

A) CEMEX and certain of its subsidiaries as Original Borrowers, Original Guarantors and Original Security Providers, the Original Creditors, Citibank International plc as Agent and Wilmington Trust (London) Limited as Security Agent entered into a facilities agreement dated on or about the date hereof (the "**Facilities Agreement**").

B) CEMEX and certain of its subsidiaries as Original Borrowers, Original Guarantors and Original Security Providers, the Financing Creditors, Citibank International plc as Agent and Wilmington Trust (London) Limited as Security Agent entered into an intercreditor agreement dated on or about the date hereof (the "**Intercreditor Agreement**").

C) The Pledgors own 1'938'958'014 issued registered shares *(Namenaktien)* in CEMEX TRADEMARKS HOLDING Ltd. (representing approximately 99.57 % of the issued share capital of the Company) a company incorporated under the laws of Switzerland, having its registered office at Römerstrasse 13, 2555 Brügg bei Biel, Switzerland (the " **Company**").

D) As of the date hereof, the Company has an issued share capital of CHF 1'947'382'051.00, divided into 1'947'382'051 freely transferable registered shares *(Namenaktien)* with a par value of CHF 1 each.

E) In order to provide security in accordance with the Facilities Agreement and the Intercreditor Agreement, each of the Pledgors wishes to pledge all of its shares in the Company in favor of each of the Pledgees.

F) The Security Agent has been duly appointed under the Facilities Agreement and the Intercreditor Agreement, to act as security agent and shall act in its capacity as security agent and in the name and for the account of the Pledgees in connection with the execution, delivery and performance of this Agreement and shall exercise the rights of the Pledgees arising hereunder as their direct representative ( *direkter Stellvertreter*).

**Now, therefore**, the Parties hereto agree as follows:

## 1 Definitions and Construction

Unless defined otherwise hereinafter and except to the extent that the context requires otherwise, capitalized terms used in this Agreement shall have the meanings assigned to them in the Facilities Agreement or Intercreditor Agreement.

| | |
|---|---|
| **Agreement** | means this share pledge agreement. |
| **Annex** | means an annex to this Agreement. |
| **Article** | means an article of this Agreement. |
| **CO** | means the Swiss Code of Obligations (*Schweizerisches Obligationenrecht, OR*). |
| **Company** | shall have the meaning set forth in Recital C) of this Agreement. |
| **DEBA** | means the Swiss Federal Debt Enforcement and Bankruptcy Act ( *Bundesgesetz über Schuldbetreibung und Konkurs, SchKG*). |
| **Dividends** | means all dividend payments by the Company in respect of the Shares whether in cash or in the form of Shares or Participation Rights or in any other form. |
| **Enforcement Event** | shall have the meaning set forth in the Intercreditor Agreement. |
| **Event of Default** | shall have the meaning set forth in the Facilities Agreement. |
| **Existing Shares** | means 1'938'958'014 fully paid registered shares ( *Namenaktien*) of the Company with a par value of CHF 1 each, all held by the Pledgors as of the date of this Agreement, together with all Related Rights, pursuant to Article 3c) of this Agreement. |
| **Facilities Agreement** | shall have the meaning set forth in Recital A) of this Agreement. |
| **Future Shares** | means any shares or Participation Rights issued to the Pledgors in addition to or in exchange for or as a surrogate for the Existing Shares by the Company in whatever nominal value, which the Pledgors may acquire by way of subscription or otherwise subsequent to the date of this Agreement, together with all Related Rights. |

| | |
|---|---|
| **Instructing Group** | shall have the meaning set forth in the Intercreditor Agreement. |
| **Intercreditor Agreement** | shall have the meaning set forth in Recital B) of this Agreement. |
| **Intrinsic Value** | has the meaning given to it in Article 8. |
| **Participation Rights** | means participation certificates (*Partizipationsscheine*) and profit sharing certificates (*Genussscheine*) within the meaning of articles 656a et seq. and articles 657 CO of the Company to be issued in the future. |
| **Party** | means any party of this Agreement. |
| **Pledge** | shall have the meaning set forth in Article 2.1. |
| **Pledgees** | means the Secured Parties from time to time. |
| **Related Rights** | means, in relation to the Shares, all Dividends, interest and other distributions paid or payable after the date hereof, i.e., whether in cash or in kind and all shares, securities (including any convertible debt instruments, warrants and the dividends, interest and other distributions thereon), rights, money and property accruing or offered at any time by way of redemption, bonus, preference, option rights or otherwise to or in respect of any of the Shares, including any present or future right to purchase, subscribe or otherwise have shares issued in the Company, or in substitution or exchange for any of the Shares and any and all administrative and financial rights related to the Shares, including but not limited to, voting rights and rights to dividend in respect of the Shares. |
| **Release Date** | means the date on which the Transaction Security shall be released pursuant to clause 9.2 of the Intercreditor Agreement. |

| | |
|---|---|
| **Secured Obligations** | means all the Liabilities and all other present and future obligations at any time due, owing or incurred by any member of the Group and by each Debtor (and, to the extent applicable in relation to the Transaction Security granted by it, each Security Provider) to any Secured Party under the Debt Documents, both actual and contingent and whether incurred solely or jointly and as principal or surety or in any other capacity including the obligations set out in Clause 11.2 (Finance Parallel Debt (Covenant to pay the Security Agent)) and Clause 11.3 (Notes Parallel Debt (Covenant to pay the Security Agent)) of the Intercreditor Agreement. |
| **Shares** | means the Existing Shares and any Future Shares collectively. |
| **Subscription Right** | means the Pledgors' preemptive rights ( *Bezugsrechte*) and the advance subscription rights (*Vorwegzeichnungsrechte*) in connection with the issuance of Shares or Participation Rights, or the creation of authorized or conditional share capital by the Company. |

## 2 Pledge of Shares

### 2.1 Object of Pledge

The Pledgors hereby agree to pledge and hereby pledge to each Pledgee (for this purpose being represented by the Security Agent) individually all Shares, Subscription Rights and Related Rights (free and clear of any pledges, liens, rights of set-off or other third party rights of any nature) as a first ranking security (the "**Pledge**").

### 2.2 Secured Obligations

The Pledge shall serve as a first ranking security to each of the Pledgees for the Secured Obligations.

## 3 Delivery of Documents

On the date hereof, the Pledgor shall deliver to the Security Agent the following documents:

a) (i) a PDF copy, certified by a Mexican notary public, of the by-laws ( *estatutos sociales*) in effect of each of the Cemex, Cemex Mexico, Tolteca and (ii) copies of the articles of incorporation and the by-laws in effect for Interamerican, as well as the original short form of a recent certificate of good standing of Interamerican from the Secretary of State of the State of Delaware;

b) a PDF copy of the resolution of the board of directors, or, in relation to each of CEMEX, CEMEX Mexico and Tolteca, of the powers-of-attorney, with

authority for acts of domain (*actos de dominio*), for the officers, of each of the Pledgors wherein the entry into this Agreement and the granting of the Pledge as provided for hereunder is duly approved;

c) the original of the share certificates representing the Existing Shares as specified in Annex 1, duly endorsed in blank, with duly preceding endorsements (*vollständige Indossamentenkette*), it being acknowledged and agreed that the Security Agent is already in possession of these share certificates in its capacity as security agent under an existing share pledge agreement (under which the pledged security and these share certificates have been released immediately prior to the execution of this Agreement pursuant to a global deed of release) and the Pledgors agree and instruct that the Security Agent shall as of the date of this Agreement hold these share certificates in its capacity as Security Agent under this Agreement (in order to avoid a physical retransfer and delivery); and

d) a PDF copy of the share register (*Aktienbuch*) of the Company evidencing that (i) the Pledgors are registered as shareholders with voting rights with respect to the Existing Shares and (ii) the Shares are pledged to the Pledgees according to this Agreement.

For so long as the Pledge shall remain in effect, each of the Pledgors shall continue to be registered as a shareholder with voting rights in the share register of the Company with respect to the Existing Shares. Upon the occurrence of an Enforcement Event, the Security Agent shall, following receipt of express written instructions from the Instructing Group or otherwise in accordance with the terms of the Intercreditor Agreement, be entitled, but not obligated, to exercise the voting rights in accordance with Article 5.3.

## 4 Transfer of Future Shares

Each of the Pledgors shall, and shall procure (or the Security Agent on its behalf) that the Company will, promptly upon the accrual, offer or issue of any Future Shares duly transfer to the Security Agent all share certificates and other documents representing such Future Shares, in the case of registered shares, by share certificates duly endorsed in blank.

## 5 Shareholder Rights

### 5.1 Subscription Rights

As long as no Enforcement Event has occurred, the right to exercise the pledged Subscription Rights shall remain with each Pledgor, provided, however, that all Shares, Participation Rights and other rights and interests acquired by the Pledgors upon exercise of Subscription Rights shall be pledged pursuant to Article 2.1 and all share certificates and other documents representing such Shares, Participation Rights and other rights and interests shall be transferred to the Security Agent pursuant to Article 4.

In case a Pledgor does not intend to exercise any Subscription Rights, each of the Pledgors herewith agrees to assign and herewith assigns such Subscription Rights free of charge to the Security Agent and the Security Agent shall be entitled, but not obliged, to exercise such Subscription Rights. For that purpose, the Pledgors shall promptly do all acts and things and permit all acts and things to be done which are necessary for the Security Agent to exercise such Subscription Rights (for the avoidance of doubt, not including the payment of the subscription price).

The Pledgors shall notify the Security Agent, in writing, promptly of any grant of Subscription Rights and each of the Pledgors undertakes to notify the Security Agent of any intention not to exercise Subscription Rights not less than 20 Business Days prior to expiration of the right to exercise such Subscription Rights.

Upon the occurrence of an Enforcement Event, the Security Agent shall be entitled, but not obligated, to exercise the Subscription Rights. For that purpose, each of the Pledgors shall promptly do all acts and things (for the avoidance of doubt, not including the payment of the subscription price) and permit all acts and things to be done which are necessary for the Security Agent to exercise the Subscription Rights.

**5.2 Dividends**

As long as no Enforcement Event has occurred, each Pledgor shall be entitled to receive and retain all Dividends.

Upon the occurrence of an Enforcement Event, the Security Agent shall be entitled to receive and retain all Dividends. For that purpose, each of the Pledgors shall promptly (i) pay any moneys subsequently distributed and received by the Pledgors as Dividends (net of any tax) in respect of the Shares to the Security Agent and (ii), to the extent permitted by law, do all acts and things and permit all acts and things to be done which are necessary to enable the Security Agent to collect such Dividends directly from the Company; dividends in the form of Shares or Participation Rights shall be deemed Future Shares and be subject to Article 4.

**5.3 Voting Rights**

As long as no Enforcement Event has occurred, all voting rights in the Shares shall remain with the Pledgors.

When exercising (or failing to exercise) the voting rights in the Shares, each of the Pledgors shall act:

a) in a manner that is not inconsistent with the Facilities Agreement, the Intercreditor Agreement, this Agreement (in particular Article 7) and any other Debt Document; and

b) in a manner that would not intentionally be prejudicial to the validity and enforceability of the Pledge or cause an Event of Default or Enforcement Event to occur.

Upon the occurrence of an Enforcement Event, the Security Agent shall have the right (but not the obligation) to exercise the voting rights in the Shares after obtaining express written instructions from the Instructing Group or otherwise in accordance with the terms of the Intercreditor Agreement at its discretion. For that purpose, each of the Pledgors shall promptly (i) execute any and all proxies in favor of the Security Agent or any person designated by the Security Agent and (ii) do all acts and things and permit all acts and things to be done which are necessary for the Security Agent or the person designated by the Security Agent to exercise its voting rights in the Shares.

## 6 Representations and Warranties

Each of the Pledgors hereby represents and warrants to the Pledgees that as of the date of this Agreement:

a) the documents referred to in Articles 3a) and 3d) are accurate, complete and up-to-date;

b) the resolutions referred to in Article 3b) have been duly passed in meetings duly convened or by circular resolutions duly taken, accurately reflect the resolutions and other matters reflected therein and are in full force and effect and have not been revoked or amended;

c) it is a company, duly formed and validly existing pursuant to the laws of the United Mexican States (in respect of CEMEX, CEMEX Mexico and Tolteca) and the State of Delaware (in respect of Interamerican);

d) its representative is duly authorized to enter into this Agreement, which authority has not been revoked or modified in any manner whatsoever;

e) the execution of, and performance of its obligations under, this Agreement by each Pledgor has been duly authorized by all necessary corporate action on behalf of the Pledgor;

f) the execution of, and performance of its obligations under, this Agreement by each Pledgor does not contravene or violate any Mexican or Swiss law, authorization or order applicable to that Pledgor in any material respect;

g) no shareholders' meeting or board meeting of the Company or any of the Pledgors has been held in which resolutions were passed or approved that could negatively affect the security interest created under this Agreement or any other right of the Pledgees under this Agreement;

h) no authorization, approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required (i) for the pledge of the Shares pursuant hereto or for the execution, delivery or performance of this Agreement by it, (ii) for the perfection or maintenance of the pledge created hereby (including the first priority nature of such pledge) or (iii) for the exercise by the Security Agent or the Pledgees of its/their rights provided for in this Agreement or the remedies in respect of the Shares pursuant to this Agreement,

i) the Existing Shares set forth in Annex 1 are duly and validly issued by the Company, are fully paid and constitute approximately 99.57 % of the issued and outstanding shares of the Company;

j) each Pledgor is the sole legal and beneficial owner of its portion of the Existing Shares as set forth in Annex 1, which are free and clear of any pledges, liens, encumbrances, or other interests or third party rights of any nature other than the Pledge created hereunder;

k) the Company has not created any authorized or conditional share capital or granted any options for the acquisition of Shares;

l) this Agreement (i) constitutes legal and valid obligations binding on each of the Pledgors, (ii) is, subject to the original of the share certificates representing the Existing Shares being in the possession of the Security Agent (which, for the avoidance of doubt, is the case as of the date of this Agreement), an effective and perfected first ranking security over the Existing Shares securing the Secured Obligations, and (iii) is enforceable against any of the Pledgors in accordance with its terms;

m) acknowledges and understands that the Security Agent appears in its capacity as security agent, acting in the name and for the account of the Pledgees, in accordance with the terms of the Debt Documents;

n) acknowledges and understands the terms of the Debt Documents, as well as the amounts due and payable to the Secured Parties under the Debt Documents by it and the other Obligors (as such term is defined in the Facilities Agreement), and agrees that the pledge created hereunder secures, among others, the payment of such amounts; and

o) each of CEMEX Mexico and Tolteca acknowledges that by virtue of the Debt Documents it will obtain a direct benefit for its business and operations.

## 7 Undertakings

Each of the Pledgors hereby undertakes not to enter into any legal instrument relating to, or granting any pledge, lien, encumbrance, or other interest or third party right over the Shares.

In addition, except in accordance with the terms of the Facilities Agreement and any other Debt Document and for as long as the Pledge remains in effect, each of the Pledgors hereby undertakes:

a) not to dispose of, transfer or assign the Shares or take any other action with respect to the Shares (other than in accordance with the Facilities Agreement) that would jeopardize (i) any rights of the Pledgees under this Agreement or any other Debt Document or (ii) the validity and enforceability of the Pledge;

b) not to revoke or amend the board resolution referred to in Article 3b);

c) not to vote in favor of any resolution with regard to the Company whereby:

(i) the Existing Shares would be modified or altered; or

(ii) the transferability of the Shares would be restricted in any way;

d) to promptly inform the Security Agent, in writing, (i) if a third party claims or pretends to own any of the Shares and (ii) of all circumstances concerning the Company which might materially adversely affect the validity or enforceability of the Pledge;

e) to enter into and to procure the perfection of additional pledge agreements (at its own cost and expense), if and to the extent that a pledge of certain Related Rights requires, as a matter of law, the execution and perfection of a specific pledge agreement for such Related Rights;

f) to do all acts and things necessary (at its own cost and expense) in case of a realization of the Pledge, and procure that any acts and things be done (at its own cost and expense) to properly effect any transfer of the Shares to a new owner, free of any pledge, lien, encumbrance, or other interest or third party right of any nature on any of the Shares so transferred and, in the case of registered shares, to procure that the board of directors of the respective Company register such new owner as new shareholder of the Company with voting rights; and

g) to promptly execute such further documents and do such further acts (at its own cost and expense) which the Pledgees may reasonably require for the purpose of the creation, perfection, protection and realization of the Pledge.

**8 Realization of Pledge**

Upon the occurrence of an Enforcement Event and subject to the Intercreditor Agreement, the Security Agent shall, after obtaining express written instructions from the Instructing Group or otherwise in accordance with the terms of the Intercreditor Agreement, have the right, but not the obligation, to enforce the Pledge created pursuant to this Agreement, by liquidation of the Shares in full or in part through an auction or a private sale ( *Private Verwertung*) or acquisition of the Shares for the Security Agent's or any other Pledgee's account ( *Selbsteintritt*), in each case without having to initiate proceedings under, and without regard to the formalities provided in, the DEBA and, to the extent legally permissible, without the need to give prior notice to the Pledgors.

In case of an acquisition of the Shares for the Security Agent's or any other Pledgee's account ( *Selbsteintritt*), such acquisition shall be done at the "intrinsic value" (*innerer Wert*) of the Shares (the "**Intrinsic Value**"). If the Pledgors and the Security Agent do not reach an agreement on the Intrinsic Value within 10 Business Days from the date of the Security Agent's first proposal, the Intrinsic Value shall be determined by an independent expert (*Schiedsgutachter*) to be mutually appointed by the relevant parties. The expert's determination of the Intrinsic Value shall be final. If the relevant parties cannot, within 10 Business Days from the date of the Security Agent's first proposal, agree on the expert to be appointed, the independent expert shall be appointed by the president of the "*TREUHANDKAMMER Schweizerische Kammer der Wirtschaftsprüfer und Steuerexperten*" Zurich, Switzerland.

Upon the occurrence of an Enforcement Event, the Security Agent shall, after obtaining express written instructions from the Instructing Group or otherwise in accordance with the terms of the Intercreditor Agreement, have full discretion as to manner, time and place of enforcement of the Pledge. Each of the Pledgors shall co-operate and render (at its own cost and expense) all assistance, which the Security Agent considers necessary, in order to facilitate the enforcement of the Pledge.

Any money received or realized by the Security Agent from any enforcement of the Pledge shall be paid or applied in the order set out in clause 10 (Application of Proceeds) of the Intercreditor Agreement.

Notwithstanding the foregoing and notwithstanding the provision of article 41 DEBA, the Security Agent shall be entitled to institute or pursue the enforcement of the Secured Obligations pursuant to regular debt enforcement proceedings without having first to institute proceedings for the realization of any security interest created to secure the Secured Obligations ( *Ausschluss des beneficium excussionis realis*). The Parties agree in advance that a sale according to article 130 DEBA (*Freihandverkauf*) shall be admissible.

**9 Release of Pledge**

The Pledge shall be automatically (a) terminated and cancelled and (b) the Shares or, in case of realization of the Shares, the remainder thereof, shall be released and returned to the Pledgors at their own cost and expense, at the earlier of (i) the day on which all Secured Obligations have been discharged in full and the Security Agent is satisfied (having been instructed in accordance with the terms of the Intercreditor Agreement) that no further Secured Obligations are capable of arising and no amount paid to discharge the Secured Obligations is capable of being avoided or reduced in bankruptcy, insolvency or similar laws or (ii) the Release Date.

**10 Position of the Security Agent**

The Security Agent has been duly appointed by each of the Pledgees under the Facilities Agreement and the Intercreditor Agreement (in particular clause 11) to act as security agent. The Security Agent shall act, for the purpose of this Agreement, in its capacity as security agent in the name and for the account of the Pledgees and is authorised to exercise the rights, powers, authorities and discretions specifically given to the Security Agent under or in connection with this Agreement together with any other incidental rights, powers, authorities and discretions as direct representative ( *direkter Stellvertreter*) of the Pledgees. The Pledgors acknowledge such rights and powers and acknowledge in particular clause 11.5 of the Intercreditor Agreement (*No independent power*).

The Security Agent performs this Agreement and exercises the rights of the Pledgees arising hereunder, as direct representative ( *direkter Stellvertreter*) of each of the Pledgees. Any action with respect to this Agreement taken by the Security Agent shall be construed as binding upon each of the Pledgees.

The Security Agent shall not, whether by virtue of this Agreement or by exercising any of its rights thereunder, owe any duty of care or fiduciary duty to the Pledgors or the Company.

The permissive rights of the Security Agent to take action under this Agreement shall not be construed an obligation or duty for it to do so.

Provided it complies with its obligations in this Agreement, the Security Agent is not required to have any regard to the interests of the Company.

In acting as Security Agent, the Security Agent shall be treated as acting through its agency division which shall be treated as a separate entity from its other divisions and departments. Any information received or acquired by the Security Agent which is received or acquired by some other division or department or otherwise than in its capacity as Security Agent may be treated as confidential by the Security Agent and will not be treated as information possessed by the Security Agent in its capacity as such.

In acting or otherwise exercising its rights or performing its duties under any of this Agreement, the Security Agent shall act in accordance with the provisions of the Intercreditor Agreement and shall, when required to grant a consent, exercise a discretion or power, take or omit to take any action, act pursuant to any instruction or direction from the Instructing Group or Administrative Agent (as applicable and as provided in the Intercreditor Agreement). In so acting, the Security Agent shall have the rights, benefits, protections, indemnities and immunities set out in the Intercreditor Agreement as if those provisions were set out in this Agreement, mutatis mutandis, and shall not incur any liability to the Pledgors, the Company or to any other Person.

The provisions of this Clause 10 shall survive any termination of this Agreement.

## 11 Transfer of Rights and Obligations

The Pledgors may only transfer rights or obligations arising under this Agreement to third parties with the prior written consent of the Security Agent.

Each Finance Party and each Refinancing Party (as defined in the Intercreditor Agreement) which has become a party to a Debt Document after the date of this Agreement in accordance with the Debt Documents shall automatically become a party to this Agreement ( *Vertragspartei*) (through the representation of the Security Agent), and thereby assume all rights and obligations of a Pledgee and each of the Pledgors explicitly consents to such Finance Party becoming a party to this Agreement ( *Vertragspartei*), and thereby assuming all rights and obligations of a Pledgee.

Each Noteholder and Noteholder Trustee (as each such term is defined in the Intercreditor Agreement) shall have the benefit of the security created hereby in accordance with the terms of the Intercreditor Agreement.

## 12 Indemnification

The Security Agent and each Pledgee shall not be liable for any loss or damage suffered by any of the Pledgors save in respect of such loss or damage which is suffered as a result of the wilful misconduct ( *Absicht*) or gross negligence (*grobe Fahrlässigkeit*) of a Pledgee or the Security Agent. Notwithstanding anything to the contrary herein, any liability of each of the Pledgees towards each of the Pledgors under this Agreement shall not be joint and several (*nicht solidarisch*) but separate and independent.

## 13 General Provisions

### 13.1 Costs and Expenses

With respect to costs and expenses, Clause 17 (*Costs and Expenses*) of the Facilities Agreement shall apply and the provisions thereof are incorporated herein by reference (with such conforming changes as necessary for interpretation being deemed to be made for the purposes of this Agreement).

### 13.2 Notices

All notices or other communications to be given under or in connection with the Agreement shall be made pursuant to, and in accordance with, the provisions of the Finance Documents, in particular clause 33 (*Notices*) of the Facilities Agreement and clause 18 (*Notices*) of the Intercreditor Agreement.

### 13.3 Entire Agreement

This Agreement, including Annex 1 and any other documents referred to herein, constitutes the entire agreement and understanding among the Parties with respect to the subject matter hereof, and shall supersede all prior oral and written agreements or understandings of the parties relating hereto. All references to this Agreement shall be deemed to include Annex 1 hereto.

### 13.4 Amendments and Waivers

This Agreement may only be amended or any provision thereof waived in accordance with the provisions of clause 20.2 ( *Amendments and Waivers: Transaction Security Documents*) of the Intercreditor Agreement and by a document signed by all Parties or, in case of a waiver of any provision, by a document signed by the Party waiving such provision.

### 13.5 Severability

Should any part or provision of this Agreement be held to be invalid or unenforceable by any competent arbitral tribunal, court, governmental or administrative authority having jurisdiction, the other provisions of this Agreement shall nonetheless remain valid. In this case, the Parties shall endeavor to negotiate a substitute provision that best reflects the economic intentions of the Parties without being unenforceable, and shall execute all agreements and documents required in this connection.

### 13.6 Remedies Cumulative

No failure or delay on the part of the Security Agent to exercise any power, right or remedy hereunder operates as a waiver thereof, nor shall any single or any partial exercise of any power, right or remedy preclude its further exercise or the exercise of any other power, right or remedy.

**13.7 Continuing Security**

This Agreement shall create a continuing security and no change or amendment whatsoever in any of the Debt Documents or any document or agreement relating thereto shall affect the validity of the Pledge or the obligations which are imposed on each of the Pledgors pursuant to it.

## 14 Governing Law and Jurisdiction

### 14.1 Governing Law

This Agreement (including matters as to the transfer of possession of any share certificates representing the Shares) shall be governed by and construed in accordance with the substantive laws of Switzerland (under the exclusion of the conflict of law rules of the Swiss International Private Law).

### 14.2 Jurisdiction

All disputes arising out of or in connection with this Agreement, including disputes on its conclusion, binding effect, amendment and termination, shall be resolved exclusively by the Courts of the City of Zurich, Switzerland, and shall, if possible, be adjudicated by the Commercial Court of the Canton of Zurich (*Handelsgericht des Kantons Zürich*), Switzerland.

The Security Agent and the other Pledgees in addition have the right to institute legal proceedings against each of the Pledgors at any other competent court, in which case Swiss law shall nevertheless be applicable as provided in Article 14.1.

**Signatures on next page**

**Signatures**

Monterrey, N.L. México, this 17 September 2012

for and on behalf of
**CEMEX S.A.B. de C.V.**

/s/ Roger Saldaña
Roger Saldaña

/s/ José Antonio González Flores
José Antonio González Flores

Monterrey, N.L., México this 17 September 2012

for and on behalf of
**CEMEX México, S.A. de C.V.**

/s/ Roger Saldaña
Roger Saldaña

/s/ José Antonio González Flores
José Antonio González Flores

Monterrey, N.L., México this 17 September 2012

**Interamerican Investments Inc.**

By: /s/ Roger Saldaña
Name: Roger Saldaña
Title: Attorney-in-Fact

/s/ José Antonio González Flores
José Antonio González Flores
Attorney-in-Fact

Monterrey, N.L., México this 17 September 2012

for and on behalf of
**Empresas Tolteca de Mexico, S. A. de C.V.**

/s/ Roger Saldaña
Roger Saldaña

/s/ José Antonio González Flores
José Antonio González Flores

Monterrey, N.L., México this 17 September 2012

**Wilmington Trust (London) Limited**, acting in its capacity as Security Agent and acting in the name and for the account of the Pledgees:

/s/ Paul Barton

Name: Paul Barton
Title: Relationship Manager

**Annex 1**

**Details of Existing Shares**

| Shareholder | Share Issuer | Type of Share | Certificate Number | Number of Shares | Par value of each Share |
|---|---|---|---|---|---|
| CEMEX | CEMEX TRADEMARKS HOLDING Ltd. | Registered Shares | 3 | 949’126’121 | CHF 1 |
| CEMEX Mexico | CEMEX TRADEMARKS HOLDING Ltd. | Registered Shares | 5 | 217’865’866 | CHF 1 |
| Interamerican | CEMEX TRADEMARKS HOLDING Ltd. | Registered Shares | 2 | 8’424’037 | CHF 1 |
| Tolteca | CEMEX TRADEMARKS HOLDING Ltd. | Registered Shares | 4 | 763’541’990 | CHF 1 |
| **Total** | | | | **1’938’958’014** | |

C L I F F O R D

C H A N C E

**NEW SUNWARD HOLDING B.V.**

**CEMEX, S.A.B. DE C.V.**

como Pignorantes / as Pledgors

y / and

**CEMEX ESPAÑA, S.A.**

como Sociedad / as Company

y / and

**WILMINGTON TRUST (LONDON) LIMITED**

como Agente de Garantías / as Security Agent

y / and

las Partes Garantizadas / the Secured Parties

y / and

**BANCO BILBAO VIZCAYA ARGENTARIA, S.A.**

como Depositario /as Custodian

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# CONTRATO DE PRENDAS DE ACCIONES

(Share Pledges Agreement)

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**ÍNDICE**

En Madrid, a 8 de noviembre de 2012.

Con mi intervención, D. Rafael Monjo Carrió, Notario del Ilustre Colegio de Madrid, con residencia en esta ciudad.

In Madrid, on 8 November 2012.

With my intervention, Mr. Rafael Monjo Carrió, Notary Public of the Madrid Notaries Association, with domicile in this city.

**INTERVIENEN**

**APPEAR**

**DE UNA PARTE,**

**A.1.- NEW SUNWARD HOLDING B.V.,** sociedad de nacionalidad holandesa, con domicilio social en Amsteldijk 166, 1079LH Amsterdam, Países Bajos, inscrita en la Cámara de Comercio e Industria de Ámsterdam (*Kamer van Koophandel en Fabrieken voor Amsterdam*) con número 34133556 y con número de identificación fiscal N-0032922-G (en lo sucesivo, "**Holding**").

Representada por Don JUAN PELEGRÍ Y GIRÓN, mayor de edad, con domicilio a estos efectos en la Calle Hernández de Tejada, número 1, 28027 Madrid; con Documento Nacional de Identidad número 01489996-X.

Hace uso de las facultades, vigentes según afirma, a su favor conferidas el día siete de septiembre de dos mil doce, ante el Notario de Ámsterdam, Don Kjell Stelling.

**A.2.- CEMEX, S.A.B. DE C.V.**, entidad de nacionalidad mexicana, con domicilio social en Ciudad de Monterrey, N.L. (México), en la Avenida Constitución, número 444, Poniente, Zona Centro, inscrita en Registro Federal de Contribuyente con número CEM-880726-UZA y con número de identificación fiscal N-4121454-E (en lo sucesivo, "**Parent**").

Representada por Don JUAN PELEGRI Y GIRÓN, mayor de edad, con domicilio profesional a estos efectos en la Calle Hernández de Tejada, número 1, 28027 Madrid; con Documento Nacional de Identidad número 01489996-X y por Don FRANCISCO JAVIER GARCÍA RUIZ DE MORALES, casado, de nacionalidad española, mayor de edad, provisto de Documento Nacional de Identidad número 09772997-K, en vigor, y domicilio a efectos profesionales en Calle Hernández de Tejada, número 1, 28027 Madrid, como apoderados.

**ON THE ONE HAND,**

**A.1.- NEW SUNWARD HOLDING B.V.,** a company duly incorporated under the laws of The Netherlands, with registered offices at Amsteldijk 166, 1079LH Amsterdam, The Netherlands, registered with the Chamber of Commerce and Industries for Amsterdam (*Kamer van Koophandel en Fabrieken voor Amsterdam*) under the number 34133556 and with tax identification number N-0032922-G (hereinafter, "**Holding**").

Represented by Mr. JUAN PELEGRI Y GIRÓN, legal age, domiciled for these purposes at Calle Hernández de Tejada, número 1, 28027 Madrid; bearer of DNI number 01489996-X.

He appears by virtue of existing powers, currently in force, granted in his favour the seventh of September of two thousand and twelve, before the Notary of Amsterdam, Mr Kjell Stelling.

**A.2.- CEMEX, S.A.B. DE C.V.**, an entity duly incorporated under the laws of Mexico with registered offices at Ciudad de Monterrey, N.L. (México), Avenida Constitución, 444, Poniente, Zona Centro, registered with the Federal Registry under the number CEM-880726-UZA and with tax identification number N-4121454-E (hereinafter, "**Parent**").

Represented by Mr. JUAN PELEGRI Y GIRÓN, legal age, domiciled for these purposes at Calle Hernández de Tejada, 1, 28027 Madrid; bearer of DNI number 01489996-X; and Mr. FRANCISCO JAVIER GARCÍA RUIZ DE MORALES, married, of Spanish nationality, of legal age, bearer of DNI number 09772997-K currently in force, with professional address at Calle Hernández de Tejada, 1, 28027 Madrid, acting as attorneys.

Hacen uso de las facultades vigentes, según afirman a su favor conferidas, mediante escritura otorgada en San Pedro Garza García, Nuevo León, Estados Unidos Mexicanos, el día dieciséis de agosto de dos mil doce, ante el Notario Don Ignacio Gerardo Martínez González, bajo el número 5698.

En lo sucesivo, Holding y Parent, conjuntamente, los "**Pignorantes**", y cada uno de ellos, indistintamente, el o un "**Pignorante**".

They appear by virtue of existing powers, currently in force, granted in their favour, by virtue of a deed issued in San Pedro Garza García, Nuevo León, Mexico, on sixteenth August two thousand and twelve, granted before the Notary Mr. Ignacio Gerardo Martínez González, under number 5698.

Hereinafter, Holding and Parent shall be jointly referred to as the "**Pledgors**", and each of them, individually, as a "**Pledgor**".

**DE OTRA PARTE,**

**A.3.- CEMEX ESPAÑA, S.A.**, entidad de nacionalidad española, con domicilio social en Hernández de Tejada 1, 28027, Madrid, con número de identificación fiscal A-46004214 e inscrita en Registro Mercantil de Madrid al Tomo 9.743 y 9.744, página 1 y 166, sección 8, hoja M-156542 (en lo sucesivo, "**Cemex España**" o la "**Sociedad**").

Representada por Don JUAN PELEGRI Y GIRÓN, mayor de edad, con domicilio a estos efectos en la Calle Hernández de Tejada, número 1, 28027 Madrid; con Documento Nacional de Identidad número 01489996-X.

Hace uso de las facultades, vigentes según firma, a su favor conferidas mediante la escritura pública otorgada por CEMEX ESPAÑA, S.A. ante el Notario de Madrid, Don Rafael Monjo Carrió con el número 1.639 de su orden de protocolo.

**ON THE OTHER HAND,**

**A.3.- CEMEX ESPAÑA, S.A.**, a company incorporated under the laws of Spain, with registered office at Hernández de Tejada 1, 28027, Madrid (Spain), with Tax Identification Number A-46004214 and registered with the Commercial Registry of Madrid, in volume 9,743 and 9,744, sheet 1 and 166, section 8, page no. M-156542 (hereinafter, "**Cemex España**" or the "**Company**").

Represented by Mr. JUAN PELEGRI Y GIRÓN, legal age, domiciled for these purposes at Calle Hernández de Tejada, 1, 28027 Madrid; bearer of DNI number 01489996-X.

He appears by virtue of existing powers, currently in force, conferred in his favour by virtue of the public deed granted by CEMEX ESPAÑA, S.A. before the Notary Public of Madrid, Mr. Rafael Monjo Carrió under the number 1,639 of his official records.

**DE OTRA PARTE,**

**B.1.-** Las entidades referidas en el **Anexo 2** (los "**Trustees de los Bonistas**") en virtud de los correspondientes apoderamientos.

**ON THE OTHER HAND,**

**B.1.-** The entities referred to in **Annex 2** (the "**Noteholders Trustees**") by virtue of the relevant powers of attorney.

**Y DE OTRA PARTE,**

**C.1.-** Las entidades referidas en el **Anexo 1.A** del presente Contrato (los "**Acreedores Originales**").

**AND ON THE OTHER HAND,**

**C.1.-** The entities referred to in **Annex 1.A** hereto (the "**Original Creditors**").

**C.2.- WILMINGTON TRUST (LONDON) LIMITED**, entidad constituida de conformidad con las leyes de Inglaterra y Gales, con domicilio social en Third Floor, 1 King's Arms Yard, Londres EC2R 7AF, inscrita en el Registro de Sociedades con número 05650152 (en lo sucesivo, el "**Agente de Garantías**").

Representada por D. EMILIO DURÁN APRAIZ, mayor de edad, de nacionalidad española, con domicilio profesional a estos efectos en Calle Almagro 16-18, 28010, Madrid, con DNI número 72.074.121-X, en vigor.

Hace uso de las facultades, vigentes según afirma, a su favor conferidas en virtud de poder otorgado el 6 de noviembre de 2012, ante Don Edward Gardiner, Notario con ejercicio en Londres, debidamente apostillado.

El Agente de Garantías actúa en el presente Contrato en su propio nombre y derecho y, asimismo por cuenta y en beneficio de los Acreedores Originales y de las restantes Partes Garantizadas (tal y como se definen más adelante) en virtud del Contrato de Relación entre Acreedores (tal y como éste se define a continuación).

**C.3.- BANCO BILBAO VIZCAYA ARGENTARIA, S.A.**, entidad de crédito con domicilio en Bilbao, Plaza de San Nicolás número 4, y número de identificación fiscal A-48265169 (en lo sucesivo, el "**Depositario**").

Representada por DON JULIÁN RINCÓN MARTÍNEZ, de nacionalidad española, mayor de edad, provisto de D.N.I. número 6582929-F, en vigor, y domicilio a efectos profesionales en Bilbao, Plaza de San Nicolás número 4, como apoderado, en virtud de la escritura de poder otorgada por el Depositario el 13 de octubre de 2004 ante el Notario de Madrid, D. Ramón Corral Beneyto con el número 3.985 de su protocolo.

La Sociedad comparece en este acto a los efectos de darse por notificada de las Prendas constituidas en virtud del presente Contrato.

**C.2.- WILMINGTON TRUST (LONDON) LIMITED**, an entity duly incorporated under the laws of England and Wales with registered offices at Third Floor, 1 King's Arms Yard, London EC2R 7AF, registered with the Companies Home under the number 05650152 (hereinafter, the "**Security Agent**").

Represented by Mr. EMILIO DURÁN APRAIZ, of legal age, of Spanish nationality, with professional address at Calle Almagro 16-18, 28010, Madrid and bearer of Spanish ID Card number 72.074.121-X, currently in force.

He appears by virtue of existing powers, currently in force, granted in his favour on 6 November 2012 before Mr. Edward Gardiner, Notary public practicing in London, and duly apostilled.

The Security Agent acts in this Agreement in its own name and on its own behalf and, in addition for the Original Creditors, and of the remaining Secured Parties (as defined below) by virtue of the Intercreditor Agreement (as this term is defined below).

**C.3.- BANCO BILBAO VIZCAYA ARGENTARIA, S.A.**, a credit entity duly with registered offices at Bilbao, Plaza de San Nicolás, 4, Spain, registered with Tax Identification Number A-48265169 (hereinafter, the "**Custodian**").

Represented by MR. JULIÁN RINCÓN MARTINEZ, of Spanish nationality, of legal age, bearer of D.N.I. number 6582929-F currently in force, with professional address at Bilbao, Plaza de San Nicolás, 4, acting as attorney, by virtue of the public deed granted by the Custodian on 13 October 2004 before the Notary Public of Madrid, Mr. Ramón Corral Beneyto under number 3,985 of his official records.

The Company appears in this act for the purposes of acknowledging the granting of the Pledges created by virtue of this Agreement.

Las entidades enumeradas anteriormente serán denominadas, conjuntamente, como las "**Partes**".

The entities listed above shall be jointly referred to as the "**Parties**".

**EXPONEN**

**I.** Que la Sociedad (tal y como este término se define a continuación) y los Pignorantes forman parte del Grupo CEMEX (en lo sucesivo, el "**Grupo**"), cuya matriz es Parent.

**II.** Que Parent ha suscrito, en el marco de un proceso de refinanciación de la deuda del Grupo, un contrato sometido a Derecho inglés denominado "*Facilities Agreement*" suscrito con fecha 17 de septiembre de 2012, elevado a público en la presente fecha ante el Notario de Madrid, D. Rafael Monjo Carrió (en lo sucesivo, el "**Contrato de Financiación**") con los Acreedores Originales de los que Wilmington Trust (London) Limited actúa como Agente de Garantías, y del que también son parte, entre otros, una serie de compañías del Grupo en su condición de "*Original Borrowers*", "*Original Guarantors*" y "*Original Security Providers*", quienes también son parte, respectivamente (tal y como estos términos se definen en el Contrato de Financiación).

De acuerdo con la Cláusula 25 (*Changes to the Creditors*) y con la Cláusula 27 (*Changes to the Obligors*) del Contrato de Financiación, respectivamente, podrán adherirse al Contrato de Financiación nuevos Acreedores así como "*Guarantors*" adicionales.

**III.** El Contrato de Financiación incluye en su Parte II del Anexo 1 una lista de los Acreedores Originales (*The Original Creditors*) con sus respectivas Exposiciones (*Exposures*).

**IV.** Que, entre otros, los "*Original Facilities Agreement Creditors*", el Agente de Garantías, Parent, y ciertas compañías del Grupo como "Original Borrowers", "Original Guarantors", los "*Intra-Group Lenders*" y "Original Security Providers" (según sea el caso), han suscrito con fecha 17 de septiembre de 2012 un contrato de relación entre acreedores denominado

**WHEREAS**

**I.** That the Company (as this term is defined below) and the Pledgors are part of the CEMEX Group (hereinafter, the "**Group**"), the parent company of which is Parent.

**II.** That the Parent, in connection with a debt refinancing in respect of the Group, has entered into an English law governed facilities agreement executed on 17 September 2012, raised to the status of Spanish public document on the date hereof before the Notary of Madrid, Mr. Rafael Monjo Carrió (hereinafter, the "**Facilities Agreement**"), with the Original Creditors amongst which Wilmington Trust (London) Limited acts as Security Agent, and to which a number of companies within the Group including the Pledgors and the Company, in their capacity as Original Borrowers, Original Guarantors and Original Security Providers, who are also signatories, respectively (as each of these terms is defined in the Facilities Agreement).

Pursuant to Clause 25 (*Changes to the Creditors*) and Clause 27 (*Changes to the Obligors*) of the Facilities Agreement, respectively, it is anticipated that additional Creditors and additional Guarantors may accede to the Facilities Agreement.

**III.** The Facilities Agreement includes as Schedule 1 Part II a list of the Original Creditors together with their Exposures.

**IV.** That, among others, the Original Facilities Agreement Creditors, the Security Agent, Parent and certain companies of the Group defined therein as the Original Borrowers, Original Guarantors, the Intra-Group Lenders and Original Security Providers (as the case may be), have entered into an intercreditor agreement executed on 17 September 2012, raised to the status of Spanish public

"Intercreditor Agreement", elevado a público en la presente fecha ante el Notario de Madrid, D. Rafael Monjo Carrió (en lo sucesivo, el "**Contrato de Relación entre Acreedores**").

De acuerdo con la Cláusula 14 del Contrato de Relación entre Acreedores (*Changes to the Parties*), podrán adherirse al mismo nuevas partes de acuerdo con el procedimiento y las formalidades previstas en la citada cláusula.

Además, existe la intención de que los Acreedores de la Refinanciación (*Refinancing Creditors*), Acreedores de los Bonos Adicionales (*Additional Notes Creditors*) y Trustee de los Bonos Adicional (*Additional Notes* Trustee) obtengan el beneficio de las Prendas (tal y como se definen posteriormente) mediante su adhesión al presente Contrato conforme a lo dispuesto en la Estipulación 16.

Se adjunta como **Anexo 3** al presente Contrato una copia del Contrato de Relación entre Acreedores.

**V.** Que los Pignorantes son legítimos propietarios de las acciones que se detallan a continuación de Cemex España:

- Holding es titular de 1.320.213.703 acciones de 1,17 euros de valor nominal cada una (en lo sucesivo, las "**Acciones Holding**"), representativas del 99,4847% del capital social de la Sociedad. Las Acciones Holding están libres de cargas y gravámenes de cualquier tipo, conforme se acredita en el certificado de legitimación (en lo sucesivo, el "**Certificado de Legitimación Acciones Holding**") expedido el 7 de noviembre de 2012 por el Depositario actualmente encargado del registro contable de las Acciones Holding (en lo sucesivo, el "**Registro Acciones Holding**").

- Parent es titular de 2.050.000 acciones de 1,17 euros de valor nominal cada una (en lo sucesivo, las "**Acciones Parent**"), representativas del 0,1545% del capital social de la Sociedad. Las Acciones Parent están libres de cargas y gravámenes de cualquier tipo, conforme

document on the date hereof before the Notary of Madrid, Mr. Rafael Monjo Carrió (hereinafter, the "**Intercreditor Agreement**").

Pursuant to Clause 14 of the Intercreditor Agreement ( *Changes to the Parties*), new parties may accede to the same in accordance with the procedure and formalities set out thereunder.

In addition, it is intended that the Refinancing Creditors, Additional Notes Creditors and Additional Notes Trustee shall have the benefit of the Pledges (as defined below) by acceding to this Agreement pursuant to Clause 16.

A copy of the Intercreditor Agreement is attached herewith as **Annex 3.**

**V.** The Pledgors are the legitimate owners of the shares detailed below of Cemex España:

- Holding owns 1,320,213,703 shares of 1.17 euro par value each (hereinafter, the "**Holding Shares**"), which represent 99.4847% of the share capital of the Company. The Shares are free and clear of any lien or encumbrance whatsoever, as evidenced by the ownership certificate (*certificado de legitimación*) (hereinafter, the "**Holding Shares Ownership Certificate**") issued on 7 November 2012 by the Custodian, managing company of the registry where the Shares are recorded (hereinafter, the "**Holding Shares Registry**").

- Parent owns 2,050,000 shares of 1.17 euro par value each (hereinafter, the "**Parent Shares**"), which represent 0.1545% of the share capital of the Company. The Parent Shares are free and clear of any lien or encumbrance whatsoever, as evidenced by the

se acredita en el certificado de legitimación (en lo sucesivo, el "**Certificado de Legitimación Acciones Parent**") expedido el 7 de noviembre de 2012 por el Depositario, entidad actualmente encargada del registro contable de las Acciones Parent (en lo sucesivo, el "**Registro Acciones Parent**").

En lo sucesivo, se hará referencia a las Acciones Holding y a las Acciones Parent, conjuntamente, como las "**Acciones**".

En lo sucesivo, se hará referencia al Certificado de Legitimación Acciones Holding y al Certificado de Legitimación Acciones Parent, conjuntamente, como los "**Certificados de Legitimación**".

En lo sucesivo, se hará referencia al Registro de Acciones Holding y al Registro de Acciones Parent, conjuntamente, como los "**Registros**".

**VI.** Que, a los efectos de garantizar las Obligaciones Garantizadas (tal y como este término se define en la Cláusula 1.2 siguiente), los Garantes Originales (*Original Guarantors*) y los Proveedores de Garantías Originales (*Original Security Providers*), entre los cuales se encuentran los Pignorantes, han acordado el otorgamiento de una serie de garantías personales y derechos reales a favor de las Partes Garantizadas (tal y como este término se define en la Cláusula 1.2 siguiente), entre ellas, en el caso de los Pignorantes, el otorgamiento de sendos derechos reales de prenda sobre las Acciones.

**VII.** En virtud de lo anterior, las Partes han acordado el otorgamiento de este Contrato de Prenda de Acciones (en lo sucesivo, el "**Contrato**") que se regirá por las siguientes

## ESTIPULACIONES

### 1. INTERPRETACIÓN Y DEFINICIONES

1.1 Salvo que en este documento se establezca lo contrario, los términos en mayúsculas que se incluyen en este Contrato tendrán el significado que a los mismos se atribuye en el Contrato de Financiación.

ownership certificate (*certificado de legitimación*) (hereinafter, the "**Parent Shares Ownership Certificate**") issued on 7 November 2012 by the Custodian, managing company of the registry where the Parent Shares are recorded (hereinafter, the "**Parent Shares Registry**").

Hereinafter, the Holding Shares and the Parent Shares shall be jointly referred to as the "**Shares**".

Hereinafter, the Holding Shares Ownership Certificate and the Parent Shares Ownership Certificate shall be jointly referred to as the "**Ownership Certificates**".

Hereinafter, the Holding Shares Registry and the Parent Shares Registry shall be jointly referred to as the "**Registries**".

**VI.** That, for the purposes of securing the Secured Obligations (as this term is defined in Clause 1.2 below), the Original Guarantors and the Original Security Providers, amongst which the Pledgors are included, have agreed to grant in favour of the Secured Parties (as defined in Clause 1.2 below), certain guarantees and security interests, including, in the case of the Pledgors, the granting of several rights *in rem* of pledges over the Shares.

**VII.** In light of the above, the Parties have agreed to enter into this Agreement of Pledge over Shares (hereinafter, the "**Agreement**") which shall be governed by the following

## CLAUSES

### 1. INTERPRETATION AND DEFINITIONS

1.1. Unless a contrary indication appears, capitalised terms included in this Agreement shall have the same meanings given to them in the Facilities Agreement.

Las Partes acuerdan y hacen constar que este Contrato no modifica los términos y condiciones del Contrato de Financiación o del Contrato de Relación entre Acreedores. Además, este Contrato quedará sujeto a los términos del Contrato de Relación entre Acreedores y, en caso de cualquier inconsistencia, el Contrato de Relación entre Acreedores prevalecerá entre las partes de este Contrato y del Contrato de Relación entre Acreedores y siempre que lo permita la ley aplicable.

The Parties hereby agree that this Agreement shall not in any way prejudice or affect the terms and conditions contained in the Facilities Agreement or the Intercreditor Agreement. Further, this Agreement shall be subject to the terms of the Intercreditor Agreement and in the event of any inconsistencies, the Intercreditor Agreement shall prevail amongst the parties hereto and thereto and as permitted by applicable law.

1.2 Adicionalmente, los siguientes términos tendrán el significado que a continuación se les asigna:

1.2. In addition, the following terms shall have the meaning ascribed to them below:

"**Obligaciones Garantizadas**" significa todas las Obligaciones (*Liabilities*) y todas las obligaciones presentes y futuras pendientes en cualquier momento, debidas o incurridas por cualquier miembro del Grupo y por cada uno de los Deudores (*Debtors*) a cualquier Parte Garantizada (*Secured Party*) bajo cada uno de los Documentos de Deuda (*Debt Documents*), tanto actuales como contingentes, incurridas de manera individual o conjunta, como obligación principal o accesoria de garantía o de cualquier otra forma (tal y como cada uno los términos anteriores se define en el Contrato de Relación entre Acreedores).

"**Secured Obligations**" means all the Liabilities and all other present and future obligations at any time due, owing or incurred by any member of the Group and by each Debtor to any Secured Party under each Debt Documents, both actual and contingent and whether incurred solely or jointly and as principal or surety or in any other capacity (as each of the terms above are defined in the Intercreditor Agreement).

"**Partes Garantizadas**" tendrá el significado que al mismo término se le otorga en el Contrato de Relación entre Acreedores.

"**Secured Parties**" shall have the meaning given to it in the Intercreditor Agreement.

"**Supuesto de Ejecución**" tendrá el significado que al mismo término se le otorga en el Contrato de Relación entre Acreedores.

"**Enforcement Event**" shall have the meaning given to it in the Intercreditor Agreement.

"**Grupo Instructor**" tendrá el significado que al mismo término se le otorga en el Contrato de Relación entre Acreedores.

"**Instructing Group**" shall have the meaning given to it in the Intercreditor Agreement.

"**Fecha de Cancelación**" significa la fecha en que las Garantías de la Operación (*Transaction Security*) (tal y como este término se define en el Contrato de Relación entre Acreedores) se liberen de conformidad con lo previsto en la Cláusula 9.2 del Contrato de Relación entre Acreedores.

"**Release Date**" means the date on which the Transaction Security (as defined in the Intercreditor Agreement) shall be released pursuant to Clause 9.2 of the Intercreditor Agreement.

"**Fecha de Liberación Final**" tendrá el significado que al mismo término se le otorga en el Contrato de Relación entre Acreedores.

"**Final Discharge Date**" shall have the meaning given to it in the Intercreditor Agreement.

## 2. CONSTITUCIÓN DE PRENDAS

2.1 En garantía del cumplimiento íntegro y puntual de cada una de las Obligaciones Garantizadas, los Pignorantes constituyen a favor de las Partes Garantizadas sendos derechos reales de prenda concurrentes de primer rango sobre las Acciones, que cada una de las Partes Garantizadas acepta en este acto en su propio nombre y derecho o a través del Agente de Garantías (en lo sucesivo, las "**Prendas**", y cada una de ellas, indistintamente, la o una "**Prenda**").

2.2 En este sentido, a efectos aclaratorios, se constituyen tantas Prendas como obligaciones se derivan a favor las Partes Garantizadas de cada uno de los Documentos de Deuda (*Debt Documents*) (tal y como este término se define en el Contrato de Relación entre Acreedores).

2.3 No se incluirán bajo la definición de Obligaciones Garantizadas obligaciones que, en el caso de ser incluidas, hiciesen que las prendas constituidas en virtud del presente Contrato, o parte de las mismas, fuesen nulas por dar lugar a un supuesto de asistencia financiera de conformidad con la Sección 2:98c o la Sección 2:207c del Código Civil holandés o cualesquiera otras normas aplicables sobre asistencia financiera bajo cualquier jurisdicción relevante (en lo sucesivo, la "**Prohibición**"), y todas las disposiciones de este Contrato deberán interpretarse consecuentemente. A efectos aclaratorios, este Contrato continuará garantizado aquellas obligaciones que, de ser incluidas bajo la definición de Obligaciones Garantizadas, no constituirían una violación de la Prohibición.

2.4 Cada una de las Prendas es independiente de las restantes y se regirá separadamente por las normas contenidas en las

## 2. CREATION OF PLEDGES

2.1 As security for the full and punctual performance of each of the Secured Obligations, the Pledgors hereby create in favour of the Secured Parties several first ranking concurrent pledges over the Shares, which the Secured Parties hereby accept in its own name and on its own behalf or through the Security Agent (hereinafter, the "**Pledges**", and each of them, individually, a "**Pledge**").

2.2 In this regard, for clarification purposes, the obligations arising from each of the Debt Documents (as defined in the Intercreditor Agreement) in favour of the Secured Parties is secured by a different Pledge created hereunder.

2.3. No obligations shall be included in the definition of Secured Obligations to the extent that, if they were included, the security interests granted pursuant to this Agreement or any part thereof would be void as a result of violation of the prohibition on financial assistance contained in Article 2:98c and 2:207c Dutch Civil Code or any other applicable financial assistance rules under any relevant jurisdiction (hereinafter, the "**Prohibition**") and all provisions hereof will be interpreted accordingly. For the avoidance of doubt, this Agreement will continue to secure those obligations which, if included in the definition of Secured Obligations, will not constitute a violation of the Prohibition.

2.4 Each of the Pledges is independent in its own right and shall each be governed separately by Clauses 2 to 18 of this

Estipulaciones 2 a 18 del presente Contrato. Las menciones que se hacen en este Contrato a las Obligaciones Garantizadas, a las Prendas (incluida su ejecución y cancelación) y a las Partes Garantizadas se entenderán hechas por separado en relación con cada una de las Prendas, si bien sólo cabrá la ejecución conjunta de todas las Prendas en los términos previstos en este Contrato y en el Contrato de Relación entre Acreedores.

Agreement. The references made in this Agreement to the Secured Obligations, the Pledges (including their enforcement and cancellation) and the Secured Parties shall be deemed to be made separately in regard to each of the Pledges, although it shall only be possible to jointly enforce all Pledges in accordance with the terms provided herein and in the Intercreditor Agreement.

## 3. OBLIGACIONES GARANTIZADAS. CARÁCTER INDIVISIBLE

3.1 Cada una de las Prendas constituida a favor de las Partes Garantizadas garantiza el íntegro y total cumplimiento de la totalidad de las correspondientes Obligaciones Garantizadas.

3.2 Cada una de las Prendas tiene el carácter de indivisible. En consecuencia, cada Prenda garantiza el íntegro cumplimiento de las correspondientes Obligaciones Garantizadas en su integridad sin que el cumplimiento parcial de las mismas suponga la cancelación proporcional de las Prendas correspondientes.

3.3 Las Partes Garantizadas podrán ejecutar las Prendas de forma independiente de cualquier otra garantía real o personal constituida en aseguramiento de las Obligaciones Garantizadas ahora o en el futuro, por lo que las Prendas podrán ser ejecutadas con carácter previo, simultáneo o posterior a cualquier otra garantía constituida a favor de las Partes Garantizadas.

## 3. SECURED OBLIGATIONS. INDIVISIBLE NATURE

3.1 Each of the Pledges created in favour of the Secured Parties secures the full and punctual performance of all the relevant Secured Obligations.

3.2 Each of the Pledges is of an indivisible nature. Consequently, each Pledge secures the punctual performance of the corresponding Secured Obligations in their entirety. Partial performance of the Secured Obligations will not entail the proportional cancellation of the relevant Pledges.

3.3 The Secured Parties may enforce the Pledges independently of any other personal guarantee or rights *in rem* of pledges created or to be created for the purposes of securing the performance of the Secured Obligations. Consequently, the Pledges may be enforced previously, simultaneously or subsequently to the enforcement of any other guarantee created in favour of the Secured Parties.

## 4. DESPLAZAMIENTO POSESORIO

4.1 De conformidad con lo dispuesto en el artículo 10 de la Ley 24/1988, de 28 de julio, del Mercado de Valores, la inscripción de las Prendas en las correspondientes cuentas de los Registros equivaldrá al desplazamiento posesorio de las Acciones.

4.2 El Depositario, mediante su comparecencia en el presente Contrato, se da por notificado del otorgamiento del presente Contrato y:

## 4. DELIVERY OF THE POSSESSION

4.1 In accordance with Article 10 of the Law 24/1988, dated 28 July, on the Securities Market, the recording of the Pledges in the corresponding accounts of the Registries will be equivalent to the delivery of possession of the Shares.

4.2 The Custodian, by means of is appearance as a party to this Agreement, acknowledges the execution of this Agreement and:

4.2.1 se compromete a inscribir en el día de hoy la constitución de cada una de las Prendas en los correspondientes Registros de anotaciones en cuenta y proceder al desglose de las Acciones, inscripción que equivaldrá al desplazamiento posesorio de las Acciones de conformidad con lo previsto en el artículo 10 de la Ley 24/1988, de 28 de julio, del Mercado de Valores y en el artículo 13 del RD 116/1992;

4.2.1. hereby undertakes to record as at the date hereof the creation of each of the Pledges in the relevant book entries Registries. This recording shall be equivalent to the delivery of possession of the Shares pursuant to Article 10 of the Law 24/1988, dated 28 July, on the Securities Market and Article 13 of RD 116/1992;

4.2.2 se compromete a emitir nuevos certificados de legitimación en los que se acredite la constitución de las Prendas y su inscripción en los correspondientes Registros de anotaciones en cuenta (en lo sucesivo, los "**Certificados de Prendas**").

4.2.2 undertakes to issue new ownership certificates which evidence the creation of the Pledges as well as its registration with the relevant book entries Registries (hereinafter, the "**Pledges Certificates**").

4.3 El Depositario entrega en este acto al Agente de Garantías los Certificados de Legitimación originales (de los que una copia se adjunta a este Contrato como **Anexo 4**), que permanecerán en su poder hasta que proceda su sustitución por los Certificados de Prendas.

El Agente de Garantías se compromete a conservar y custodiar los Certificados de Prendas y a devolverlos a los Pignorantes inmediatamente después de la extinción y cancelación de las Prendas de acuerdo con lo dispuesto en la Cláusula 9 siguiente.

4.3 The Custodian hereby delivers to the Security Agent the original Legitimacy Certificates (a copy of which are attached hereto as **Annex 4**), and the Security Agent shall keep them until their substitution for the Pledges Certificates.

The Security Agent undertakes to safekeep the Pledges Certificates and to return them to the Pledgors immediately upon the cancellation of the Pledges in accordance with Clause 9 below.

## 5. EXTENSIÓN DE LAS PRENDAS

5.1 *Sustitución de activos*

Las Prendas se extenderán y comprenderán cualesquiera títulos, valores, activos (materiales o inmateriales) o fondos que sustituyan o correspondan a las Acciones en el caso de fusión, escisión, disolución, ampliación o reducción de capital, conversión o canje, transformación o cualesquiera otras operaciones societarias similares que afecten a la Sociedad o a las Acciones de manera que no disminuya el valor de las Prendas. Las referencias a las Acciones en este Contrato serán aplicables a los valores, activos o fondos que en el futuro las sustituyan o correspondan.

## 5. EXTENSION OF PLEDGES

5.1 *Replacement of assets*

The Pledges created herein shall extend to comprise any shares, securities, assets (tangible or intangible) or funds which substitute or correspond to the Shares in the event of merger, winding up, capital increase or reduction, conversion or share swap, transformation, de-merger or any other similar corporate transactions affecting the Company or the Shares such that the value of the Pledges does not decrease. Hereinafter, any reference to the Shares in this Agreement shall extend to comprise any right, securities, assets or funds that may correspond or in future substitute to the Shares.

Si como consecuencia de cualquiera de las operaciones referidas en el párrafo anterior las Prendas se extendieran a dinero o derechos de crédito convertibles en dinero, dicha cantidad se depositará en cuentas abiertas a nombre de los Pignorantes con la entidad o entidades señaladas por el Grupo Instructor (a través del Agente de Garantías) y quedará igualmente pignorada a favor de las Partes Garantizadas (en términos similares a los establecidos en el presente Contrato). En el supuesto de ejecución de las Prendas sobre el derecho de crédito de los Pignorantes al reintegro del saldo de la misma, la ejecución se efectuará mediante adjudicación directa a las Partes Garantizadas, por compensación con las Obligaciones Garantizadas pendientes de pago, a prorrata entre ellas, previa notificación fehaciente a los Pignorantes.

La extensión de las Prendas, en su caso, se realizará, a requerimiento del Agente de Garantías en virtud de las instrucciones escritas dadas por el Grupo Instructor, mediante el otorgamiento de los documentos públicos o privados que sean necesarios o convenientes atendiendo a la clase de garantía que proceda en función de la naturaleza del bien que sustituya a las Acciones. Los Pignorantes se comprometen a documentar dicha extensión en el plazo de treinta (30) días naturales desde que el Agente de Garantías le requiera.

En caso de que los Pignorantes no documenten la extensión de las Prendas en el plazo indicado, el Agente de Garantías estará facultado, haciendo uso de las facultades contenidas en los poderes irrevocables otorgados a su favor por los Pignorantes en esta misma fecha a estos efectos, para otorgar por sí solo dichos documentos (aunque ello implique autocontratación).

5.2 *Ampliaciones de capital*

En caso de que se lleve a cabo una ampliación de capital de acuerdo con lo previsto en el Contrato de Financiación,

If as a result of any transactions referred to in the preceding paragraph, the Pledges extend to cash or credit rights convertible into cash, the relevant amount shall be deposited in accounts opened by the Pledgors with the entity or entities appointed by the Instructing Group (through the Security Agent) and shall remain pledged in favour of the Secured Parties (in similar terms to those contained herein). Should any of the Pledges over the credit right to the reimbursement of the cash be enforced, the enforcement will take place by means of the set off of the relevant amount, which shall be directly allocated to the Secured Parties against the Secured Obligations outstanding, on a pro rata basis, provided that prior notice has been served to the Pledgors.

The extension of the Pledges, if applicable, shall be made at the request of the Security Agent on written instructions of the Instructing Group, by means of the execution of public or private documents as may be necessary or desirable in light of the type of guarantee to be granted pursuant to the nature of the asset that replaces the Shares. The Pledgors undertake to grant as many documents as may be necessary for the purposes of extending the Pledges within thirty (30) calendar days following receipt of a written request from the Security Agent for such purposes.

In the event that such documents are not granted within the above referred deadline, the Security Agent shall be entitled to grant the same in the name and on behalf of the Pledgors exercising the faculties conferred under the irrevocable powers of attorney granted by the Pledgors on the date hereof in favour of the Security Agent (even if this implies self-contracting).

5.2 *Increase of share capital*

In the event that a capital share increase is made in accordance with the Facilities Agreement, the Pledgors shall inform the

los Pignorantes informarán al Agente de Garantías por escrito con al menos cinco (5) Días Hábiles de antelación a la fecha prevista de celebración de junta general de accionistas en la que se vaya a votar o aprobar, según sea el caso, una ampliación de capital de la Sociedad y le remitirán por correo certificado copia de la escritura de ampliación de capital tan pronto como reciban del Notario copia de la citada escritura.

Los Pignorantes se comprometen a realizar todos los actos y formalizar cuantos documentos sean necesarios para que las Prendas se extiendan a las nuevas acciones de la Sociedad emitidas y suscritas por el Pignorante, con objeto de que el valor de las Prendas (en términos de porcentaje de participación en el capital) no disminuya, permaneciendo en todo momento pignorado el 99,6392%% del capital social de la Sociedad.

La extensión de las Prendas se documentará en documento de prenda complementario otorgado por los Pignorantes ante Notario en el plazo de treinta (30) días naturales a partir de la fecha de inscripción del aumento de capital en el Registro Mercantil, y se inscribirá en las correspondientes cuentas de los Registros.

En caso de que los Pignorantes no documenten y/o formalicen la extensión de las Prendas en el plazo indicado, el Agente de Garantías estará facultado, haciendo uso de las facultades contenidas en los poderes irrevocables otorgados a su favor por los Pignorantes en esta misma fecha a estos efectos, para otorgar por sí solo dichos documentos (aunque ello implique autocontratación).

Security Agent in writing at least five (5) Business Days in advance of the date on which a general shareholders meeting, in which that increase of share capital is to be considered or approved, is to be held and shall send the Security Agent, through registered mail, a copy of the deed of increase of share capital as soon as the Pledgors receive it from the relevant Notary.

The Pledgors undertake to do all things and execute all documents as may be necessary in order for the Pledges to be extended to such newly-issued shares of the Company subscribed by the Pledgor, in order to avoid a decrease in the value of the Pledges (as referred to a percentage in the share capital), so that 99.6392%% of the share capital of the Company is pledged at all times.

The extension of the Pledges shall be documented by a supplementary pledge document granted by the Pledgors before a Spanish Notary within thirty (30) calendars days following the date of registration of the capital increase with the Mercantile Registry, and shall be recorded with the corresponding accounts of the Registries.

In the event that such documents are not granted and/or the extension is not perfected within the above referred deadline, the Security Agent shall be entitled to grant the same in the name and on behalf of the Pledgors exercising the faculties conferred under the irrevocable powers of attorney granted by the Pledgors on the date hereof in favour of the Security Agent (even if this implies self-contracting).

## 6. INDISPONIBILIDAD DE LAS ACCIONES

De conformidad con el artículo 21 del RD 116/1992, y sujeto a cualesquiera operaciones permitidas bajo el Contrato de Financiación, en tanto subsistan las Prendas sobre las Acciones éstas permanecerán inmovilizadas y los Pignorantes no podrán, sin el previo consentimiento del Agente de Garantías,

## 6. NON DISPOSAL OF THE SHARES

In accordance with Article 21 of RD 116/1992, for so long as any of the Pledges over the Shares is in force, the Shares may not be transferred and, therefore, the Pledgors may not sell, transfer, encumber, levy or dispose of the Shares in any way or create any option right or restriction to the transmission thereof without the express prior

actuando de acuerdo con las instrucciones del Grupo Instructor, venderlas, transmitirlas, gravarlas o disponer de ellas de cualquier otra manera, ni constituir ningún derecho de opción o restricción a su libre transmisibilidad, todo ello salvo en el supuesto de que esté permitido de acuerdo con lo previsto en el Contrato de Financiación.

written consent of the Security Agent acting on the instructions of the Instructing Group, unless it is otherwise permitted in accordance with the terms of the Facilities Agreement.

**7. EJERCICIO DE LOS DERECHOS INCORPORADOS A LAS ACCIONES**

7.1 Los siguientes derechos seguirán siendo ejercidos por el Pignorante:

7.1.1 los derechos políticos o de voto en relación con las Acciones; y

7.1.2 los derechos económicos correspondientes a las Acciones (incluyendo dividendos, intereses, frutos o rendimientos de cualquier clase).

7.2 No obstante lo anterior, los Pignorantes no podrán, sin el previo consentimiento del Agente de Garantías, ejercer los derechos políticos correspondientes a las Acciones a favor de acuerdos que resulten (i) contrarios a lo dispuesto en el Contrato de Financiación y/o en el Contrato de Relación entre Acreedores; o (ii) en detrimento de los derechos conferidos a las Partes Garantizadas en virtud de las Prendas.

7.3 Desde el momento en que (i) se produzca un Supuesto de Ejecución y (ii) el Agente de Garantías, siguiendo las instrucciones necesarias de acuerdo con lo previsto en el Contrato de Relación entre Acreedores, así lo notifique al Pignorante, el ejercicio de los derechos correspondientes a las Acciones corresponderá a las Partes Garantizadas actuando a través del Agente de Garantías.

A los efectos anteriores, los Pignorantes se obligan a efectuar a la mayor brevedad posible cuantas actuaciones sean necesarias o convenientes para permitir el ejercicio de los derechos correspondientes a las Acciones por parte de las Partes Garantizadas de conformidad con lo establecido en el párrafo anterior.

**7. EXERCISE OF THE RIGHTS ATTACHED TO THE SHARES**

7.1 The following rights shall remain with the Pledgor:

7.1.1 the voting rights attached to the Shares; and

7.1.2 the economic rights attached to the Shares (including, dividends, interests or any other return).

7.2 Notwithstanding the above, the Pledgors may not exercise, without the prior consent of the Security Agent, the voting rights attached to the Shares for the purposes of passing resolutions that are (i) contrary to the provisions of the Facilities Agreement and/or the Intercreditor Agreement; or (ii) detrimental to the rights conferred upon the Secured Parties hereunder.

7.3 Upon (i) the occurrence of an Enforcement Event and (ii) the service of a notice to that purpose sent by the Security Agent, following the instructions required pursuant to the Intercreditor Agreement to the Pledgor, the Secured Parties, acting through the Security Agent, shall be entitled to exercise all rights attached to the Shares.

For the above purposes, the Pledgors undertake to promptly perform as many actions as may be necessary or desirable in order to allow the exercise of the rights attached to the Shares by the Secured Parties in accordance with the preceding paragraph.

**8. DECLARACIONES DE LOS PIGNORANTES**

8.1 Los Pignorantes declaran y manifiestan a favor de las Partes Garantizadas:

8.1.1 Que la Sociedad es una sociedad existente y válidamente constituida en España y está inscrita en el Registro Mercantil de Madrid.

8.1.2 Que el Depositario es la entidad encargada de los Registros de las Acciones.

8.1.3 Que tienen capacidad para suscribir y cumplir el presente Contrato y han realizado todas las actuaciones necesarias para autorizar el otorgamiento y cumplimiento del mismo.

8.1.4 Que los derechos reales de prenda constituyen obligaciones válidas de los Pignorantes, exigibles frente a los mismos con arreglo a lo dispuesto en este Contrato.

8.1.5 Que la aceptación y cumplimiento por los Pignorantes de las obligaciones contempladas en este Contrato: (a) no contraviene ningún mandato o decisión judicial o administrativa; (b) no entra en conflicto con sus escrituras de constitución o sus estatutos o los de la Sociedad; (c) no se opone a ningún documento, acuerdo o contrato que sea vinculante para los Pignorantes ni para la Sociedad ni (d) requiere autorización, consentimiento, licencia o permiso.

8.1.6 Los Pignorantes ostentan legítimamente la plena propiedad de las Acciones identificadas en el Expositivo V de este Contrato y tienen pleno poder de disposición sobre las mismas.

8.1.7 Que las Acciones: (a) no están sometidas a ninguna carga, gravamen o derecho de opción de

**8. REPRESENTATIONS OF THE PLEDGORS**

8.1 The Pledgors represent in favour of the Secured Parties:

8.1.1 That the Company exists and is validly incorporated under the laws of Spain and is registered with the Mercantile Registry of Madrid.

8.1.2 That the Custodian is the managing company of the Registries where the Shares are recorded.

8.1.3 That they have the capacity to execute this Agreement and all necessary actions to authorise the execution and performance of this Agreement have been obtained.

8.1.4 That the rights *in rem* of pledges constitute valid and binding obligations to the Pledgors, in accordance with the terms of this Agreement.

8.1.5 That the acceptance and performance by the Pledgors of the obligations set out hereunder: (a) does not contravene any judicial or administrative order or decision; (b) does not contravene their constitutional documents or the Company's in any respect; (c) does not oppose to any document, agreement or contract binding for the Pledgors or the Company; and (d) does not require any authorisation, consent, licence or permit.

8.1.6 The Pledgors are the owners of the Shares identified in Recital V of this Agreement and have the full title to dispose of their respective Shares.

8.1.7 That the Shares: (a) are free from any lien, encumbrance, option right or statutory or contractual restriction to

compra o de venta o restricción estatutaria o contractual a su libre transmisibilidad; (b) han sido válidamente emitidas por la Sociedad; y (c) están plenamente suscritas y completamente desembolsadas.

8.1.8 Sujeto a la aceptación por parte de las Partes Garantizadas, mediante este Contrato se otorgan derechos reales de prenda de primer rango sobre las Acciones a favor de las Partes Garantizadas en garantía de las Obligaciones Garantizadas.

8.1.9 Que las Acciones pignoradas representan el 99,6392% del capital social de la Sociedad.

**9. EXTINCIÓN DE LAS PRENDAS**

9.1 Las Prendas quedarán automáticamente extinguidas y canceladas en la primera de las siguientes fechas (i) la Fecha de Liberación Final (*Final Discharge Date*) (tal y como este término se define en el Contrato de Relación entre Acreedores), o (ii) la Fecha de Cancelación.

9.2 De acuerdo con la Cláusula 9.2 del Contrato de Relación entre Acreedores, el Agente de Garantías, en nombre de las Partes Garantizadas, deberá, dentro de los diez (10) Días Hábiles siguientes a la Fecha de Cancelación, cancelar todas las Prendas creadas en virtud de este Contrato y deberá realizar todos los actos que sean precisos o convenientes a los efectos de cancelar las Prendas, incluyendo, a título enunciativo, (i) devolver a los Pignorantes los Certificados de Prendas (o cualesquiera certificados que los hayan sustituido) y (ii) notificar al Depositario a los efectos de que pueda inscribirse en los Registros la cancelación de las Prendas.

**10. VENCIMIENTO Y EJECUCIÓN**

10.1 Sujeto a los términos de este Contrato y del Contrato de Relación entre Acreedores, las Prendas podrán ejecutarse al acaecer un Supuesto de Ejecución siempre que el mismo sea continuado y haya una cantidad vencida y exigible, en

their transmission; (b) have been validly issued by the Company; and (c) are fully subscribed and paid up.

8.1.8 Subject to acceptance by the Secured Parties, first ranking pledges over the Shares are created in favour of the Secured Parties as security for the performance of the Secured Obligations.

8.1.9 That the pledged Shares represent the 99.6392% of the share capital of the Company.

**9. TERMINATION OF THE PLEDGES**

9.1 The Pledges shall be automatically terminated and cancelled on the earlier of (i) the Final Discharge Date (as defined in the Intercreditor Agreement) or (ii) the Release Date.

9.2 In accordance with Clause 9.2 of the Intercreditor Agreement, the Security Agent, on behalf of the Secured Parties, shall within ten (10) Business Days following the Release Date release all of the Pledges created under this Agreement and shall do all such acts as may be necessary or desirable to effect the termination and/or cancellation of the Pledges, including, but not limited to, (i) returning to the Pledgors the Pledges Certificates (or any replacement thereof) and (ii) notifying the Custodian in order that such cancellation may be recorded in the Registries accordingly.

**10. MATURITY AND ENFORCEMENT**

10.1 Subject to the terms and conditions of this Agreement and the Intercreditor Agreement, the Pledges may be enforced upon the occurrence of an Enforcement Event and for so long as it is continuing and there is an amount owing, due and payable,

cuyo caso el Agente de Garantías, siguiendo instrucciones del Grupo Instructor (*Instructing Group*) (tal y como este término se define en el Contrato de Relación entre Acreedores), estará facultado para ejecutar las Prendas.

in which case the Security Agent, following instructions from the Instructing Group (as this term is defined in the Intercreditor Agreement), shall be entitled to enforce the Pledges.

10.2 Acaecido un Supuesto de Ejecución, el Agente de Garantías no podrá entablar ninguna acción a los efectos de ejecución contra las Acciones salvo que haya sido expresamente instruido por escrito para ello por el Grupo Instructor (*Instructing Group*), o de otro modo de conformidad con los términos del Contrato de Relación entre Acreedores, y para el ejercicio de la acción real pignoraticia, las Partes Garantizadas podrán entablar, a su elección y a través del Agente de Garantías, cualquiera de los procedimientos que legalmente les asistan, entre ellos, los judiciales ordinarios, declarativos o de ejecución o el extrajudicial previsto en el artículo 1872 del Código Civil, así como el procedimiento previsto en los artículos 11 y siguientes del Real Decreto-Ley 5/2005, de 11 de marzo de 2005 (en lo sucesivo, el "**RDL 5/2005**"), sin que la utilización de una vía suponga la renuncia al ejercicio de las otras, en tanto las Obligaciones Garantizadas no hayan sido cumplidas en su integridad.

10.2 Following an Enforcement Event, the Security Agent shall not take any enforcement action against the Shares unless expressly instructed to do so in writing by the Instructing Group (as such term is defined in the Intercreditor Agreement) or otherwise in accordance with the terms of the Intercreditor Agreement, and for the purposes of the enforcement of the Pledges, the Secured Parties may, through the Security Agent, initiate upon their election, any of the legal proceedings available for the enforcement of the Pledges, including the ordinary or executive judicial proceedings or the non-judicial proceeding set forth in Article 1872 of the Civil Code, and also the procedure set out in Articles 11 and subsequent of Royal Decree-Law 5/2005, of 11 March 2005 (hereinafter, the "**RDL 5/2005**"), it being understood that the election of any of the above proceedings does not limit the possibility of electing any of the other proceedings, if the Secured Obligations have not been fully discharged.

10.3 A los efectos de la ejecución de las Prendas (por cualquiera de estos procedimientos), las Partes acuerdan que el importe de la deuda líquida, vencida y exigible será la cantidad especificada en la certificación que emita el Agente Administrativo (*Administrative Agent*), de conformidad con el artículo 572.2 de la Ley de Enjuiciamiento Civil en la que conste el saldo adeudado por razón de las Obligaciones Garantizadas, de conformidad con lo previsto en la Cláusula 34 del Contrato de Financiación.

10.3 For the purposes of the enforcement of the Pledges (by any of the relevant procedures), the Parties agree that any amount due and payable in the event of enforcement of the Pledges shall be the amount indicated in the certificate issued by the Administrative Agent pursuant to Article 572.2 of the Spanish Law of Civil Procedure, reflecting the balance owed under the Secured Obligations, in accordance with the provisions of Clause 34 of the Facilities Agreement.

10.4 Para el caso de que las Partes Garantizadas, a través del Agente de Garantías, decidan seguir el procedimiento de ejecución previsto en el RDL 5/2005, las Partes acuerdan expresamente lo siguiente:

10.4.1 De acuerdo con el artículo 12 del RDL 5/2005 para el inicio del procedimiento de ejecución, el Agente de Garantías deberá remitir un requerimiento de ejecución (en lo sucesivo, el "**Requerimiento de Ejecución**") al Depositario, en el que se indiquen:

(i) los datos del Contrato de Financiación, incluyendo nombre, fecha, tipo, datos de sus partes y la manifestación de que se ha producido una causa de resolución anticipada del mismo o el motivo por el que se resuelve, se declara el vencimiento anticipado y se liquidan las Obligaciones Garantizadas;

(ii) el importe al que asciende la deuda bajo las Obligaciones Garantizadas;

(iii) el nombre y datos del Depositario; y

(iv) la orden de enajenación de las Acciones o la orden de traspaso libre de pago de las Acciones a la cuenta del Agente de Garantías.

El Depositario comprobará la identidad del acreedor y la capacidad del firmante del requerimiento y adoptará las medidas necesarias para enajenar o transmitir las Acciones con la intervención de un notario o a través de una sociedad de valores, agencia de valores o entidad de crédito de acuerdo con la Disposición Adicional Tercera de la Ley 24/1988, de 28 de julio, del mercado de valores, tal y como la misma ha sido modificada.

10.4.2 El valor de las Acciones a los efectos de la ejecución de las Prendas será su valor de mercado (en lo sucesivo, el "**Valor de**

10.4 In the event that the Secured Parties, through the Security Agent, decide to follow the special enforcement proceedings set forth in RDL 5/2005, the following is agreed:

10.4.1 In accordance with article 12 of RDL 5/2005, for the commencement of the enforcement proceeding the Security Agent shall send an enforcement request (hereinafter, the "**Enforcement Request**") to the Custodian, which shall include the following:

(i) the relevant details of the Facilities Agreement, including name, date, type, information on the parties and a declaration that an early termination event has occurred or the reason for the termination, acceleration and settlement of the Secured Obligations;

(ii) the amount of the debt under the Secured Obligations;

(iii) the name and details of the Custodian; and

(iv) the order for the sale of the Shares or the order for the transfer (free of payment) of the Shares to the account of the Security Agent.

The Custodian shall check the identity of the creditor and the authority of the person signing the request, and shall take the necessary measures for the selling or transferring the Shares with the intervention of a notary or through a "*sociedad de valores*", "*agencia de valores*" or credit entity as per the Third Additional Provision of Law 24/1988, dated 28 July, on the securities market, as amended.

10.4.2 In the event of enforcement of the Pledges, the value of the Shares shall be their market value (hereinafter, the "**Enforcement**

**Ejecución**"). A estos efectos, el Valor de Ejecución será determinado por un banco de inversiones independiente y de prestigio internacionalmente reconocido que será designado por el Agente de Garantías (siguiendo instrucciones del Grupo Instructor) de entre los siguientes: Goldman Sachs, Rothschild, UBS, Nomura y Credit Suisse First Boston. El Banco de Inversiones seleccionado (en lo sucesivo, el "**Banco de Inversiones**") deberá ser independiente de los Pignorantes y de las Partes Garantizadas en el momento de determinación del Valor de Ejecución, debiendo confirmar a las Partes por escrito antes de aceptar su encargo que no está afectado por ningún conflicto de interés ni por cualquier otra circunstancia que pueda perjudicar su independencia para la determinación del Valor de Ejecución. El Banco de Inversiones seleccionado determinará el valor de mercado en el plazo máximo de quince (15) Días Hábiles a contar desde la aceptación del encargo. Cualesquiera costes que se deriven de la determinación del valor de las Acciones serán íntegramente asumidos por los Pignorantes. Los Pignorantes se comprometen incondicional e irrevocablemente a facilitar inmediatamente al Agente de Garantías toda aquella información financiera, comercial, jurídica o técnica necesaria para determinar el Valor de Ejecución.

Las Partes acuerdan expresamente que el Agente de Garantías podrá solicitar al Banco de Inversiones la determinación del Valor de

**Value**"). The Enforcement Value of the Shares shall be the value determined by an independent investment bank of internationally recognised standing which shall be appointed by the Security Agent (following the instructions of the Instructing Group) among the following: Goldman Sachs, Rothschild, UBS, Nomura and Credit Suisse First Boston. The appointed investment bank (hereinafter, the "**Investment Bank**") must be independent from the Pledgors and the Secured Parties at the time of determining the Enforcement Value, and must confirm in writing to the Parties that it is not affected by any conflict of interest or by any other circumstance which may prejudice its independence to determine the Enforcement Value. The appointed Investment Bank will issue its valuation within fifteen (15) working days from its acceptance. Any cost arising out from the valuation of the Shares shall be borne by the Pledgors. The Pledgors unconditionally and irrevocably undertake hereby to promptly provide the Security Agent with all financial, commercial, legal or technical information that is required to assess the Enforcement Value of the Shares.

The parties expressly agree that the Security Agent may request the Investment Bank to determine the Enforcement Value of the Shares at any time after an Enforcement Event occurs provided that prior notice to that effect has been served by the Security Agent following

Ejecución en cualquier momento desde la fecha en que se produzca un Supuesto de Ejecución siempre que el Agente de Garantías lo notifique previamente por escrito a los Pignorantes según las instrucciones del Grupo Instructor.

El Valor de Ejecución lo determinará el Banco de Inversión ponderando con arreglo a criterios aceptados comúnmente por la comunidad financiera internacional los resultados obtenidos a partir de los siguientes métodos: (i) valor liquidativo de la Sociedad y de su grupo consolidado; (ii) valor de las Acciones según el método de descuento de flujos de caja; (iii) valor de las Acciones según los métodos de múltiplos de compañías y transacciones comparables; y (iv) otros métodos de valoración aplicables al caso concreto y aceptados comúnmente por la comunidad financiera internacional.

10.4.3 Acaecido un Supuesto de Ejecución, y una vez el Valor de Ejecución haya sido determinado por el Banco de Inversiones, las Partes Garantizadas, a través del Agente de Garantías, podrán ejecutar las Prendas bien mediante la venta de las Acciones a cualquier tercero bien mediante la apropiación de las mismas, siendo el precio mínimo de venta o el valor de adjudicación el Valor de Ejecución que corresponda a las Acciones transmitidas.

10.4.4 Acaecido un Supuesto de Ejecución, el Agente de Garantías, aun en el caso de incurrir en autocontratación, podrá actuar, en virtud de los poderes irrevocables otorgados por los Pignorantes en esta misma fecha a estos efectos, como mandatario para representar a los Pignorantes en la enajenación de las Acciones en

instructions of the Instructing Group to the Pledgors.

The Enforcement Value will be determined by the Investment Bank weighing in accordance with criteria generally accepted by the international financial community the results obtained by using the following methods: (i) break-up value of the Company and of its consolidated group; (ii) value of the Shares pursuant to the discounted cash flows valuation method; (iii) value of the Shares pursuant to the company multiples and comparable transactions valuation methods; and (iv) any other applicable valuation method generally accepted by the international financial community.

10.4.3 After the occurrence of an Enforcement Event, and once the Enforcement Value has been determined by the Investment Bank, the Secured Parties, acting through the Security Agent, may enforce the Pledges by selling the Shares to any third party or by means of directly acquiring them. The minimum selling price shall be the Enforcement Value corresponding to the transferred Shares.

10.4.4 After the occurrence of an Enforcement Event, the Security Agent, even if it gives rise to self-contracting, and by virtue of the irrevocable powers of attorney granted on the date hereof by the Pledgors to these effects, shall be capable of acting as the attorney of the Pledgors for the purpose of the sale of the Shares in the condition of seller, as well as for the purposes

calidad de vendedor, así como para otorgar los documentos públicos o privados que puedan resultar necesarios para la formalización de la transmisión de las Acciones.

10.5 Para el caso de que se procediese a la ejecución de las Prendas por el procedimiento previsto en el artículo 1872 del Código Civil, las Partes acuerdan lo siguiente:

10.5.1 Los domicilios para requerimientos y notificaciones serán los que figuran en la Estipulación 12 siguiente.

10.5.2 El tipo mínimo para la primera subasta será, a elección del Grupo Instructor (*Instructing Group*) (tal y como este término se define en el Contrato de Relación entre Acreedores), el Valor de Ejecución (determinado conforme a lo establecido en la Estipulación 10.4 anterior). El tipo mínimo para la segunda subasta será el 75% del Valor de Ejecución.

Si las dos primeras subastas quedaran desiertas, las Partes Garantizadas podrán hacerse dueños de las Acciones, dando carta de pago por la cantidad debida bajo las Obligaciones Garantizadas correspondientes.

A solicitud del Agente de Garantías podrán celebrarse terceras y posteriores subastas, con iguales formalidades y sin sujeción a tipo.

10.5.3 El Agente de Garantías, en virtud de los poderes irrevocables otorgados por los Pignorantes en esta misma fecha a estos efectos, podrá actuar como mandatario para representar a los Pignorantes en la subasta de las Acciones, en calidad de vendedor y para que otorgue el correspondiente contrato de compraventa (incluso en documento público) a favor del adquirente, con facultades expresas de autocontratación.

of granting in its name and behalf any public or private documents which may be necessary for the formalisation of the transfer of the Shares.

10.5 In the event that the Original Creditors, acting through the Security Agent, decide to follow the enforcement proceedings set forth under article 1872 of the Civil Code, the following is agreed:

10.5.1 The domiciles for requests and notifications shall be those indicated in Clause 12 below.

10.5.2 The minimum bid price for the first auction shall be, at the option of the Instructing Group (as this term is defined in the Intercreditor Agreement), the Enforcement Value (determined in accordance with Clause 10.4 above). The minimum bid price for the second auction shall be the 75% of the Enforcement Value.

If no bids were presented in the first two auctions, the Secured Parties may become owners of the Shares, acknowledging receipt of payment of the amount owed under the relevant Secured Obligations.

At the request of the Security Agent, third and further auctions may take place with the same formalities and no initial bid price.

10.5.3 The Security Agent, by virtue of the irrevocable powers of attorney granted by the Pledgors on the date hereof for such purposes, shall be capable of acting as representative of the Pledgors in the auction of the Shares, as transferor, and to execute the notarial deed of transfer of the Shares in favour of the purchaser on behalf of the Pledgor.

10.5.4 Será Notario competente para la ejecución de las Prendas aquel Notario con residencia en Madrid capital que designe el Agente de Garantías.

A solicitud del Agente de Garantías podrán celebrarse distintas subastas que tengan por objeto distintos paquetes de Acciones.

Las subastas se anunciarán con diez (10) días naturales de anticipación a su celebración, debiendo mediar diez (10) días naturales, como mínimo, entre la celebración de cada una de ellas, en su caso, las cuales podrán anunciarse simultáneamente. Con igual antelación se notificará su celebración a los Pignorantes y a la Sociedad, indicándoles el Notario que intervendrá en la enajenación.

10.5.5 Cualquier licitador (excepto las Partes Garantizadas) deberá realizar un depósito con el notario encargado de la ejecución igual al 10% del tipo de la primera subasta, en garantía de que se formalizará la adquisición y pagará el precio en caso de resultar adjudicatario; de no cumplirlo, perderá el depósito a favor de las Partes Garantizadas que lo aplicarán al pago de las Obligaciones Garantizadas en el orden establecido en el Contrato de Relación entre Acreedores.

10.6 Tanto para el caso de que las Prendas se ejecuten conforme al procedimiento de ejecución previsto en el RDL 5/2005 o en el artículo 1872 del Código Civil, el Agente de Garantías aplicará el precio obtenido de la enajenación de las Acciones al total reembolso de las Obligaciones Garantizadas y, en su caso, entregará a los Pignorantes el exceso de dicho precio sobre la cantidad adeudada,

10.5.4 The Spanish Notary Public competent for the enforcement proceedings shall be a Notary resident in Madrid (capital city) appointed by the Security Agent.

Upon the request of the Security Agent, partial auctions may take place for selling the Shares in different lots.

The auctions shall be announced ten (10) calendar days in advance. In case of several auctions, the announcement of each such auctions may be effected simultaneously, however, a minimum ten (10) calendar days period must elapse between each of such auctions. The Pledgors and the Company shall be as well notified with the same advance, indicating the Notary who shall carry out the auction.

10.5.5 Any bidder (except for the Secured Parties) shall place a deposit with the relevant notary appointed for the enforcement of the Pledges for an amount equal to 10% of the minimum bid price for the first auction, as security for the formalisation of the transfer and payment in case of award; if this is not formalised the bidder shall lose the deposit in favour of the Secured Parties who shall apply such amounts towards the discharge of the Secured Obligations in the order provided for the in the Intercreditor Agreement.

10.6 In case of enforcement of the Pledges through the enforcement proceedings set forth under RDL 5/2005 or article 1872 of the Civil Code, the Security Agent will apply the price obtained from the sale of the Shares to the complete repayment of the Secured Obligations and, if any, shall deliver to the Pledgors the excess obtained from the sale of the Shares once all costs, expenses and taxes related to the sale have

una vez descontados los gastos e impuestos que la enajenación haya podido causar.

10.7 Las Partes Garantizadas conservarán todos sus derechos y acciones contra los "*Borrowers*" y los "*Guarantors*" por la parte de las Obligaciones Garantizadas que no haya sido satisfecha o resarcida mediante la ejecución de las Prendas.

## 11. TRIBUTOS Y GASTOS

Serán de cuenta de los Pignorantes cuantos tributos, tasas, gravámenes, aranceles, timbres, corretajes y gastos, de la naturaleza que sean (incluidos los honorarios del Notario que interviene en el otorgamiento del presente Contrato y los del mantenimiento de los Registros contable de las Acciones) se originen, ahora o en el futuro, por causa del otorgamiento, de la extensión, conservación, modificaciones, cancelación y ejecución de las Prendas de acuerdo con los términos de este Contrato y cualesquiera otros gastos u honorarios de abogados y procuradores y tasas y/o costas judiciales que puedan originarse a las Partes Garantizadas por causa del incumplimiento por los Pignorantes de sus obligaciones bajo este Contrato.

## 12. NOTIFICACIONES

12.1 Las Partes efectuarán todas las notificaciones relativas a este Contrato mediante escrito firmado por persona con poder suficiente y enviado a las otras partes por correo con acuse de recibo; en caso de urgencia, podrán hacerse las notificaciones por fax o por cualquier otro sistema que permita la acreditación de su recepción, debiendo en estos casos confirmarse por correo con acuse de recibo dentro del plazo de los cinco (5) días naturales siguientes a su envío.

12.2 Los domicilios de cada una de las partes a efectos de comunicaciones son:

12.2.1 **Para Holding**:

| | |
|---|---|
| Domicilio: | C / Hernández de Tejada 1, 28027, Madrid (España) |
| Atención: | D. Juan Pelegrí y Girón |
| Telf: | +34 91 377 9254 |
| Fax: | +34 91 377 6500 |

been satisfied.

10.7 The Secured Parties shall keep any and all of their rights and legal actions against the Borrowers and the Guarantors for any portion of the Secured Obligations that has not been satisfied or collected as a result of the enforcement of the Pledges.

## 11. TAXES AND EXPENSES

All present and future taxes, fees and expenses of any nature whatsoever (including the fees of the Notary attesting and before whom this Agreement is granted and those connected with the maintenance of the Registries of book entries where the Shares are recorded) arising out of the execution, extension, maintenance, amendments, cancellation and enforcement of the Pledges in accordance with this Agreement as well as any other fees or expenses of legal advisors and *procuradores* and the judicial costs in which the Secured Parties may incur as a consequence of the breach by the Pledgors of any of its obligations hereunder, shall be borne by the Pledgors.

## 12. NOTICES

12.1 All notices to be delivered between the parties in connection with this Agreement shall be made in writing by means of a letter signed by a duly empowered attorney and sent with acknowledgement of receipt. When urgent, notices may be delivered by fax or by any other mean that may evidence its reception. In this latter case, the notices shall be confirmed within the following five (5) calendar days by means of a letter with acknowledgement of receipt.

12.2 The address of each of the parties for the purposes of notices are as follows:

12.2.1 **For Holding**:

| | |
|---|---|
| Address: | C / Hernández de Tejada 1, 28027, Madrid (Spain) |
| Attention of: | Mr. Juan Pelegrí y Girón |
| Telf: | +34 91 377 9254 |
| Fax: | +34 91 377 6500 |

| | |
|---|---|
| 12.2.2 | **Para Parent:** |
| Domicilio: | C / Hernández de Tejada 1, 28027, Madrid (España) |
| Atención: | D. Juan Pelegrí y Girón |
| Telf: | +34 91 377 9254 |
| Fax: | +34 91 377 6500 |
| 12.2.3 | **Para el Agente de Garantías y las Partes Garantizadas:** |
| Domicilio: | Third Floor, 1 King's Arms Yard, London, United Kingdom, EC2R 7AF |
| Atención: | Sajada Afzal |
| Fax: | +44 (0) 207397 3601 |
| 12.2.4 | **Para la Sociedad:** |
| Domicilio: | C/ Hernández de Tejada 1, 28027, Madrid (España) |
| Atención: | D. Juan Pelegrí y Girón |
| Telf: | +34 91 377 92 54 |
| Fax: | + 34 91 377 96 48 |

12.3 Cualquier cambio de domicilio deberá ser comunicado a las partes restantes con no menos de cinco (5) días naturales de antelación y en la forma prevista en la Cláusula 12.1 anterior.

**13. SUBSANACIÓN O COMPLEMENTO DEL CONTRATO**

Los Pignorantes deberán, dentro de los diez (10) Días Hábiles siguientes a la recepción de una notificación por escrito del Agente de Garantías, otorgar cuantos documentos públicos o privados sean necesarios a los efectos de subsanar o aclarar este Contrato, o a los efectos de perfeccionar las Prendas.

**14. CESIÓN DE LA PRENDA**

Los Pignorantes reconocen y aceptan que, en virtud del Contrato de Financiación y del Contrato de Relación entre Acreedores, cada una de las Partes Garantizadas pueden ceder su posición contractual respecto a (en el caso de un Acreedor, *Creditor,* o *Refinancing Creditor*) cualquiera de sus Exposiciones (*Exposures*) bajo las Facilidades Crediticias (*Facilities*) (tal y como cada uno de estos tres últimos términos se definen en el Contrato de Financiación), y (en el caso de un Bonista, *Noteholder*), los Bonos (*Notes*) ostentados por

| | |
|---|---|
| 12.2.2 | **For Parent:** |
| Address: | C / Hernández de Tejada 1, 28027, Madrid (Spain) |
| Attention of: | Mr. Juan Pelegrí y Girón |
| Telf: | +34 91 377 9254 |
| Fax: | +34 91 377 6500 |
| 12.2.3 | **For the Security Agent and the Secured Parties:** |
| Address: | Third Floor, 1 King's Arms Yard, London, United Kingdom, EC2R 7AF |
| Attention of: | Sajada Afzal |
| Fax: | +44 (0) 207397 3601 |
| **12.2.4** | **For the Company:** |
| Address: | C/ Hernández de Tejada 1, 28027, Madrid (Spain) |
| Attention of: | Mr. Juan Pelegrí y Girón |
| Telf: | +34 91 377 92 54 |
| Fax: | + 34 91 377 96 48 |

12.3 Any change of address shall be communicated to the other parties with no less than five (5) calendar days prior notice in accordance with Clause 12.1 above.

**13. FURTHER ASSURANCES**

The Pledgors shall, within ten (10) Business Days of receipt of a written request from the Security Agent, grant all such documents (private or public) as may be necessary to clarify any term of this Agreement or perfect the Pledges.

**14. ASSIGNMENT OF THE PLEDGE**

The Pledgors hereby acknowledge and agree that, pursuant to the Facilities Agreement and the Intercreditor Agreement, each of the Secured Parties may assign or transfer by novation any of its rights and benefits in respect of (in case of a Creditor or Refinancing Creditor) any of its Exposures under the Facilities (as the three preceding terms are defined in the Facilities Agreement), and (in the case of a Noteholder) the Notes held by it (as the two preceding terms are defined in the Intercreditor Agreement).

el mismo (tal y como cada uno de estos dos últimos términos se definen en el Contrato de Relación entre Acreedores).

Los Pignorantes reconocen y aceptan expresamente que, de acuerdo con el artículo 1528 del Código Civil, cualquier cesión efectuada por una Parte Garantizada (o sus cesionarios) al amparo de lo dispuesto en el Contrato de Financiación o Documentos de Refinanciación y en el Contrato de Relación entre Acreedores, o los Documentos de los Bonistas -*Noteholder Documents*- (tal y como dicho término se define en el Contrato de Relación entre Acreedores) correspondientes, conllevará automáticamente, y sin necesidad de nuevo consentimiento de los Pignorantes a tal efecto, la cesión proporcional de los derechos que corresponden al Acreedor Original, *Refinancing Creditor* o Bonista -*Noteholder*- (según sea el caso) cedente en virtud de la correspondiente Prenda. No obstante, si fuera requerido para ello por el Agente de Garantías, los Pignorantes se comprometen a otorgar cuantos documentos públicos o privados pudieran ser necesarios o convenientes para acreditar dicha cesión. En todo caso, los costes y/o gastos derivados del otorgamiento de dichos documentos correrán a cargo de los Pignorantes.

En consecuencia, las referencias que en este Contrato se realizan a las Partes Garantizadas y/o al Agente de Garantías se entenderán hechas a las Partes Garantizadas y/o al Agente de Garantías que en cada momento ostenten tal condición bajo el Contrato de Financiación y/o el Contrato de Relación entre Acreedores.

Igualmente, las referencias realizadas al Agente de Garantías se entenderán hechas a aquella entidad que en cada momento ostente tal condición.

The Pledgors hereby expressly acknowledge and agree that, in accordance with article 1528 of the Spanish Civil Code, any assignment or transfer carried out by any of the Secured Parties (or any subsequent assignee or transferee thereof) under the provisions of the Facilities Agreement or Refinancing Documents and the Intercreditor Agreement, or the relevant Noteholder Documents (as defined in the Intercreditor Agreement), shall automatically entail without the need of any further agreement of the Pledgors to such effect, the proportional assignment of the rights corresponding to the relevant Original Creditor, Refinancing Creditor or Noteholder (as the case may be) by virtue of the relevant Pledge. Notwithstanding the above, the Pledgors undertake that, upon the Security Agent's request, it will grant as many public or private documents as may be necessary or desirable to evidence such transfers. Any costs and/or expenses related to the execution of such documents shall be borne by the Pledgors.

Consequently, references in this Agreement to the Secured Parties and/or the Security Agent shall be construed as references to the Secured Parties and/or the Security Agent from time to time under the Facilities Agreement and/or the Intercreditor Agreement.

Likewise, the references to the Security Agent shall be deemed to be made to the entity that holds that condition from time to time.

## 15. AGENTE DE GARANTÍAS

15.1 El Agente de Garantías no tendrá, ya sea en virtud del presente Contrato o por el ejercicio de cualquiera de los derechos conferidos en el mismo, ningún deber de diligencia o fiduciario con respecto a los Pignorantes o la Sociedad.

15.2 Los derechos concedidos al Agente de Garantías para realizar actuaciones bajo el presente Contrato no se interpretarán como una obligación o deber del Agente de Garantías de realizarlas.

## 15. SECURITY AGENT

15.1 The Security Agent shall not, whether by virtue of this Agreement or by exercising any of its rights thereunder, owe any duty of care or fiduciary duty to the Pledgors or the Company.

15.2 The permissive rights of the Security Agent to take action under this Agreement shall not be construed as an obligation or duty for it to do so.

15.3 Siempre y cuando el Agente de Garantías cumpla con sus obligaciones bajo el presente Contrato, no se le requerirá al Agente de Garantías que tenga en consideración los intereses de la Sociedad.

15.3 Provided it complies with its obligations in this Agreement, the Security Agent is not required to have any regard to the interests of the Company.

15.4 El Agente de Garantías, cuando actúe como tal, se considerará que actúa a través de su división de agencia, que será considerada como una entidad separada de sus otras divisiones o departamentos. Cualquier información recibida u obtenida por el Agente de Garantías a través de otra división o departamento, o de cualquier otra manera diferente a la información recibida u obtenida en su condición de Agente de Garantías, será tratada de manera confidencial por el Agente de Garantías y no será considerada como información en poder del Agente de Garantías en su condición de tal.

15.4 In acting as Security Agent, the Security Agent shall be treated as acting through its agency division which shall be treated as a separate entity from its other divisions and departments. Any information received or acquired by the Security Agent which is received or acquired by some other division or department or otherwise than in its capacity as Security Agent may be treated as confidential by the Security Agent and will not be treated as information possessed by the Security Agent in its capacity as such.

15.5 El Agente de Garantías actuará, cuando lleve a cabo actuaciones o de cualquier otro modo ejercite sus derechos o deberes bajo el presente Contrato, de conformidad con los términos del Contrato de Relación entre Acreedores y, cuando se requiera que otorgue un consentimiento, ejercite una facultad discrecional, lleve a cabo u omita cualquier actuación, solicitará las instrucciones o directrices del Grupo Instructor o del Agente Administrativo (en su caso y tal y como está previsto en el Contrato de Relación entre Acreedores). Al realizar dichas actuaciones, el Agente de Garantías tendrá los derechos, beneficios, protecciones, indemnizaciones e inmunidades establecidas en el Contrato de Relación entre Acreedores como si dichos derechos, beneficios, protecciones, indemnizaciones e inmunidades hubieren sido establecidas en el presente Contrato, *mutatis mutandi*, y no incurrirá en responsabilidad alguna frente al Pignorante, la Sociedad o cualquier otra Persona.

15.5 In acting or otherwise exercising its rights or performing its duties under any of this Agreement, the Security Agent shall act in accordance with the provisions of the Intercreditor Agreement and shall, when required to grant a consent, exercise a discretion, take or omit to take any action, seek instruction or direction from the Instructing Group or Administrative Agent (as applicable and as provided in the Intercreditor Agreement). In so acting, the Security Agent shall have the rights, benefits, protections, indemnities and immunities set out in the Intercreditor Agreement as if those provisions were set out in this Agreement, *mutatis mutandis*, and shall not incur any liability to the Pledgor, the Company or to any other Person.

15.6 Los términos de esta Estipulación 15 permanecerán en vigor más allá de la terminación del presente Contrato.

15.6 The provisions of this Clause 15 shall survive any termination of this Agreement.

## 16. ADHESIÓN Y RATIFICACIÓN

16.1 Las Partes Garantizadas en cuyo beneficio ha actuado el Agente de Garantías podrán acceder al presente Contrato y ratificar el contenido del mismo, aceptando las Prendas constituidas en su favor, mediante la comparecencia ante el notario interviniente.

16.2 Las Partes instruyen al notario interviniente para que documente las adhesiones y ratificaciones mencionadas en el apartado anterior mediante el otorgamiento de las correspondientes pólizas o escrituras por parte de las Partes Garantizadas en cuestión.

16.3 El notario interviniente acepta las instrucciones recibidas.

## 17. LEY Y JURISDICCIÓN

17.1 Este Contrato se regirá e interpretará de conformidad con la legislación española.

17.2 Las Partes, con renuncia expresa a cualquier otro fuero, se someten expresa e irrevocablemente al de los Juzgados y Tribunales de la ciudad de Madrid, para cualesquiera desavenencias que pudieran derivarse de este Contrato.

## 18. IDIOMA

El presente Contrato se redacta en idioma inglés y en idioma español. En caso de discrepancia o incongruencia entre la versión redactada en inglés y la redactada en español, prevalecerá la versión española. La versión inglesa tiene carácter meramente informativo.

## 16. ACCESSION AND RATIFICATION

16.1 The Secured Parties on whose benefit the Security Trustee has acted herein may accede to this Agreement and ratify its content, accepting the Pledges created in their favour, by appearing before the intervening notary.

16.2 The Parties hereby instruct the intervening notary to document the accessions and ratifications set out in the previous paragraph by means of the execution of the relevant deeds (*pólizas* or *escrituras*) by the relevant Secured Parties.

16.3 The intervening notary accepts the aforementioned instructions.

## 17. LAW AND JURISDICTION

17.1 This Agreement will be governed by and construed in accordance with Spanish law.

17.2 Each of the parties to this Agreement irrevocably submits themselves, with express waiver to any other forum, to the jurisdiction of the Courts and Tribunals of the city of Madrid for the resolution of any claim which may arise out of in connection with this Agreement.

## 18. LANGUAGE

This Agreement is executed in both the Spanish and the English language. In the event of any discrepancy or inconsistency between the Spanish and the English versions, the Spanish version shall prevail. The English version is intended for information purposes only.

**Las Partes se manifiestan conformes con el contenido de este Contrato tal y como aparece redactado, extendido en 225 hojas incluidos sus anexos, que otorgan y firman únicamente en la última página con mi intervención que sello y rubrico todos los folios, quedando el original en mi archivo.**

**Y yo, el Notario, hechas las advertencias legales oportunas, doy fe de la identidad de las Partes, de la legitimidad de sus firmas, y de todo lo convenido en este Contrato, que firmo y sello en el lugar y fecha del encabezamiento.**

**CEMEX ESPAÑA, S.A.**

**/s/ D. Juan Pelegrí y Girón**

**p.p. D. Juan Pelegrí y Girón**

**NEW SUNWARD HOLDING B.V.**

**/s/ D. Juan Pelegrí y Girón**

**p.p. D. Juan Pelegrí y Girón**

**CEMEX, S.A.B. DE C.V.**

**/s/ D. Juan Pelegrí y Girón**

**p.p. D. Juan Pelegrí y Girón**

**/s/ D. Francìsco Javier García Ruiz De Morales**

**p.p. D. Francìsco Javier García Ruiz De Morales**

**WILMINGTON TRUST (LONDON) LIMITED**

**/s/ D. Emilio Durán Apraiz**

**p.p. D. Emilio Durán Apraiz**

**THE BANK OF NEW YORK MELLON, INSTITUCIÓN DE BANCA MÚLTIPLE**

**/s/ D. Emilio Durán Apraiz**

**WILMINGTON TRUST (LONDON) LIMITED**
**p.p. D. Emilio Durán Apraiz**

**ALLSTATE LIFE INSURANCE COMPANY**
**ATLANTIC SECURITY BANK**
**BANAMEX USA**
**BANCA MONTE DEI PASCHI DI SIENA LONDON BRANCH**
**BANCA MONTE DEI PASCHI DI SIENA-NEW YORK BRANCH**
**BANCO NACIONAL DE COMERCIO EXTERIOR, S.N.C.**
**BANCO NACIONAL DE MEXICO SA, INTEGRANTE DEL GRUPO FINANCIERO**
**BANAMEX, ACTING THROUGH ITS NASSAU BAHAMAS BRANCH**
**BANCO NACIONAL DE MÉXICO, S.A. INTEGRANTE DEL GRUPO FINANCIERO**
**BANAMEX**
**BARCLAYS BANK PLC**
**BAYERISCHE LANDESBANK**
**BAYERISCHE LANDESBANK, NEW YORK BRANCH**
**CITIBANK INTERNATIONAL PLC (as Lender)**
**COMERICA BANK**
**COMMERZBANK AG, NEW YORK BRANCH**
**COMPUTERSHARE TRUST COMPANY, N.A. (9.50% Senior Secured Notes due 2018)**
**CREDIT AGRICOLE CORPORATE & INVESTMENT BANK**
**CREDIT AGRICOLE CORPORATE & INVESTMENT BANK PARIS**
**CREDIT AGRICOLE CORPORATE & INVESTMENT BANK S.A., NEW YORK BRANCH**
**CREDIT INDUSTRIEL ET COMMERCIAL, LONDON BRANCH**
**CREDIT SUISSE AG CAYMAN ISLANDS BRANCH**
**FCOF III EUROPE UB SECURITIES LIMITED**
**HSBC BANK PLC, SUCURSAL EN ESPAÑA**
**HSBC MEXICO, S.A., INSTITUCIÓN DE BANCA MÚLTIPLE, GRUPO FINANCIERO**
**HSBC**
**ICE 1 EM CLO LTD**
**INSIGHT LDI SOLUTIONS PLUS PLC, INRESPECT OF THE INSIGHT LOAN FUND**
**INTESA SANPAOLO SPA, NEW YORK BRANCH**
**MEDIOBANCA BANCA DI CREDITO FINANZIARIO SPA**
**MIZUHO CORPORATE BANK NEDERLAND NV**
**MIZUHO CORPORATE BANK, LTD.**
**MORGAN STANLEY BANK INTERNATIONAL LIMITED**
**NATIONAL BENEFIT LIFE INSURANCE COMPANY**
**PHL VARIABLE INSURANCE COMPANY**
**PHOENIX LIFE INSURANCE COMPANY**
**PRIMERICA LIFE INSURANCE COMPANY**
**SCOTIABANK EUROPE PLC**
**STANDARD CHARTERED BANK**
**SWISS RE LIFE & HEALTH AMERICA INC.**
**THE BANK OF NEW YORK MELLON, (9.375% Senior Secured Notes due 2022)**
**THE BANK OF NEW YORK MELLON(9.875% U.S. Dollar-Denominated Senior Secured Notes due 2019)**
**THE BANK OF NEW YORK MELLON (Callable Perpetual Dual-Currency)**

**THE BANK OF NEW YORK MELLON (Floating Rate Senior Secured Notes due 2015)**
**THE BANK OF NEW YORK MELLON(9.25% U.S. Dollar-Denominated Senior Secured Notes due 2020)**
**THE BANK OF NEW YORK MELLON (Callable Perpetual Dual-Currency)**
**THE BANK OF NEW YORK MELLON (9.000% Senior Secured Notes due 2018)**
**THE BANK OF NEW YORK MELLON (9.50% Senior Secured Notes due 2016)**
**THE BANK OF NEW YORK MELLON (9.625% Senior Secured Notes due 2017)**
**THE BANK OF NEW YORK MELLON(Callable Perpetual Dual-Currency)**
**THE BANK OF NEW YORK MELLON (Callable Perpetual Dual-Currency)**
**THE BANK OF NOVA SCOTIA**
**THE GOVENOR AND COMPANY OF THE BANK OF IRELAND**
**THORNBURG INVESTMENT INCOME BUILDER FUND**
**UBS AG, STAMFORD BRANCH**
**WESTPAC EUROPE LIMITED**
**WESTPORT INSURANCE CORPORATION**

**/s/ Dña. Ruth Musgrave**

**p.p. Dña. Ruth Musgrave**

**BANCO BILBAO VIZCAYA ARGENTARIA, S.A.**

| | |
|---|---|
| **/s/ Julian Rincón** | **/s/ Juan Carlos Herrero** |
| **p.p. Julian Rincón** | **p.p. Juan Carlos Herrero** |

**BANCO DE SABADELL, S.A.**

| | |
|---|---|
| **/s/ Diego Rusillo Delgado** | **/s/ Francisco Javier Gonzalez** |
| **p.p. Diego Rusillo Delgado** | **p.p. Francisco Javier Gonzalez** |

**BANCO ESPAÑOL DE CRÉDITO, S.A.**

| | |
|---|---|
| **/s/ Belén Aleubila** | **/s/ Borja Bertran** |
| **p.p. Belén Aleubila** | **p.p. Borja Bertran** |

**BANCO POPULAR ESPAÑOL, S.A.**

| | |
|---|---|
| **/s/ Ana Caceres** | **/s/ David Fombellida** |
| **p.p. Ana Caceres** | **p.p. David Fombellida** |

**BANCO SANTANDER (MEXICO) S.A., INSTITUCIÓN DE BANCA MÚLTIPLE, GRUPO FINANCIERO SANTANDER**

| | |
|---|---|
| **/s/ Javier Martín** | **/s/ Angel Barranco** |
| **p.p. Javier Martín** | **p.p. Angel Barranco** |

**BANK OF AMERICA N.A SUCURSAL EN ESPAÑA**
**BANK OF AMERICA N.A.**

**/s/ Vicente Belloch**

**p.p. Vicente Belloch**

**BANKIA, S.A.**
**BANKIA, S.A., MIAMI BRANCH**

| /s/ Laura Sanz | /s/ Aitor Cohi | /s/ Cohrs Gallarreta |
|---|---|---|
| **p.p. Laura Sanz** | **p.p. Aitor Cohi** | **p.p. Cohrs Gallarreta** |

**BBVA BANCOMER, SOCIEDAD ANÓNIMA, INSTITUCIÓN DE BANCA MÚLTIPLE, GRUPO FINANCIERO BBVA BANCOMER**

| | |
|---|---|
| **/s/ Julián Rincón Martinez** | **/s/ Juan Carlos Herrero** |
| **p.p. Julián Rincón Martinez** | **p.p. Juan Carlos Herrero** |

**BNP PARIBAS S.A.**

**/s/ Felipe Font López**

**p.p. Felipe Font López**

**BNP PARIBAS (NEW YORK BRANCH)**

**/s/ Felipe Font López**

**p.p. Felipe Font López**

**BNP PARIBAS (PARIS BRANCH)**

**/s/ Felipe Font López**

**p.p. Felipe Font López**

**BNP PARIBAS (SYDNEY BRANCH)**

**/s/ Felipe Font López**

**p.p. Felipe Font López**

**BNP PARIBAS, SUCURSAL EN ESPAÑA**

| | |
|---|---|
| **/s/ Alberto Sarricolea Bilbao** | **/s/ Luis de la Riva Gallego** |
| **p.p. Alberto Sarricolea Bilbao** | **p.p. Luis de la Riva Gallego** |

**CAIXA GERAL DE DEPÓSITOS, S.A., SUCURSAL EN ESPAÑA**

**/s/ Carlos Meira**

**p.p. Carlos Meira**

**CAIXABANK, S.A.**

| | |
|---|---|
| **/s/ Fernando Álvares-Quiñones** | **/s/ Ignacio Bereciartua** |
| **p.p. Fernando Álvares-Quiñones** | **p.p. Ignacio Bereciartua** |

**CITIBANK INTERNATIONAL PLC, SUCURSAL EN ESPAÑA**

**/s/ Miguel Trueba Salcedo**

**p.p. Miguel Trueba Salcedo**

**CITIBANK NA**
**CITIBANK NA, NEW YORK**

**/s/ Leslie Rubio**

**p.p. Leslie Rubio**

**COMMERZBANK AG, LONDON BRANCH**

**/s/ Felipe Font**

**p.p. Felipe Font**

**COMMINGLED PENSION TRUST FUND (DISTRESSED DEBT OPPORTUNITIES) OF JPMORGAN CHASE BANK, N.A.**

**/s/ Felipe Font López**

**p.p. Felipe Font López**

**CREDIT AGRICOLE CIB SUCURSAL EN ESPAÑA**

| | |
|---|---|
| **/s/ Alberto Garcia Magdelena** | **/s/ Carlos Aranguren** |
| **p.p. Alberto Garcia Magdelena** | **p.p. Carlos Aranguren** |

**CVI GVF (Lux) Master S.àr.l**

**/s/ Felipe Font López**

**Fdo. Felipe Font López**

**HARTFORD LIFE AND ACCIDENT INSURANCE COMPANY**

**/s/ Felipe Font López**

**Fdo. Felipe Font López**

**HARTFORD LIFE INSURANCE**

**/s/ Felipe Font López**

**Fdo. Felipe Font López**

**ING Bank, N.v. Dublin Brach**

**/s/ Felipe Font**

**p.p. Felipe Font**

**ING BELGIUM S.A, SUCURSAL EN ESPAÑA**

| | |
|---|---|
| **/s/ Aurora Sanz** | **/s/ Tomas August** |
| **p.p. Aurora Sanz** | **p.p. Tomas August** |

**INSTITUTO DE CRÉDITO OFICIAL**

**/s/ Monìca Vidal**

**p.p. Monìca Vidal**

**INTESA SANPAOLO SPA, SUCURSAL EN ESPAÑA**

| | |
|---|---|
| **/s/ Juan Pontoni** | **/s/ Carlos Garrido** |
| **p.p. Juan Pontoni** | **p.p. Carlos Garrido** |

**JPMORGAN CHASE BANK NATIONAL ASSOCIATION, SUCURSAL EN ESPAÑA**
**JPMORGAN CHASE BANK, N.A.**

**/s/ Maria Soler**

**p.p. Maria Soler**

**/s/ Felipe Font López**

**p.p. Felipe Font López**

**JPMORGAN DISTRESSED DEBT OPPORTUNITIES MASTER FUND, LTD.**

**/s/ Felipe Font López**

**p.p. Felipe Font López**

**/s/ Felipe Font López**

**p.p. Felipe Font López**

**/s/ Felipe Font López**

**p.p. Felipe Font López**

**LIBERBANK, S.A.**

**/s/ Sonia Lucila Gil**

**p.p. Sonia Lucila Gil**

**LLOYDS TSB BANK PLC**

**/s/ Marcos Azabal**

**p.p. Marcos Azabal**

**PACHOLDER HIGH YIELD FUND, INC.**

**/s/ D. Felipe Font López**

**p.p. D. Felipe Font López**

**PORTIGON AG, MADRID BRANCH**

| /s/ Berto Nuvoloni | /s/ Raul Calvo |
|---|---|
| **Berto Nuvoloni** | **and Raul Calvo** |

**QP SFM CAPITAL HOLDINGS LIMITED**

**/s/ D. Felipe Font López**

**p.p. D. Felipe Font López**

**THE ROYAL BANK OF SCOTLAND, N.V.**
**THE ROYAL BANK OF SCOTLAND, PLC**

| | |
|---|---|
| **/s/ Antonio Casteleiro** | **/s/ Javier Garcia Palencia** |
| **p.p. Antonio Casteleiro** | **p.p. Javier Garcia Palencia** |

**ANEXO 1**
**ACREEDORES ORIGINALES**

**ANNEX 1**
**ORIGINAL CREDITORS**

**PARTE A / PART A**

**ATLANTIC SECURITY BANK**

**BANAMEX USA**

**BANCA MONTE DEI PASCHI DI SIENA, S.P.A., SUCURSAL EN LONDRES**

**BANCA MONTE DEI PASCHI DI SIENA, S.P.A., SUCURSAL EN NUEVA YORK**

**BANCO BILBAO VIZCAYA ARGENTARIA, S.A.**

**BANCO DE SABADELL, S.A.**

**BANCO ESPAÑOL DE CRÉDITO, S.A.**

**BANCO NACIONAL DE COMERCIO EXTERIOR, S.N.C.**

**BANCO NACIONAL DE MEXICO SA, INTEGRANTE DEL GRUPO FINANCIERO BANAMEX, ACTING THROUGH ITS NASSAU BAHAMAS BRANCH**

**BANCO NACIONAL DE MÉXICO S.A., INTEGRANTE DEL GRUPO FINANCIERO BANAMEX**

**BANCO POPULAR ESPAÑOL, S.A.**

**BANCO SANTANDER (MÉXICO), S.A., INSTITUCIÓN DE BANCA MÚLTIPLE, GRUPO FINANCIERO SANTANDER**

**BANK OF AMERICA N.A., SUCURSAL EN ESPAÑA**

**BANK OF AMERICA N.A.**

**BANKIA, S.A.**

**BANKIA, S.A. MIAMI BRANCH**

**BARCLAYS BANK PLC**

**BAYERISCHE LANDESBANK**

**BAYERISCHE LANDESBANK, NEW YORK BRANCH**

**BBVA BANCOMER S.A., INSTITUCIÓN DE BANCA MÚLTIPLE GRUPO FINANCIERO BBVA BANCOMER**

**BNP PARIBAS, SUCURSAL EN NEW YORK**

**BNP PARIBAS, SUCURSAL EN PARIS**

**BNP PARIBAS, SUCURSAL EN SYDNEY**

**BNP PARIBAS S.A.**

**BNP PARIBAS, SUCURSAL EN ESPAÑA**

**CAIXA GERAL DE DEPOSITOS, S.A, SUCURSAL EN ESPAÑA**

**CAIXABANK S.A.**

**CITIBANK INTERNATIONAL PLC (Acreedor)**

**CITIBANK INTERNATIONAL PLC (Agente)**

**CITIBANK INTERNATIONAL PLC, SUCURSAL EN ESPAÑA**

**CITIBANK N.A.**

**CITIBANK NA, SUCURSAL EN NUEVA YORK**

**COMERICA BANK**

**COMMERZBANK AG, SUCURSAL EN LONDRES**

**COMMERZBANK AG, SUCURSAL EN NUEVA YORK**

**CREDIT AGRICOLE CIB SUCURSAL EN ESPAÑA**

**CREDIT AGRICOLE CORPORATE & INVESTMENT BANK**

**CREDIT AGRICOLE CORPORATE & INVESTMENT BANK S.A., SUCURSAL EN NUEVA YORK**

**CREDIT INDUSTRIEL ET COMMERCIAL, SUCURSAL EN LONDRES**

**CREDIT SUISSE AG CAYMAN ISLANDS BRANCH**

**DEUTSCHE BANK AG, SUCURSAL EN NEW YORK**

**FCOF III EUROPE UB SECURITIES LIMITED**

**FORTIS BANK S.A./N.V.**

**FORTIS BANK S.A., SUCURSAL EN ESPAÑA**

**HSBC BANK PLC, SUCURSAL EN ESPAÑA**

**HSBC MEXICO S.A., INSTITUCIÓN DE BANCA MÚLTIPLE, GRUPO FINANCIERO HSBC**

**ICE 1 EM CLO LTD**

**IKB DEUTSCHE INDUSTRIEBANK AG, SUCURSAL EN ESPAÑA**

**ING BANK N.V., DUBLIN BRANCH**

**ING BELGIUM S.A., SUCURSAL EN ESPAÑA**

**INSTITUTO DE CRÉDITO OFICIAL**

**INTESA SANPAOLO S.P.A., SUCURSAL EN NUEVA YORK**

**INTESA SANPAOLO S.P.A., SUCURSAL EN ESPAÑA**

**JPMORGAN CHASE BANK, N.A.**

**JPMORGAN CHASE BANK, N.A.**

**LIBERBANK, S.A**

**LLOYDS TSB BANK, PLC**

**MEDIOBANCA - BANCA DI CREDITO FINANZIARIO S.P.A.**

**MIZUHO COPORATE BANK NEDERLAND, N.V.**

**MIZUHO CORPORATE BANK, LTD.**

**MORGAN STANLEY BANK INTERNATIONAL LIMITED**

**PORTIGON AG, SUCURSAL EN ESPAÑA**

**QP SFM CAPITAL HOLDINGS LIMITED**

**SCOTIABANK EUROPE PLC**

**SOCIÉTÉ GÉNÉRALE, SUCURSAL EN PARIS**

**SPECIAL SITUATIONS INVESTING GROUP, INC**

**STANDARD CHARTERED BANK**

**THE BANK OF NOVA SCOTIA**

**THE GOVERNOR AND COMPANY OF THE BANK OF IRELAND**

**THE ROYAL BANK OF SCOTLAND NV**

**THE ROYAL BANK OF SCOTLAND PLC**

**THORNBURG INVESTMENT INCOME BUILDER FUND**

**UBS AG, STAMFORD BRANCH**

**WESTPAC EUROPE LIMITED**

**ALLSTATE LIFE INSURANCE COMPANY**

**CVI GVF (LUX) MASTER S.A.R.L.**

**HARTFORD LIFE AND ACCIDENT INSURANCE COMPANY**

**HARTFORD LIFE INSURANCE COMPANY**

**NATIONAL BENEFIT LIFE INSURANCE COMPANY**

**PHL VARIABLE INSURANCE COMPANY**

**PHOENIX LIFE INSURANCE COMPANY**

**PRIMERICA LIFE INSURANCE COMPANY**

**QP SFM CAPITAL HOLDINGS LIMITED**

**SWISS RE LIFE & HEALTH AMERICA INC.**

**WESTPORT INSURANCE CORPORATION (FKA EMPLOYERS REINSURANCE CORPORATION)**

**COMMINGLED PENSION TRUST FUND (DISTRESSED DEBT OPPORTUNITIES) OF JP MORGAN CHASE BANK, N.A.**

**INSIGHT LDI SOLUTIONS PLUS PLC, INRESPECT OF THE INSIGHT LOAN FUND**

**JPMORGAN DISTRESSED DEBT OPPORTUNITIES MASTER FUND, LTD.**

**JPMORGAN CORE PLUS BOND FUND**

**JPMORGAN HIGH YIELD FUND**

**JPMORGAN STRATEGIC INCOME OPPORTUNITIES FUND**

**PACHOLDER HIGH YIELD FUND, INC.**

**ANEXO 2**
**TRUSTEES DE LOS BONISTAS**

**ANNEX 2**
**NOTEHOLDERS TRUSTEES**

**THE BANK OF NEW YORK MELLON, INSTITUCIÓN DE BANCA MÚLTIPLE.** incorporated in accordance with the laws of Mexico, with registered office at Paseo de la Reforma No. 115, Piso 23, Col. Lomas de Chapultepec, Mexico, D.F. and registered before the Public Registry of Property and Commerce of the Federal District (*Registro Público de la Propiedad y del Comercio del Distrito Federal*) under mercantile number "384235", which acts as common representative of the note holders of *certificados bursátiles* issued by CEMEX, S.A.B. de C.V. and guaranteed by CEMEX México, S.A. de C.V. and EMPRESAS TOLTECA DE MÉXICO, S.A. DE C.V. identified under ticker number "CEMEX 07-20" issued on November 20, 2007. Represented by WILMINGTON TRUST (LONDON) LIMITED, incorporated in accordance with the laws of Mexico, with registered office at 6 Broad Street Place, London EC2M 7JH, registered before the Companies Registry under number 05650152 as per the faculties granted by the power of attorney dated October 24, 2012, before Mr. Patricio Bandala Tolentino, Public Notary of the Federal District of Mexico, with number 252 of its records, which is duly apostilled as per the 1961 Hague Convention.

**THE BANK OF NEW YORK MELLON**, incorporated in accordance with the laws of the State of New York (United States of America), with registered office at One Wall Street, New York, N.Y. 10286, United States of America under IRS number 13-5160382, acting on behalf of the holders of the 9.375% Senior Secured Notes due 2022, for an aggregate amount of U.S.$1.500.000.000 as per the indenture dated October 12, 2012 entered into by and among, CEMEX Finance LLC, as issuer, CEMEX, S.A.B. de C.V. CEMEX México S.A. de C.V., CEMEX Corp., CEMEX España, S.A., CEMEX Research Group AG, CEMEX Shipping, B.V., CEMEX Asia, B.V., CEMEX France Gestion (S.A.S.), CEMEX UK, CEMEX Egyptian Investments, B.V., New Sunward Holding B.V., CEMEX Concretos S.A. de C.V. and Empresas Tolteca de México, S.A. de C.V., as guarantors and THE BANK OF NEW YORK MELLON, as trustee. Represented by Ms. Ruth Suzanne Musgrave, of legal age, British national, with a business address for this effects at Paseo de la Castellana, 110, 28046 Madrid, with British passport 506046126, and National Identity Number X9231168A as per the power of attorney dated October 12, 2012 granted before Mr. Danny Lee, Public Notary of the State of New York, duly apostilled as per the 1961 Hague Convention.

**THE BANK OF NEW YORK MELLON**, incorporated in accordance with the laws of the State of New York (United States of America), with registered office at One Wall Street, New York, N.Y. 10286, United States of America under IRS number 13-5160382, acting on behalf of the holders of the 9.875% U.S. Dollar-Denominated Senior Secured Notes due 2019 for an aggregate amount of U.S.$703.861.000 and the holders of the 9.875% Euro-Denominated Senior Secured Notes due 2019 for an aggregate amount of €179.219.000 as per the indenture dated March 28, 2012 entered into by and among, CEMEX España, S.A., Luxembourg Branch, as issuer, CEMEX, S.A.B. de C.V. CEMEX México S.A. de C.V. and New Sunward Holding B.V., as guarantors and THE BANK OF NEW YORK MELLON, as trustee. Represented by Ms. Ruth Suzanne Musgrave, of legal age, British national, with a business address for this effects at Paseo de la Castellana, 110, 28046 Madrid, with British passport 506046126, and National Identity Number X9231168A as per the power of attorney dated September 14, 2012 granted before Mr. Danny Lee, Public Notary of the State of New York, duly apostilled as per the 1961 Hague Convention.

**THE BANK OF NEW YORK MELLON**, incorporated in accordance with the laws of the State of New York (United States of America), with registered office at One Wall Street, New York, N.Y. 10286, United States of America under IRS number 13-5160382, acting on behalf of the holders of the Callable Perpetual Dual-Currency Notes for and aggregate amount of U.S.$900.000.000 as per the indenture dated December 18, 2006 entered into by and among, New Sunward Holding Financial Ventures B.V., as issuer, CEMEX, S.A.B. de C.V. CEMEX México S.A. de C.V. and New Sunward Holding B.V., as guarantors and THE BANK OF NEW YORK MELLON, as trustee. Represented by Ms. Ruth Suzanne Musgrave, of legal age, British national, with a business address for this effects at Paseo de la Castellana, 110, 28046 Madrid, with British passport 506046126, and National Identity Number X9231168A as per the power of attorney dated September 14, 2012 granted before Mr. Danny Lee, Public Notary of the State of New York, duly apostilled as per the 1961 Hague Convention.

**THE BANK OF NEW YORK MELLON**, incorporated in accordance with the laws of the State of New York (United States of America), with registered office at One Wall Street, New York, N.Y. 10286, United States of America under IRS number 13-5160382, acting on behalf of the holders of the Floating Rate Senior Secured Notes due 2015 for and aggregate amount of U.S.$800.000.000 as per the indenture dated April 5, 2011 entered into by and among, CEMEX, S.A.B. de C.V., as issuer, CEMEX España, S.A., CEMEX México S.A. de C.V. and New Sunward Holding B.V., as guarantors and THE BANK OF NEW YORK MELLON, as trustee. Represented by Ms. Ruth Suzanne Musgrave, of legal age, British national, with a business address for this effects at Paseo de la Castellana, 110, 28046 Madrid, with British passport 506046126, and National Identity Number X9231168A as per the power of attorney dated September 14, 2012 granted before Mr. Danny Lee, Public Notary of the State of New York, duly apostilled as per the 1961 Hague Convention.

**THE BANK OF NEW YORK MELLON**, incorporated in accordance with the laws of the State of New York (United States of America), with registered office at One Wall Street, New York, N.Y. 10286, United States of America under IRS number 13-5160382, acting on behalf of the holders of the 9.25% U.S. Dollar-Denominated Senior Secured Notes due 2020 for an aggregate amount of U.S.$1.192.996.000 and the holders of the 8.875% Euro-Denominated Senior Secured Notes due 2017 for an aggregate amount of €115.346.000 as per the indenture dated May 12, 2010 entered into by and among, CEMEX España, S.A., Luxembourg Branch, as issuer, CEMEX, S.A.B. de C.V., CEMEX México S.A. de C.V. and New Sunward Holding B.V., as guarantors, and THE BANK OF NEW YORK MELLON, as trustee. Represented by Ms. Ruth Suzanne Musgrave, of legal age, British national, with a business address for this effects at Paseo de la Castellana, 110, 28046 Madrid, with British passport 506046126, and National Identity Number X9231168A as per the power of attorney dated September 14, 2012 granted before Mr. Danny Lee, Public Notary of the State of New York, duly apostilled as per the 1961 Hague Convention.

**THE BANK OF NEW YORK MELLON**, incorporated in accordance with the laws of the State of New York (United States of America), with registered office at One Wall Street, New York, N.Y. 10286, United States of America under IRS number 13-5160382, acting on behalf of the holders of the Callable Perpetual Dual-Currency Notes for and aggregate amount of €730.000.000 as per the indenture dated May 9, 2007 entered into by and among, New Sunward Holding Financial Ventures B.V., as issuer, CEMEX, S.A.B. de C.V. CEMEX México S.A. de C.V. and New Sunward Holding

B.V., as guarantors and THE BANK OF NEW YORK MELLON, as trustee. Represented by Ms. Ruth Suzanne Musgrave, of legal age, British national, with a business address for this effects at Paseo de la Castellana, 110, 28046 Madrid, with British passport 506046126, and National Identity Number X9231168A as per the power of attorney dated September 14, 2012 granted before Mr. Danny Lee, Public Notary of the State of New York, duly apostilled as per the 1961 Hague Convention.

**THE BANK OF NEW YORK MELLON**, incorporated in accordance with the laws of the State of New York (United States of America), with registered office at One Wall Street, New York, N.Y. 10286, United States of America under IRS number 13-5160382, acting on behalf of the holders of 9.000% Senior Secured Notes due 2018 for and aggregate amount of U.S.$1.650.000.000 as per the indenture dated January 11, 2011 entered into by and among, CEMEX, S.A.B. de C.V., as issuer, CEMEX España, S.A., CEMEX México S.A. de C.V. and New Sunward Holding B.V., as guarantors and THE BANK OF NEW YORK MELLON, as trustee. Represented by Ms. Ruth Suzanne Musgrave, of legal age, British national, with a business address for this effects at Paseo de la Castellana, 110, 28046 Madrid, with British passport 506046126, and National Identity Number X9231168A as per the power of attorney dated September 14, 2012 granted before Mr. Danny Lee, Public Notary of the State of New York, duly apostilled as per the 1961 Hague Convention.

**THE BANK OF NEW YORK MELLON**, incorporated in accordance with the laws of the State of New York (United States of America), with registered office at One Wall Street, New York, N.Y. 10286, United States of America under IRS number 13-5160382, acting on behalf of the holders of 9.50% Senior Secured Notes due 2016 for and aggregate amount of U.S.$1.750.000.000 as per the indenture dated December 14, 2009 entered into by and among, CEMEX Finance LLC, as issuer, CEMEX, S.A.B. de C.V. CEMEX México S.A. de C.V., CEMEX España, S.A., New Sunward Holding B.V., CEMEX Corp., CEMEX Concretos S.A. de C.V. and Empresas Tolteca de México, S.A. de C.V., as guarantors, and THE BANK OF NEW YORK MELLON, as trustee. Represented by Ms. Ruth Suzanne Musgrave, of legal age, British national, with a business address for this effects at Paseo de la Castellana, 110, 28046 Madrid, with British passport 506046126, and National Identity Number X9231168A as per the power of attorney dated September 14, 2012 granted before Mr. Danny Lee, Public Notary of the State of New York, duly apostilled as per the 1961 Hague Convention.

**THE BANK OF NEW YORK MELLON**, incorporated in accordance with the laws of the State of New York (United States of America), with registered office at One Wall Street, New York, N.Y. 10286, United States of America under IRS number 13-5160382, acting on behalf of the holders of 9.625% Senior Secured Notes due 2017 for and aggregate amount of U.S.$350.000.000 as per the indenture dated December 14, 2009 entered into by and among, CEMEX Finance LLC, as issuer, CEMEX, S.A.B. de C.V. CEMEX México S.A. de C.V., CEMEX España, S.A., New Sunward Holding B.V., CEMEX Corp., CEMEX Concretos S.A. de C.V. and Empresas Tolteca de México, S.A. de C.V., as guarantors, and THE BANK OF NEW YORK MELLON, as trustee. Represented by Ms. Ruth Suzanne Musgrave, of legal age, British national, with a business address for this effects at Paseo de la Castellana, 110, 28046 Madrid, with British passport 506046126, and National Identity Number X9231168A as per the power of attorney dated September 14, 2012 granted before Mr. Danny Lee, Public Notary of the State of New York, duly apostilled as per the 1961 Hague Convention.

**THE BANK OF NEW YORK MELLON**, incorporated in accordance with the laws of the State of New York (United States of America), with registered office at One Wall Street, New York, N.Y. 10286, United States of America under IRS number 13-5160382, acting on behalf of the holders of the Callable Perpetual Dual-Currency Notes for and aggregate amount of U.S.$350.000.000 as per the indenture dated December 18, 2006 entered into by and among, New Sunward Holding Financial Ventures B.V., as issuer, CEMEX, S.A.B. de C.V. CEMEX México S.A. de C.V. and New Sunward Holding B.V., as guarantors and THE BANK OF NEW YORK MELLON, as trustee. Represented by Ms. Ruth Suzanne Musgrave, of legal age, British national, with a business address for this effects at Paseo de la Castellana, 110, 28046 Madrid, with British passport 506046126, and National Identity Number X9231168A as per the power of attorney dated September 14, 2012 granted before Mr. Danny Lee, Public Notary of the State of New York, duly apostilled as per the 1961 Hague Convention.

**THE BANK OF NEW YORK MELLON**, incorporated in accordance with the laws of the State of New York (United States of America), with registered office at One Wall Street, New York, N.Y. 10286, United States of America under IRS number 13-5160382, acting on behalf of the holders of the Callable Perpetual Dual-Currency Notes for and aggregate amount of U.S.$750.000.000 as per the indenture dated February 12, 2007, entered into by and among, New Sunward Holding Financial Ventures B.V., as issuer, CEMEX, S.A.B. de C.V. CEMEX México S.A. de C.V. and New Sunward Holding B.V., as guarantors and THE BANK OF NEW YORK MELLON, as trustee. Represented by Ms. Ruth Suzanne Musgrave, of legal age, British national, with a business address for this effects at Paseo de la Castellana, 110, 28046 Madrid, with British passport 506046126, and National Identity Number X9231168A as per the power of attorney dated September 14, 2012 granted before Mr. Danny Lee, Public Notary of the State of New York, duly apostilled as per the 1961 Hague Convention.

**COMPUTERSHARE TRUST COMPANY, N.A.,** incorporated in accordance with the laws of the United States of America, with registered office at 30 Indiana St., Suite 750, Golden, Colorado, 80401, United States of America under IRS number 04-3401714, acting on behalf of the holders of the 9.50% Senior Secured Notes due 2018 for and aggregate amount of U.S.$500.000.000 as per the indenture dated September 17, 2012, entered into by and among, CEMEX, S.A.B. de C.V., as issuer, CEMEX México S.A. de C.V., CEMEX Corp., CEMEX España, S.A., CEMEX Research Group AG, CEMEX Shipping B.V., CEMEX Asia B.V., CEMEX France Gestion (S.A.S.), CEMEX UK, CEMEX Egyptian Investments B.V., New Sunward Holding B.V., CEMEX Concretos S.A. de C.V. and Empresas Tolteca de México, S.A. de C.V., as guarantors, and COMPUTERSHARE TRUST COMPANY, N.A., as trustee. Represented by Ms. Ruth Suzanne Musgrave, of legal age, British national, with a business address for this effects at Paseo de la Castellana, 110, 28046 Madrid, with British passport 506046126, and National Identity Number X9231168A as per the power of attorney dated September 17, 2012 granted before Mr. Beezly Kiernan, Public Notary of the State of New York, duly apostilled as per the 1961 Hague Convention.

**ANEXO 3**
**COPIA DEL CONTRATO DE RELACIÓN ENTRE ACREEDORES**

**ANNEX 3**
**COPY OF THE INTERCREDITOR AGREEMENT**

**ANEXO 4**
**COPIA DE LOS CERTIFICADOS DE LEGITIMACIÓN**

**ANNEX 4**
**COPY OF THE LEGITIMACY CERTIFICATES**

**Exhibit 4.36**

[*TRANSLATION FOR INFORMATION PURPOSES ONLY*]

**Execution version**

IRREVOCABLE SECURITY TRUST AGREEMENT IN RESPECT OF STOCK No. F/111517-9 (the "Agreement"), dated September 17, 2012, entered into by and among:

(1) Cemex, S.A.B. de C.V. ("Cemex SAB"), Empresas Tolteca de México, S.A. de C.V. ("Tolteca"), Impra Café, S.A. de C.V. ("Impra Cafe"), Interamerican Investments, Inc. ("Interamerican"), Cemex México, S.A. de C.V. ("Cemex Mexico"), and Centro Distribuidor de Cemento, S.A. de C.V. ( "Cedice"), as settlors (each of Cemex SAB, Tolteca, Impra Cafe, Interamerican, Cemex Mexico and Cedice, a " Settlor" and, together, the "Settlors");

(2) Cemex Mexico, Cedice, Mexcement Holdings, S.A. de C.V. ("Mexcement") and Corporación Gouda, S.A. de C.V. ("Gouda"), as issuers (each of Cemex Mexico, Cedice, Mexcement and Gouda, in their respective capacities as issuers, an " Issuer" and, together, the "Issuers");

(3) Banco Nacional de México, S.A., Integrante del Grupo Financiero Banamex, División Fiduciaria (the " Trustee"), a banking institution duly organized and validly existing pursuant to the laws of the United Mexican States (" Mexico"); and

(4) Wilmington Trust (London) Limited (the "Beneficiary"), on its own behalf and in its capacity as Security Agent acting hereunder in accordance with the terms of the Intercreditor Agreement (as defined hereinafter) on behalf of the Secured Parties (as defined hereinafter), a private limited company duly incorporated and validly existing under the laws of England and Wales,

pursuant to the following Preliminary Statements, Representations and Clauses.

## PRELIMINARY STATEMENTS

I. WHEREAS, on September 17, 2012. CEMEX, SAB, as the Parent, several direct and indirect subsidiaries of Cemex SAB as borrowers, guarantors or security providers (jointly, the "Obligors"), certain financial institutions and other entities identified therein as creditors (the creditors, together with their successors, beneficiaries and permitted assignees and

transferees, the "Original Creditors"), Citibank International plc, in its capacity as agent (the " Agent") and the Beneficiary, among others, entered into a Facilities Agreement with the purpose of refinancing certain debt of Cemex SAB and the other Obligors described therein (the " Facilities Agreement"; and the debt contemplated in the Facilities Agreement, together with the above mentioned liabilities, the " Original Debt"). A copy of the Facilities Agreement is attached hereto as **Schedule A.**

II. WHEREAS, on September 17, 2012, Cemex SAB, the other Obligors, the Original Creditors, the Agent and the Beneficiary, among others, entered into an Intercreditor Agreement, providing, among other things, for the exercise of rights in respect of collateral, the release of collateral, and the distribution of proceeds arising from the exercise of rights in respect of collateral among several creditors (the " Intercreditor Agreement"). A copy of the Intercreditor Agreement is attached hereto as **Schedule B.**

III. WHEREAS, according to the Facilities Agreement and the Intercreditor Agreement, Cemex SAB and its subsidiaries may refinance debt maintained or issued by any of them, as such refinancing is permitted and shall be secured under this Agreement, in accordance with the terms of the Facilities Agreement and the Intercreditor Agreement, by means of the issuance of bonds, notes or other debt instruments, or convertible or exchangeable securities or loan facilities (jointly, the "Refinanced Debt", and the creditors of any kind, acceding, in its case, by means of an accession agreement, to the Intercreditor Agreement, the "Refinancing Creditors").

IV. WHEREAS, on November 30, 2007, Cemex SAB issued certain *certificados bursátiles* denominated in *unidades de inversión*, guaranteed, on a *por aval* basis, by each of Cemex Mexico and Tolteca, for an amount of 116,530,800 *unidades de inversión*, that are registered with the Mexican National Securities Registry and listed on the Mexican Stock Exchange, under the ticker 07-2U which are identified in **Schedule C** hereto (the "Certificados Bursatiles"). Attached hereto, as **Schedule D**, are copies of each of the securities evidencing the Certificados Bursatiles.

V. WHEREAS, New Sunward Holding Financial Ventures B.V. ("NSHFV") issued, (i) on December 18, 2006, certain callable perpetual dual currency notes, guaranteed by each of Cemex SAB, Cemex Mexico and New Sunward Holding B.V. (" NSH"), which shall be secured in accordance with the terms of this Agreement, for an amount up to US$350,000,000; (ii) on December 18, 2006, certain callable perpetual dual currency notes, guaranteed by each of Cemex SAB, Cemex Mexico and NSH, which shall be secured in accordance with the terms of this Agreement, for an amount up to

US$900,000,000; (iii) on February 12, 2007, certain callable perpetual dual currency notes, guaranteed by each of Cemex SAB, Cemex Mexico and NSH, which shall be secured in accordance with the terms of this Agreement, for an amount up to US$750,000,000; and (iv) on May 9, 2007, certain callable perpetual dual currency notes, guaranteed by each of Cemex SAB, Cemex Mexico and NSH, which shall be secured in accordance with the terms of this Agreement, for an amount up to €730,000,000 (the notes mentioned in paragraphs (i) through (iv) above are jointly referred to as the " Perpetual Securities"). Attached hereto, as **Schedule E**, is a copy of the securities evidencing the Perpetual Securities.

VI. WHEREAS, Cemex SAB issued on (i) January 11, 2011, certain senior secured notes for an amount of US$1,650,000,000, guaranteed by each of Cemex Mexico, Cemex España S.A. ("Cemex España") and NSH, which shall be secured in accordance with the terms of this Agreement, with an interest of 9.000% maturing on January 11, 2018, (ii) April 5, 2011, certain floating rate senior secured notes, for an amount of US$800,000,000, guaranteed by each of Cemex Mexico, Cemex España and NSH, which shall be secured in accordance with the terms of this Agreement, with a floating interest maturing on September 30, 2015, and (iii) September 17, 2012, certain senior secured notes for an amount of US$500,000,000, guaranteed by each of Cemex Mexico, Cemex España, Cemex Concretos, S.A. de C.V. ("Cemex Concretos"), Tolteca, Cemex Corp., NSH, Cemex Research Group AG, Cemex Shipping B.V., Cemex Asia B.V., Cemex France Gestion, Cemex UK and Cemex Egyptian Investments B.V., which shall be secured in accordance with the terms of this Agreement, with an interest of 9.50% maturing on June 15, 2018 (the notes mentioned in paragraphs (i), (ii) and (iii) above are jointly referred to as the "Cemex SAB Bonds"). Attached hereto, as **Schedule F**, is a copy of the securities evidencing the Cemex SAB Bonds.

VII. WHEREAS, Cemex Finance LLC issued on (i) December 14, 2009, certain senior notes for an amount of US$1,750,000,000, guaranteed by each of Cemex SAB, Cemex Mexico, Cemex España, Cemex Concretos, Tolteca, Cemex Corp. and NSH, which shall be secured in accordance with the terms of this Agreement, with an interest of 9.5% maturing on December 14, 2016, and (ii) December 14, 2009, certain senior secured notes for an amount of Euro €350,000,000 guaranteed by each of Cemex SAB, Cemex Mexico, Cemex Concretos, Tolteca, Cemex Corp. and NSH, which shall be secured in accordance with the terms of this Agreement, with an interest of 9.625% maturing on December 14, 2017 (the notes mentioned in paragraphs (i) and (ii) above are jointly referred to as the "Cemex Finance Bonds"). Attached hereto, as **Schedule G**, is a copy of the securities evidencing the Cemex Finance Bonds.

VIII. WHEREAS, Cemex España, through its Luxembourg branch, issued on (i) May 12, 2010, certain senior secured notes for an

amount of Euro €115,346,000 guaranteed by each of Cemex SAB, Cemex Mexico and NSH, which shall be secured in accordance with the terms of this Agreement, with an interest of 8.875% maturing on May 12, 2017; (ii) March 28,2012, certain senior secured notes for an amount of Euro €179,219,000 guaranteed by each of Cemex SAB, Cemex Mexico and NSH, which shall be secured in accordance with the terms of this Agreement, with an interest of 9.875% maturing on April 30, 2019; (iii) March 28, 2012, certain senior secured notes for an amount of $703,861,000, guaranteed by each of Cemex SAB, Cemex Mexico and NSH, which shall be secured in accordance with the terms of this Agreement, with an interest of 9.875% maturing on April 30, 2019, and (iv) May 12, 2010, certain senior secured notes for an amount of $1,192,996,000, guaranteed by each of Cemex SAB, Cemex Mexico and NSH, which shall be secured in accordance with the terms of this Agreement, with an interest of 9.25% maturing on May 12, 2020 (the notes mentioned in paragraphs (i) through (iv) above are jointly referred to as the "Cemex España Bonds"). Attached hereto, as **Schedule H**, is a copy of the securities evidencing the Cemex España Bonds.

IX. WHEREAS, Cemex SAB or any of its subsidiaries (the "Additional Obligors") may, from time to time, issue notes, *certificados bursátiles* (under programs approved on the date hereof or in the future), bonds or other debt securities, convertible or exchangeable securities, or borrow under loan facilities, the proceeds of which are applied to refinance (i) the Certificados Bursatiles, the Perpetual Securities, the Cemex SAB Bonds, the Cemex Finance Bonds, the Cemex España Bonds or any Refinanced Debt, which are secured equally and ratably with other indebtedness of the Obligors under the terms provided for in the Facilities Agreement, (ii) any debt of Cemex SAB or any of the other Obligors under the Facilities Agreement, which is issued or, as necessary, borrowed by the Additional Obligors after the date of the Facilities Agreement, and which may be issued or, as necessary, borrowed in accordance with the Facilities Agreement (such debt, together with the debt referred to in Recital III, jointly the "Refinanced Debt").

X. WHEREAS, the Settlors desire to create a first lien, pursuant to the terms of this Agreement, in respect of the shares transferred in trust referred to herein, ratably and equally, in favor of (i) the Original Creditors, acting through the Beneficiary, and the Beneficiary, (ii) any financial institution that enters into a Creditor Accession Letter (as such term is defined in the Facilities Agreement) in accordance with the Facilities Agreement within 30 Business Days following the Effective Date (as such term is defined in the Facilities Agreement), acting through the Beneficiary, (iii) the Agent, (iv) the holders of the Certificados Bursatiles, acting through the *representante común* of such Certificados Bursatiles, (v) the holders of the Perpetual Securities, acting through the trustee thereof, (vi) the holders of the Cemex SAB Bonds, acting through

the trustee thereof, (vii) the holders of the Cemex Finance Bonds, acting through the trustee thereof, (viii) the holders of the Cemex España Bonds, acting through the trustee thereof, and (ix) the holders of or creditors under any Refinanced Debt, acting through the applicable *representante común*, trustee, agent or creditor (together, the parties specified in paragraphs (i) through (ix) above, and any successors or assignees thereof, the " Secured Parties"), under the terms set forth herein and the Intercreditor Agreement, to secure the due and timely payment of any and all amounts payable by Cemex SAB and the other Obligors under the Financing Agreement and any Refinanced Debt, Cemex SAB, Cemex Mexico and Tolteca under the Certificados Bursatiles; Cemex SAB, NSHFV, Cemex Mexico and NSH under the Perpetual Securities; Cemex SAB, Cemex Mexico and NSH under the Cemex SAB Bonds; Cemex Finance LLC, Cemex SAB, Cemex Mexico, Cemex Concretos, Tolteca, Cemex Corp. and NSH under the Cemex Finance Bonds; Cemex España, Cemex SAB, Cemex Mexico and NSH under the Cemex España Bonds, and any Additional Obligor under any Refinanced Debt (the " Obligations").

Based upon the foregoing Preliminary Statements, each of the parties hereto hereby represents and agrees as follows:

**REPRESENTATIONS**

I. Each of the Settlors represents, on its own behalf and only in respect of itself, as of the date hereof that:

(a) it is a corporation duly organized and existing under the laws of its jurisdiction of incorporation, authorized to enter into this Agreement and to perform its obligations hereunder;

(b) it is the owner of the shares specified in **Exhibit I**, representing capital stock of the relevant Issuer, which are transferred in trust on the date hereof (together, the "Transferred Shares");

(c) it wishes to transfer in trust to the Trustee, pursuant to the terms of this Agreement, its respective Transferred Shares, in favor of each of the Secured Parties, to secure the due and timely performance of the Secured Obligations (as defined below);

(d) its respective Transferred Shares have been duly issued by the relevant Issuer, result from lawful activities, are fully paid, and are free from any lien, security interest, option or encumbrance, of any nature, except for what is set forth in this Agreement;

(e) this Agreement constitutes a legal, valid and binding obligation of the Settlor, enforceable against such Settlor in accordance with its terms, and is sufficient to transfer ownership of the Transferred Shares to the Trustee pursuant to the terms hereof;

(f) it has obtained all internal authorizations necessary to enter into, and to perform its obligations under, this Agreement, including any required authorizations from its shareholders or its board of directors, as applicable;

(g) its representatives are duly authorized to enter into, and bind it under, this Agreement, and such authority has not been limited, revoked or modified in any manner, as evidenced by the public deeds or other evidence of authority attached hereto as **Exhibit J**;

(h) it does not require any approval from any third party, including any governmental authority, for the execution and performance of this Agreement, except that, in the event of foreclosure hereunder, the purchaser or purchasers of any Transferred Shares may require the approval of each of the Mexican Competition Commission (*Comisión Federal de Competencia)* and the Mexican Foreign Investment Commission ( *Comisión Nacional de Inversiones Extranjeras*);

(i) the entering into this Agreement and the performance of its obligations hereunder, do not contravene or result in any breach or violation of any applicable law, rule or regulation, of any agreement, of any nature, to which it may be party or under which it may be bound, or its bylaws or other constitutive documents in effect;

(j) it has not initiated, nor does it have knowledge that it has been initiated against it, any bankruptcy, insolvency, *concurso mercantil*, *quiebra* or similar proceeding under any applicable law;

(k) no legal action or proceeding has been initiated to which it is a party or of which it has been notified, or to its knowledge is intended to be initiated, before any court, governmental authority or arbitrator, of any nature (whether in Mexico or outside of Mexico), that could have a material adverse effect on the business or financial condition of the Settlor, on the rights of the corresponding Settlor with respect to the Transferred Shares, or on the validity, effectiveness or enforceability of this Agreement, except as set forth in the Facilities Agreement and its annexes;

(l) it agrees to provide to the Trustee any information the Trustee may require to comply with the requirements set forth in Article 115 of the Law of Credit Institutions and any other applicable regulation and internal policies of the Trustee;

(m) by entering into this Agreement, it acknowledges the existence of the Secured Parties and their agents, and the capacity of the Beneficiary to act on its own behalf and for the benefit of the Secured Parties (according to the terms set forth in the Intercreditor Agreement), and to exercise any rights arising under the terms of this Agreement.

II. Each of the Issuers represents, on its own behalf and only in respect of itself, as of the date hereof that:

(a) it is a corporation duly organized and existing under the laws of Mexico, authorized to enter into this Agreement and to perform its obligations hereunder;

(b) the Transferred Shares issued thereby have been duly issued, are fully paid, and are free from any lien, security interest, option or encumbrance, of any nature, except for what is set forth in this Agreement;

(c) this Agreement constitutes a legal, valid and binding obligation of the Issuer, enforceable against such Issuer in accordance with its terms;

(d) it has obtained all internal authorizations necessary to enter into, and to perform its obligations under, this Agreement;

(e) its representatives are duly authorized to enter into, and bind it under, this Agreement, and such authority has not been limited, revoked or modified in any manner, as evidenced by the public deeds attached hereto as **Exhibit K**;

(f) it does not require any approval from any third party, including any governmental authority, for the execution and performance of this Agreement, except that, in the event of foreclosure hereunder, the purchaser or purchasers of any Transferred Shares may require the approval of each of the Mexican Federal Competition Commission (*Comisión Federal de Competencia)* and the Mexican Foreign Investment Commission (*Comisión Nacional de Inversiones Extranjeras*);

(g) the entering into this Agreement and the performance of its obligations hereunder, do not contravene or result in any breach or violation of any applicable law, rule or regulation, of any agreement, of any nature, to which it may be party or under which it may be bound, or its bylaws or other constitutive documents in effect;

(h) no legal action or proceeding has been initiated to which it is a party or of which it has been notified, or to its knowledge is intended to be initiated, before any court, governmental authority or arbitrator, of any nature (whether in Mexico or outside of Mexico), that could have a material adverse effect on the business or financial condition of the Issuer, on the rights of the corresponding Settlor with respect to the Transferred Shares or on the validity, effectiveness or enforceability of this Agreement, except as set forth in the Facilities Agreement and its annexes.

III. The Trustee represents as of the date hereof that:

(a) it is a multiple banking institution (*institución de banca múltiple*) duly organized and existing under the laws of Mexico, authorized to enter into this Agreement and to perform its obligations hereunder;

(b) this Agreement constitutes a legal, valid and binding obligation of the Trustee, enforceable against the Trustee in accordance with its terms;

(c) it has obtained all internal authorizations necessary to enter into, and to perform its obligations under, this Agreement;

(d) its representatives (*delegados fiduciarios*) are duly authorized to enter into, and bind it under, this Agreement, and such authority has not been limited, revoked or modified in any manner, as evidenced by the public deeds attached hereto as **Exhibit L**;

(e) it does not require any approval from any third party, including any governmental authority, for the execution and performance of this Agreement, except that, in the event of foreclosure hereunder, the purchaser or purchasers of any Transferred Shares may require the approval of each of the Mexican Federal Competition Commission (*Comisión Federal de Competencia)* and the Mexican Foreign Investment Commission (*Comisión Nacional de Inversiones Extranjeras*);

(f) the entering into this Agreement and the performance of its obligations hereunder, do not contravene or result in any breach or violation of any applicable law, rule or regulation, of any agreement, of any nature, to which it may be party or under which it may be bound, or its bylaws or other constitutive documents in effect;

(g) it agrees to act as trustee under this Agreement; and

(h) it has explained the Parties the text of sub-paragraph b), paragraph XIX of Article 106 of the Law of Credit Institutions and of the Circular 1/2005 and the amendments thereto issued by *Banco de México*, in connection with the Trustee's limitations under the current laws and regulations, provided that such provisions are included in Clause Ninth of this Agreement.

IV. The Beneficiary represents as of the date hereof that:

(a) it is a private limited company duly incorporated and existing under the laws of England and Wales, authorized to enter into this Agreement and to perform its obligations hereunder;

(b) its representatives are duly authorized to enter into, and bind it under, this Agreement, and such authority has not been limited, revoked or modified in any manner, as evidenced by the public deeds or other evidence of authority attached hereto as **Exhibit M**;

(c) it does not require any approval from any third party, including any governmental authority, for the execution and performance of this Agreement, except that, in the event of foreclosure hereunder, the purchaser or purchasers of any Transferred Shares may require the approval of each of the Mexican Federal Competition Commission (*Comisión Federal de Competencia)* and the Mexican Foreign Investment Commission (*Comisión Nacional de Inversiones Extranjeras*);

(d) it is entering into this Agreement on its own behalf and for the benefit of the Original Creditors and, if applicable, the Refinancing Creditors (and their respective successors and assigns) and the other Secured Parties, pursuant to the terms of the Facilities Agreement and the Intercreditor Agreement pursuant to the instructions received from the Agent.

IN WITNESS WHEREOF, the parties hereto agree to the following:

## CLAUSES

**FIRST.** Creation of the Trust; Subsequent Transfers. (a) Each of the Settlors hereby creates this irrevocable security trust with the Trustee, identified with number F/111517-9, by transferring to the Trustee ownership of the Transferred Shares, which shall be subject to the terms set forth in this Agreement until the Termination Date (as defined below) or as otherwise provided herein, as security for the due, full and timely satisfaction of (i) any and all present and future liabilities at

any time due, owing or incurred by Cemex SAB, any of its Subsidiaries and the other Obligors to any Secured Party in accordance with the Facilities Agreement and the Intercreditor Agreement, including the Obligations, (ii) any and all of the amounts payable by the Settlors pursuant to the terms of this Agreement, and (iii) any and all fees, costs and expenses incurred, paid or disbursed by the Beneficiary, the Secured Creditors or their respective agents, if any, upon exercise of their respective rights set forth herein ((i), (ii) and (iii), jointly, the "Secured Obligations"). The Trustee hereby acquires and receives the Transferred Shares and the execution of this Agreement constitutes evidence of receipt of such Transferred Shares by the Trustee.

(b) Each of the Settlors hereby agrees to transfer to the Trustee, and to cause any third party controlled by Cemex SAB, directly or indirectly, to transfer to the Trustee, within five (5) business days counted from the date of acquisition thereof, by any means, any additional shares issued by any Issuer that any of the Settlors or such controlled third party may acquire, by subscription and payment or otherwise (the " Additional Shares"), pursuant to the procedure specified in this Clause First. For purposes of this Agreement, the term "business days" shall mean any day which is not a Saturday or Sunday, on which banking institutions are authorized to open and carry out operations with the general public in Mexico, in conformity with the calendar issued and updated from time to time by the National Banking and Securities Commission ( *Comisión Nacional Bancaria y de Valores*).

(c) The representations made by each of the Settlors in this Agreement, shall be deemed repeated by the relevant Settlor or a third party on each of the dates on which such Settlor or any third party transfers Additional Shares in trust pursuant to the terms of this Agreement, *mutatis mutandi*, in respect of such Additional Shares.

(d) The transfer of ownership by each Settlor to the Trustee of the Transferred Shares it owns, shall be undertaken as follows:

(1) each Settlor shall transfer in trust the Transferred Shares by means of (i) delivering to the Trustee any and all certificates evidencing the Transferred Shares, duly endorsed in property (*endoso en propiedad*) to the Trustee, and (ii) causing the relevant Issuer's secretary of the board of directors, to make a notation in the stock registry book of the relevant Issuer, specifying that the relevant Transferred Shares have been transferred to the Trustee pursuant to the terms of this Agreement, and delivering a

certificate of the relevant secretary of the board of directors of the relevant Issuer to such effect, issued in favor of the Trustee and for the benefit of the Secured Parties; and

(2) each of the Settlors shall transfer to the Trustee, and agrees to cause any applicable third party to transfer to the Trustee, pursuant to this Agreement (and in particular, this Clause First), any Additional Shares any of them may acquire.

(e) The Trustee hereby acknowledges the due receipt of the Transferred Shares, as set forth in Clause First, (d)(1) above, having received the relevant certificates to its satisfaction, and agrees to hold the Transferred Shares in trust, pursuant to the terms hereof, as part of the, and jointly with other, Trust Assets (as hereinafter defined), for the benefit of the Beneficiary and the Secured Parties, to secure performance of the Secured Obligations and, upon the occurrence of the Termination Date, to the extent any Trust Assets shall remain on such Termination Date, for the benefit of, and the reversion to, the corresponding Settlor pursuant to the terms and conditions hereof and following the instructions of such Settlor, and at such Settlor's own expense.

(f) With respect to any Transferred Shares or Additional Shares transferred to the Trustee pursuant to this Agreement, the Settlor or third party transferring the applicable Transferred Shares or Additional Shares, shall be liable for (i) any claims of property rights made by any third party (*saneamiento para el caso de evicción*), and (ii) any hidden defects (*vicios ocultos*).

(g) Without any responsibility, of any nature whatsoever, arising to the Trustee, the Beneficiary or any of the Secured Parties, each of the Settlors hereby states, in its capacity as second beneficiary pursuant to this Agreement, that (i) such Settlor reserves, upon the occurrence of the Termination Date, to the extent any Trust Assets shall remain on such Date, the right to reacquire the Transferred Shares and any Additional Shares, for purposes of applicable tax law, and (ii) the transfer and delivery of the Transferred Shares and any Additional Shares to the Trustee does not result in the payment of any income taxes arising from the transfer of the Transferred Shares and any Additional Shares set forth in this Agreement, in accordance with Article 14 of the Mexican Federal Fiscal Code (*Código Fiscal de la Federación)*, because the corresponding Settlor has the right to reacquire the Transferred Shares and any Additional Shares (to the extent remaining), upon the occurrence of the Termination Date. Each Settlor agrees, for the benefit of the Secured Parties and with the Trustee's knowledge, that the provisions of this paragraph do not contravene the irrevocability provision set forth in Clause Fourteenth of this Agreement.

(h) Within ten (10) business days counted from the date hereof, the Trustee, pursuant to the instructions of the Beneficiary (which are hereby deemed to be given, without any separate instruction being required), if necessary with the assistance of Cemex SAB, agrees to notify the *representante común* of the Certificados Bursatiles, the trustee acting for the holders of the Perpetual Securities, the trustee acting for the holders of the Cemex SAB Bonds, the trustee acting for the holders of the Cemex Finance Bonds, the trustee acting for the holders of the Cemex España Bonds of the creation of the trust set forth in this Agreement and the rights arising therefrom for holders of Certificados Bursatiles, the Perpetual Securities, the Cemex SAB Bonds, the Cemex Finance Bonds and the Cemex España Bonds.

**SECOND.** Parties to the Agreement. (a) The parties to this Agreement are the following:

| | |
|---|---|
| Settlors and second beneficiaries: | Cemex SAB, Tolteca, Impra Cafe, Interamerican, Cemex Mexico and Cedice, and any other party that transfers Additional Shares in trust pursuant to the terms of this Agreement; |
| Trustee: | Banco Nacional de México, S.A., Integrante del Grupo Financiero Banamex, División Fiduciaria; |
| Beneficiary: | Wilmington Trust (London) Limited, on its own behalf and on behalf of the Secured Parties in accordance with the terms set forth in the Intercreditor Agreement, provided that none of the Secured Parties other than the Beneficiary, acting for the Original Creditors and, as specified in the Intercreditor Agreement, acting for the Refinancing Creditors, shall have the right to enforce any of its rights arising hereunder, but shall be entitled to receive its pro-rata portion of the proceeds from foreclosure, upon exercise of rights by the Beneficiary as set forth herein and pursuant to the terms of the Intercreditor Agreement. |

(b) The Settlors shall be beneficiaries in second place and each of them shall be entitled, on the Termination Date, to all or a portion of the Trust Assets, as the case may be, that shall remain on the Termination Date.

(c) In case the Beneficiary deems it appropriate or necessary, or it is required in accordance with the terms of the Intercreditor Agreement, the Beneficiary may request or obtain instructions or directions from the Secured Parties to act or exercise any rights under this Agreement in accordance with Clause Twenty First.

(d) The successors, assigns and/or the parties replacing the Trustee, any Settlor, the Beneficiary, the Original Creditors, the Refinancing Creditors, if applicable, or any other of the Secured Parties, as the case may be, pursuant to the terms hereof and of the Facilities Agreement, the Intercreditor Agreement, the Refinancing Indebtedness, the Certificados Bursatiles, the Perpetual Securities, the Cemex SAB Bonds, the Cemex Finance Bonds, the Cemex España Bonds and any Additional Indebtedness, shall be deemed as the "Trustee", a "Settlor", the "Beneficiary", the "Original Creditors", the "Refinancing Creditors" and the "Secured Parties," respectively, for purposes of this Agreement.

(e) By entering into this Agreement, the Trustee (i) agrees to faithfully and loyally perform its obligations as trustee pursuant to the provisions set forth in this Agreement, and in accordance with applicable law, (ii) acknowledges and accepts title and ownership of the Transferred Shares and, if applicable, the Additional Shares, to satisfy the purposes of the trust created hereunder, and (iii) shall be deemed to have delivered to the Settlors an acknowledgement of receipt in respect to the Transferred Shares, that shall also serve as the inventory of the Trust Assets, pursuant to what is set forth in Rule 5.1 of Circular 1/2005, issued by the Mexican Central Bank (*Banco de México*), as modified from time to time (the "Circular 1/2005").

**THIRD.** Purposes of this Trust. The purposes of the trust created hereby and the Trustee's obligations are:

(a) that the Trustee receives in trust ownership and maintain as collateral the Trust Assets during the effectiveness of this Agreement, as provided hereunder and under the Facilities Agreement and the Intercreditor Agreement, until the earlier to occur of (i) full and final discharge of the obligations of the Original Creditors to the satisfaction of the Agent (acting reasonably) as set forth in the Intercreditor Agreement, (ii) the release of the Trust Assets, pursuant to the terms of the Intercreditor Agreement, on the Business Day following the date

on which (1) the Consolidated Leverage Ratio for any Reference Period in respect of which a Compliance Certificate has been (or is required to have been) delivered under the Facilities Agreement (as each capitalized term is defined in the Facilities Agreement) was not greater than 3.50:1, and (2) no Default is continuing (as the capitalized term is defined in the Facilities Agreement), or (iii) any other termination as permitted under Clause Fourteenth hereof (such earlier date, the "Termination Date"), provided that the occurrence of any of the events described in paragraphs (i), (ii) and (iii) shall be notified in writing by the Beneficiary to the Trustee;

(b) that the Trust Assets secure the Secured Obligations and, as set forth in this Agreement, that the Trustee, upon the occurrence of an Enforcement Event (as defined in the Intercreditor Agreement; hereinafter, an "Enforcement Event"), sell such Trust Assets, and the proceeds of such sale be applied to the payment of the Secured Obligations, as provided in this Agreement and the Intercreditor Agreement;

(c) that the Trustee re-convey the Trust Assets that shall then remain under this Agreement to the Settlors as it may correspond, immediately after the Termination Date, by transferring the corresponding Transferred Shares or Additional Shares, as the case may be, according to the instructions and at the expense of the relevant Settlor, including by means of an endorsement in ownership and delivery of the necessary certificates;

(d) that the Trustee maintain the Trust Assets, exercise, or allow the exercise, of the rights pertaining thereto, as set forth in Clause Fifth, and act as a good *pater familias* (*buen padre de familia*) in respect of the Trust Assets, it being understood that, should the Trustee have any doubt regarding the exercise of such rights, it must request instructions from both the Settlors and the Beneficiary or from any of the Settlors or the Beneficiary, as may be applicable, as set forth in this Agreement (and, in particular, Clause Eighth) or, upon the occurrence of an Enforcement Event, solely from the Beneficiary (unless an emergency arises, in which case the Trustee shall act as a good *pater familias* (*buen padre de familia*) pursuant to its discretion, using its judgment and without any responsibility to the Trustee, except if the Trustee shall have acted with fraud, negligence or bad faith (*dolo, negligencia o mala fe*)).

(e) that, in the event the Trust Assets or a portion thereof be represented by cash, the Trustee invest such cash in Certificates of the Treasury of the Federation (*Certificados de la Tesorería de la Federación* or *Cetes*) (or if not available, any other instrument issued by the Mexican government), whether purchased in a primary offering or in the secondary market or, if

so instructed by the Settlors and the Beneficiary, in any other instruments, as permitted under applicable law regulating the investment of trust assets (including Circular 1/2005), upon the occurrence of an Enforcement Event, in any instrument specified by the Beneficiary, and upon the occurrence of the Termination Date, in any instrument specified by the Settlors (to the extent any Trust Assets shall remain on such Date), it being understood that (i) the Trustee is authorized, for such purposes, to open any necessary bank or investment accounts and undertake all action to enter into the necessary agreements, all as instructed by the Settlors and the Beneficiary, and (ii) if any dividends or other distributions shall be received by the Trustee pursuant to Clause Fifth (b) hereof, and the Settlors (as opposed to the Beneficiary) shall be entitled to receive such dividends or distributions as therein set forth, then the Trustee shall invest or deliver the applicable amounts received as distributions, solely as instructed by the Settlors;

(f) that the Trustee enter into the necessary agreements or instruments, and undertake any other action that may be deemed necessary, to create, maintain and manage the trust created pursuant to the terms of this Agreement and to manage the Trust Assets, as instructed by the Beneficiary or, when expressly agreed, the Settlors;

(g) that the Trustee perform its remaining obligations contemplated by this Agreement, duly and promptly;

(h) that the Trustee perform any and all action entrusted to it hereunder (including, without limitation, the execution of the necessary agreements or receiving or granting any power-of-attorney), pursuant to this Clause Third or any other Clause of this Agreement, implicitly arising from the terms hereof or resulting from applicable law.

**FOURTH.** Trust Assets. The Trust Assets shall be comprised of the following:

(a) the Transferred Shares transferred by each Settlor, as set forth in Clause First hereof;

(b) any Additional Shares or other assets, if applicable, transferred to the trust created hereunder by the Settlors or by any other third party controlled, directly or indirectly, by Cemex SAB;

(c) any ancillary rights related to the Transferred Shares, any Additional Shares and any other assets transferred in trust hereunder;

(d) except for dividends or other distributions to which the Settlors shall be entitled as provided in Clause Fifth (b) hereof, any income, distributions and proceeds relating to the Transferred Shares, the Additional Shares or any other assets transferred in trust hereunder;

(e) any instruments or securities, of any nature, acquired with the Trust Assets and income or proceeds resulting from such Trust Assets;

(f) any certificates issued in substitution of, for any reason, the Transferred Shares or any Additional Shares;

(g) the rights pertaining to the Transferred Shares, any Additional Shares and any other assets transferred in trust hereunder, as set forth, and subject to the limitations specified, in Clause Fifth; and

(h) any other assets, property or rights that, for any reason or under any legal circumstance, become a part of the Trust Assets.

**FIFTH.** Certain Rights and Obligations of the Settlors. The parties hereto hereby confirm that, so long no Enforcement Event has occurred, the Settlors are beneficially entitled to voting rights and to dividend rights, in accordance with the terms of paragraphs (a) and (b) below.

(a) Voting and Subscription Rights. (1) The parties agree that, so long as no Enforcement Event has occurred, each of the Settlors shall be entitled (i) to provide the Trustee with written instructions in respect of how to vote the Transferred Shares or the Additional Shares in terms of this Clause Fifth and the Trustee shall vote the Transferred Shares or Additional Shares in accordance with such instructions, or (ii) to cause the Trustee to provide proxies permitting the voting of any such Transferred Shares or Additional Shares, except upon the occurrence of an Enforcement Event, in which case, each of the Settlors hereby agrees that the voting rights pertaining to the Transferred Shares and the Additional Shares, shall be exercised by the Trustee, as instructed by the Beneficiary.

(2) Should a Settlor exercise the option specified in paragraph (a)(1)(ii) above, for purposes of allowing the relevant Settlor to exercise the voting rights attributable to the Transferred Shares and the Additional Shares, the Trustee shall deliver to such Settlor, any certificates, proxies or documents that

are reasonably requested in writing by such Settlor, and in the form and manner so requested, so long as (i) such certificates, proxies or documents have been requested in a timely manner with respect to shareholders' meetings and, in any case, at least three (3) business days in advance of the date on which such meeting is scheduled to occur, (ii) no Enforcement Event has occurred, and (iii) all related expenses are covered by the relevant Settlor, provided that the relevant Settlor shall deliver to the Trustee a written report in respect of the manner on which the voting rights were exercised within three (3) business days after the date of the relevant shareholders meeting.

(3) In connection with the exercise of the voting rights corresponding to the Transferred Shares or the Additional Shares, as permitted under paragraph (a)(1)(ii) above, each of the Settlors hereby agrees that it may not exercise, and it shall cause any third party that is controlled, directly or indirectly, by Cemex SAB, not to exercise, such voting rights in any manner (i) that is contrary to the provisions of the Facilities Agreement or the Intercreditor Agreement, or (ii) that is detrimental to, or otherwise affects, the rights of the Beneficiary or the Secured Parties set forth herein, in the Facilities Agreement or in the Intercreditor Agreement.

(4) In the event that the Trustee, as holder of the Transferred Shares or the Additional Shares as set forth herein, shall be entitled to exercise preemptive rights attributable to the Transferred Shares and the Additional Shares, in connection with any new stock issued, or proposed to be issued, by the relevant Issuer, the Trustee shall exercise such rights, so long as (i) written instructions shall have been provided to the Trustee by the corresponding Settlor (who shall benefit from the relevant shares upon reversion hereunder), at least three (3) business days prior to the date on which the term to exercise the subscription rights shall expire (and the Trustee shall exercise such rights in accordance with such instructions), and (ii) the corresponding Settlor shall have provided the Trustee with the necessary immediately available funds, if funds are required for the exercise of the rights, at least two (2) business day before such date. The Trustee shall be released from any liability with respect to the corresponding Settlor, if written instructions or funds are not timely provided by such Settlor. The parties agree

that any Additional Shares acquired by the Trustee under this paragraph (a)(4), shall be subject to the terms of this Agreement and shall be considered as Additional Shares for purposes hereof.

(b) Distributions. (1) The parties agree that, so long as no Enforcement Event has occurred, each of the Settlors shall be entitled to receive from the Trustee dividends or other distributions in cash, payable by the relevant Issuer with respect to the Transferred Shares and the Additional Shares, which shall be paid, upon effective receipt, by the Trustee to the relevant Settlor, by delivery of the applicable amount as it may correspond; should an Enforcement Event occur, such cash dividends or distributions shall become part of the Trust Assets subject to the terms of this Agreement.

(2) All dividends or distributions made with respect to the Transferred Shares and the Additional Shares in kind (by means of Additional Shares or any other means) shall become part of the Trust Assets subject to the terms of this Agreement.

(c) Formalization. Each of the parties hereto hereby agrees that, no later than on the fifth business day following the date of execution hereof, each such party shall appear before a notary public or a commercial notary public ( *corredor público*) selected by the Trustee, to formalize this Agreement.

**SIXTH.** Certain Obligations of the Settlors. Until the Termination Date, and except if expressly authorized in writing by the Beneficiary, each of the Settlors hereby agrees to:

(a) inform the Beneficiary and the Trustee immediately, of any development or event that has had or could reasonably be expected to have, a material adverse effect in respect of the Trust Assets, this Agreement or its obligations hereunder;

(b) execute and deliver all documents or instruments, and undertake any action, that may be necessary, based upon the reasonable judgment of the Trustee or the Beneficiary, to maintain in full force and effect the true transfer arising from this Agreement, or to permit the Trustee or the Beneficiary, as applicable, to exercise any of their respective rights pursuant to this Agreement;

(c) refrain from creating or permitting the creation of any liens or limitations of rights with respect to the Trust Assets; and

(d) immediately transfer in trust to the Trustee, any Additional Shares that it may own, from time to time, pursuant to the terms of this Agreement and, in particular, Clause First.

**SEVENTH.** Action Upon Occurrence of an Enforcement Event .

(a) Sale of Shares. If an Enforcement Event shall occur, the Beneficiary, if the requirements set forth in the Intercreditor Agreement shall have been satisfied, shall have the right to instruct the Trustee to start an extrajudicial foreclosure proceeding, to sell the Transferred Shares and any Additional Shares (and any other Trust Assets that may be sold), in accordance with the following paragraphs, agreed upon by the Settlors and the Beneficiary, based upon Article 83 of the Law of Credit Institutions ( *Ley de Instituciones de Crédito* ) and Article 403 of the General Law of Negotiable Instruments and Credit Transactions (*Ley General de Títulos y Operaciones de Crédito* ):

(1) if the Trustee receives a sale instruction from the Beneficiary (a copy of which shall be delivered to the representative of the Settlors appointed hereunder), in terms of the form of sale instruction attached hereto as **Exhibit N** (hereinafter, the "Sale Instruction"), by means of which the Beneficiary requests the Trustee to sell the Transferred Shares, any Additional Shares and other assets comprising the Trust Assets, to satisfy the Secured Obligations, because of the occurrence of an Enforcement Event, the Trustee shall proceed to sell such Trust Assets as provided below. The Sale Instruction shall include, as an attachment, a copy of this Agreement, certified by a notary public or a commercial notary public (*corredor público*), shall include the description supporting the occurrence of an Enforcement Event in accordance with the provisions of the Intercreditor Agreement, and the amounts due and payable to the Secured Parties or a statement setting forth that the Settlors have not complied with their respective payment obligations hereunder;

(2) the Trustee shall give notice of the Sale Instruction to the representative of the Settlors, as instructed by the Beneficiary, to the address in Mexico indicated herein, by personal delivery, during business days and hours, through any of its officers or through a notary public or commercial notary public (*corredor público*), not later than three (3) Business Days after receipt of the Sale Instruction;

(3) the Settlors shall have ten (10) business days, counted from the date on which the notice from the Trustee specified in paragraph (a)(2) above shall have been received, to oppose the sale as set forth in paragraph (4) below;

(4) the Settlors may only oppose such sale if the Settlors deliver to the Trustee evidence of payment issued and duly executed by the Beneficiary, of the obligations of the Obligors under the Facilities Agreement vis-à-vis the Original Creditors or of the payment obligations of the Settlors hereunder; it being understood that the Trustee may request the Beneficiary to provide a written confirmation as to whether such obligations have been complied with;

(5) in the event that the Settlors fail to prove, pursuant to paragraph (a)(4) above, that the Settlors have complied with their obligations arising from the Facilities Agreement or hereunder, as the case may be, the Trustee, upon written instructions given by the Beneficiary, shall immediately proceed to sell the Trust Assets as set forth in this Clause;

(6) the Beneficiary may, at any time, by notifying the Trustee in writing, instruct the Trustee to suspend, totally or partially, on the date and time on which such instructions are received by the Trustee, the extrajudicial foreclosure proceeding commenced in accordance with this Clause Seventh; provided that such notice shall cease to have effect, totally or partially, on the date and time on which the Trustee receives in writing from the Beneficiary, a new instruction by means of which the Beneficiary requests the Trustee to continue, totally or partially, with the extrajudicial foreclosure relating to the Trust Assets;

(7) the foreclosure shall be made by the Trustee, by means of an auction to be held in a location chosen by the Trustee. The Trustee with the aid of the Advisor (as such term is defined below), shall make a survey of potential bidders, and shall solicit potential bidders, whether arising from the survey or not, their participation in the auction. To the extent deemed necessary by the Beneficiary, the Advisor shall be in charge of preparing and distributing, or causing a third party to prepare and distribute, as instructed

by the Beneficiary, at the Settlors' expense and as promptly as reasonably practicable, a confidential information memorandum (the " Information Memorandum"), to be delivered to such potential bidders that have expressed an interest in purchasing the Trust Assets. The Information Memorandum shall contain, among other things, a description of the business of the Issuers, and an analysis of the Issuers' financial condition and results of operations (including audited financial statements of each Issuer for the last three (3) fiscal years, if available). The Information Memorandum or any other necessary document shall advise potential bidders of the amount each such potential bidder shall post through a certificate of deposit or certified check issued in favor of the Trustee, to guarantee the seriousness of their potential proposal, should any such potential bidder seek to participate in the auction;

(8) each of the Settlors and the Issuers agree to produce and deliver to the Trustee, the Advisor and the Beneficiary, such information related to the Issuers (legal, financial or otherwise), reasonably requested by the Advisor or the Beneficiary, necessary or desirable to prepare the Information Memorandum or for the purposes of this Agreement and any other documentation related to the Issuers (legal, financial or otherwise) that the Advisor or the Beneficiary reasonably consider that a potential bidder may require to make an informed offer;

(9) after the Trustee has distributed the Information Memorandum to potential bidders, if necessary, or after the Trustee shall have delivered any information deemed necessary to potential bidders, the Trustee shall advise such bidders of the place, date and time selected for the auction (the "Auction Notice"), which date shall not exceed thirty (30) days counted from the date the Information Memorandum or other information was distributed to all prospective bidders, and such date in no event shall exceed forty five (45) days from the date the Information Memorandum or other information was distributed to the first prospective bidder;

(10) the participating bidders shall deliver their offers in writing and in a sealed envelope to the Trustee, no later than on the date and time established in the Auction Notice, together with a certificate of deposit issued by a banking institution or a certified check issued in favor of the Trustee in the amount

determined by the Trustee (after consulting with the Beneficiary) to guarantee the seriousness of their proposal;

(11) the Trustee shall open the envelopes in the presence of the bidders, their representatives and a notary public or a commercial notary public (*corredor público*), on the date and time of the auction; the Trustee shall have ten (10) business days after such envelopes shall have been opened (or a longer period, if it was not possible to sell the Trust Assets within such period, as a result of any event, including failure to receive any necessary regulatory approvals), if so requested by the Beneficiary, to sell the Trust Assets to the bidder that submitted the highest offer;

(12) the winning bidder shall pay to the Trustee the offered price within the number of business days following the date of the auction indicated by the Trustee, after consulting with the Beneficiary;

(13) in the event that the bidder who made the highest bid fails to pay the price within the term specified, the deposit made or delivered certified check thereby shall inure to the benefit of the Beneficiary, who shall apply it to repay the amounts owed in respect of the Secured Obligations, as provided in this Clause;

(14) upon expiration of the term referred to in the preceding paragraph without the proposed purchase price being paid, the Trustee shall clearly notify the bidder who offered the second highest price (within the following twenty (20) business days); if such bidder maintains its initial offer, it shall be granted a period of time within which to pay the purchase price to the Trustee, if requested by the Beneficiary; if the second highest bidder does not maintain its offer, the Trustee may continue contacting all bidders in the order of higher to lower offers, following the procedure specified above, unless the Beneficiary shall object;

(15) if the sale may not be made to any of the bidders, the Trustee, with the consent of the Beneficiary, shall undertake a new auction following substantially the foregoing steps, until the sale of the Trust Assets is completed.

(b) Application of Sale Proceeds. The proceeds from any sale of the Trust Assets (including any Transferred Shares and

Additional Shares), shall be delivered to the Trustee, who shall proceed as instructed by the Beneficiary pursuant to the Intercreditor Agreement, in the following order of application:

(1) to the payment of any and all taxes due by any of the Settlors, as a result of the sale of the Trust Assets, if such taxes shall have not been paid by the corresponding Settlor;

(2) to the payment of expenses and fees reasonably incurred in connection with the sale of the Trust Assets, including, without limitation, any expenses or fees charged or incurred by the Trustee or the Beneficiary, if any such expenses or fees shall have not been paid by the Settlors;

(3) to the payment of the Trustee's fees, if such fees shall have not been paid by the Settlors;

(4) to the payment, on a pro-rata basis, of any and all outstanding Secured Obligations, for which purpose the amounts requested by the Beneficiary shall be delivered thereto, so that the Beneficiary may apply such amounts or cause such amounts to be applied, in the order specified in Clause 10.1 of the Intercreditor Agreement; and

(5) upon payment of the foregoing items, any remaining amounts shall be delivered pursuant to the instructions of the Settlors or, absent such instructions, as ordered by a court of competent jurisdiction.

(c) Conversion. As the Secured Obligations payable by the Settlors are mainly monetary obligations denominated in dollars of the United States of America, to the extent necessary to pay the applicable dollar-denominated Secured Obligations, the amounts received in pesos from the sale of the Trust Assets referred to in this Clause Seventh, shall be converted into dollars of the United States of America by the Trustee, to the extent necessary and as instructed by the Beneficiary, at the most favorable rate provided by Banco Nacional de México, S.A., Integrante del Grupo Financiero Banamex, or BBVA Bancomer, S.A., Institución de Banca Múltiple, Grupo Financiero BBVA Bancomer, or any successor thereof, and in case such rate is not provided to the Trustee by the aforementioned institutions, as it shall be obtained from an institution chosen by the Beneficiary, which amounts so converted shall be applied by the Trustee, up to the resulting converted amount, to the payment of the dollar-denominated Secured Obligations and other items (in such order) described above.

(d) Advisor. Upon agreement with the Beneficiary, the Trustee shall appoint a third party (the "Advisor"), which shall be a reputable credit institution or financial advisor institution, to organize and coordinate the bidding process contemplated herein and to prepare all relevant documentation, provided that (i) the Beneficiary may, at any time, remove or replace the Advisor (if appointed), with or without cause, and (ii) there shall not exist a labor relationship between the Trustee and the Beneficiary.

(e) Substitution of the Advisor. Should the Advisor, for any reason, not be able to perform its obligations under this Agreement, the parties hereto agree that the Trustee, after having so agreed with the Beneficiary and only in that case, shall appoint a new advisor, whom shall adhere to the terms of this Agreement, and whom shall be deemed as the "Advisor" starting from the date of the appointment; it being understood that (i) such appointment shall be made to a reputable institution capable of performing such duties, and (ii) the Advisor shall not cease to perform its duties until a new advisor accepts its designation as such under the terms provided in this Agreement.

(f) Fees and expenses of the Advisor. The Settlors, on a joint and several basis, agree to pay the Advisor its reasonable fees.

As required under Article 403 of the General Law of Negotiable Instruments and Credit Transactions ( *Ley General de Títulos y Operaciones de Crédito*), each of the Settlors expressly agrees the extrajudicial foreclosure proceeding set forth in this Clause Seventh, by signing below to so evidence:

The Settlors:

Cemex, S.A.B. de C.V.

/s/ Roger Saldaña Madero /s/ René Delgadillo Galván

Por: Roger Saldaña Madero and René Delgadillo Galván
Cargo: Apoderado Jurídicos

/s/ Roger Saldaña Madero /s/ René Delgadillo Galván

Por: Roger Saldaña Madero and René Delgadillo Galván
Cargo: Apoderado Jurídicos

Empresas Tolteca de México, S.A. de C.V.

/s/ Roger Saldaña Madero /s/ René Delgadillo Galván

Impra Café, S.A. de C.V.

/s/ Roger Saldaña Madero /s/ René Delgadillo Galván

Por: Roger Saldaña Madero and René Delgadillo Galván
Cargo: Apoderado Jurídicos

Por: Roger Saldaña Madero and René Delgadillo Galván
Cargo: Apoderado Jurídicos

Interamerican Investments, Inc.

/s/ Roger Saldaña Madero /s/ René Delgadillo Galván

Por: Roger Saldaña Madero and René Delgadillo Galván
Cargo: Apoderado Jurídicos

Cemex México, S.A. de C.V.

/s/ Roger Saldaña Madero /s/ René Delgadillo Galván

Por: Roger Saldaña Madero and René Delgadillo Galván
Cargo: Apoderado Jurídicos

Centro Distribuidor de Cemento, S.A. de C.V.

/s/ Roger Saldaña Madero /s/ René Delgadillo Galván

Por: /s/ Roger Saldaña Madero and René Delgadillo Galván
Cargo: Apoderado Jurídicos

**EIGHTH.** Obligations and Scope of Trustee's Liability; Protection of the Trust Assets. (a) The Trustee agrees to manage the Trust Assets, to comply with its obligations and to exercise its rights hereunder, pursuant to the terms hereof and according to applicable law, and using the highest standard of care contemplated under Mexican law, and agrees not to take any action and not to omit to take any action, that would result in the Trustee not complying with such obligations.

(b) The parties hereto hereby agree that the Trustee shall not be liable for any action or omission of the other parties to this Agreement or of any third party that may result in an impossibility to satisfy the purposes set forth in this Agreement.

(c) Any Secured Obligation (or other obligations applicable to the Trustee pursuant to the terms hereof) shall be satisfied up to the amount of the Trust Assets. Should the Trust Assets be insufficient to satisfy the Secured Obligations, the Trustee shall have no responsibility to make any contributions under this Agreement or to pay the Secured Obligations, but shall be obligated to notify each of the Beneficiary and the Settlors of the existence of any insufficiency.

(d) Each of the Settlors and the Issuers shall notify immediately, in writing, the Trustee and the Beneficiary, of any development or event that has had or could reasonably be expected to have a material adverse effect in respect of the Trust Assets, this Agreement or the respective obligations of the Settlors hereunder, so that the Trustee may defend the Trust Assets pursuant to paragraph (g) below.

(e) The Trustee shall inform each of the Settlors and the Beneficiary, of any threat to the Trust Assets or of any Enforcement Event it has knowledge of, it being understood that the Trustee shall not be required to investigate the existence thereof.

(f) The parties hereto hereby agree that any instructions or notices to be delivered to the Trustee hereunder, shall be in writing.

(g) The Trustee shall have the obligation to grant, to the persons or entities specified in writing by the Settlors and the Beneficiary, the necessary powers-of-attorney to defend the Trust Assets. In the event that the Settlors and the Beneficiary have not designated a person or entity to defend the Trust Assets pursuant to the foregoing terms, and it is likely that such lack of defense shall have a material adverse effect on the Trust Assets, the Trustee shall grant the requisite powers-of-attorney to the person or persons that the Trustee deems appropriate, using its discretion, and shall give the necessary instructions for the effective defense of the Trust Assets, until such time when the Settlors and the Beneficiary deliver the appropriate written instructions to the Trustee in connection with such defense, without the Trustee or the Beneficiary being liable, except in case of the Trustee, if actions of the Trustee arise from willful misconduct, bad faith or negligence (*dolo, negligencia o mala fe*). If (i) there shall be an Enforcement Event, or (ii) the Settlors and the Beneficiary do not reach an agreement as to the identity of the person or entity that shall defend the Trust Assets or in respect of the terms of the instructions to be given in connection therewith, the appointment of attorneys-in-fact shall be made solely by the Beneficiary, without the Beneficiary being liable. Neither the Trustee nor the Beneficiary shall be liable for the acts of the attorneys-in-fact, or for the payment of the relevant fees and expenses, which shall be paid by the Settlors, failing whom, with the Trust Assets. The Trustee shall in no case grant powers-of-attorney for acts of ownership, which shall always be exercised by the trust delegates (*delegados fiduciarios*) of the Trustee.

(h) Should an urgent action be necessary to protect and maintain the Trust Assets, the Trustee shall be obligated to take any immediate action required to maintain the Trust Assets. The Trustee shall not be liable for any action it takes for purposes of protecting the Trust Assets, provided that its actions comply with the terms set forth in this Agreement and applicable law.

(i) If the Trustee shall receive a judicial or other notice or claim with respect to this Agreement or the Trust Assets, it shall, no later than the day following the day it shall receive the notice (or the following business day), send a copy of such notice or claim to the Settlors and the Beneficiary.

**NINTH.** Mandatory Provision Regarding the Trustee's Liability. (a) In accordance with Recital III (h) of this Agreement and Article 106, XIX, b) of the Law of Credit

Institutions (*Ley de Instituciones de Crédito*), the Trustee represents that it has explained clearly and without doubt to the parties hereto, the terms, legal meaning and consequences of such Article, which reads as follows:

"ARTICLE 106. It shall be prohibited to credit institutions:

XIX. When entering into the transactions referred to in Section XV of Article 46 of this Law:

[…]

b) To respond to the settlors, principals or agents, of any breach by the debtors, for loans granted thereto, or on behalf of issuers, for securities acquired, unless it is due to their fault, as set forth in the last paragraph of Article 391 [sic] of the General Law of Negotiable Instruments and Credit Transactions (*Ley General de Títulos y Operaciones de Crédito*), or to guarantee obtaining certain returns in connection with funds, the investment of which is requested therefrom.

If upon termination of the trust agreement, mandate or agency established to grant loans, any such loans shall have not been repaid by the debtors, the institution shall transfer the loans to the settlor or the beneficiary, as the case may be, or to the representative or agent, without repaying any outstanding amounts.

In any trust agreements, mandates or agencies, the prior paragraphs shall be inserted conspicuously as well as a representation from the trustee institution to the effect that it has, clearly and without doubt, made its meaning be known to the persons from whom it has received assets in trust.

c) To act as trustees, attorneys-in-fact or agents respectively regarding trusts, mandates or agencies, through which funds from the public may be obtained, directly or indirectly, by means of any actions causing direct or contingent liabilities, except in connection with trusts created by the Federal Government through the Ministry of Finance and Public Credit, and trusts through which securities registered at the Mexican Securities Registry are issued, according to the provisions of the Securities Market Law ( *Ley del Mercado de Valores*);

d) To act under the trusts, mandates and agencies referred to in the second paragraph of Article 88 of the Investment Corporations Law ( *Ley de Sociedades de Inversión*);

e) To act under trusts, mandates and agencies through which limitations or prohibitions specified by financial laws are avoided;

f) To use funds or securities of the trusts, mandates or agencies created for the purpose of making loans, in which the trustee has discretionary authority in providing such loans, to conduct transactions resulting in or that may result in any of their trustee delegates ( *delegados fiduciaries*), board members and their alternates, whether or not acting, statutory supervisors ( *comisarios*), whether regular or alternate, whether acting or not, the external auditors of the institution, the members of the technical committee of the relevant trust, the ascendants and descendants in first degree or spouses of such persons, the corporations in which a majority of the shares is controlled by such persons or their institutions, and such persons that the Central Bank (*Banco de México*) determines by general rules, becoming debtors,

g) To manage rural properties, unless they have received the management to distribute the assets among heirs, beneficiaries, associates or lenders, or to pay an obligation or to secured compliance therewith with the value of such rural property or its products, and without the management, in such case, exceeding the term of two years, except in the case of a trust to undertake production or security trusts;

h) To enter into trusts that manage sums of money contributed periodically by consumer groups organized as commercial associations, having as purpose the acquisition of certain assets or services that are regulated under the Federal Consumer Protection Law ( *Ley Federal de Protección al Consumidor*).

Any agreement contrary to what is set forth in the preceding paragraphs shall be null and void."

(b) Pursuant to Rule 5.5 of Circular 1/2005, the parties executing this Agreement agree to incorporate the following provisions:

"6. Prohibitions.

6.1 In connection with trust agreements, trustees are not permitted to:

(a) charge or attribute to the trust assets, prices different from the prices agreed upon when the relevant transaction shall be entered into;

(b) guarantee the prices or gains applicable to the sums of money to be invested as agreed upon; and

(c) perform transactions under terms and conditions that shall contravene its internal policies and sound financial practices.

6.2 Trustees shall not perform transactions related to securities, negotiable instruments or any other financial instruments, which shall not satisfy the requirements agreed upon in the relevant trust agreement.

6.3 Trustees may not enter into trust agreements of the type that they shall not be permitted to enter into, in accordance with applicable laws and regulations.

6.4 In no event may trustees pay, with funds part of the trust estate, fines imposed on such trustees by any authority.

[…]

6.6 Trustees must comply with the provisions of Articles 106, section XIX, of the Law of Credit Institutions ( *Ley de Instituciones de Crédito* ), 103, section IX, of the Securities Market Law ( *Ley del Mercado de Valores*), 62, section VI, of the General Law of Insurance Companies ( *Ley General de Instituciones y Sociedades Mutualistas de Seguros* ), and 60, section VI Bis, of the Federal Bonding Companies Law ( *Ley Federal de Instituciones de Fianzas*), as applicable to each entity."

(c) Pursuant to Circular 1/2005, the Trustee has advised the parties that the Trustee shall be liable, from a civil law perspective, for damages and losses caused as a result of the breach of the obligations assumed by it hereunder, as long as it is so determined by a competent judicial authority.

**TENTH.** Substitution of the Trustee. (a) Subject to paragraphs (c) and (d) below, the Trustee may resign its position a trustee hereunder, by giving written notice to the Settlors and the Beneficiary at least sixty (60) calendar days in advance ( except as set forth in Clause Tenth (c) hereof), including upon the occurrence of the event set forth in Clause Fourteenth (a)(iv), provided that the Trustee may under no circumstances resign if an enforcement action pursuant to Clause Seventh hereof shall have been initiated. Subject to the provisions of

paragraph (c) below, the appointment of the Trustee may also be terminated, by means of a notice in writing given by the Beneficiary, at least thirty (30) calendar days in advance.

(b) If the Trustee ceases to act as trustee under this Agreement, due to an anticipated termination of its duties in accordance with paragraph (a) above or upon the occurrence of the Termination Date, the Trustee shall prepare account statements and accounts related to the Trust Assets, which shall be delivered within thirty (30) calendar days following such termination to the Settlors and the Beneficiary. The Settlors and the Beneficiary shall have thirty (30) calendar days to examine and object to such account statements and accounts, counted from the date of receipt thereof; after such period shall have expired, the financial statements and accounts shall be deemed as approved by the Settlors and the Beneficiary, unless mistakes or any errors or omissions shall not be evident.

(c) The Beneficiary shall be entitled to appoint any successor Trustee, provided that, so long as no Enforcement Event has occurred and is continuing, the Settlors shall have the right to consent to any such appointment, within fifteen (15) calendar days following the date the representative of the Settlors shall have received notice of such appointment, consent which may not be unreasonably withheld and which shall be deemed given if the Settlors do not object to such appointment in a timely manner.

(d) The Trustee shall not cease to be the trustee hereunder until the successor trustee is appointed pursuant to the terms set forth herein, such successor trustee has accepted its designation, and the Trust Assets have been duly transferred to the successor trustee.

(e) Any successor trustee shall have the same rights and obligations as the Trustee hereunder, and shall be deemed the " Trustee" for all purposes of this Agreement.

**ELEVENTH.** Fees and Expenses of the Trustee. (a) The Settlors, on a joint and several basis, agree to pay to the Trustee the fees specified **Exhibit O**, and any other reasonable fees and any and all reasonable and documented costs and expenses incurred or paid thereby, in connection with the management of the Trust Assets and the performance of its obligations hereunder.

(b) The parties agree that the Trustee shall not be obligated to perform the instructions provided by any of the parties hereto entitled to provide instructions, if it has not received sufficient funds to pay for any and all of its costs and expenses, and shall be required to inform the Settlors and the Beneficiary promptly, of the need of any such funds to satisfy

its obligations hereunder. If the Trustee does not have sufficient liquid funds in its possession, to reasonably perform its obligations hereunder, the parties agree that the Trustee shall not be liable for any damages or losses it may cause, as a result of its inability to perform hereunder.

**TWELFTH**. Taxes. (a) Any tax, duty, assessment or other similar obligation arising from the entering into this Agreement, the holding and management of the Trust Assets, the performance of the obligations of any of the Trustee or the Beneficiary, or the exercise of rights by any of the Trustee or the Beneficiary, on the date hereof or at any time in the future, shall be payable and paid by the Settlors, on a joint and several basis, and each of the Settlors hereby agrees to indemnify and hold harmless the Trustee, the Beneficiary and each of the Secured Parties for any liabilities arising therefrom or related thereto. Each of the Settlors agrees to provide to the Trustee and the Beneficiary, tax receipts, returns or any other evidence of payment, of the applicable taxes, duties, assessments and related obligations.

(b) If for any reason and at any time, the Trustee is notified by any tax or tax-like authorities, located in any jurisdiction, of any determination or interpretation that the activities contemplated herein or any other related elements, result in the trust created hereunder being deemed a taxable entity and, therefore, the Trustee is obligated to withhold and pay, or solely to pay, any taxes in connection with the trust created hereunder or any action related hereto, the Trustee shall promptly provide written notice to the Settlors and the Beneficiary, so that the Settlors may take any and all necessary action, including the payment of any taxes, duties, assessments or related obligations.

(c) The obligations of the Settlors set forth in this Clause Twelfth, shall remain in full force and effect for the applicable statute of limitations and notwithstanding the occurrence of the Termination Date or by any other reason by which this Agreement may be terminated.

**THIRTEENTH.** Reports. (a) The Trustee hereby agrees to provide to the Beneficiary and the Settlors monthly statements with respect to the Transferred Shares, the Additional Shares and any other assets constituting the Trust Assets, including any investments with respect thereto. The Settlors and the Beneficiary shall each have thirty (30) calendar days counted from the date of receipt of the relevant statements, to review and reject, in the case of the Beneficiary, subject to the instructions of the Secured Parties, the contents of the relevant statements. After such period has expired, the statements shall be deemed approved by the Settlors and the Beneficiary, except in the case of evident mistakes, errors or omissions.

(b) In addition, the Trustee agrees to provide to the Settlors and the Beneficiary, any and all the information reasonably requested by any of them, in respect of the Trust Assets or this Agreement, within three (3) business days counted from the date of receipt of the relevant request.

**FOURTEENTH.** Duration and Irrevocability. (a) This Agreement may be terminated, as permitted under Article 392 of the General Law of Negotiable Instruments and Credit Transactions (*Ley General de Títulos y Operaciones de Crédito* ), (i) if the satisfaction of the purposes of the trust created hereunder, become impossible, (ii) by agreement of any and all parties hereto (but not of any beneficiaries specified herein, that are not executing or otherwise adhering expressly to the terms of this Agreement), (iii) if the trust created hereunder is declared null and void by a competent judicial authority, as fraudulent to third parties, (iv) if the Trustee terminates this Agreement, as a result of the fees specified herein as payable to the Trustee, not having been paid for a period equal to or greater than three (3) 360-day periods, counted from the date hereof, or (v) if the Trust Assets are sold pursuant to the non-judicial foreclosure procedure specified in Clause Seventh of this Agreement.

(b) This Agreement shall be irrevocable and shall remain in full force and effect until the Termination Date, except that the obligations of the Settlors set forth in Clauses Twelfth, Nineteenth and Twentieth hereof (and all related provisions hereunder) shall survive such Termination Date for the applicable statute of limitations.

**FIFTEENTH.** Notices. (a) All notices or other communications relating to this Agreement shall be made in writing, and shall be delivered or sent to the domiciles specified below, or to any other domicile or telecopy number from time to time designated by the receiving party, by means of written notice to the other parties. All such notices and communications must be delivered personally or transmitted via telecopy, addressed as mentioned above, and shall be effective, if delivered by messenger, when received, or if transmitted by fax when transmitted, answerback received. The parties designate as their domiciles:

The Settlors:

Ave. Ricardo Margáin Zozaya # 325
Col. Valle del Campestre
Garza García, Nuevo León 66265
Mexico
Facsimile: 52(81)8888-4399
Attention: Vicepresidencia Jurídica

The Issuers:

Ave. Ricardo Margáin Zozaya # 325
Col. Valle del Campestre
Garza García, Nuevo León 66265
Mexico
Facsimile: 52(81)8888-4399
Attention: Vicepresidencia Jurídica

The Trustee:

Calzada del Valle No. 350 Oriente 1er. Piso
Col. Del Valle
San Pedro Garza García, Nuevo León 66220
Mexico
Facsimile: 52(81)1226-2097
Attention: [*]

The Beneficiary:

1 King's Arms Yard
Third Floor
London EC2M 7AF
United Kingdom
Facsimile: (44) 207-397-3601
Attention: Sajada Afzal

(b) Each of the Settlors and the Issuers hereby designates Ramiro G. Villarreal Morales, and in its absence José Antonio González Flores, as its respective representative (*comisionista mercantil*) for any and all purposes specified herein, and agrees that any action taken or omitted to be taken by any such representative or any notice received or given by such representative, shall bind any and all Settlors and Issuers, respectively, as if such action or omission shall have been taken directly by such Settlor or Issuer, without any further action being required.

(c) All notices and instructions delivered to the Trustee in accordance with this Agreement, shall be identified with the respective number of trust agreement and shall contain the duly authorized and registered signature or signatures of the individuals requesting the relevant transaction or service, which shall be described in the instructions delivered to the Trustee.

For such purposes, the Trustee hereby represents that it has implemented certain mechanisms and/or proceedings for the reception and execution of instructions, including those transmitted by fax or any other transmittal and/or communication means; therefore, the Parties, as applicable, shall execute with the Trustee any documents necessary in such regards, which shall be provided by the Trustee.

The Parties acknowledge and agree that the Trustee shall be authorized to execute, only on banking business days and hours, the instructions delivered to it under this Agreement, in accordance with security procedures described above.

In accordance with Article 52 of the Law of Credit Institutions, the Parties agree that the Trustee shall not be liable in case it suspends or cancels any actions carried out pursuant to the instructions delivered to it by any of the Settlors or the Beneficiary, if any of the circumstances set forth in such Article occurs. The Trustee hereby agrees to notify in writing the Settlors and the Beneficiary any action suspended or cancelled in accordance with the above mentioned Article.

**SIXTEENTH.** Amendments. This Agreement may not be amended, except by means of a written instrument signed by the Settlors, the Issuers, the Trustee and the Beneficiary and if in conformity with the terms of the Intercreditor Agreement.

**SEVENTEENTH.** Assignment. Neither the Trustee nor any of the Settlors or Issuers may assign or transfer its respective rights or delegate its respective obligations under this Agreement, except upon receiving the prior written consent of the Beneficiary or as otherwise set forth herein.

**EIGHTEENTH**. Trustee's Powers. (a) The Trustee shall have the authority necessary for the satisfaction of the purposes of this Agreement, with the power and authority set forth in Article 391 of the General Law of Negotiable Instruments and Credit Transactions ( *Ley General de Títulos y Operaciones de Crédito*), and all other power and authority necessary, or deemed necessary, under the terms of this Agreement or under applicable law, subject to the instructions required under the terms hereof.

(b) The Trustee shall have, with respect to the Trust Assets and its rights and obligations under this Agreement, a power-of-attorney for lawsuits and collections, acts of administration and acts of ownership, as well as for the execution of negotiable instruments, including the authority required to receive and make payments, issue receipts and grant all types of special powers-of-attorney, to satisfy the purposes of the trust created under this Agreement, all in accordance with applicable law, provided that the Trustee shall not grant powers for acts of ownership nor perform any act with respect to the Trust Assets that is not contemplated under the terms of this Agreement or authorized as set forth herein.

(c) It is hereby agreed that Trustee shall not incur any liability for acting upon any notice, certificate, consent or any other instrument or document, that appears to be genuine on its face and that is signed by the corresponding party or parties.

(d) The Trustee shall not be obligated to perform any act in contravention of the terms of this Agreement or in contravention of applicable law.

**NINETEENTH.** Indemnity. (a) To the extent not covered under Clause 16 of the Intercreditor Agreement, the Settlors, on a joint and several basis, agree to indemnify and hold harmless each of the Trustee (including without limitation, its trust delegates, employees and representatives), the Beneficiary and any and all Secured Parties, their respective directors, employees, advisors and affiliates, from and against any and any all claims, of any nature whatsoever, for damages, losses and any other responsibilities ( except to the extent any such claim is determined to have resulted from such the Trustee's or Beneficiary's gross negligence or willful misconduct), that may be incurred by or asserted or awarded against, the Trustee, the Beneficiary or the Secured Parties, their respective directors, employees, advisors and affiliates, in each case arising out of or in connection with the defense of the Trust Assets, the exercise of their respective rights hereunder, this Agreement or the obligations of each such party hereunder, including, without limitation, from and against and any all claims, damages, losses, liabilities and expenses (including without limitation reasonable fees and expenses of counsel) that may be incurred by or asserted or awarded against the Trustee, the Beneficiary or the Secured Parties, their respective directors, employees, advisors and affiliates.

(b) The obligations of the Settlors set forth in this Clause Nineteenth, shall remain in full force and effect for the applicable statute of limitations and notwithstanding the occurrence of the Termination Date, or by any other reason this Agreement may be terminated.

**TWENTIETH**. Expenses. (a) All reasonable and documented fees and expenses paid or payable in connection with this Agreement, shall be paid or payable, on a joint and several basis, by the Settlors. The Trustee shall not be obligated to use its own funds to pay any fees or expenses incurred or payable in connection with this Agreement or with the satisfaction of its obligations hereunder and, in that respect, the only obligation of the Trustee shall consist of sending to the Settlors and the Beneficiary (in this last case, for information purposes), a timely request for additional funds to be provided. The Beneficiary shall have the right, but not the obligation, if in possession of funds under the Facilities Agreement, the

Intercreditor Agreement and other related documents, to pay such fees and expenses, and, upon any such payment, the amounts so paid shall be considered part of the Secured Obligations, shall be secured as set forth herein, and shall bear interest, form the time of payment, pursuant to the terms of the Facilities Agreement.

(b) The obligations of the Settlors set forth in this Clause Twentieth, shall remain in full force and effect for the applicable statute of limitations and notwithstanding the occurrence of the Termination Date.

**TWENTY FIRST.** Certain provisions for Beneficiary. (a) The Beneficiary shall not have any fiduciary duties to, nor shall it have any duty to protect the interests of, the Settlors, the Issuers or the Trustee.

(b) In acting as beneficiary hereunder, it shall be deemed that the Beneficiary is acting through its agency division, which shall be treated as a separate entity from its other divisions and departments thereof. Any information received or acquired by the Beneficiary, which is received or acquired by another division or department, or otherwise than in its capacity as Beneficiary hereunder, may be treated as confidential by the Beneficiary.

(c) In acting or exercising its rights under this Agreement, including in respect of any notice delivered in accordance with paragraph (a) of Clause Third or paragraph (a)(4) of Clause Seventh hereof, the Beneficiary shall act in accordance with the provisions of the Intercreditor Agreement and shall be entitled to seek instructions or directions from the Instructing Group or the Super Majority Instructing Group, as the case may be (each as defined in the Intercreditor Agreement) in accordance with the terms of the Intercreditor Agreement, and the Beneficiary shall not be held liable for any delay caused by so doing. In so acting, the Beneficiary shall have the rights, benefits, protections, indemnities and immunities set forth in the Intercreditor Agreement.

(d) The provisions set forth in this Clause Twenty First shall remain in full force and effect for the applicable statute of limitations and notwithstanding the occurrence of the Termination Date, or by any other reason this Agreement may be terminated.

**TWENTY SECOND.** Exhibits. All exhibits included in this Agreement shall be considered an integral part of this Agreement, as if their content was inserted in the body of this Agreement.

**TWENTY THIRD**. Conflicts. Should any conflict arise in connection with the interpretation of the provisions of this Agreement and the provisions of the Facilities Agreement and the Intercreditor Agreement, the provisions contained herein shall prevail only with respect to (i) the conflicting provisions, and (ii) any other provisions that require that Mexican law be applicable, for this Agreement to be valid and binding pursuant to its terms.

**TWENTY FOURTH.** Independence of Provisions. Should any of the provisions of this Agreement be declared illegal or unenforceable by any competent judicial authority, such provision shall be considered independent and interpreted separately from the other provisions contained herein, and shall not affect, in any way, the validity and enforceability of the rest of the provisions of this Agreement.

**TWENTY FIFTH.** Governing Law and Jurisdiction. This Agreement shall be governed by, and construed in accordance with, the laws of Mexico. For any matter related to or in connection with this Agreement, each of the parties hereto hereby expressly and irrevocably submits to the jurisdiction of the courts of Mexico City, Federal District, and agrees that all claims related to an action or proceeding hereunder, may be heard and determined by such courts. Each of the parties hereto hereby waives any right or jurisdiction to which it may be entitled by reason of its present or future domicile or place of residence.

**TWENTY SIXTH.** Headings. The headings used in this Agreement are for convenience of reference only, and shall not be used to interpret any of the provisions of this Agreement.

**TWENTY SEVENTH.** Counterparts. This Agreement is executed in ten (10) counterparts, each of which shall be deemed as an original and all of which, when taken together, shall be deemed to constitute one and the same instrument.

[REMAINDER OF PAGE LEFT INTENTIONALLY IN BLANK]

IN WITNESS WHEREOF, the parties hereto execute this Agreement on the date and year indicated in the first page hereof.

THE SETTLORS

Cemex, S.A.B. de C.V.
Empresas Tolteca de México, S.A. de C.V.
Impra Café, S.A. de C.V.
Interamerican Investments, Inc.
Cemex México, S.A. de C.V.
Centro Distribuidor de Cemento, S.A. de C.V.

By /s/ Roger Saldaña Madero
Name: Roger Saldaña Madero
Title: Attorney-in-Fact

By /s/ René Delgadillo Galván
Name: René Delgadillo Galván
Title: Attorney-in-Fact

THE ISSUERS

Cemex México, S.A. de C.V.
Centro Distribuidor de Cemento, S.A. de C.V.
Mexcement Holdings, S.A. de C.V.
Corporación Gouda, S.A. de C.V.

By /s/ Roger Saldaña Madero
Name: Roger Saldaña Madero
Title: Attorney-in-Fact

By /s/ René Delgadillo Galván
Name: René Delgadillo Galván
Title: Attorney-in-Fact

THE TRUSTEE

Banco Nacional de México, S.A.,
Integrante del Grupo Financiero Banamex,
División Fiduciaria

By /s/ Maria de los Ángeles Montemayor Garza
Name: Maria de los Ángeles Montemayor Garza
Title: Representative

By /s/ Elva Nelly Wing Treviño
Name: Elva Nelly Wing Treviño
Title: Representative

THE BENEFICIARY

Wilmington Trust (London) Limited, on its own behalf and in its capacity as Security Agent, for the benefit of the Original Creditors and, if applicable, the Refinancing Creditors (and their respective successors and assigns) and the other Secured Parties

By /s/ Andrés Cárdenas Ortiz Monasterio
Name: Andrés Cárdenas Ortiz Monasterio
Title: Attorney in fact

Exhibit A

Facilities Agreement

Exhibit B

Intercreditor Agreement

Exhibit C

Issuances Certificados Bursátiles

Exhibit D

Certificates evidencing the Certificados Bursátiles

Exhibit E

Certificates evidencing the Perpetual Securities

Exhibit F

Certificates evidencing the CEMEX SAB Bonds

Exhibit G

Transferred Shares

Exhibit H

Powers-of-Attorney of the Settlors' Representatives

Exhibit I

Powers-of-Attorney of the Issuers' Representatives

Exhibit J

Powers-of-Attorney of the Trustee's Representatives

Exhibit K

Powers-of-Attorney of the Beneficiary's Representatives

Exhibit L

Form of Sale Instruction

**Exhibit 4.37**

CLIFFORD
CHANCE

**CLIFFORD CHANCE LLP**

**EXECUTION COPY**

ANCILLARY AGREEMENT

DATED 17 SEPTEMBER 2012

BETWEEN

CEMEX, S.A.B. DE C.V.

AND

THE OBLIGORS

AND

THE EXTINGUISHING CREDITORS

AND

CITIBANK INTERNATIONAL PLC
ACTING FOR ITSELF AND AS ADMINISTRATIVE AGENT ON BEHALF OF THE FINANCE PARTIES

AND

CITIBANK INTERNATIONAL PLC
AS EXCHANGE AGENT

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RELATING TO THE FINANCING AGREEMENT
DATED 14 AUGUST 2009 (AS AMENDED ON
1 DECEMBER 2009, 18 MARCH 2010, 25 OCTOBER 2010,
13 APRIL 2011 AND 17 SEPTEMBER 2012)

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**CONTENTS**

**THIS AGREEMENT** is dated 17 September 2012 and made between:

(1) **CEMEX, S.A.B. de C.V.** (the "**Parent**");

(2) **THE SUBSIDIARIES** of the Parent listed in Schedule 1 (*The Obligors*) as borrowers, issuers, guarantors and/or security providers (together with the Parent, the "**Obligors**");

(3) **THE ENTITIES** named on the signing pages as extinguishing creditors (the " **Original Extinguishing Creditors**");

(4) **CITIBANK INTERNATIONAL PLC**, as administrative agent on behalf of the Finance Parties under the Financing Agreement (the " **Administrative Agent**"); and

(5) **CITIBANK INTERNATIONAL PLC**, for itself and as exchange agent (the "**Exchange Agent**").

**WHEREAS**

(A) The parties have entered into the Amendment and Restatement Agreement and the Transaction Security (as defined in the Financing Agreement prior to its amendment pursuant to the Amendment and Restatement Agreement) has been, or will be, released with effect from the Restatement Effective Time (as defined in the Amendment and Restatement Agreement).

(B) The Extinguishing Creditors have agreed to unilaterally release and extinguish all of their claims and discharge all liabilities owed to them by any of the Obligors under the Financing Agreement and the Finance Documents with respect to their Extinguished Exposures which will have the effect of extinguishing all rights and obligations of such Extinguishing Creditors in relation to the Obligors with respect to their Extinguished Exposures in full. Upon such release, discharge and extinguishment becoming effective each Extinguishing Creditor will cease to be a Participating Creditor under the Financing Agreement with respect to its Extinguished Exposures.

(C) Upon the occurrence of the events referred to in paragraph (B) above, the Obligors agree and acknowledge that the Extinguishing Creditors will no longer be Participating Creditors for the purpose of the Financing Agreement with respect to their Extinguished Exposures and that the remaining Participating Creditors under the Financing Agreement will be as listed in the Exposures Schedule.

**IT IS AGREED** as follows:

1. **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions**

In this Agreement:

"**Acceptance Notices**" has the meaning given to that term in the Invitation Memorandum.

"**Additional Extinguishing Creditors**" means any Participating Creditor that becomes a Creditor under (and as defined in) the New Facilities Agreement in accordance with Clause 25.11 (*Acceding Creditors*) of the New Facilities Agreement.

"**Affidavit of Loss**" means an affidavit of loss in favour of an Obligor (or the Parent on its behalf) from a New HY Note Recipient in relation to that New HY Note Recipient's loss of the relevant pagaré, promissory note or Existing USPP Note issued pursuant to the Financing Agreement or the Existing USPP Note Agreement, as the case may be, substantially in the form set out in Schedule 3 ( *Affidavit of Loss*).

"**Amendment and Restatement Agreement**" means the amendment and restatement agreement dated the same date as this Agreement amending and restating the Financing Agreement.

"**Derivatives Unwind Promissory Notes**" has the meaning given to that term in the New Facilities Agreement.

"**Effective Date**" has the meaning given to it in the Amendment and Restatement Agreement.

"**Effective Time**" means the time at which a deemed utilisation of a Facility (each as defined in the New Facilities Agreement) pursuant to Clause 3.4 (*Deemed Utilisation*) of the New Facilities Agreement occurs.

"**Exchange Offer**" has the meaning given to that term in the Invitation Memorandum.

"**Existing Derivatives Unwind Promissory Note**" has the meaning given to that term in the New Facilities Agreement.

"**Extinguished Exposures**" means the Exposures in respect of which Extinguishing Creditors have delivered Acceptance Notices accepting the Exchange Offer.

"**Extinguishing Creditors**" means each Original Extinguishing Creditor and each Additional Extinguishing Creditor.

"**Exposures**" has the meaning given to that term in the Financing Agreement.

"**Exposures Schedule**" means the schedule delivered to each Creditor's Representative in accordance with Clause 4 ( *Notification*) of this Agreement in the form set out in Schedule 2 ( *The Remaining Participating Creditors*) as updated from time to time to reflect the Extinguished Exposures of any Additional Extinguishing Creditors.

"**Financing Agreement**" means the financing agreement dated 14 August 2009 and made between (amongst others) (1) CEMEX, S.A.B. de C.V.; (2) the financial institutions and noteholders named therein in their capacity as Participating Creditors; (3) Citibank International plc, acting as Administrative Agent; and (4) Wilmington Trust (London) Limited, acting as Security Agent, as amended on 1 December 2009, 18 March 2010, 25 October 2010 and 13 April 2011 and as amended by the Amendment and Restatement Agreement.

"**Invitation Memorandum**" means the invitation memorandum to Participating Creditors to participate in the Exchange Offer and/or consent request dated 5 July 2012, as such document may be amended or supplemented in accordance with its terms.

"**New Facilities Agreement**" means the facilities agreement dated on or about the date of this Agreement and made between (amongst others) (1) the Parent; (2) the financial institutions and noteholders named therein in their capacity as Original Creditors (as defined therein); (3) Citibank International plc, acting as agent; and (4) Wilmington Trust (London) Limited, acting as security agent.

"**New HY Note**" has the meaning given to that term in the Invitation Memorandum.

"**New HY Note Recipient**" means an Extinguishing Creditor that has duly submitted an Acceptance Notice accepting the Exchange Offer and subscribing for New HY Notes (in relation to which such Extinguishing Creditor has not been informed by the Exchange Agent that such Acceptance Notice has not been accepted) and which has received or is, subject to Clause 6 ( *Return of Promissory Notes, Enforcement and Indemnification with respect to Extinguishing Creditors Receiving New HY Notes*), entitled to receive through the facilities of the Depository Trust Company, a New HY Note.

"**New USPP Note Agreement**" has the meaning given to the term "**USPP Note Agreement**" in the New Facilities Agreement.

1.2 **Incorporation of defined terms**

(a) Unless a contrary indication appears, a term defined in the Financing Agreement has the same meaning in this Agreement.

(b) The principles of construction set out in the Financing Agreement shall have effect as if set out in this Agreement.

1.3 **Clauses**

In this Agreement, any reference to a "Clause" or a "Schedule" is, unless the context otherwise requires, a reference to a Clause in or a Schedule to this Agreement.

1.4 **Third party rights**

Except as otherwise expressly provided in this Agreement, a person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Agreement.

2. **REPRESENTATIONS**

Each Obligor makes the representations and warranties set out in this Clause 2 to each party to this Agreement.

2.1 **Status**

(a) It is a corporation or limited liability company, duly organised and validly existing under the laws and regulations of its jurisdiction of incorporation or formation other than in the case of CEMEX International Finance Company which is a private company duly incorporated with unlimited liability under the laws and regulations of Ireland.

(b) It has the power to own its assets and carry on its business as it is being conducted.

2.2 **Binding Obligations**

Subject to the Legal Reservations, the obligations expressed to be assumed by it in this Agreement are legal, valid, binding and enforceable obligations.

2.3 **Non-conflict with other obligations**

The entry into and performance by it (or, in the case of paragraph (c) below, any Obligor) of, and the transactions contemplated by this Agreement do not and will not conflict with:

(a) any law or regulation applicable to it or any judgment or other administrative or judicial order affecting it or binding upon it or any of its assets (including in respect of CEMEX International Finance Company, section 60 of the Companies Act, 1963);

(b) its constitutional documents;

(c) the Finance Documents or any documentation relating to any publicly-issued securities binding upon it; or

(d) any agreement or instrument binding upon it or any of its assets, in a manner or to an extent which would have or would be reasonably likely to have a Material Adverse Effect.

2.4 **Power and authority**

It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, this Agreement to which it is a party and the transactions contemplated by this Agreement.

2.5 **Validity and admissibility in evidence**

All Authorisations required or desirable:

(a) to enable it to lawfully enter into, exercise its rights and comply with its obligations under this Agreement; and

(b) to make this Agreement admissible in evidence in its jurisdiction of incorporation, have been obtained or effected and are in full force and effect.

2.6 **Governing law, choice of forum and enforcement**

Subject to the Legal Reservations:

(a) the choice of governing law of this Agreement, will be recognised and enforced in its jurisdiction of incorporation;

(b) the choice of the English courts set forth in this Agreement is a valid and enforceable choice of forum under any other applicable law; and

(c) any judgment obtained in relation to this Agreement will be recognised and enforced in its jurisdiction of incorporation.

3. **INDEMNITY AND ACKNOWLEDGEMENT**

3.1 **Indemnity**

(a) The Parent and each of the Obligors jointly and severally agree, to indemnify and hold harmless each Extinguishing Creditor, the Administrative Agent, the Exchange Agent and the Security Agent and each of their respective Affiliates and each of their and their Affiliates respective directors, officers, employees, agents, advisors and representatives (each being an " **Indemnified Person**") from and against any and all claims, damages, losses, liabilities, costs, legal expenses and other expenses (all together " **Losses**") which have been incurred by or awarded against any Indemnified Person, in each case arising out of or in connection with any claim, investigation, litigation or proceeding (or the preparation of any defence with respect thereto) commenced or threatened by any person other than itself, its respective directors, officers, employees, agents, advisors or representatives, in relation to the matters referred to in this Agreement and any Finance Document (including, without limitation, any breach by the Obligors of any provision of such documents) except to the extent such Losses or claims result from gross negligence or wilful misconduct by that Indemnified Person. Any third party referred to in this Clause 3.1 may rely on this Clause 3.1.

(b) The indemnity given pursuant to paragraph (a) above shall:

(i) in the case of a Dutch Obligor or an Obligor incorporated in Spain, not extend to obligations the indemnification of which would cause the relevant Obligor to act in breach of financial assistance legislation applicable to it under the laws of its jurisdiction of incorporation; and

(ii) in the case of a Swiss Obligor, be subject to Clause 20.13 ( *Swiss guarantee limitation* ) of the Financing Agreement, as if references in that clause to "this Agreement" are references to this Agreement.

3.2 **Recovery**

There shall be no double recovery by or on behalf of any Indemnified Person under this Agreement or any document entered into by such Indemnified Person with the Parent or any other member of the Group in connection with the Financing Agreement or any refinancing of the Financing Agreement.

3.3 **Acknowledgement**

(a) As of the Effective Time:

(i) if any Extinguishing Creditor has duly submitted an Acceptance Notice accepting the Exchange Offer in respect of all its Exposures, it shall no longer be a Participating Creditor for the purposes of the Finance Documents provided that nothing in this Agreement shall limit the right of such Extinguising Creditor to receive payment of accrued interest and Break Costs (if any) in respect of the Extinguished Exposures of such Extinguishing Creditor up to but excluding the Effective Date pursuant to Clause 5 ( *Interest*) of this Agreement;

(ii) if any Extinguishing Creditor has arrangements in place with one or more Sub-Participants (as defined in the Invitation Memorandum) in the form in place as at 28 June 2012 which prevent it from submitting an Acceptance Notice accepting the Exchange Offer in respect of all of its Exposures and such Extinguishing Creditor has duly submitted an Acceptance Notice accepting the Exchange Offer in respect of some of its Exposures, it shall no longer be a Participating Creditor in respect of such Extinguished Exposures for the purposes of the Finance Documents but shall remain a Participating Creditor in respect of all other Exposures, provided that nothing in this Agreement shall limit the right of such Extinguishing Creditor to receive payment of accrued interest and Break Costs (if any) in respect of the Extinguished Exposures of such Extinguishing Creditor up to but excluding the Effective Date pursuant to Clause 5 ( *Interest*) of this Agreement;

(iii) each Obligor hereby agrees to and acknowledges paragraphs (i) and (ii) above;

(iv) the parties to this Agreement hereby confirm that the Extinguished Exposures of an Extinguishing Creditor, as applicable, under the Facilities shall, as contemplated by an Acceptance Notice duly submitted by that Extinguishing Creditor, contemporaneously with the Effective Time (but no earlier), be unilaterally, irrevocably and unconditionally extinguished in full (the " **Extinguishments**"), and that the obligations of each Obligor to that Extinguishing Creditor shall be discharged to the extent of such Extinguishments;

(v) each party to this Agreement hereby agrees to and acknowledges paragraph (iv) above;

(vi) each party to this Agreement acknowledges and agrees that the Extinguishments shall not constitute a prepayment of any Facility or any Exposure and that the "Utilisation" of the "Facilities" (each as defined in the New Facilities Agreement) under the New Facilities Agreement, the New USPP Note Agreement and the Derivatives Unwind Promissory Notes shall occur without any movement of funds.

(b) The Parent and the other Obligors hereby agree that with effect from the Effective Time they have no claims against any of the Extinguishing Creditors under or in respect of the Finance Documents.

(c) As of the Effective Time, to the extent that they correspond to all the Extinguished Exposures specified in the relevant Acceptance Notice, (i) all Secured Obligations (or other similar term, as defined in any Finance Document) owed by the applicable Obligors to the Extinguishing Creditors (including without limitation all indebtedness and Secured Obligations (or other similar term, as defined in any Finance Document) of any Obligor, as borrower or guarantor, at any time arising under or in respect of such Finance Document and any other Transaction Documents or Financing Documents (each as defined in the Invitation Memorandum) (or other similar term, as defined in any Finance Document) shall, with respect to each Extinguishing Creditor, be deemed to be and shall have been released and discharged in full and (ii) all of the other covenants, agreements and obligations of any Obligors, either as borrower or guarantor, owed to each Extinguishing Creditor or under which each Extinguishing Creditor has or had rights to enforce under any Finance Document and any other Transaction Documents or Financing Documents (each as defined in the Invitation Memorandum) (or other similar term, as defined in any Finance Document) shall, with respect to each Extinguishing Creditor, automatically be released and terminated and cease to have any further effect, provided that such release and discharge shall in no way limit the right to receive payment to accrued interest and break costs (if any) in respect of the Extinguished Exposures pursuant to Clause 5 (*Interest*) of this Agreement.

(d) Each Extinguishing Creditor represents and warrants and undertakes that it has the power, capacity and authority to give the confirmations referred to in this Clause 3.3 (*Acknowledgement*) and that the Extinguishments will be effective against and binding on it.

## 4. NOTIFICATION

### 4.1 Exchange Agent

The Exchange Agent hereby agrees to deliver the Exposures Schedule to the Administrative Agent promptly following the Effective Time.

### 4.2 Administrative Agent

The Administrative Agent hereby agrees to deliver the Exposures Schedule to the Creditors' Representatives in respect of the Syndicated Bank Facilities promptly following receipt thereof.

4.3 **Creditor's Representatives**

The parties to this Agreement agree that the Creditor's Representatives may rely on Clause 3.3 ( *Acknowledgement*) of this Agreement and the Exposures Schedule in determining the Exposures of the remaining Participating Creditors under the Financing Agreement.

5. **INTEREST**

(a) Each of the parties to this Agreement agrees that any accrued interest (including any default interest) and Break Costs (if any) payable to the Extinguishing Creditors in respect of any Extinguished Exposures outstanding up to but excluding the Effective Date will be paid by the relevant Obligor as required by the terms of the relevant Finance Documents on or prior to the end of the then current Interest Period (and for this purpose Break Costs will be calculated as if the extinguishment of the Extinguished Exposures had been a prepayment).

(b) Any failure to pay such amounts in accordance with paragraph (a) above shall constitute an "Event of Default" (as defined in the New Facilities Agreement) under Clause 24.1 (*Non-payment*) of the New Facilities Agreement unless such failure to pay is caused by an administrative error or technical difficulties within the banking system in relation to the transmission of funds and payment is made within three Business Days of its due date.

6. **RETURN OF PROMISSORY NOTES, ENFORCEMENT AND INDEMNIFICATION WITH RESPECT TO EXTINGUISHING CREDITORS RECEIVING NEW HY NOTES**

(a) To the extent provided under each of its relevant Exposures under the Finacing Agreement, each New HY Note Recipient hereby agrees to deliver at or prior to the Effective Time to the applicable Obligor (or the Parent on its behalf) or its designee each pagaré, promissory note, USPP Note or Existing Derivatives Unwind Promissory Note issued or transferred to such New HY Note Recipient with respect to its relevant Exposures under the Financing Agreement or an Affidavit of Loss with respect to such pagaré, promissory note, USPP Note or Existing Derivatives Unwind Promissory Note, in each case which relates to the amount of New HY Notes that such New HY Note Recipient is to receive as at the Effective Time.

(b) An Obligor shall only be obliged to deliver through the facilities of the Depository Trust Company a New HY Note to a New HY Note Recipient upon receipt by such Obligor (or the Parent on its behalf) or its designee of the pagaré or promissory note, USPP Note or Existing Derivatives Unwind Promissory Note issued or transferred to such New HY Note Recipient with respect to its relevant Exposures under the Financing Agreement or an Affidavit of Loss.

(c) Each New HY Note Recipient undertakes not to take any Enforcement Action (as defined in the Intercreditor Agreement) under, or in respect of, any pagaré or promissory note, USPP Note or Existing Derivatives Unwind Promissory Note issued or transferred to such New HY Note Recipient with respect to its relevant Exposures under the Financing Agreement.

(d) Each New HY Note Recipient to whom a pagaré or promissory note, USPP Note or Existing Derivatives Unwind Promissory Note has been issued or transferred with respect to its relevant Exposures under the Financing Agreement hereby agrees to indemnify and hold harmless the relevant Obligor and each of its successors and assigns, of and from any loss, damage or claim resulting from that New HY Note Recipient's loss, misplacement or transfer of such pagaré or promissory note, USPP Note or Existing Derivatives Unwind Promissory Note issued or transferred under the Financing Agreement.

(e) For the avoidance of doubt, no New HY Note Recipient may claim under a pagaré, promissory note, USPP Note or Existing Derivatives Unwind Promissory Note issued or transferred to such New HY Note Recipient with respect to its relevant Exposures under the Financing Agreement that have been exchanged for New HY Notes.

## 7. MISCELLANEOUS

### 7.1 Incorporation of terms

The provisions of Clause 34 (*Notices*), Clause 36 (*Partial Invalidity*), Clause 37 (*Remedies and Waivers*) and Clause 41 (*Enforcement*) of the Financing Agreement shall be incorporated into this Agreement as if set out in full in this Agreement and as if references in those clauses to "this Agreement" or "the New Finance Documents" or "any New Finance Document" are references to this Agreement.

### 7.2 Counterparts

This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

## 8. GOVERNING LAW

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

**This Agreement has been entered into on the date stated at the beginning of this Agreement.**

**SCHEDULE 1**
**THE OBLIGORS**

| **Name of Borrowers** | **Registration number or equivalent** |
|---|---|
| CEMEX, S.A.B. de C.V. | CEM-880726-UZA |
| CEMEX España, S.A. | A-46004214 |
| New Sunward Holding B.V. | 34133556 |
| CEMEX Materials LLC | File# 4443303 (Delaware) |
| CEMEX Finance LLC | File#: 3654572 |
| **Name of Guarantors** | **Registration number or equivalent** |
| CEMEX, S.A.B. de C.V. | CEM-880726-UZA |
| CEMEX España, S.A. | A-46004214 |
| CEMEX México, S.A. de C.V. | CME-820101-LJ4 |
| CEMEX Concretos, S.A. de C.V. | CCO-740918-9M1 |
| Empresas Tolteca de México, S.A. de C.V. | ETM-890720-DJ2 |
| New Sunward Holding B.V. | 34133556 |
| CEMEX Corp. | File #: 2162255 |
| CEMEX, Inc. | Charter # 13000400D (Louisiana) |
| CEMEX Finance LLC | File #: 3654572 |
| **Name of Security Providers** | **Registration number or equivalent** |
| CEMEX, S.A.B. de C.V. | CEM-880726-UZA |
| CEMEX México, S.A. de C.V. | CME-820101-LJ4 |

| | |
|---|---|
| Centro Distribuidor de Cemento, S.A. de C.V. | CDC-960913-SK6 |
| Empresas Tolteca de México, S.A. de C.V. | ETM-890720-DJ2 |
| Impra Café, S.A. de C.V. | ICA-801002-5E8 |
| Interamerican Investments, Inc. | File #: 2252951 |
| Mexcement Holdings, S.A. de C.V. | MHO-010605-UDA |
| Corporación Gouda, S.A. de C.V. | CGO-020124-4W0 |
| New Sunward Holding B.V. | 34133556 |
| CEMEX International Finance Company | 226652 |
| CEMEX TRADEMARKS HOLDING Ltd. | CH-035.3.029.636-0 |

**SCHEDULE 2**
**THE REMAINING PARTICIPATING CREDITORS**

| Obligation | Exposure at the Effective Time | Obligor | Guarantor |
|---|---|---|---|
| **Part I (Syndicated Facilities)** | | | |
| **CEMEX, S.A.B. de C.V. US$700,000,000 (originally US$800,000,000) Credit Agreement dated 23 June 2004 as amended** | **$ 20,592,600.02** | **CEMEX, S.A.B. de C.V.** | **CEMEX México, S.A. de C.V.; Empresas Tolteca de México, S.A. de C.V.** |
| WELLS FARGO BANK NA, CHARLOTTE | $ 20,592,600.02 | | |
| **CEMEX, S.A.B. de C.V. US$1,200,000,000 Credit Agreement dated 31 May 2005 as amended** | **$ 43,146,400.03** | **CEMEX, S.A.B. de C.V.** | **CEMEX México, S.A. de C.V.; Empresas Tolteca de México, S.A. de C.V.** |
| WELLS FARGO BANK NA | $ 43,146,400.03 | | |
| **CEMEX España, S.A. US$2,300,000,000 RMC Revolving Facilities Agreement dated 24 September 2004 as amended** | **$** 35,534,492.50 | **CEMEX España, S.A.** | **CEMEX España, S.A.** |
| **FACILITY B (Revolving Facility)** | **$ 15,315,746.25** | **CEMEX España, S.A.** | **CEMEX España, S.A.** |
| BRED BANQUE POPULAIRE, PARIS | $ 1,838,625.00 | | |
| CAISSE REGIONALE DE CREDIT AGRICOLE MUTUEL DE PARIS ET D'ILE-DE-FRANCE | $ 4,903,000.00 | | |
| CENTROBANCA, MILAN | $ 6,128,750.00 | | |
| IKB DEUTSCHE INDUSTRIEBANK AG SPAIN | $ 2,445,371.25 | | |
| **FACILITY C (Revolving Facility)** | **$ 20,218,746.25** | **CEMEX España, S.A.** | **CEMEX España, S.A.** |
| BRED BANQUE POPULAIRE, PARIS | $ 6,741,625.00 | | |
| CENTROBANCA, MILAN | $ 6,128,750.00 | | |
| CAISSE REGIONALE DE CREDIT AGRICOLE MUTUEL DE PARIS ET D'ILE-DE-FRANCE | $ 4,903,000.00 | | |
| IKB DEUTSCHE INDUSTRIEBANK AG SPAIN | $ 2,445,371.25 | | |
| **CEMEX España, S.A. US$6,000,000,000 (originally US$9,000,000,000) Rinker Acquisition Facilities Agreement dated 6 December, 2006 as amended** | **$ 58,598,944.57**<br>**€ 22,526,041.53** | **CEMEX España, S.A.** | **N/A** |
| **FACILITY B1** | **$ 38,912,416.66** | **CEMEX España, S.A.** | **N/A** |
| CAISSE REGIONALE DE CREDIT AGRICOLE MUTUEL DE PARIS ET D'ILE-DE-France | $ 11,848,916.67 | | |
| CENTROBANCA - BANCA DI CREDITO | $ 17,160,499.98 | | |
| SERENGETI ARUSHA BV | $ 5,000,000.00 | | |

| Obligation | Exposure at the Effective Time | Obligor | Guarantor |
|---|---|---|---|
| SOCIÉTÉ GÉNÉRALE PARIS | $ 4,903,000.01 | | |
| **FACILITY B3** | **€ 6,166,364.83** | **CEMEX España, S.A.** | **N/A** |
| BRED BANQUE POPULAIRE | € 6,166,364.83 | | |
| **FACILITY C** | **€ 16,359,676.70**<br>**$ 19,686,527.91** | **CEMEX España, S.A.** | **N/A** |
| | **€ 16,359,676.70** | | |
| BRED BANQUE POPULAIRE | € 3,595,533.34 | | |
| CAISSE REGIONALE DE CREDIT AGRICOLE MUTUEL DE PARIS ET D'ILE-DE-FRANCE | € 5,213,523.35 | | |
| CENTROBANCA - BANCA DI CREDITO | € 7,550,620.01 | | |
| | **$ 19,686,527.91** | | |
| BRED BANQUE POPULAIRE | $ 3,227,808.33 | | |
| CAISSE REGIONALE DE CREDIT AGRICOLE MUTUEL DE PARIS ET D'ILE-DE-FRANCE | $ 4,680,322.09 | | |
| CENTROBANCA - BANCA DI CREDITO | $ 6,778,397.49 | | |
| SERENGETI ARUSHA BV | $ 5,000,000.00 | | |
| **New Sunward Holding B.V. US$700,000,000 Facilities Agreement dated 27 June 2005 (as amended)** | **$ 11,889,775.00** | **NEW SUNWARD HOLDING B.V.** | **CEMEX, S.A.B. de C.V.; CEMEX México, S.A. de C.V.; Empresas Tolteca de México S.A. de C.V.** |
| **FACILITY B (Revolving Facility)** | | | |
| WELLS FARGO BANK, N.A. | $ 11,889,775.00 | | |
| **Part II (US Private Placements)** | | | |
| **US$882,407,495.57 Note Purchase Agreement** | **$ 326,058,061.37** | **CEMEX Finance LLC** | **CEMEX España, S.A.** |
| Principal Life Insurance Company | 2,654,260.09 | | |
| Principal Life Insurance Company | 1,327,130.05 | | |
| Principal Life Insurance Company | 6,556,022.43 | | |
| Principal Life Insurance Company | 3,278,011.21 | | |
| Principal Life Insurance Company | 252,154.71 | | |
| Principal Life Insurance Company | 1,327,130.05 | | |
| Principal Life Insurance Company | 1,061,704.04 | | |
| Principal Life Insurance Company | 265,426.01 | | |

| Obligation | Exposure at the Effective Time | Obligor | Guarantor |
|---|---|---|---|
| Scottish Re (US)/Nationwide Insurance Co 1 Yr Trust | 530,852.02 | | |
| Scottish Re (US)/Nationwide Insurance Co 5 Yr Trust | 530,852.02 | | |
| Scottish Re (US)/Lincoln National, LTD. | 530,852.02 | | |
| RGA Reinsurance Company | 3,981,390.14 | | |
| Symetra Life Insurance Company | 5,308,520.18 | | |
| Symetra Life Insurance Company | 4,246,816.15 | | |
| Symetra Life Insurance Company | 2,654,260.09 | | |
| Scottish Re (US) | 530,852.02 | | |
| Western National Life Insurance Company | 7,962,780.27 | | |
| American General Life and Accident Insurance Company | 5,308,520.18 | | |
| United States Life Insurance Company in the City of New York | 6,370,224.22 | | |
| The Variable Annuity Life Insurance Co. | 18,579,820.64 | | |
| John Hancock Life Insurance Company | 22,561,210.78 | | |
| John Hancock Variable Life Insurance Company | 1,327,130.05 | | |
| New York Life Insurance and Annuity Corporation | 9,289,910.32 | | |
| New York Life Insurance and Annuity Corporation | 265,426.01 | | |
| New York Life Insurance Company | 16,987,264.58 | | |
| Monumental Life Insurance Company | 13,271,300.46 | | |
| Allied Irish Banks, p.l.c | 10,617,040.37 | | |
| Knights of Columbus | 5,308,520.18 | | |
| Knights of Columbus | 2,654,260.09 | | |
| The Ohio National Life Insurance Company | 5,308,520.18 | | |
| Prudential Retirement Insurance and Annuity Company | 2,941,800.00 | | |
| KANE & CO. | 1,961,200.00 | | |
| POND LAUNCH & CO. | 2,451,500.00 | | |
| BARCLAYS CAPITAL INC. | 1,470,900.00 | | |
| FERNWOOD FOUNDATION FUND LLC. | 274,568.00 | | |
| FERNWOOD ASSOCIATES LLC. | 1,578,766.00 | | |
| FERNWOOD RESTRUCTURINGS LIMITED | 1,578,766.00 | | |
| CUNA Mutual Insurance Society | 5,308,520.18 | | |

| Obligation | Exposure at the Effective Time | Obligor | Guarantor |
|---|---|---|---|
| FERNWOOD FOUNDATION FUND LLC. | 627,584.00 | | |
| FERNWOOD ASSOCIATES LLC. | 3,608,608.00 | | |
| FERNWOOD RESTRUCTURINGS LIMITED | 3,608,608.00 | | |
| Prudential Insurance Company of America | 1,348,325.00 | | |
| Prudential Insurance Company of America | 1,348,325.00 | | |
| FERNWOOD FOUNDATION FUND LLC. | 520,130.05 | | |
| FERNWOOD ASSOCIATES LLC. | 2,990,747.78 | | |
| FERNWOOD RESTRUCTURINGS LIMITED | 2,990,747.78 | | |
| Prudential Insurance Company of America | 13,752,095.23 | | |
| Prudential Insurance Company of America | 13,752,095.22 | | |
| Principal Life Insurance Company | 4,598,430.76 | | |
| MSD Credit Opportunity Master Fund, L.P. | 7,633,102.58 | | |
| Insight LDI Solutions Plus PLC, in respect of the Insight High Yield Bond Fund | 7,688,935.00 | | |
| Ascend Partners Fund II LP | 4,500,000.00 | | |
| Ascend Partners Fund II BPO, LTD | 1,736,825.12 | | |
| Ascend Partners Fund I, LTD | 500,000.00 | | |
| Ascend Partners Fund II, LTD | 2,500,000.00 | | |
| FERNWOOD FOUNDATION FUND LLC. | 1,750,000.00 | | |
| FERNWOOD ASSOCIATES LLC. | 4,500,000.00 | | |
| FERNWOOD RESTRUCTURINGS LIMITED | 3,750,000.00 | | |
| Insight Investment Discretionary Funds ICVC, UK Corporate All Maturities Bond Fund | 3,726,084.36 | | |
| Insight Investment Discretionary Funds ICVC, UK Corporate Long Maturities Bond Fund | 1,242,028.12 | | |
| Insight Investment Discretionary Funds ICVC, UK Broad Market Bond Fund | 931,521.09 | | |
| Insight LDI Solutions Plus PLC, In Respect of the Insight Bonds Plus Fund | 2,173,549.21 | | |
| Absolute Insight Funds PLC, In Respect of the Absolute Insight Credit Fund | 6,210,140.60 | | |
| BNY Mellon Global Funds PLC, In Respect of the BNY Mellon Absolute Return Bond Fund | 49,681.12 | | |
| UBS Securities LLC | 1,592,556.05 | | |
| Ascend Partners Fund I, LTD | 743,000.00 | | |
| Ascend Partners Fund II LP | 9,013,000.00 | | |
| Ascend Partners Fund II, LTD | 5,154,000.00 | | |

| Obligation | Exposure at the Effective Time | Obligor | Guarantor |
|---|---|---|---|
| Ascend Partners Fund II BPO, LTD | 2,775,610.99 | | |
| Ascend Partners Fund II LP | 10,684,000.01 | | |
| Ascend Partners Fund II BPO, LTD. | 3,045,376.68 | | |
| Ascend Partners Fund I, LTD. | 824,000.00 | | |
| Ascend Partners Fund II, LTD. | 5,619,000.00 | | |
| Insight Investment Discretionary Funds ICVC, UK Corporate All Maturities Bond Fund | 2,273,915.25 | | |
| Insight Investment Discretionary Funds ICVC, UK Corporate Long Maturities Bond Fund | 757,971.75 | | |
| Insight Investment Discretionary Funds ICVC, UK Broad Market Bond Fund | 568,478.81 | | |
| Insight LDI Solutions Plus PLC, In Respect of the Insight Bonds Plus Fund | 1,326,450.56 | | |
| Insight LDI Solutions Plus PLC, in respect of the Insight High Yield Bond Fund | 1,382,085.34 | | |
| BNY Mellon Global Funds PLC, In Respect of the BNY Mellon Absolute Return Bond Fund | 30,318.87 | | |
| FERNWOOD FOUNDATION FUND LLC. | 500,000.00 | | |
| FERNWOOD ASSOCIATES LLC. | 1,445,862.17 | | |
| FERNWOOD RESTRUCTURINGS LIMITED | 916,551.30 | | |
| FERNWOOD ASSOCIATES LLC. | 954,137.82 | | |

**SCHEDULE 3**
**AFFIDAVIT OF LOSS**

AFFIDAVIT OF LOSS

The undersigned, [INSERT LENDER], (the "**Lender**") hereby certifies to [INSERT OBLIGOR] (the "**Borrower**") as follows:

1. The Borrower has delivered a Note, dated [ ●], a copy of which is attached hereto (the "**Promissory Note**") to the Lender [in connection with the [INSERT AGREEMENT] dated as of [INSERT DATE]) (as amended, restated, supplemented or otherwise modified from time to time), among the Borrower, [●], and the other financial institutions that are or may from time to time become a party thereto).]*

2. The Lender has caused a diligent search of its files and vault to be made in order to find the Promissory Note and the Promissory Note has not been found. The Promissory Note has been inadvertently lost, misplaced or destroyed.

3. The Lender has taken no action to give or further pledge, sell, assign, transfer, endorse in blank or otherwise or in any other manner dispose of the Promissory Note to any person, firm or corporation, nor has any record or correspondence been found which indicates that the Lender has entrusted the possession of the Promissory Note to any person, firm or corporation for safekeeping or for any other purpose.

4. The Lender hereby agrees to indemnify and hold harmless the Borrower, any Guarantor under the Promissory Note and their respective successors and assigns, of and from any loss, damage or claim resulting from the Lender's loss or misplacement of the Promissory Note.

5. Insofar as this Certificate is executed before a foreign notary public, the Lender hereby agrees to docket this Certificate with an "Apostille" pursuant to the Hague convention of 5 October 1961, if requested by the Borrower in connection with a judicial action undertaken by the Borrower to cancel or replace the Promissory Note.

6. The Lender hereby agrees that if the Promissory Note is subsequently found by the Lender or come into the Lender's possession, the Lender will immediately surrender the Promissory Note to the Borrower for cancellation.

Dated:

[INSERT LENDER]

By: _____
Name:
Title:

By: _____
Name:
Title:

STATE OF )
)
COUNTY OF )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that , whose name as of , a , is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, s/he, as such and with full authority, executed the same voluntarily for and as the act of said .

Given under my hand and official seal this the day of , [ ]

Notary Public

My commission expires:

Note: * The wording in brackets will not necessarily be required for Existing Derivatives Unwind Promissory Notes which do not derive from a particular facility.

**SIGNATURE PAGES**

**THE PARENT**

For and on behalf of

**CEMEX, S.A.B. DE C.V.**

By: JOSE A. GONZALEZ

Print name: JOSE A. GONZALEZ

*Signature page to the Ancillary Agreement*

**THE BORROWERS**

For and on behalf of

**CEMEX, S.A.B. DE C.V.**

By: JOSE A. GONZALEZ

Print name: JOSE A. GONZALEZ

*Signature page to the Ancillary Agreement*

For and on behalf of

**CEMEX ESPAÑA, S.A.**

By: HECTOR J. VELA

Print name: HECTOR J. VELA

*Signature page to the Ancillary Agreement*

For and on behalf of

**NEW SUNWARD HOLDING B.V.**

By: HECTOR J. VELA

Print name: HECTOR J. VELA

*Signature page to the Ancillary Agreement*

For and on behalf of

**CEMEX MATERIALS LLC**

By: HECTOR J. VELA

Print name: HECTOR J. VELA

Title: ATTORNEY IN FACT

*Signature page to the Ancillary Agreement*

For and on behalf of

**CEMEX FINANCE LLC**

By: HECTOR J. VELA

Print name: HECTOR J. VELA

Title: ATTORNEY IN FACT

*Signature page to the Ancillary Agreement*

**THE GUARANTORS**

For and on behalf of

**CEMEX, S.A.B. DE C.V.**

By: JOSE A. GONZALEZ

Print name: JOSE A. GONZALEZ

*Signature page to the Ancillary Agreement*

For and on behalf of

**CEMEX ESPAÑA, S.A.**

By: HECTOR J. VELA

Print name: HECTOR J. VELA

*Signature page to the Ancillary Agreement*

For and on behalf of

**CEMEX MÉXICO, S.A. DE C.V.**

By: JOSE A. GONZALEZ

Print name: JOSE A. GONZALEZ

*Signature page to the Ancillary Agreement*

For and on behalf of

**CEMEX CONCRETOS, S.A. DE C.V.**

By: JOSE A. GONZALEZ

Print name: JOSE A. GONZALEZ

*Signature page to the Ancillary Agreement*

For and on behalf of

**EMPRESAS TOLTECA DE MÉXICO, S.A. DE C.V.**

By: JOSE A. GONZALEZ

Print name: JOSE A. GONZALEZ

*Signature page to the Ancillary Agreement*

For and on behalf of

**NEW SUNWARD HOLDING B.V.**

By: HECTOR J. VELA

Print name: HECTOR J. VELA

*Signature page to the Ancillary Agreement*

For and on behalf of

**CEMEX CORP.**

By: HECTOR J. VELA

Print name: HECTOR J. VELA

Title: ATTORNEY IN FACT

*Signature page to the Ancillary Agreement*

For and on behalf of

**CEMEX, INC.**

By: HECTOR J. VELA

Print name: HECTOR J. VELA

*Signature page to the Ancillary Agreement*

For and on behalf of

**CEMEX FINANCE LLC**

By: HECTOR J. VELA

Print name: HECTOR J. VELA

Title: ATTORNEY IN FACT

*Signature page to the Ancillary Agreement*

**THE SECURITY PROVIDERS**

For and on behalf of

**CEMEX, S.A.B. DE C.V.**

By: JOSE A. GONZALEZ

Print name: JOSE A. GONZALEZ

*Signature page to the Ancillary Agreement*

For and on behalf of

**CEMEX MÉXICO, S.A. DE C.V.**

By: JOSE A. GONZALEZ

Print name: JOSE A. GONZALEZ

*Signature page to the Ancillary Agreement*

For and on behalf of

**CENTRO DISTRIBUIDOR DE CEMENTO, S.A. DE C.V.**

By: JOSE A. GONZALEZ

Print name: JOSE A. GONZALEZ

*Signature page to the Ancillary Agreement*

For and on behalf of

**EMPRESAS TOLTECA DE MÉXICO, S.A. DE C.V.**

By: JOSE A. GONZALEZ

Print name: JOSE A. GONZALEZ

*Signature page to the Ancillary Agreement*

For and on behalf of

**IMPRA CAFÉ, S.A. DE C.V.**

By: JOSE A. GONZALEZ

Print name: JOSE A. GONZALEZ

*Signature page to the Ancillary Agreement*

For and on behalf of

**INTERAMERICAN INVESTMENTS, INC.**

By: JOSE A. GONZALEZ

Print name: JOSE A. GONZALEZ

Title: ATTORNEY IN FACT

*Signature page to the Ancillary Agreement*

For and on behalf of

**MEXCEMENT HOLDINGS, S.A. DE C.V.**

By: JOSE A. GONZALEZ

Print name: JOSE A. GONZALEZ

*Signature page to the Ancillary Agreement*

For and on behalf of

**CORPORACIÓN GOUDA, S.A. DE C.V.**

By: JOSE A. GONZALEZ

Print name: JOSE A. GONZALEZ

*Signature page to the Ancillary Agreement*

For and on behalf of

**NEW SUNWARD HOLDING B.V.**

By: HECTOR J. VELA

Print name: HECTOR J. VELA

*Signature page to the Ancillary Agreement*

For and on behalf of

**CEMEX INTERNATIONAL FINANCE COMPANY**

By: JAVIER GARCIA

Print name: JAVIER GARCIA

Witness: ANGEL MÉNDEZ

Print name: ANGEL MÉNDEZ

Address: HERNANDEZ DE TEJADA, NO.1, 28027, MADRID

Occupation: FINANCIAL MANAGER

*Signature page to the Ancillary Agreement*

For and on behalf of

**CEMEX TRADEMARKS HOLDING LTD.**

By: JAVIER GARCIA

Print name: JAVIER GARCIA

*Signature page to the Ancillary Agreement*

**THE ADMINISTRATIVE AGENT**

For and on behalf of

**CITIBANK INTERNATIONAL PLC**

By: R BRODY

Print name: MRS R BRODY

*Signature page to the Ancillary Agreement*

**THE EXCHANGE AGENT**

For and on behalf of

**CITIBANK INTERNATIONAL PLC**

By: R BRODY

Print name: MRS R BRODY

*Signature page to the Ancillary Agreement*

**THE ORIGINAL EXTINGUISHING CREDITORS**

*Signature page to the Ancillary Agreement*

For and on behalf of the Administrative Agent on behalf of

**ATLANTIC SECURITY BANK**

By: R BRODY

Print name: MRS R BRODY

*Signature page to the Ancillary Agreement*

For and on behalf of

**BANAMEX USA**

By: JEFF HEALY and RAUL MUNOZ

Print name: JEFF HEALY and RAUL MUNOZ

*Signature page to the Ancillary Agreement*

For and on behalf of

**BANCA MONTE DEI PASCHI DI SIENA SPA, LONDON BRANCH**

By: ENRICO VIGNOLI and WENDY A. JOHNSON

Print name: ENRICO VIGNOLI and WENDY A. JOHNSON

*Signature page to the Ancillary Agreement*

For and on behalf of

**BANCA MONTE DEI PASCHI DI SIENA SPA, NEW YORK BRANCH**

By: RENATO BASSI and BRIAN R. LANDY

Print name: RENATO BASSI and BRIAN R. LANDY

*Signature page to the Ancillary Agreement*

For and on behalf of

**BANCO BILBAO VIZCAYA ARGENTARIA, S.A.**

By: JORGE BURGALETA and JULIAN RINCON

Print name: JORGE BURGALETA and JULIAN RINCON

*Signature page to the Ancillary Agreement*

For and on behalf of

**BANCO DE SABADELL, S.A.**

By: SUSANA CONDE and JOAQUÍN LÓPEZ

Print name: SUSANA CONDE and JOAQUÍN LÓPEZ

*Signature page to the Ancillary Agreement*

For and on behalf of

**BANCO ESPAÑOL DE CRÉDITO, S.A.**

By: BORJA BERTRAN and CARLOS PORRAS

Print name: BORJA BERTRAN and CARLOS PORRAS

*Signature page to the Ancillary Agreement*

For and on behalf of

**BANCO NACIONAL DE COMERCIO EXTERIOR, S.N.C.**

By: LEONEL N. VASQUEZ GÓMEZ and ADRIANA PÉREZ CÁCERES

Print name: LEONEL N. VASQUEZ GÓMEZ and ADRIANA PÉREZ CÁCERES

*Signature page to the Ancillary Agreement*

For and on behalf of

**BANCO NACIONAL DE MÉXICO, S.A. INTEGRANTE DEL GRUPO FINANCIERO BANAMEX**

By: JULIO ALVAREZ GONZÁLEZ and LEOPOLDO AMAYA GONZÁLEZ

Print name: JULIO ALVAREZ GONZÁLEZ and LEOPOLDO AMAYA GONZÁLEZ

*Signature page to the Ancillary Agreement*

For and on behalf of

**BANCO NACIONAL DE MÉXICO, S.A. INTEGRANTE DEL GRUPO FINANCIERO BANAMEX, ACTING THROUGH ITS NASSAU BAHAMAS BRANCH**

By: JULIO ALVAREZ GONZÁLEZ and LEOPOLDO AMAYA GONZÁLEZ

Print name: JULIO ALVAREZ GONZÁLEZ and LEOPOLDO AMAYA GONZÁLEZ

*Signature page to the Ancillary Agreement*

For and on behalf of

**BANCO POPULAR ESPAÑOL S.A.**

By: DAVID FOMBELLIDA and MIGUEL ANGEL PEREZ

Print name: DAVID FOMBELLIDA and MIGUEL ANGEL PEREZ

*Signature page to the Ancillary Agreement*

For and on behalf of

**BANCO SANTANDER (MEXICO) S.A. INSTITUCIÓN DE BANCA MÚLTIPLE**
**GRUPO FINANCIERO SANTANDER**

By: WADE A. KIT and OCTAVIANO CARLOS COUTTOLENC MESTRE

Print name: WADE A. KIT and OCTAVIANO CARLOS COUTTOLENC MESTRE

*Signature page to the Ancillary Agreement*

For and on behalf of the Administrative Agent on behalf of

**BANK OF AMERICA N.A**

By: R BRODY

Print name: MRS R BRODY

*Signature page to the Ancillary Agreement*

For and on behalf of the Administrative Agent on behalf of

**BANK OF AMERICA N.A SUCURSAL EN ESPAÑA**

By: R BRODY

Print name: MRS R BRODY

*Signature page to the Ancillary Agreement*

For and on behalf of

**BANKIA, S.A.**

By: AITOR COHRS and LAURA SANZ

Print name: AITOR COHRS and LAURA SANZ

*Signature page to the Ancillary Agreement*

For and on behalf of

**BANKIA, S.A. MIAMI BRANCH**

By: AITOR COHRS and LAURA SANZ

Print name: AITOR COHRS and LAURA SANZ

*Signature page to the Ancillary Agreement*

For and on behalf of

**BARCLAYS BANK PLC**

By: MICHAEL MOZER

Print name: MICHAEL MOZER

*Signature page to the Ancillary Agreement*

For and on behalf of the Administrative Agent on behalf of

**BAYERISCHE LANDESBANK**

By: R BRODY

Print name: MRS R BRODY

*Signature page to the Ancillary Agreement*

For and on behalf of the Administrative Agent on behalf of

**BAYERISCHE LANDESBANK, NEW YORK BRANCH**

By: R BRODY

Print name: MRS R BRODY

*Signature page to the Ancillary Agreement*

For and on behalf of

**BBVA BANCOMER, S.A., INSTITUCIÓN DE BANCA MÚLTIPLE**
**GRUPO FINANCIERO BBVA BANCOMER**

By: ALEJANDRO JOSE CARDENAS BORTONI and LORENZO JOSE VALDES ELIZONDO

Print name: ALEJANDRO JOSE CARDENAS BORTONI and LORENZO JOSE VALDES ELIZONDO

*Signature page to the Ancillary Agreement*

For and on behalf of

**BNP PARIBAS (PARIS BRANCH)**

By: KATHRYN B. QUINN and ALBERT A. YOUNG JR.

Print name: KATHRYN B. QUINN and ALBERT A. YOUNG JR.

*Signature page to the Ancillary Agreement*

For and on behalf of

**BNP PARIBAS S.A.**

By: KATHRYN B. QUINN and ALBERT A. YOUNG JR.

Print name: KATHRYN B. QUINN and ALBERT A. YOUNG JR.

*Signature page to the Ancillary Agreement*

For and on behalf of

**BNP PARIBAS S.A., SUCURSAL EN ESPAÑA**

By: KATHRYN B. QUINN and ALBERT A. YOUNG JR.

Print name: KATHRYN B. QUINN and ALBERT A. YOUNG JR.

*Signature page to the Ancillary Agreement*

For and on behalf of

**BNP PARIBAS SA-NEW YORK BRANCH**

By: KATHRYN B. QUINN and ALBERT A. YOUNG JR.

Print name: KATHRYN B. QUINN and ALBERT A. YOUNG JR.

*Signature page to the Ancillary Agreement*

For and on behalf of

**BNP PARIBAS (SYDNEY BRANCH)**

By: KATHRYN B. QUINN and ALBERT A. YOUNG JR.

Print name: KATHRYN B. QUINN and ALBERT A. YOUNG JR.

*Signature page to the Ancillary Agreement*

For and on behalf of the Administrative Agent on behalf of

**BURLINGTON LOAN MANAGEMENT LIMITED**

By: R BRODY

Print name: MRS R BRODY

*Signature page to the Ancillary Agreement*

For and on behalf of

**CAIXA GERAL DE DEPOSITOS, S.A, SUCURSAL EN ESPAÑA**

By: PEDRO MC CARTHY DA CUNHA

Print name: PEDRO MC CARTHY DA CUNHA

*Signature page to the Ancillary Agreement*

For and on behalf of

**CAIXABANK S.A.**

By: FERNANDO ALVAREZ-QUIÑONES and JAVIER GARCIA FAUBEL

Print name: FERNANDO ALVAREZ-QUIÑONES and JAVIER GARCIA FAUBEL

*Signature page to the Ancillary Agreement*

For and on behalf of the Administrative Agent on behalf of

**CITIBANK INTERNATIONAL PLC**

By: R BRODY

Print name: MRS R BRODY

*Signature page to the Ancillary Agreement*

For and on behalf of

**CITIBANK INTERNATIONAL PLC, SUCURSAL EN ESPAÑA**

By: MIGUEL TRUEBA

Print name: MIGUEL TRUEBA

*Signature page to the Ancillary Agreement*

For and on behalf of the Administrative Agent on behalf of

**CITIBANK NA**

By: R BRODY

Print name: MRS R BRODY

*Signature page to the Ancillary Agreement*

For and on behalf of

**CITIBANK N.A., NEW YORK**

By: FLAVIO FIGUEIREDO and ELISEO SERDÁN

Print name: FLAVIO FIGUEIREDO and ELISEO SERDÁN

*Signature page to the Ancillary Agreement*

For and on behalf of the Administrative Agent on behalf of

**COMERICA BANK**

By: R BRODY

Print name: MRS R BRODY

*Signature page to the Ancillary Agreement*

For and on behalf of the Administrative Agent on behalf of

**COMMERZBANK AG, LONDON BRANCH**

By: R BRODY

Print name: MRS R BRODY

*Signature page to the Ancillary Agreement*

For and on behalf of the Administrative Agent on behalf of

**COMMERZBANK AG, NEW YORK BRANCH**

By: R BRODY

Print name: MRS R BRODY

*Signature page to the Ancillary Agreement*

For and on behalf of

**CREDIT AGRICOLE CIB SUCURSAL EN ESPAÑA**

By: CARLOS ARANGUREN and JAVIER ALVAREZ-RENDUELES

Print name: CARLOS ARANGUREN and JAVIER ALVAREZ-RENDUELES

*Signature page to the Ancillary Agreement*

For and on behalf of

**CREDIT AGRICOLE CORPORATE & INVESTMENT BANK**

By: LUCILE GUBLER and FRANCK BENICHOU

Print name: LUCILE GUBLER and FRANCK BENICHOU

*Signature page to the Ancillary Agreement*

For and on behalf of

**CREDIT AGRICOLE CORPORATE & INVESTMENT BANK PARIS**

By: LUCILE GUBLER and FRANCK BENICHOU

Print name: LUCILE GUBLER and FRANCK BENICHOU

*Signature page to the Ancillary Agreement*

For and on behalf of

**CREDIT AGRICOLE CORPORATE & INVESTMENT BANK S.A. NEW YORK BRANCH**

By: KEVIN D. FLOOD and JEAN PHILIPPE ADAM

Print name: KEVIN D. FLOOD and JEAN PHILIPPE ADAM

*Signature page to the Ancillary Agreement*

For and on behalf of the Administrative Agent on behalf of

**CREDIT INDUSTRIEL ET COMMERCIAL, LONDON BRANCH**

By: R BRODY

Print name: MRS R BRODY

*Signature page to the Ancillary Agreement*

For and on behalf of

**CREDIT SUISSE AG CAYMAN ISLANDS BRANCH**

By: DAVID FITZGERALD and STEVEN DWEK

Print name: DAVID FITZGERALD and STEVEN DWEK

*Signature page to the Ancillary Agreement*

For and on behalf of

**CVI GVF CLO 1 LTD**

By: TIFFANY PARR

Print name: TIFFANY PARR

*Signature page to the Ancillary Agreement*

For and on behalf of

**CVI GVF (LUX) MASTER SARL**

By: TIFFANY PARR

Print name: TIFFANY PARR

*Signature page to the Ancillary Agreement*

For and on behalf of

**DEUTSCHE BANK AG, NEW YORK BRANCH**

By: J. OTERO and ENRIQUE LANDAETA

Print name: J. OTERO and ENRIQUE LANDAETA

*Signature page to the Ancillary Agreement*

For and on behalf of

**DEUTSCHE BANK LUXEMBOURG S.A.**

By: FRANZ-JOSEF EWERHARDY and KARLINA BELHOSTE

Print name: FRANZ-JOSEF EWERHARDY and KARLINA BELHOSTE

*Signature page to the Ancillary Agreement*

For and on behalf of

**ELQ INVESTORS LTD.**

By: SIMON MELLOR

Print name: SIMON MELLOR

*Signature page to the Ancillary Agreement*

For and on behalf of

**FCOF III EUROPE UB SECURITIES LIMITED**

By: TONY TRAYNOR

Print name: TONY TRAYNOR

*Signature page to the Ancillary Agreement*

For and on behalf of

**FORTIS BANK S.A./N.V**

By: ALFRED M. TORRES and JOHN W. BENTON

Print name: ALFRED M. TORRES and JOHN W. BENTON

*Signature page to the Ancillary Agreement*

For and on behalf of

**FORTIS BANK, SA SUCURSAL EN ESPAÑA**

By: ALFRED M. TORRES and JOHN W. BENTON

Print name: ALFRED M. TORRES and JOHN W. BENTON

*Signature page to the Ancillary Agreement*

For and on behalf of

**GOLDMAN SACHS INTERNATIONAL BANK**

By: SIMON MELLOR

Print name: SIMON MELLOR

*Signature page to the Ancillary Agreement*

For and on behalf of

**HSBC BANK PLC, SUCURSAL EN ESPAÑA**

By: ANTONIO VILELA and MARK J. HALL

Print name: ANTONIO VILELA and MARK J. HALL

*Signature page to the Ancillary Agreement*

For and on behalf of

**HSBC MEXICO, S.A., INSTITUCIÓN DE BANCA MÚLTIPLE, GRUPO FINANCIERO HSBC**

By: VICTOR MANUEL ELIZONDO and CORDELIA GONZALEZ FLORES ARIAS

Print name: VICTOR MANUEL ELIZONDO and CORDELIA GONZALEZ FLORES ARIAS

*Signature page to the Ancillary Agreement*

For and on behalf of

**ICE 1 EM CLO LTD**

By: NATHAN SANDLER

Print name: NATHAN SANDLER

*Signature page to the Ancillary Agreement*

For and on behalf of the Administrative Agent on behalf of

**ICE GLOBAL VALUE LOANS MASTER FUND LTD**

By: R BRODY

Print name: MRS R BRODY

*Signature page to the Ancillary Agreement*

For and on behalf of the Administrative Agent on behalf of

**ING BANK N.V., DUBLIN BRANCH**

By: R BRODY

Print name: MRS R BRODY

*Signature page to the Ancillary Agreement*

For and on behalf of the Administrative Agent on behalf of

**ING BELGIUM S.A, SUCURSAL EN ESPAÑA**

By: R BRODY

Print name: MRS R BRODY

*Signature page to the Ancillary Agreement*

For and on behalf of the Administrative Agent on behalf of

**INSTITUTO DE CRÉDITO OFICIAL**

By: R BRODY

Print name: MRS R BRODY

*Signature page to the Ancillary Agreement*

For and on behalf of the Administrative Agent on behalf of

**INTESA SANPAOLO SPA, NEW YORK BRANCH**

By: R BRODY

Print name: MRS R BRODY

*Signature page to the Ancillary Agreement*

For and on behalf of the Administrative Agent on behalf of

**INTESA SANPAOLO SPA, SUCURSAL EN ESPAÑA**

By: R BRODY

Print name: MRS R BRODY

*Signature page to the Ancillary Agreement*

For and on behalf of the Administrative Agent on behalf of

**JPMORGAN CHASE BANK, N.A.**

By: R BRODY

Print name: MRS R BRODY

*Signature page to the Ancillary Agreement*

For and on behalf of the Administrative Agent on behalf of

**JPMORGAN CHASE BANK, N.A., SUCURSAL EN ESPAÑA**

By: R BRODY

Print name: MRS R BRODY

*Signature page to the Ancillary Agreement*

For and on behalf of

**LIBERBANK, S.A**

By: SONIA LUCILA GIL RANCHO

Print name: SONIA LUCILA GIL RANCHO

*Signature page to the Ancillary Agreement*

For and on behalf of the Administrative Agent on behalf of

**LLOYDS TSB BANK PLC**

By: R BRODY

Print name: MRS R BRODY

*Signature page to the Ancillary Agreement*

For and on behalf of the Administrative Agent on behalf of

**MEDIOBANCA BANCA DI CREDITO FINANZIARIO SPA**

By: R BRODY

Print name: MRS R BRODY

*Signature page to the Ancillary Agreement*

For and on behalf of the Administrative Agent on behalf of

**MERRILL LYNCH INTERNATIONAL**

By: R BRODY

Print name: MRS R BRODY

*Signature page to the Ancillary Agreement*

For and on behalf of

**MIZUHO CORPORATE BANK, LTD.**

By: DAVID NAPOLI COSTA

Print name: DAVID NAPOLI COSTA

*Signature page to the Ancillary Agreement*

For and on behalf of the Administrative Agent on behalf of

**MIZUHO CORPORATE BANK NEDERLAND NV**

By: MR K. KATO and MR T. SUZUKI

Print name: MR K. KATO and MR T. SUZUKI

*Signature page to the Ancillary Agreement*

For and on behalf of

**MORGAN STANLEY BANK INTERNATIONAL LIMITED**

By: NAUMAN ANSARI

Print name: NAUMAN ANSARI

*Signature page to the Ancillary Agreement*

For and on behalf of the Administrative Agent on behalf of

**NCG BANCO, S.A.**

By: R BRODY

Print name: MRS R BRODY

*Signature page to the Ancillary Agreement*

For and on behalf of

**PORTIGON AG SUCURSAL EN ESPAÑA**

By: BERTO NUVOLONI and RAUL CALVO

Print name: BERTO NUVOLONI and RAUL CALVO

*Signature page to the Ancillary Agreement*

For and on behalf of

**QP SFM CAPITAL HOLDINGS LIMITED**

By: THOMAS L. O'GRADY

Print name: THOMAS L. O'GRADY

*Signature page to the Ancillary Agreement*

For and on behalf of the Administrative Agent on behalf of

**SCOTIABANK EUROPE PLC**

By: R BRODY

Print name: MRS R BRODY

*Signature page to the Ancillary Agreement*

For and on behalf of

**SPECIAL SITUATIONS INVESTING GROUP, INC**

By: NANCY Y. KWOK

Print name: NANCY Y. KWOK

*Signature page to the Ancillary Agreement*

For and on behalf of the Administrative Agent on behalf of

**STANDARD CHARTERED BANK**

By: R BRODY

Print name: MRS R BRODY

*Signature page to the Ancillary Agreement*

For and on behalf of the Administrative Agent on behalf of

**STEELMILL MASTER FUND LP**

By: R BRODY

Print name: MRS R BRODY

*Signature page to the Ancillary Agreement*

For and on behalf of the Administrative Agent on behalf of

**STICHTING PENSIOENFONDS ZORG EN WELZIJN**

By: R BRODY

Print name: MRS R BRODY

*Signature page to the Ancillary Agreement*

For and on behalf of the Administrative Agent on behalf of

**THE BANK OF NOVA SCOTIA**

By: R BRODY

Print name: MRS R BRODY

*Signature page to the Ancillary Agreement*

For and on behalf of the Administrative Agent on behalf of

**THE GOVERNOR AND COMPANY OF THE BANK OF IRELAND**

By: R BRODY

Print name: MRS R BRODY

*Signature page to the Ancillary Agreement*

For and on behalf of the Administrative Agent on behalf of

**THE ROYAL BANK OF SCOTLAND NV**

By: R BRODY

Print name: MRS R BRODY

*Signature page to the Ancillary Agreement*

For and on behalf of the Administrative Agent on behalf of

**THE ROYAL BANK OF SCOTLAND PLC**

By: R BRODY

Print name: MRS R BRODY

*Signature page to the Ancillary Agreement*

For and on behalf of the Administrative Agent on behalf of

**THORNBURG INVESTMENT INCOME BUILDER FUND**

By: R BRODY

Print name: MRS R BRODY

*Signature page to the Ancillary Agreement*

For and on behalf of the Administrative Agent on behalf of

**UBS AG, STAMFORD BRANCH**

By: R BRODY

Print name: MRS R BRODY

*Signature page to the Ancillary Agreement*

For and on behalf of the Administrative Agent on behalf of

**VIRTUS MULTI SECTOR FIXED INCOME FUND**

By: R BRODY

Print name: MRS R BRODY

*Signature page to the Ancillary Agreement*

For and on behalf of the Administrative Agent on behalf of

**VIRTUS MULTISECTOR FIXED INCOME SERIES**

By: R BRODY

Print name: MRS R BRODY

*Signature page to the Ancillary Agreement*

For and on behalf of the Administrative Agent on behalf of

**VIRTUS MULTI SECTOR SHORT TERM BOND FUND**

By: R BRODY

Print name: MRS R BRODY

*Signature page to the Ancillary Agreement*

For and on behalf of the Administrative Agent on behalf of

**VIRTUS SENIOR FLOATING RATE FUND**

By: R BRODY

Print name: MRS R BRODY

*Signature page to the Ancillary Agreement*

For and on behalf of

**WESTPAC EUROPE LIMITED**

By: ANDREW VINEY

Print name: ANDREW VINEY

*Signature page to the Ancillary Agreement*

**THE USPP NOTEHOLDERS**

*Signature page to the Ancillary Agreement*

For and on behalf of

**ALLSTATE LIFE INSURANCE COMPANY**

By: ORLANDO PURPURA and MARK W. (SAM) DAVIS

Print name: ORLANDO PURPURA and MARK W. (SAM) DAVIS

*Signature page to the Ancillary Agreement*

For and on behalf of

**CVI GVF (LUX) MASTER S.A.R.L.**

By: TIFFANY PARR

Print name: TIFFANY PARR

*Signature page to the Ancillary Agreement*

For and on behalf of the Administrative Agent on behalf of

**COMMINGLED PENSION TRUST FUND (DISTRESSED DEBT OPPORTUNITIES)
OF JPMORGAN CHASE BANK, N.A.**

By: R BRODY

Print name: MRS R BRODY

*Signature page to the Ancillary Agreement*

For and on behalf of

**HARTFORD LIFE AND ACCIDENT INSURANCE COMPANY**

By: KENNETH W. DAY

Print name: KENNETH W. DAY

*Signature page to the Ancillary Agreement*

For and on behalf of

**HARTFORD LIFE INSURANCE COMPANY**

By: KENNETH W. DAY

Print name: KENNETH W. DAY

*Signature page to the Ancillary Agreement*

For and on behalf of the Administrative Agent on behalf of

**INSIGHT LDI SOLUTIONS PLUS PLC, IN RESPECT OF THE INSIGHT LOAN FUND**

By: R BRODY

Print name: MRS R BRODY

*Signature page to the Ancillary Agreement*

For and on behalf of the Administrative Agent on behalf of

**JPMORGAN CORE PLUS BOND FUND**

By: R BRODY

Print name: MRS R BRODY

*Signature page to the Ancillary Agreement*

For and on behalf of the Administrative Agent on behalf of

**JPMORGAN DISTRESSED DEBT OPPORTUNITIES MASTER FUND, LTD.**

By: R BRODY

Print name: MRS R BRODY

*Signature page to the Ancillary Agreement*

For and on behalf of the Administrative Agent on behalf of

**JPMORGAN HIGH YIELD FUND**

By: R BRODY

Print name: MRS R BRODY

*Signature page to the Ancillary Agreement*

For and on behalf of the Administrative Agent on behalf of

**JPMORGAN STRATEGIC INCOME OPPORTUNITIES FUND**

By: R BRODY

Print name: MRS R BRODY

*Signature page to the Ancillary Agreement*

For and on behalf of

**NATIONAL BENEFIT LIFE INSURANCE COMPANY**

By: SAMUEL OTCHERE

Print name: SAMUEL OTCHERE

*Signature page to the Ancillary Agreement*

For and on behalf of the Administrative Agent on behalf of

**PACHOLDER HIGH YIELD FUND, INC.**

By: R BRODY

Print name: MRS R BRODY

*Signature page to the Ancillary Agreement*

For and on behalf of

**PHL VARIABLE INSURANCE COMPANY**

By: NELSON CORREA

Print name: NELSON CORREA

*Signature page to the Ancillary Agreement*

For and on behalf of

**PHOENIX LIFE INSURANCE COMPANY**

By: NELSON CORREA

Print name: NELSON CORREA

*Signature page to the Ancillary Agreement*

For and on behalf of

**PRIMERICA LIFE INSURANCE COMPANY**

By: SAMUEL OTCHERE

Print name: SAMUEL OTCHERE

*Signature page to the Ancillary Agreement*

For and on behalf of

**QP SFM CAPITAL HOLDING LIMITED**

By: THOMAS L. O'GRADY

Print name: THOMAS L. O'GRADY

*Signature page to the Ancillary Agreement*

For and on behalf of

**SWISS RE LIFE & HEALTH AMERICA INC.**

By: SAMUEL OTCHERE

Print name: SAMUEL OTCHERE

*Signature page to the Ancillary Agreement*

For and on behalf of

**WESTPORT INSURANCE CORPORATION**

By: SAMUEL OTCHERE

Print name: SAMUEL OTCHERE

*Signature page to the Ancillary Agreement*

**Exhibit 4.38**

*[TRANSLATION FOR INFORMATION PURPOSES ONLY]*

Execution version

**IRREVOCABLE ADMINISTRATION TRUST AGREEMENT WITH REVERSION RIGHTS No. 111523-3** dated as of September 17, 2012 (this "Agreement"), entered into by and among:

(1) the entities listed in **Schedule 1** hereof (hereinafter, together with any Additional Settlor (as defined below), the " Settlors" or the "Second Beneficiaries"), as settlors and second beneficiaries;

(2) Banco Nacional de México, S.A., integrante del Grupo Financiero Banamex, as trustee (hereinafter, the " Trustee"), a multiple banking institution organized and validly existing under the laws of the United Mexican States (" Mexico");

(3) Wilmington Trust (London) Limited, on its own behalf and as Security Agent, acting pursuant to the terms of the Intercreditor Agreement(as defined below) on behalf and for the benefit of the Creditors (as such term is defined below) and of any of their successors, beneficiaries and assignees, a private limited liability company incorporated and validly existing under the laws of England and Wales(the " First Beneficiary"); and

(4) the entities specified in **Schedule 2** hereof (each of such entities a "Counterpart" and collectively the "Counterparties");

in accordance with the following Recitals, Representations and Clauses:

## RECITALS

I. WHEREAS, on September 17, 2012. CEMEX, S.A.B. de C.V. ("Cemex SAB"), as the Parent, several direct and indirect subsidiaries of Cemex SAB as borrowers, guarantors or security providers (jointly, the "Obligors"), certain financial institutions and other entities identified therein as creditors (the creditors, together with their successors, beneficiaries and permitted assignees, the " Original Creditors"), Citibank International plc, in its capacity as agent (the "Agent") and the First Beneficiary, among others, entered into a Facilities Agreement with the purpose of refinancing certain debt of Cemex SAB and the other Obligors described therein (the "Facilities Agreement"; and the debt contemplated in the Facilities Agreement, together with the above mentioned liabilities, the "Original Debt"). A copy of the Facilities Agreement is attached hereto as **Schedule A**.

II. WHEREAS, on September 17, 2012, Cemex SAB, the other Obligors, the Original Creditors, the Agent and the First Beneficiary, entered into an Intercreditor Agreement (the "Intercreditor Agreement"), pursuant to which, among other things, they agreed the transfer of all

Mexican Intra-Group Credit Rights (as such term is defined in the Intercreditor Agreement) to the Trustee in terms hereof, so that, if the First Beneficiary delivers to the Trustee a Concurso Notice (as such term is defined below), the Voting and Subscription Rights (as such term is defined below) corresponding to the Settlors in their capacity as creditors in respect of the Mexican Intra-Group Credit Rights, be exercised by the Trustee in accordance with terms hereof and as per the instructions set forth in this Agreement. A copy of the Intercreditor Agreement is attached hereto as **Schedule B**.

III. WHEREAS, according to the Facilities Agreement and the Intercreditor Agreement, Cemex SAB and its subsidiaries may refinance debt maintained or issued by any of them, as such refinancing is permitted in accordance with the terms of the Facilities Agreement and the Intercreditor Agreement, by means of the issuance of bonds, notes or other debt instruments, or convertible or exchangeable securities or loan facilities (jointly, the " Refinanced Debt", and the lenders of any kind acceding, in its case, by means of an accession agreement to the Intercreditor Agreement, the " Refinancing Creditors"; the Refinancing Creditors together with the Original Creditors, the "Creditors").

IV. WHEREAS, on November 30, 2007, Cemex SAB issued certain *certificados bursátiles* denominated in *unidades de inversión*, guaranteed, on a *por aval* basis, by each of Cemex Mexico, S.A. de C.V. ("Cemex Mexico") and Empresas Tolteca de México, S.A. de C.V. ("Tolteca"), for an amount of 116,530,800 unidades de inversión, maturing on November 17, 2017, that are registered with the Mexican National Securities Registry and listed on the *Bolsa Mexicana de Valores, S.A.B. de C.V.* under the ticker 07-2U (the "Certificados Bursatiles").

V. WHEREAS, New Sunward Holding Financial Ventures B.V. ("NSHFV") issued, (i) on December 18, 2006, certain callable perpetual dual currency notes, guaranteed by each of Cemex SAB, Cemex Mexico and New Sunward Holding B.V. (" NSH") for an amount up to US$350,000,000; (ii) on December 18, 2006, certain callable perpetual dual currency notes, guaranteed by each of Cemex SAB, Cemex Mexico and NSH, for an amount up to US$900,000,000; (iii) on February 12, 2007, certain callable perpetual dual currency notes, guaranteed by each of Cemex SAB, Cemex Mexico and NSH, for an amount up to US$750,000,000; and (iv) on May 9, 2007, certain callable perpetual dual currency notes, guaranteed by each of Cemex SAB, Cemex Mexico and NSH, for an amount up to €730,000,000 (the notes mentioned in paragraphs (i) through (iv) above are jointly referred to as the " Perpetual Securities").

VI. WHEREAS, Cemex SAB issued on (i) January 11, 2011, certain senior secured notes for an amount of US$1,650,000,000, guaranteed by each of Cemex Mexico, Cemex España S.A. ("Cemex España") and NSH, with an interest of 9.000% maturing on January 11, 2018;(ii) April 5, 2011, certain floating rate senior notes for an amount of US$800,000,000, guaranteed by each of Cemex México, Cemex España and NSH, with a floating interest, maturing on September 30, 2015; and (iii) September 17, 2012, certain senior secured notes for an amount of US$500,000.00, guaranteed by each of Cemex México, Cemex España, Cemex Concretos S.A. de C.V. ("Cemex Concretos"), Tolteca, Cemex Corp., NSH, CEMEX Research Group AG, CEMEX Shipping B.V., CEMEX Asia B.V., CEMEX France Gestion, CEMEX UK and CEMEX Egyptian Investments B.V., with an interest of 9.50% maturing on June 15, 2018 (the notes mentioned in paragraphs (i),(ii) and (iii) above are jointly referred to as the " Cemex SAB Bonds").

VII. WHEREAS, Cemex Finance LLC issued on (i) December 14, 2009 certain senior secured notes for an amount of US$1,750,000,000, guaranteed by each of Cemex SAB, Cemex Mexico, Cemex España, Cemex Concretos, Tolteca, Cemex Corp. and NSH, with an interest of 9.5% maturing on December 14, 2016; and (ii) December 14, 2009, certain senior secured notes for an amount of €350,000,000 guaranteed by each of Cemex SAB, Cemex Mexico, Cemex Concretos, Tolteca, Cemex Corp. and NSH, with an interest of 9.625% maturing on December 14, 2017 (the notes mentioned in numerals (i) and (ii) above are jointly referred to as the "Cemex Finance Bonds").

VIII. WHEREAS, Cemex España, through its Luxembourg branch issued on (i) May 12, 2010, certain senior secured notes for an amount of €115,346,000 guaranteed by each of Cemex SAB, Cemex Mexico and NSH, with an interest of 8.875% maturing on May 12, 2017; (ii) March 28,2012, certain senior secured notes for an amount of €179,219,000 guaranteed by each of Cemex SAB, Cemex Mexico and NSH, with an interest of 9.875% maturing on April 30, 2019; (iii) March 28, 2012 certain senior secured notes for an amount of US$ 703,861,000 guaranteed by each of Cemex SAB, Cemex México, and NSH, with an interest of 9.875%, maturing on April 30, 2019; and (iv) May 12, 2010, certain senior secured notes for an amount of US$1,192,996,000, guaranteed by each of Cemex SAB, Cemex Mexico and NSH, with an interest of 9.25% maturing on May 12, 2020, (the notes mentioned in paragraphs (i) through (iv) above are jointly referred to as the " Cemex España Bonds").

IX. WHEREAS, Cemex SAB or any of its subsidiaries (the "Additional Obligors") may, from time to time, issue notes, *certificados bursátiles* (under programs approved on the date hereof or in the future), bonds or other debt securities, convertible or exchangeable securities, or borrow under loan facilities, the proceeds of which are applied to refinance (i) the Certificados Bursatiles, the Perpetual Securities, the Cemex SAB Bonds, the Cemex Finance Bonds, the Cemex España Bonds or any Refinanced Debt which are secured equally and ratably with other indebtedness of the Obligors under the terms provided for in the Facilities Agreement, or (ii) any debt of Cemex SAB or other Obligors under the Facilities Agreement which is issued or, as the case may be, borrowed by the Additional Obligors after the date of the Facilities Agreement, and which may be issued or, as the case may be, borrowed in accordance with the Facilities Agreement (such debt, together with the debt referred to in Recital III shall be jointly referred to as the " Refinanced Debt").

X. WHEREAS, the Settlors desire to transfer in favor of the Trustee the Creditor Rights (as defined below), for the sole purpose that in case the First Beneficiary delivers to the Settlor a Concurso Notice (as defined below) pursuant to the terms of this Agreement, before the date on which the Original Debt and, or this Agreement ceases to have effect in accordance with the Intercreditor Agreement (the "Termination Date"), the Trustee (i) exercises the Voting and Subscription Rights corresponding to the Settlors, in accordance with the instructions received from the First Beneficiary in terms of the Intercreditor Agreement; and (ii) receives any and all Income (as defined below), to be applied in accordance with the relevant *concurso*

*mercantil* proceeding and in terms of the Intercreditor Agreement, for the benefit of (1) the Original Creditors, acting for such purposes through the First Beneficiary and the First Beneficiary, (2) any financial institution that enters into a Creditor Accession Letter (as such term is defined in the Facilities Agreement) in accordance with the Facilities Agreement, within 30 (thirty) Business Days following the Effective Date (as such term is defined in the Facilities Agreement), acting for such purposes through the First Beneficiary (3) the Agent, (4) the holders of the *Certificados Bursátiles*, acting for such purposes through the common representative of the *Certificados Bursátiles*, (5) the holders of the Perpetual Securities, acting for such purposes through the corresponding trustee, (6) the holders of the Cemex SAB Bonds, acting for such purposes through the corresponding trustee, (7) the holders of the Cemex Finance Bonds, acting for such purposes through the corresponding trustee, (8) the holders of the Cemex España Bonds, acting for such purposes through the corresponding trustee, and (9) the holders or lenders of the Refinanced Debt, acting for such purposes through the corresponding common representative, trustee, agent or lender (the parties mentioned in paragraphs (1) through (9) above, as well as any successor, beneficiary or assignee shall jointly be referred to the "Beneficiary Creditors"), in accordance with the terms of the Intercreditor Agreement and until the Termination Date, for the payment of any and all amounts payable by Cemex SAB and the other Obligors, under the *Certificados Bursátiles*, the Perpetual Securities, the Cemex SAB Bonds, the Cemex Finance Bonds, the Cemex España Bonds and any Refinanced Debt (the " Beneficiary Obligations").

Based upon the foregoing Recitals, each of the Parties hereto hereby represents and agrees as follows:

**REPRESENTATIONS**

I. Each of the Settlors and the Counterparties hereby represent, in its capacity as Settlor or Counterparty, as the case may be, through its legal representative, that:

(a) it is a corporation duly incorporated and existing under the laws of its place of incorporation, authorized to enter into this Agreement and to comply with its obligations hereunder;

(b) it intends to transfer in accordance with this Agreement, only in its capacity as Settlor, the Lender Rights owned by it for the purposes set forth herein;

(c) it is the owner, as Settlor for the purposes of this Agreement, of its Lender Rights *vis a vis* each Counterparty, and in respect to which each Counterparty represents to be obligated thereunder, which are free and clear from any liens, options or other encumbrances or any third-party rights, and which are contributed to the Trust Estate (*patrimonio fideicomitido*) (as defined below), pursuant to this Agreement;

(d) this Agreement is a valid obligation, enforceable against it in accordance with the terms hereof, subject to the provisions set forth in the LCM (as defined below);

(e) it has obtained and as of the date hereof maintains all internal and, in its case, administrative or contractual authorizations, which are necessary for the execution of this Agreement and the performance of the obligations derived hereunder, including but not limited to, any shareholder or board of directors authorizations, as applicable;

(f) its representatives have the necessary authorities to execute and obligate it in accordance with the terms hereof, such authorities have not been limited, modified, or revoked in any way, as evidenced in the public instruments and other documents containing such authorities, which are attached hereto as **Schedule C**;

(g) no consent, authorization or filing of documents before authorities, registries or third parties is required for the execution of or performance of this Agreement; except for the notice to be delivered in its capacity as Settlor to the Counterparties in terms of article 389 of the LGTOC, in respect of the contribution of the Lender Rights to the Trust Estate, which shall be deemed to be delivered and accepted by the Counterparties by means of the execution of this Agreement;

(h) the execution of and the performance of this Agreement does not constitute a breach or violation to any law, regulation, ruling whatsoever, any agreement, of any nature, to which it is a party or to which it is obligated thereunder; or its existing by-laws or any other applicable constitutive documents;

(i) it has not initiated, nor has knowledge of the commencement against it of any bankruptcy proceeding, *concurso mercantil*, or similar proceedings in accordance with the applicable law;

(j) it has not initiated nor has knowledge of being a party to, or has been served in respect to, or that any action or proceeding whatsoever will be initiated before any court, governmental authority or arbitrator, of any nature, (in Mexico or abroad), that might have an adverse and material effect in the business or financial condition of the Settlor, the Lenders Rights it owns or the validity or effectiveness of this Agreement;

(k) it hereby expressly acknowledges the existence of the Original Creditors, the First Beneficiary and their representatives, as well as the legal capacity of the First Beneficiary to act on behalf and for the benefit of the Creditors (pursuant to the Intercreditor Agreement), as well as to exercise any of the rights arising under this Agreement;

(l) the assets and/or rights, including the Lender Rights transferred in accordance with the terms hereof, solely in its capacity as Settlor for purposes of this Agreement, are legal and derive from legal activities, and there is no connection between the origin or destiny of the resources, assets and/or rights being transferred with illegal or terrorist activities, and hereby agrees to provide to the

Trustee any information reasonably requested by it for purposes of article 115 of the Credit Institutions Law (hereinafter, the " LIC") and with any other applicable regulation and internal policies of the Trustee (which are disclosed by the Trustee to the Settlor);

(m) it acknowledges and agrees that the Trustee is not aware nor shall it be aware of the terms and conditions of any other agreements related with or derived from this Agreement, executed or to be executed by the Parties hereto, including but not limited to the Financing Documents (other than this Agreement) thus, it accepts that the Trustee is not, nor will be, liable in any manner whatsoever, in respect of the veracity, legitimacy, authenticity or legality of said agreements, and that the Trustee, except in the event it is a party thereto or executes such agreements in accordance with the instructions provided hereunder, is not obligated nor shall be bound in any manner whatsoever to the terms and conditions of said agreements or documents and their respective Schedules;

(n) for all applicable legal effects, it acknowledges and agrees that this Trust is not an investment trust nor a business activity trust;

(o) the Trustee has explained to it the meaning of the text included in Representation III, paragraph (b) below, as well as of the scope of the content of this Agreement;

(p) by means of the execution of this Agreement, it expressly and irrevocably authorizes the Trustee, in accordance with article 28 of the Law for the Regulation of Credit Information (*Ley para Regular las Sociedades de Información Crediticia* ), to request, at its own cost and expense, from the date hereof and at any time thereafter during the term hereof, to the credit information institutions authorized to operate in Mexico, as many credit reports in respect of each Settlor as it deems necessary;

(q) from the date hereof and as a result of the execution of this Agreement, the Trustee shall be the owner of the Lender Rights, subject to the terms hereof, precisely for the purposes set forth in this Agreement;

(r) prior to the execution of this Agreement, the Trustee suggested it to obtain, from the professional, law firm or firm of its election, advice and support in respect of the scope, consequences and general legal or tax aspects of this Agreement, since the Trustee has no liability in respect of such matters, nor does assure that the tax structure derived from the Trust will not be modified as consequence of future amendments to the tax regulation.

II. The First Beneficiary hereby represents, that:

(a) it is a private limited company incorporated and existing under the laws of England and Wales, with sufficient authority to execute this Agreement and to perform its obligations hereunder;

(b) its legal representative has sufficient power and authority to execute this Agreement on its behalf, which authority has not been revoked, limited or modified in any manner whatsoever as of the date hereof, as evidenced by the public instruments and other documents attached hereto as **Schedule D**;

(c) it does not require the consent or authorization of any third party, including any governmental authority, for the execution or performance of this Agreement; and

(d) it enters into this Agreement on its own behalf and on behalf and for the benefit of the Original Creditors, and if applicable, the Refinancing Creditors (their successors, beneficiaries and assignees), pursuant to the terms of the Facilities Agreement and the Intercreditor Agreement;

III. The Trustee hereby represents, through its fiduciary delegate, that:

(a) it is a credit institution duly incorporated and validly existing under the laws of Mexico, duly authorized to execute fiduciary transactions, as per the provisions of the LIC and its regulations.

(b) pursuant to article 106, section XIX, subsection b) of the LIC, it represents that it has explained to all Parties hereto the content and legal implications of such provision, and the applicable provisions of Circular 1/2005 and the amendments thereto, issued by the Mexican Central Bank ( *Banco de México*), in respect to the prohibitions limiting it under the applicable provisions in effect; article 106, section XIX, subsection b) of the LIC, is transcribed as follows:

*"Article 106.- Credit institutions shall be prohibited from:*

*XIX. When entering into the operations referred to in Section XV of Article 46 of this Law:*

*a) abolished;*

*b) To respond to the settlors, principals or agents, of any breach by the debtors, for loans granted thereto, or on behalf of issuers, for securities acquired, unless it is due to their fault, as set forth in the last paragraph of Article 391 of the General Law of Negotiable Instruments and Credit Operations, or to guarantee obtaining certain returns in connection with funds, the investment of which is requested therefrom;*

*If upon termination of the trust agreement, mandate or agency established to grant loans, any such loans shall have not been repaid by the debtors, the institution shall transfer them to the settlor or the beneficiary, as the case may be, or to the representative or agent, without repaying any outstanding amounts;*

*In any trust agreements, mandates or agencies, the prior paragraphs shall be inserted conspicuously as well as a representation from the institution to the effect that it has, clearly and without doubt, made its meaning be known to the Persons from whom it has received assets for investment;*

*c) Acting as trustees, representatives (mandatarios) or agents under trusts, mandates or agencies, respectively, by means of which the direct or indirect, reception of funds from the public is carried out by any action causing a direct or contingent liability, except through trusts created by the Federal Government through the Ministry of Finance and Public Credit, and trusts through which securities be registered before the National Securities Registry (Registro Nacional de Valores) pursuant to the Mexican Securities Law (Ley del Mercado de Valores) are issued;*

*d) Executing trust, mandate and agency agreements referred to in the second paragraph of Article 88 of the Investment Companies Law (Ley de Sociedades de Inversión);*

*e) Acting in trust, mandate or agency agreements through which the restrictions and prohibitions set forth in the financial legislation are avoided;*

*f) Employing funds or assets of the trust, mandate or agency agreements destined to the granting of credits, in which the trustee has the discretionary authority, in the granting of such credits, to carry out transactions by which the following Persons become or may become debtors: the trust delegates; the proprietary or alternate members of the board of directors or executive committee, as the case may be, whether acting or not in their respective capacities; the employees and officers of the institution; the proprietary or alternate statutory auditors, whether acting or not in their respective capacities; the institution's external auditors; the members of the technical committee of the relevant trust; the ascendants or descendants in first degree or spouses of the above mentioned individuals, the companies in which meetings such Persons or institutions represent a majority, as well as those Persons that Banco de México determines through general provision, and*

*g) Managing rural real estate, unless they have received the management in order to distribute the estate among heirs, legatees, partners or creditors, or to pay an obligation or to guarantee its fulfillment with the value of such real estate or its products, and only when such management does not exceeds a period of two years, except in case of production or guaranty trusts.*

*h) Executing trusts that administer amounts of money periodically delivered by consumer groups constituted by means of commercialization systems, destined to the acquisition of determined goods or services, of those provided for in the Federal Consumer Protection Law.*

*Any agreement contrary to what is set forth herein, shall be null…"*

Furthermore, pursuant to the provisions set forth in section 5.5 of Circular 1/2005 of Banco de México, the relevant provisions of section 6 of such Circular 1/2005 is hereby transcribed for all applicable legal effects:

*"6.1 In the execution of trust agreements, the Trustees shall not be permitted to:*

*a) Charge to the trust estate different prices from those agreed to at the time of entering into the relevant transaction;*

*b) Guarantee the receipt of revenues or prices by the funds which investment is entrusted to them;*

*c) Execute transactions in conditions and terms contrary to their internal policies and the healthy financial practices.*

*6.2 Execute transactions with securities, negotiable instruments or any other financial instruments that do not comply with the agreed upon specifications under the corresponding trust agreement.*

*6.3 The Fiduciary Institutions shall not carry out types of Trusts which they are not authorized to celebrate pursuant to the laws and dispositions that regulate them.*

*6.4 In no event shall the Fiduciary Institutions be able to cover with the trust estate the payment of any penalty imposed to them by any authority.*

*6.5 In guaranty trusts, the Surety Institutions and the Limited Scope Financial Institutions shall not be able to receive any assets or rights other than assets and rights which purpose is to guarantee the relevant obligations.*

*6.6 The fiduciary institutions shall comply with the provisions of Articles 106 section XIX of the Credit Institutions Law, 103 section IX of the Securities Law, 62 section VI of the General Law of Insurance Institutions and 60 section VI Bis of the Federal Law of Surety Institutions, as it may correspond to each Institution."*

(c) its fiduciary delegates has sufficient power and authority to execute this Agreement, which authorities have not been revoked or limited in any manner whatsoever as of the date hereof.

(d) it desires to act as Trustee of the trust created hereunder and represents its faithful and loyal performance of the applicable legal provisions and of the terms hereof.

IN CONSIDERATION OF THE FOREGOING, the Parties agree to the following:

## CLAUSES

**FIRST. Definitions.** (a) The following terms, used with capital letter in this Agreement, shall have the meanings set forth below (all terms included in this Clause First and any other definitions used herein in their singular form shall have the same meaning when used in their plural form and vice versa):

"Additional Counterparty" means any Mexican Group Member other than the Counterparties executing this Agreement on the date hereof, which executes a credit or loan agreement or receives credit as a consequence of any kind of commercial relationship, with any of the Settlors or Additional Settlors, and enters into a joinder agreement in terms substantially similar to the document attached hereto as **Schedule E**.

"Additional Obligors" shall have the meaning ascribed to such term in Recital Ninth of this Agreement.

"Additional Settlor" means any Group Member, other than the Settlors executing this Agreement on the date hereof, executing any Intercompany Credit Agreement or Mexican Company Credit Agreement and that enters into a contribution agreement in terms of the document attached hereto as **Schedule G** or in substantially similar terms.

"Agent" shall have the meaning ascribed to such term in Recital First of this Agreement.

"Agreement" shall have the meaning ascribed to such term in the Preamble of this Agreement.

"Authorized Officer" shall have the meaning ascribed to such term in Clause Eighteenth of this Agreement.

"Beneficiary Lenders" shall have the meaning ascribed to such term in Recital Tenth of this Agreement.

"Beneficiary Obligations" shall have the meaning ascribed to such term in Recital Tenth of this Agreement.

"Business Day" means any day other than a Saturday or Sunday or a day on which commercial banks in Mexico City, Mexico, New York, New York, United States of America, or London, England are authorized or required by law or governmental action to close.

"Cemex Concretos" shall have the meaning ascribed to such term in Recital Sixth of this Agreement.

"Cemex España" shall have the meaning ascribed to such term in Recital Sixth of this Agreement.

"Cemex España Bonds" shall have the meaning ascribed to such term in Recital Eighth of this Agreement.

"Cemex Finance Bonds" shall have the meaning ascribed to such term in Recital Seventh of this Agreement.

"Cemex México" shall have the meaning ascribed to such term in Recital Fourth of this Agreement.

"Cemex SAB" shall have the meaning ascribed to such term in Recital First of this Agreement.

"Cemex SAB Bonds" shall have the meaning ascribed to such term in Recital Sixth of this Agreement.

"Certificados Bursátiles" shall have the meaning ascribed to such term in Recital Fourth of this Agreement.

"Civil Code" means the Federal Civil Code and the correlative civil codes for the Mexican federal entities, including Mexico City, as it may be amended from time to time.

"Concurso Judgment" means the judgment pursuant to which a competent court declares a Concurso Proceeding in respect of any of the Counterparties.

"Concurso Notice" means the original written notice delivered by the First Beneficiary to the Trustee in the form attached herein as **Schedule H**, by means of which the First Beneficiary (i) notifies the Trustee that a competent court has issued a Concurso Judgment and (ii) (A) attaches a copy of the publication of the Concurso Judgment issued by the corresponding court, in the court bulletin board ( *estrado*) or in the judicial bulletin, (B) evidences the service of process in respect of the Concurso Judgment made by the *conciliador* or receiver, (C) attaches a copy of the publication of the extract of the Concurso Sentence in the Official Gazette of the Federation, or (D) evidences the issuance of the Consurso Judgment by any other means permitted under the LCM and any other applicable provisions.

"Concurso Proceeding" means the business reorganization and/or bankruptcy proceeding initiated against any of the Counterparties in accordance with the LCM.

"Confirmation Term" has the meaning ascribed to such term in Clause Fourth, paragraph (d)(i)(y) of this Agreement.

"Counterparty" shall have the meaning ascribed to such term in the Preamble of this Agreement, in the understanding that, on the date of this Agreement, each of the Counterparties is a Mexican Group Member and has executed an Intercompany Credit Agreement or a Mexican Company Credit Agreement, with any of the Settlors.

"Creditors" shall have the meaning ascribed to such term in Recital Third of this Agreement.

"Dollars" or US$ means the lawful currency of the United States of America.

"Exercise Instruction" shall have the meaning ascribed to such term in Clause Fourth subsection (d)(i) hereof.

"Facilities Agreement" shall have the meaning ascribed to such term in Recital First of this Agreement.

"Financing Documents" means the Facilities Agreement, the Intercreditor Agreement, and any other instrument, negotiable instrument, document or agreement evidencing payment obligations of Cemex SAB and some of the Obligors directly related with the Financing Agreement and the Intercreditor Agreement (including any supplement, amendment, addition or amendment and restatement thereto).

"First Beneficiary" shall have the meaning ascribed to such term in the Preamble of this Agreement.

"Group" means Cemex SAB and its Subsidiaries.

"Group Member" means any direct or indirect Subsidiary of Cemex SAB that is part of the Group.

"Income" means the proceeds payable in a Concurso Proceeding in respect of the Lender Rights that are recognized in respect to any lenders that have been designated as a Recognized Creditor, but exclusively as a consequence of (i) the approval of a reorganization agreement ( *convenio concursal)* in terms of Title Fifth of the LCM or (ii) payment to the Recognized Creditors in accordance with a bankruptcy judgment in terms of Chapter III of Title Seventh of the LCM.

"Instruction Notice" shall have the meaning ascribed to such term in subsection (d)(i)(x) of Clause Fourth hereof.

"Intercompany Credit Agreement" means any agreement or document, of any kind**,** as amended, supplemented or replaced from time to time, executed by any Settlor with any Counterparty, or by any Additional Settlor or Additional Counterparty, whatever such agreement or document is designated or called and irrespectively from the legislation which governs it, evidencing credit rights, arising from any underlying transaction, granted by a Mexican Group Member to any of the Counterparties or Additional Counterparties or to any Mexican Group Member, executed prior to or subsequently to the date of this Agreement.

"Intercreditor Agreement" shall have the meaning ascribed to such term in Recital Second of this Agreement.

"Lender Rights" means any and all rights of the Settlors in their capacity as lenders, derived from any underlying legal relationship, under any Intercompany Credit Agreement and any Mexican Company Credit Agreements.

"LCM" means the Business Reorganization and Bankruptcy Law ( *Ley de Concursos Mercantiles*), as amended from time to time.

"LGTOC" means the General Law of Negotiable Instruments and Credit Transactions ( *Ley General de Títulos y Operaciones de Crédito* ), as amended from time to time.

"LIC" shall have the meaning ascribed to such term in Representation I, section (l) of this Agreement.

"Mexico" shall have the meaning ascribed to such term in the Preamble of this Agreement.

"Mexican Company Credit Agreements " means any credit or loan agreement, or any other kind of agreement from which credit rights derive, entered into by a Group Member with any of the Counterparties, Additional Counterparties or any Mexican Group Member, including each of the credit agreements entered in to by Construction Funding Corporation, a corporation incorporated under the laws of Ireland with some of the Counterparties, which are described in and copies are attached hereto as **Schedule F**, as such may be modified or amended from time to time.

"Mexican Group Member" means any Group Member incorporated under the laws of Mexico.

"NSH" shall have the meaning ascribed to such term in Recital Fifth hereof.

"NSHFV" shall have the meaning ascribed to such term in Recital Fifth hereof.

"Original Creditors" shall have the meaning ascribed to such term in Recital First of this Agreement.

"Original Debt" shall have the meaning ascribed to such term in Recital First of this Agreement.

"Obligor" shall have the meaning ascribed to such term in Recital First of this Agreement.

"Other Concurso Rights" means any right in favor of a Recognized Creditor, other than a Voting and Subscription Right, in a Concurso Proceeding.

"Party" means any of the Parties to this Agreement.

"Perpetual Securities" shall have the meaning ascribed to such term in Recital Fifth of this Agreement

"Person" means any natural person (*persona física*), company, corporation, partnership, limited liability company, trust, irregular businesses, joint venture, or any other entity (*persona moral*), business entity or governmental authority with or without legal personality.

"Pesos" o "Ps$" means the lawful currency of Mexico.

"Quarter" means the three month period ending on March 31st, June 30th, September 30th and December 31st of each calendar year.

"Recognized Creditors" means, in respect of any Person, the lenders recognized in the credits recognition, ranking and priority judgment issued by the competent district court in accordance with the LCM in a Concurso Proceeding of any of the Counterparties.

"Refinancing Creditors" shall have the meaning ascribed to such term in Recital Third of this Agreement.

"Refinanced Debt" shall have the meaning ascribed to such term in Recital Third, as supplemented in Recital Ninth of this Agreement.

"Second Beneficiary" shall have the meaning ascribed to such term in the Preamble of this Agreement.

"Settlor" shall have the meaning ascribed to such term in the Preamble of this Agreement.

"Settlors' Representative" shall have the meaning ascribed to such term in Clause Nineteenth of this Agreement.

"Subsidiary" means with respect to any Person, any company, association, or any other entity that (i) it is controlled directly or indirectly by such Person, either by the authority to directly or indirectly designate the majority of the directors, managers or any equivalent member, of the relevant company, association or entity or to have the voting power to approve any decision, or the power to approve any decision, in the general shareholders meetings or any similar corporate body; (ii) more than 50% (fifty percent) of the capital stock, irrespective of how such capital is designated or represented, or any equivalent rights, is, whether directly or indirectly, owned by such Person or by another person who has similar rights by means of an agreement or in any other manner whatsoever; or (iii) it is a Subsidiary of any of the Subsidiaries of such Person.

"Taxes" means any tax, commission, duty, encumbrance, tariff, deduction, withholding, obligation or contribution of any nature, present or future, imposed, charged, withheld or asserted by any governmental authority.

"Termination Date" shall have the meaning ascribed to such term in Recital Tenth of this Agreement.

"Tolteca" has the meaning ascribed to such term in Recital Fourth of this Agreement.

"Trust" means the irrevocable administration trust agreement No. F/111523-3 created in accordance with the terms in this Agreement.

"Trust Accounts" shall have the meaning ascribed to such term in Clause Sixth paragraph (a) of this Agreement.

"Trust Estate" or "Trust Assets" shall have the meaning ascribed to such term in Clause Fifth of this Agreement.

"Trustee" shall have the meaning ascribed to such term in the Preamble of this Agreement.

"Voting and Subscription Rights" means the right of a Recognized Creditor to authorize, modify, subscribe, vote and veto the intercreditor agreement in any Concurso Proceeding referred to in articles 156, 157 and other applicable provisions of the LCM.

(b) Any reference in this Agreement to a clause, section, paragraph, Schedule or similar, shall be understood as a reference to a clause, section, paragraph, Schedule or similar of this Agreement, unless it is expressly noted that such clause, section, paragraph, Schedule or similar makes reference to a different document.

**SECOND. Parties to the Trust.** The parties to this Agreement are as follows:

| | |
|---|---|
| Settlor and Second Beneficiary: | The companies listed in **Schedule 1** of this Agreement, and any Additional Settlor. |
| First Beneficiary: | Wilmington Trust (London) Limited, on its own behalf and on behalf and for the benefit of the Original Creditors and if applicable, the Refinancing Creditors, and to the extent set forth herein, each of the Beneficiary Lenders, pursuant to the terms of the Intercreditor Agreement provided that the First Beneficiary, acts on behalf and for the benefit of the Original Creditors and the Refinancing Creditors, and to the extent set forth herein and in the Intercreditor Agreement, each of the other Beneficiary Lenders, and therefore, the First Beneficiary shall have the right to exercise any of the rights arising hereunder, and the Original Creditors, the Refinancing Creditors and the Beneficiary Lenders shall have the right to receive, as applicable, the Income, in accordance with the terms hereof and pursuant to the terms of the Intercreditor Agreement. |
| Trustee: | Banco Nacional de México, S.A., integrante del Grupo Financiero Banamex. |

Any change or addition of a beneficiary, whether by designation, assignment or any other reason, shall be notified to the Trustee.

**THIRD. Creation of the Trust.**

(a) The Settlors, hereby create the Irrevocable Administration Trust Agreement with Reversion Rights No. 111523-3, to which Cemex SAB hereby contributes, in its capacity as Settlor, the initial amount of P$1,000.00 (one thousand Pesos 00/100).

(b) The Settlors contribute to the Trust Assets and subject to the terms of this Agreement, transfer the ownership of the Lender Rights which they currently own or acquire in the future, for the exercise of the Voting and Subscription Rights, provided that (i) until the date on which the First Beneficiary delivers to the Trustee a Concurso Notice, the Settlors will have the right to exercise the Lenders Rights that are subject to the terms of this Trust, (ii) the Parties hereto agree that they shall exclusively have rights in respect to the Income deriving from the Lender Rights exclusively as a consequence of (1) the approval of a *concurso* agreement in terms of Title Fifth of the LCM, or (2) payment to the Recognized Creditors in accordance with a bankruptcy judgment in terms of Title Seventh, Chapter III of the LCM, and before then, no amount derived from the Lender Rights shall be transferred, deposited or administrated through the Trust Accounts, therefore, in the case that any such amounts is deposited or transferred to the Trust Accounts, the Trustee shall deliver it to the respective Settlor, as soon as possible, to the account that the Settlor Representative designates in writing to the Trustee, and (iii) except from the date on which the First Beneficiary delivers to the Trustee a Concurso Notice, the Trustee shall allow the Settlors, and shall carry out any necessary actions to allow the Settlors, the administration, operation and exercise of any and all rights related to the Lender Rights (and any rights or actions deriving from such rights), including the authority to instruct the Trustee regarding the manner to exercise the Lender Rights corresponding to the relevant Settlor, being able to collect, offset and assign them to any other Settlor, or any other Group Member, as long as the assignment or transfer is subject to the condition, in order to become effective, that the Group Member becomes an Additional Settlor and subscribes a contribution agreement in substantially similar terms to those of the document attached hereto as **Schedule G** (except in the case that the Lender Rights are capitalized by the assignee and it receives shares or any other equivalent instrument, as a result of such capitalization, or the value of the outstanding shares is increased as a result of not having nominal value or the value of the partnership interest which owns is increased) and such transfer or assignment is notified within a term of 60 (sixty) Business Days from the date on which it took place, or to carry out any other action in respect of the Lender Rights, as long as such actions do not adversely affect the rights of the First Beneficiary under this Agreement, provided, further that any such assignments shall not become effective and will be deemed as not effective *vis a vis* the Trustee and the First Beneficiary, if it is carried out within 270 (two hundred and seventy) Business Days prior to the date on which any Counterparty (or any Settlor) becomes subject to a Concurso Judgment. The Settlors hereby deliver to the Trustee a copy, certified by an attorney-in-fact, of any Intercompany Credit Agreement and Mexican Companies Credit Agreements, that in effect as of July 31, 2012, along with a list of all Lender Rights list as of that date, and the Counterparties, hereby expressly acknowledge, accept and agree to the transfer of the ownership of the Lender Rights in accordance with the terms of this Agreement.

(c) In case that after July 31, 2012 (i) new Intercompany Credit Agreements are entered into, or (ii) new Mexican Companies Credit Agreements are entered into, together with the corresponding joinder agreements for an Additional Settlor to become a party hereto, the Settlors agree and, as a result of any Additional Settlors adhering to this Agreement, it would be deemed that such Additional Settlor agrees, to carry out any act and/or to enter into any document that may be deemed necessary, including a contribution agreement in terms substantially similar to the form attached hereto as **Schedule G**, to transfer the Lender Rights of such Additional Settlor to the Trust Assets, in accordance with the terms of this Agreement, and with the consent of the Counterparties, within sixty (60) Business Days following the execution of any such agreements.

(d) Banco Nacional de México, S.A., integrante del Grupo Financiero Banamex, hereby accepts its designation as trustee in accordance with this Agreement and agrees to perform its duties in accordance with this Agreement.

**FOURTH. Purpose of the Trust.** The Parties hereby agree that the purposes of this Trust, which are obligations of the Trustee, shall be the following:

(a) that the Trustee receives in property, and be the owner of, the assets and rights which will be part of the Trust Assets in accordance with the terms of this Agreement;

(b) that the Trustee maintains the ownership of the Trust Assets for the benefit of the First Beneficiary and the Second Beneficiaries, in the understanding that the Trustee shall manage the Trust Assets in accordance with the terms of this Agreement and applicable law;

(c) except in case that the event specified in paragraph (d) of this Clause Fourth occurs, that the Trustee undertakes the necessary actions in order to allow the Settlors to manage, operate and exercise each and all rights related to the Lender Rights (and any other rights or actions derived therefrom), including the authority to instruct the Trustee in respect to the manner in which the Lender Rights owned by the relevant Settlor, shall be exercised, being able to collect, offset, capitalize them (if shares or equivalent instruments are received, as a consequence of the capitalization, or if it does not receive shares or equity interest, the value of the outstanding shares is increased as a result of not having nominal value or the value of the equity interest which owns is increased) and assign them to any other Settlor, or any other Group Member, as long as the assignment or transfer is subject to the condition, in order to become effective, that the Group Member becomes an Additional Settlor and subscribes a contribution agreement in substantially similar terms to those of the document attached hereto as **Schedule G** (except in the case that the Lender Rights are capitalized by the assignee and it receives shares or any other equivalent instrument, as a result of such capitalization, or the value of the outstanding shares is increased as a result of not having nominal value or the value of the equity interest which owns is increased) and such transfer or assignment is notified within a term of 60 (sixty) Business Days from the date on which it took place, or to carry out any other action in respect of the Lender Rights, as long as such actions do not adversely

affect the rights of the First Beneficiary under this Agreement, in the understanding, that, except for the application of the Income in accordance with paragraph (d) of this Clause Fourth, no amounts derived from the Lender Rights shall be transferred, deposited or managed through the Trust Accounts, therefore in the event that any such amounts are transferred or deposited into the Trust Accounts, the Trustee shall deliver such amounts to the respective Settlor as soon as possible in the account designated in writing by the Settlors' Representative, provided, further that any such assignments shall not become effective and will be deemed as not effective *vis a vis* the Trustee and the First Beneficiary, if it is carried out within 270 (two hundred and seventy) Business Days prior to the date on which any Counterparty (or any Settlor) becomes subject to a Concurso Judgment;

(d) in the event the First Beneficiary delivers a Concurso Notice to the Trustee, the Trustee shall:

(i) exercise all rights regarding the Other Concurso Rights in a Concurso Proceeding in respect of the Lender Rights, pursuant to the written instructions received by the Trustee from the First Beneficiary in accordance with the terms of the Intercreditor Agreement (the " Exercise Instruction"), as follows:

(x) the Settlors' Representative shall inform the Trustee and the First Beneficiary in accordance with the terms of this Agreement, in writing, of the date on which the Trustee shall exercise any of the Other Concurso Rights, no later than 2 (two) Business Days following the day on which the relevant Other Concurso Right may be exercised (the " Instruction Notice").

(y) the First Beneficiary shall deliver to the Trustee, with a copy to the Settlors' Representative, in accordance with the terms of this Agreement, the Exercise Instruction within a term that shall not exceed the lesser between (A) 10 (ten) Business Days following receipt of an Instruction Notice and (B) the immediately preceding Business Day to that on which the term for the exercise of the relevant Other Concurso Rights expires pursuant to the LCM or any other applicable provision (the " Confirmation Term"), in the understanding, however, that in order to prepare and deliver the Instruction Notice, the First Beneficiary may consult any legal advisor, or other advisors, that it may deem convenient or necessary (which costs and fees shall be paid by the Settlors), and the Parties agree that it shall not have any responsibility whatsoever for, and shall be exonerated from, any determination made based on the recommendation of such advisors.

(ii) exercise all rights regarding the Voting and Subscription Rights in the corresponding Concurso Proceeding, solely in accordance with the instructions provided by the First Beneficiary to the Trustee;

(iii) execute all necessary actions in order for any Income obtained in the corresponding Concurso Proceeding is transferred and applied to the Trust Accounts, exclusively in respect to Income derived

from the Lender Rights resulting from (i) the approval of a *concurso mercantil* agreement in terms of Title Fifth of the LCM, or (ii) payments to Recognized Creditors in accordance to a bankruptcy judgment in terms of Title Seventh, Chapter III of the LCM; and

(iv) delivers, in its case, any amounts received in the Trust Accounts related to the Income, when it may correspond, to the First Beneficiary, in accordance with the instructions received from the latter, for its distribution as provided in the Intercreditor Agreement, to be applied to the payment of the outstanding Beneficiary Obligations up to the amount of such Beneficiary Obligations; provided that the Parties (and expressly the Counterparties) hereby acknowledge, accept and agree that the application of any Income to the payment of the Beneficiary Obligations shall at all times be considered as proportional direct payments of the Beneficiary Obligations, in compliance with the terms of the Intercreditor Agreement), thus the application of said Income to the proportional payment of the Beneficiary Obligations shall not be deemed as payment and release of the obligations of a Counterparty or Additional Counterparty in respect to the corresponding Settlor;

(e) that the Trustee opens and maintains the Trust Accounts, in order to receive, maintain and apply the Income deposited in the Trust Accounts in accordance with the provisions of Clause Sixth hereof and the Intercreditor Agreement;

(f) that, in the event the Trust Estate or a portion thereof consists of cash, the Trustee invests, such cash in accordance with the provisions hereof, provided, however, that the Trustee is authorized for such effects, to open bank or investment accounts and undertake all the legal acts and execute all the necessary agreements, in accordance with the instructions of the Settlors and First Beneficiary;

(g) that the Trustee preserves and protects the Trust Assets, in terms of Clause Thirteenth hereof;

(h) that the Trustee delivers the reports and provides access to all of the documentation and information regarding the Trust and the Trust Assets;

(i) upon (i) the Termination Date, or (ii) in accordance with the Intercreditor Agreement, and as long as the First Beneficiary has delivered written notice to the Trustee, at the written request of the Settlors' Representative, terminates the Trust and reverts to the Settlors, as applicable, the Trust Assets, prior to the execution of the corresponding termination agreement;

(j) that the Trustee grants or revokes the general or special powers of attorney with sufficient authorities to act on behalf of the Trustee, necessary to fulfill the purposes of this Trust or for the defense of the Trust Assets, in favor of the individuals or attorneys-in-fact/officers of the entities designated in accordance to the written instructions delivered by the First Beneficiary or the Settlors' Representative in accordance to this Agreement,;

(k) that the Trustee undertakes any other actions permitted pursuant to applicable laws and/or consistent with the purposes of this Trust which are not expressly provided herein, in accordance with the corresponding written instructions delivered by both the Settlors' Representative and the First Beneficiary, pursuant to the terms hereof;

(l) if necessary, that the Trustee reverts the transfer, and carries out any act related thereto, of any Intercompany Credit Agreement and any Mexican Company Credit Agreement, that for any reason whatsoever is no longer in effect (including its repayment) or which have been terminated, provided a prior written notice has been delivered by the relevant Settlor to the Trustee and the First Beneficiary, which notice shall contain all the necessary documents and information (including the identification of the Intercompany Credit Agreements or Mexican Company Credit Agreements); and

(m) in general, that the Trustee timely and diligently complies with each and all of its obligations set forth hereunder.

**FIFTH. Trust Assets.** The assets of the trust (the "Trust Assets" or the "Trust Estate") shall consist of the following:

(a) the amounts initially transferred by Cemex SAB pursuant to Clause Third paragraph (a);

(b) the Lender Rights of each Settlor, which shall be exercised in accordance with the terms of this Agreement;

(c) if applicable, the Income received by the Trustee in the Trust Accounts, exclusively as a result of (i) the approval of a *concurso mercantil* agreement in terms of Title Fifth of the LCM, or (ii) payment to the Recognized Creditors in accordance with a bankruptcy judgment in terms of Title Seventh, Chapter III of the LCM;

(d) if applicable, the returns and products obtained from the investment of the Trust Assets; and

(e) the amounts and/or additional rights, of any nature, that the Settlors or any other Person, as the case may be, contribute to the Trust in terms of this Agreement or resulting from the exercise of any right to which the Trustee is legally entitled.

The Parties herby acknowledge that the Trust Assets are transferred to the Trustee exclusively to strictly fulfill the Trust purposes. The Trustee shall not be liable and is hereby released from any express or implicit obligation or liability in respect of the authenticity, ownership or legitimacy of the Trust Assets.

The Parties hereby agree that the terms in this Clause Fifth shall be considered as an inventory of the assets and rights constituting the Trust Assets as of the date hereof, and that, as of the date hereof, the Settlors' Representative and the First Beneficiary shall keep a copy of said inventory. Likewise, the Parties acknowledge that said inventory may be modified from time to time considering any future contributions made by the Settlors or the Additional Settlors to the Trust, together with any returns resulting, in its case, from the investment of the Trust Assets and with the payments or withdrawals of the Trust Assets. Such variations shall be reflected in the statements referred to in this Agreement.

Any transfer of the ownership of the assets or rights contributed hereto, shall comply with the formalities set forth in the applicable laws for the transfer of such assets or rights. The assets or rights that are part of the Trust Assets will be considered as contributed for the purposes of the Trust and, therefore, only the rights and actions permitted hereunder may be exercised in respect of such assets and rights.

**SIXTH. Trust Accounts.** (a) The Trustee shall open and maintain accounts in Dollars and Pesos (the "Trust Accounts"), as internal accounts of the Trust, in order to receive any cash amounts delivered to the Trustee derived from the Income, if such is the case, or from any other source, therefore the Trustee agrees to open such accounts within 15 (fifteen) days following the execution hereof. The Trustee shall notify the information regarding the Trust Accounts to the Settlors and the Counterparties (through the Settlors' Representative), the First Beneficiary and any other Person that in a Concurso Proceeding should know such information, as instructed in writing by the First Beneficiary. Likewise, the Trustee shall maintain the registries and records it deems necessary to keep the management and control of the Income received in the Trust Accounts, in accordance with the terms of this Agreement.

(b) Provided that the proceeds received in the Trust Accounts are not related to the Income that may be transferred by the Trustee to the First Beneficiary, the Trustee shall transfer any funds deposited in the Trust Accounts to the relevant Settlor, as per the written instructions of the Settlors' Representative.

**SEVENTH. Investment Regime; Exchange Transactions.** (a) Investment Regime. The Trustee shall open and maintain the Trust Accounts, to receive any cash amounts received by it pursuant to this Agreement that are part of the Trust Assets.

If the Trust Assets include liquid assets, the Settlors' Representative hereby expressly instructs and authorizes the Trustee to invest the Trust Assets as follows: (i) the investment term shall not exceed 30 (thirty) days, except for investments in investment funds ( *sociedades de inversión*); (ii) investments shall be made in the currency of the liquid assets maintained by the Trustee; (iii) the treasury of Banco Nacional de México, S.A., integrante del Grupo Financiero Banamex, shall be the counterparty of all investment transactions made by the Trustee; and (iv) the Trustee shall make the investments in the securities available in the market at the time the investment is made, in the following order, provided that the provisions of this Clause Seventh shall be deemed by the Parties to constitute a permanent instruction in favor of the Trustee.

**Pesos:**

(i) purchase and/or *reporto* transactions in respect of securities issued by the Mexican Federal Government or debt instruments issued by credit institutions in Mexico.

(ii) debt instruments issued by Mexican credit institutions with a "AAA" credit ranking (or its equivalent in the domestic scale) granted by Standard & Poor's, S.A. de C.V., by Fitch México, S.A. de C.V. or by Moody's de México, S.A. de C.V., by the execution of *reporto* transactions in respect of such securities;

(iii) in investments in money market or investment corporations ( *sociedades de inversión*) that have a credit ranking placed within the highest investment grade in respect to short-term unsecured debt obligations or certificates of deposit granted by Standard & Poor's, S.A. de C.V., by Fitch México, S.A. de C.V. or by Moody's de México, S.A. de C.V.

**Dollars:**

(i) in any of the investments or instruments referred to in the definition of Cash Equivalent Investments (as such term is defined in the Facilities Agrement), that are instructed in writing to the Trustee by Cemex SAB, and that are available to the Trustee.

In the event that any of the Settlors decides to carry out investment transactions other than those set forth in the preceding paragraph, and subject to the consent of the First Beneficiary, they shall issue the corresponding written instructions, which shall expressly specify: (i) the amount of the liquid assets to be invested; (ii) the type of assets, rights, securities, negotiable instruments or other financial instruments on which the liquid assets constituting the Trust Assets shall be invested and, if applicable, the name of the issuers and their rating; (iii) the maximum investment terms, and (iv) the counterparty(ies) with which the Trustee shall make said investments, provided that the provisions set forth in the clause related to transactions with the same institution shall be applicable.

The Trustee has not provided, nor shall be responsible for providing any advice whatsoever to the Parties, in respect of the convenience or inconvenience of investing, buying, selling or maintaining, any investment instrument. The Trustee shall not assume any liability whatsoever in respect of the actions of third parties designated by the Parties involved in the consulting, management and/or custody of the Trust Assets.

The Parties hereby approve and expressly authorize the Trustee to enter into transactions with Banco Nacional de México, S.A., integrante del Grupo Financiero Banamex, acting in its own name, in respect of any transaction entered into by the Trustee as a result of the performance of its obligation hereunder, including but not limited to, the investment of assets, opening accounts for the deposit of funds and the foreign exchange transactions, provided that this Clause shall constitute a permanent instruction to the Trustee.

If the Settlors decide to perform the transactions referred to in this Clause with an institution other than Banco Nacional de México, S.A., integrante del Grupo Financiero Banamex, they shall expressly instruct so to the Trustee in writing.

In the execution of transactions by Banco Nacional de México, S.A., integrante del Grupo Financiero Banamex, acting in its own name and not in its capacity as Trustee, said transactions may not be offset or

extinguished by means of confusion (*confusion*). Furthermore, the Trustee hereby represents that a direct dependency between the Trustee and the treasury department of said institution does not exist, and that it shall carry out the transactions referred to in this Clause in strict compliance with its internal policies and best financial practices.

The Trustee shall only be obligated to make investments if the Trust Assets have the necessary funds to make such type of investments, in accordance with the legal provisions then in effect, provided that, if the amounts are not sufficient to make such investments, it shall be deemed that the Trustee is instructed to maintain the funds payable on demand.

The purchase of securities or investment instruments shall be subject to the duration, the availability and liquidity of such investments and the prevailing market conditions at the time at which the Trustee makes the transaction. The Settlors hereby expressly release the Trustee from any liability resulting from the purchase of securities or investment instruments executed in accordance with this Clause, as well as from any losses or damages that may affect the Trust Assets, as a result from the investments carried out by the Trustee pursuant to this Agreement.

In any event, investment and/or sale instructions shall be delivered to the Trustee and under no circumstances the financial intermediary maintaining any investment shall be granted with discretionary authority for the applicable investments.

(b) Exchange transactions. The Parties hereby instruct the Trustee to, and without incurring in any liabilities whatsoever, carry out the exchange transactions required pursuant to this Agreement; provided, however, that the Trustee shall be authorized to carry out such transactions with its own treasury, but only to the extent that the exchange rate and related commercial terms offered by its own treasury are in terms comparable to those available in the relevant market for similar transactions. The Parties hereby agree that the Trustee shall not be liable for any losses or damages in respect to the funds kept in the Trust Assets resulting from fluctuations in the exchange rate.

The Trustee has not provided, nor shall be responsible for providing to the Parties any advise whatsoever to the Parties, in respect of the convenience or inconvenience of investing, buying, selling or maintaining, any investment instrument.

The Trustee shall not assume any liability whatsoever in respect of the actions of third parties designated by the Parties involved in the consulting, management and/or custody of the Trust Assets.

**EIGHTH. Obligations of the Settlors and Counterparties.** During the term of this Agreement, the Settlors and Counterparties, as the case may be, shall be obligated as follows:

(a) The Settlors shall refrain from creating or agreeing to the creation or existence of any liens on or limitations of ownership in respect to the Trust Assets whatsoever, provided, however, that such obligations, except upon the occurrence of the event described in and pursuant to the provisions of paragraph (d) of Clause Fourth hereof,

shall not be deemed to restrict the right of the Settlors to instruct the Trustee with respect to the manner to exercise, or directly exercise, the Lenders Rights owned by the relevant Settlor, being able to collect, offset, capitalize them (if shares or equivalent instruments are received, as a consequence of the capitalization, or if it does not receive shares or equity interest, the value of the outstanding shares is increased as a result of not having nominal value or the value of the equity interest which owns is increased) and assign them to any other Settlor, or any other Group Member, as long as the assignment or transfer is subject to the condition, in order to become effective, that the Group Member becomes an Additional Settlor and subscribes a contribution agreement in substantially similar terms to those of the document attached hereto as **Schedule G** (except in the case that the Lender Rights are capitalized by the assignee and it receives shares or any other equivalent instrument, as a result of such capitalization, or the value of the outstanding shares is increased as a result of not having nominal value or the value of the equity interest which owns is increased) and such transfer or assignment is notified within a term of 60 (sixty) Business Days from the date on which it took place, or to carry out any other action in respect of the Lender Rights, as long as such actions do not adversely affect the rights of the First Beneficiary under this Agreement, in the understanding, that, except for the application of the Income in accordance with paragraph (d) of Clause Fourth, no amounts derived from the Lender Rights shall be transferred, deposited or managed through the Trust Accounts, provided, further that any such assignments shall not become effective and will be deemed as not effective *vis a vis* the Trustee and the First Beneficiary, if it is carried out within 270 (two hundred and seventy) Business Days prior to the date on which any Counterparty (or any Settlor) becomes subject to a Concurso Judgment.

(b) Pursuant to the provisions of paragraph (d) of Clause Fourth hereof, the Counterparties, hereby acknowledge and agree that any Income applied for the proportional payment of the Beneficiary Obligations shall be deemed to have been applied in accordance with the terms of the Intercreditor Agreement and, thus, the foregoing shall not release them from their payment obligations in respect to the Settlors.

(c) In the event that the Settlors execute any new Intercompany Credit Agreement (whether in writing or as a result of a legal relationship) or Mexican Company Credit Agreements, or if they are assignees in respect of such agreements, the Settlors agree to carry out and enter into, and Cemex SAB agrees to cause any Group Member that is not a Settlor that enters into a new Mexican Company Credit Agreement or Intercompany Credit Agreement, to carry out and enter into, the agreements and documents that may be necessary for the relevant Settlor or the Group Member, as the case may be, to assign to the Trustee, by means of a contribution in accordance with the provisions and for the purposes set forth in this Agreement, the relevant Lender Rights.

(d) The Settlors agree to notify the Trustee and First Beneficiary in writing of any material amendment affecting the rights of the First Beneficiary or of the Creditors or the termination of any Intercompany Credit Agreement or Mexican Company Credit Agreement, which amount is greater than US$25,000,000 (twenty five million Dollars) within 60 (sixty) Business Days following the date on which any such amendment or termination occurred (for all purposes, including the

assignment and contribution thereof in terms of this Agreement), and if any such amendment or termination could reasonably be expected to have a significant adverse effect on the rights of the Creditors or First Beneficiary hereunder, only undertake any such amendment or termination if the prior written consent of the First Beneficiary shall have been obtained, and not to amend or terminate any Intercompany Credit Agreement or Mexican Company Credit Agreement if a Concurso Notice has been delivered to the Trustee; provided, however, that (i) no amendment or termination will be effective *vis a vis* the Trustee or the First Beneficiary, if such amendment or termination occurs within 270 (two hundred and seventy) Business Days prior to the date on which any Counterparty (or any Settlor) is subject to a Concurso Judgment, and (ii) the outstanding balance report referred to in paragraph (e) below, may be used as termination notice.

(e) The Settlors agree to deliver to the Trustee and the First Beneficiary, through the Settlors' Representative, within 60 (sixty) Business Days following the end of each Quarter, a report of the outstanding balance of the Intercompany Credit Agreements and the Mexican Company Credit Agreements of each Settlor with each Counterparty in respect to the Intercompany Credit Agreements and the Mexican Company Credit Agreements which amount is greater than US$25,000,000 (twenty five million Dollars).

**NINTH. Obligations of the Trustee.** In addition to any other obligations of the Trustee set forth in this Agreement, the Trustee shall be obligated to comply at all times during the term of this Agreement with the following obligations:

(a) diligently and timely comply with the purposes of the Trust referred to in Clause Fourth hereof;

(b) carry out all actions necessary in order to preserve the Trust Assets;

(c) carry out all necessary actions, including the granting and revocation of powers of attorney, in order for the Trustee, the Settlors (through the Settlors' Representative) and/or the First Beneficiary, as the case may be, be able to exercise the rights and purposes herefrom;

(d) deliver to the Representative of the Settlors and the First Beneficiary the reports specified in Clause Tenth hereof;

(e) maintain the files, reports, evidences of payment and other documentation evidencing the compliance of its obligations;

(f) notify the First Beneficiary and the Settlors' Representative, in a timely and diligently fashion, of any circumstance of which the Trustee has become aware that could affect the exercise of the rights in favor of the First Beneficiaries, the First Beneficiary, the Trustee or the Settlors hereunder;

(g) refrain from executing activities or actions contrary to the provisions hereof or that may affect the Creditor's or First Beneficiary rights, and

(h) comply with the provisions of this Trust, being liable for the losses or damages suffered by the Trust Assets derived from causes attributable to the Trustee, in case the Trustee acts with willful misconduct, negligence or bad faith, or breaches any of the provisions hereof, as determined by the a competent judicial authority by means of a judgment against the Trustee.

Subject to the terms and conditions hereof, the Trustee shall have, among others, all authorities in favor of attorneys-in-fact, especially those derived from article 391 of the LGTOC, for the accomplishment of the purposes of this Trust and expressly limited to such purposes including, but not limited to:

- the broadest authorities corresponding to general attorneys-in-fact for lawsuits and collections and acts of administration without any limitations whatsoever, as per the provisions of the first two paragraphs of article 2554 of the Civil Code;
- authorities for acts of ownership, the exercise of which shall be undertaken in accordance with the written instructions received from the Parties, as the case may be.
- express authority to grant and revoke general and special powers of attorney.
- exercise the rights derived herefrom, including those related to the Trust Assets in accordance with the instructions received from the Parties, as the case may be;

The Trustee shall generally have the broadest authorities and shall be authorized to exercise all authorities necessary or convenient for the accomplishment of the purposes of the Trust.

**TENTH. Information.** The Trustee shall inform the Settlors' Representative and the First Beneficiary on a monthly basis, the assets constituting the Trust Assets including, but not limited to, any contributions received by the Trustee, interest, losses and profits, capital contributions, payments made pursuant to the instructions of the Settlors' Representative or the First Beneficiary and cash balances, by means of the account statements issued by the Trustee for purposes of the foregoing. The Parties hereby authorize the Trustee to make available to them, by email sent to the email address provided by the Parties, copies of the aforementioned statements within 10 (ten) days following termination of the corresponding period, thus releasing the Trustee from its obligation to deliver physical copies of the aforementioned account statements through the Mexican Postal Service. The Settlors' Representative and the First Beneficiary shall have the authority to request clarifications in connection with the foregoing within 20 (twenty) Business Days following the date on which the account statements are forwarded by email. In the event no remarks are made within said term, the information shall be deemed to be accepted, except in the event said information contains information prepared with willful misconduct or in bad faith or in case the errors in the statements are not apparent.

For purposes of the foregoing, the account statements shall be deemed to be delivered within 10 (ten) Business Days following receipt of the relevant email; in the event no copies of the abovementioned bank statements are received in the email accounts of the Parties during such term, the Settlors' Representative or the First Beneficiary, as the case may be, shall have the right to notify the Trustee within the following 5 (five) Business Days. In the event the Settlors' Representative and the First Beneficiary request account statements corresponding to previous periods, they shall request delivery thereof to the Trustee in writing, in order to allow issuance thereof by the Trustee.

**ELEVENTH. Taxes.** The provisions of this Agreement do not fall within the provisions of Articles 13 and 144 of the Income Tax Law, 113 of the Income Tax Law Regulations, and 16 of the Flat Tax Rate Law (*Ley del Impuesto Empresarial a Tasa Única)*. Under no circumstances shall the Trustee hire personnel, nor shall it assume any obligations whatsoever derived from the obligation to undertake payments to third parties, such as tax retentions, informative declarations, and others related thereto, which shall be prepared by the Settlors.

All Taxes established or imposed by the applicable fiscal statutes derived from the validity of this Agreement or by the execution of actions provided for hereunder including, but not limited to, the filing of applicable notices and/or statements shall be the sole responsibility of the Settlors, and/or the First Beneficiary, if applicable, as the case they may be, or, if applicable thereto, of the Trustee, in each case as may be required pursuant to applicable law.

The Trustee shall not be liable for the calculation of the Taxes or for the default of the obligations, that are the responsibility of the Settlors and the First Beneficiary. In respect to the tax obligations that, if the case, shall be complied with by the Trustee as a consequence of actions regarding the purposes of the Trust or those actions pursuant to the instructions of the Settlors or the First Beneficiary, the Trustee shall perform said obligations by charging the resources of the Trust Assets and, if no sufficient funds exist, each of the Settlors agrees to contribute to this Trust, through the Trustee, sufficient funds to comply with the tax obligations set forth in this Clause.

The Settlors and the First Beneficiary shall provide the Trustee, upon the latter's reasonable request, all documents necessary or sufficient in order to evidence their due and full compliance of their tax obligations.

The Parties agree that the Trustee has not provided nor will provide advice regarding tax, legal or accounting matters aimed for the taking of actions or decisions in respect of the creation and management of this Trust. Consequently, the Settlors and the First Beneficiary shall be solely responsible for obtaining their own legal, tax or accounting advice.

Each of the Settlors shall assume before the Trustee and third parties, the liabilities resulting from any Tax derived or that could derive from the creation of this Trust or the administration and ownership of the Trust Assets; in virtue of the foregoing, and if

necessary, they shall be bound to make sufficient contributions to the Trust in order to fulfill such obligations and, if the case, to indemnify and hold the Trustee harmless in respect of the performance of any obligation derived from the foregoing.

The Settlors' liability provided for hereunder shall remain in effect upon termination of this Agreement or in the event of the resignation of the Trustee; but in any case, said liability shall remain effective for a term of at least 5 (five) years following the termination date hereof.

**TWELFTH. Limitations to the Liability of the Trustee.** For the execution of the actions provided hereunder, the Trustee shall at all times act pursuant to the provisions of this Agreement, and always in accordance with the written instructions, of the Settlors' Representative and of the First Beneficiary, as the case may be.

The Trustee exclusively assumes the obligations expressly set forth herein, therefore, no additional responsibility may required from or imposed on the Trustee notwithstanding such responsibility has been agreed to by the Parties or by any other third party in accordance with the documents or legal acts related to or pursuant to which this Trust was created, unless with the Trustee's express prior consent.

Each of the Settlors authorizes and irrevocably instructs the Trustee to use the amounts which are part of the Trust Assets, to pay any expenses derived directly or indirectly from the performance of its obligations set forth herein or in the applicable law, provided that the Trustee shall notify the Settlors' Representative and the First Beneficiary the expenses paid with the Trust Assets in accordance with the terms of this Agreement.

The Settlors hereby release the Trustee from any liability incurred by it resulting from any legal and/or physical actions carried out by the Trustee in the performance of its duties and/or the execution of the instructions it received pursuant to this Agreement, except in the cases of willful misconduct, negligence or bad faith of the Trustee as determined by a competent court in a final judgment. The Settlors shall have the unlimited and joint obligation to (a) hold harmless the Trustee and its fiduciary delegates from any claims, disputes, damages, contractual or extra-contractual liabilities, proceedings, lawsuits, losses, damages, fines, actions or judgments filed, delivered, issued or imposed by any third party, individual or competent federal or local court in Mexico or abroad (solely in respect of said jurisdictions where the Settlors operate) against the Trustee and its fiduciary delegates; and to (b) reimburse the Trustee and its fiduciary delegates any costs or expenses of any nature (including reasonable and documented attorneys' fees at market standards) incurred by any of them, or any damages or losses they may suffer resulting from any claim, judgment, proceeding, lawsuit, liability, loss, damage, fine or action filed, issued or imposed against the Trustee and its fiduciary delegates, in connection with the effectiveness and legality of this Agreement, or any actions undertaken by the Trustee in accordance with the written instructions received by it pursuant to this Agreement and the other agreements executed by the Trustee. The foregoing shall not be applicable if any such liability, damage or loss results as a consequence of the willful misconduct, bad faith or

negligence of the Person entitled to be indemnified in terms of this Clause Twelfth or if such Person performs any action not authorized hereunder, as determined by a final judgment issued by a competent authority.

The Trustee shall not be obligated to make any payment whatsoever with its own assets, or to incur in any financial liability other than those assumed in its capacity as Trustee in terms of this Agreement.

The Settlors hereby acknowledge and agree that the Trustee's activities hereunder shall be undertaken solely in its capacity as Trustee in accordance with the terms hereof.

The Trustee shall only be liable for the damages and losses caused to any Person resulting from the Trustee's willful misconduct or negligence, in case it breaches its obligations hereunder or under applicable law, and the Trustee's liability is determined in a final judgment issued by a competent court.

The Trustee shall not have the obligation to confirm or verify the authenticity or effectiveness of any report, instruction, title or certificate delivered to the Trustee by the Settlors' Representative or the First Beneficiary in accordance to this Agreement. The Trustee assumes no liability whatsoever in respect of any representation made by the other Parties hereto or in the documents related herewith.

The Settlors and the First Beneficiary expressly agree and acknowledge that the Trustee is not a party to the Financing Documents and, thus, it does not, nor is required to, acknowledge or interpret the content thereof (except for this Agreement) in order to perform its obligations hereunder, provided that the First Beneficiary hereby informs the Trustee that it is acting hereunder pursuant to and in accordance with the Intercreditor Agreement.

The Settlors and the First Beneficiary agree and acknowledge that the Trustee shall have no liability whatsoever in case the Trust Assets or any portion thereof is seized, nationalized or as a result of the breach of its obligations hereunder for reasons or circumstances outside of its control.

**THIRTEENTH. Defense of the Trust Assets.** The Trustee shall deliver written notice to the Settlors' Representative and the First Beneficiary of any event or threat it becomes aware of, that could affect the Trust Assets. The Trustee shall be obligated to deliver the powers of attorney necessary for the defense of the Trust Assets to the Persons appointed (i) by the Settlors' Representative in writing prior to the Trustee's receipt of a Concurso Notice, and (ii) by the First Beneficiary, in writing, following the Trustee's receipt of a Concurso Notice. In the event the Settlors' Representative or the First Beneficiary, as the case may be, refuses to execute the actions necessary for the defense of the Trust Assets, or fails to appoint the Persons in favor of which said powers of attorney shall be granted or fails to propose the actions necessary for the defense of the Trust Assets, within 5 (five) days immediately following the notice of such action or threat by the Trustee, the Trustee shall deliver written notice of such refusal or failure of action by the Settlors' Representative or the First Beneficiary, to the Settlors' Representative

or the First Beneficiary, as the case may be, and shall grant the proxies necessary for the defense of the Trust Assets to the individuals or entities appointed in writing by the Settlors' Representative or the First Beneficiary, as the case may be. In the event the Settlors' Representative or the First Beneficiary fail to appoint an attorney-in-fact pursuant to the foregoing, and the absence of such appointment adversely affects the Trust Assets, the Trustee shall make its best efforts, but shall not be obligated to grant powers-of-attorney to the Persons determined by the Trustee, at its sole discretion, to whom it shall deliver the appropriate instructions for the defense of the Trust Assets until the Settlors' Representative or the First Beneficiary provide written instructions in respect of such defense. The Trustee and its fiduciary delegates shall not be liable for the actions of said attorneys-in-fact nor for the payment of costs, expenses and fees incurred as a result of the appointment and the defense of the Trust Assets.

In the event the Trustee is served with a judicial order or any other notice or claim related herewith from any third party whatsoever, the Trustee shall immediately deliver a copy of such document to the Settlors' Representative and to the First Beneficiary, in which case the provisions set forth in the immediately preceding paragraph shall be applicable.

All costs and fees to be covered in connection with the accomplishment of this Agreement, shall be jointly and severally paid by the Settlors, thus, the Settlors agree to deliver to the Trust Assets or pay directly to the Trustee all amounts necessary in order to grant the Trustee with sufficient funds to cover the corresponding expense within the term informed by the Trustee and, in case the Trustee does not inform such term, within 3 (three) Business Days following receipt of the request delivered by the Trustee.

The Trustee, when acting in accordance of the written instructions received from the Settlors' Representative or the First Beneficiary, as the case may be, and such actions are within the scope of authorities hereunder, the Trustee shall be released from any liability whatsoever in respect of the actions executed thereby, except when acting with willful misconduct, negligence or bad faith.

In the event of penalties derived from any proceeding related to the Trust Assets or against the Trustee, acting in such capacity, initiated by any third party, the payment of the costs and expenses determined in such regard, shall be paid jointly by the Settlors, or if not paid by the Settlors, with the Trust Assets, in accordance with the terms of this Clause, except where the Trustee acted with willful misconduct, bad faith or negligence or carries out actions that are not authorized hereunder, as determined by the corresponding judicial authority by means of a judgment issued against the Trustee.

**FOURTEENTH. Amendments.** This Agreement may only be amended by means of a written agreement executed by the Trustee, each of the Settlors, the First Beneficiary, and each of the Counterparties.

**FIFTEENTH. Substitution of the Trustee.** (a) The Trustee may resign by means of written notice delivered to the Settlors' Representative and the First Beneficiary at least 60 (sixty) days prior

to the date on which such resignation shall become effective. Upon receipt of a resignation notice from the Trustee, and provided that no Concurso Notice has been delivered, the Settlors' Representative, subject to the consent of the First Beneficiary shall appoint a substitute Trustee, to be appointed by the Parties, amongst any Mexican institution with a nationally recognized trust department; in the understanding, however, that the Trustee shall continue to act as trustee until the date on which the substitute Trustee executes the documentation described in section (c) below.

(b) Subject to the consent of the Settlors' Representative (which consent cannot be unreasonably denied or withheld), the First Beneficiary shall be authorized to remove the Trustee, upon written notice to the Trustee at least 30 (thirty) days prior to the removal date, and shall be entitled to appoint another credit institution to act as substitute trustee. In the event the First Beneficiary issues a Concurso Notice, the First Beneficiary shall be authorized to remove the Trustee in accordance with the provisions of this Clause, in which case the consent of the Settlors' Representative shall not be required.

(c) The substitute trustee shall consent in writing to its designation as trustee hereunder to the resigning or removed Trustee, the Settlors' Representative and the First Beneficiary, which consent shall be evidenced by a trustee substitution agreement executed for such purposes. Immediately thereafter, the resigning or removed Trustee shall transfer all assets in its possession, in its capacity as Trustee, pursuant this Agreement to the substitute trustee, and only then shall the resignation or removal of the Trustee shall become effective, in which case the substitute trustee shall assume all rights, authorities and obligations of the Trustee hereunder and perform its duties hereunder in such capacity.

(d) Upon termination of its appointment, whether in virtue of resignation or removal, the Trustee shall prepare a report on the Trust Assets since the date of the latest delivered report in accordance with this Agreement until the date on which such resignation or removal becomes effective. The Parties shall have thirty (30) days to review such report and request any clarifications deemed appropriate. Upon expiration of such term, the report shall be deemed approved if no remarks are made in respect thereof.

**SIXTEENTH. Substitution of the First Beneficiary.** The Parties hereto hereby agree that the initial or any subsequent First Beneficiary may be removed as a First Beneficiary hereunder, in accordance with the terms of the Intercreditor Agreement, and substituted also in accordance with the terms of the Intercreditor Agreement. In the event of the appointment of a substitute First Beneficiary, the appointment of such substitute shall become effective if, in addition to such substitute delivering a prior notice to the Trustee disclosing its identity and other relevant information, (i) the documentation required by the Trustee in accordance with its internal know your customer policies is delivered to it by such substitute, and (ii) such substitute executes any documents requested by the Trustee to formalize its designation pursuant to the terms hereof in order to assume its capacity as "First Beneficiary", provided that the First Beneficiary may be released from its obligations and appointment hereunder, if any, notwithstanding that a substitute first beneficiary has not yet been appointed or become a First Beneficiary hereunder.

The Parties agree that immediately following the removal of any First Beneficiary in accordance with the immediately preceding paragraph, the First Beneficiary so removed shall no longer represent the Lenders pursuant to the terms hereof and the substitute first beneficiary shall have all rights, authorities and obligations of the First Beneficiary hereunder and shall have such representation and duties in such capacity.

**SEVENTEENTH. Assignment.** None of the Settlors may assign, transfer or encumber its rights or transfer its obligations hereunder; except (a) for those assignments or transfers to any other Settlor or any other Group Member, provided, however, that the assignment or transfer is subject to the condition, in order to become effective, that the Group Member becomes an Additional Settlor and executes a contribution agreement in substantially similar terms to those of the document attached hereto as **Schedule G** (except in the case that the Lender Rights are capitalized by the assignee and it receives shares or any other equivalent instrument, as a result of such capitalization, or if it does not receive shares or equity interest, the value of the outstanding shares is increased as a result of not having nominal value or the value of the equity interest which owns is increased) and such transfer or assignment is notified within a term of 60 (sixty) Business Days from the date on which it took place, or (b) for those assignments or transfers to any third party other than a Settlor subject to the prior written authorization of the First Beneficiary, provided that such obligations, except upon the occurrence of the event described in and pursuant to the provisions of paragraph (d) of Clause Fourth hereof, shall not be deemed to restrict the right of the Settlors to instruct the Trustee with respect to the manner to exercise, or directly exercise, such Lenders Rights, and such Settlor may carry out any other action in respect of the Lender Rights, as long as such actions do not adversely affect the rights of the First Beneficiary under this Agreement, in the understanding, that, except in such case, no amounts derived from the Lender Rights shall be transferred, deposited or managed through the Trust Accounts, provided further that any such assignments shall not become effective and will be deemed as not effective *vis a vis* the Trustee and the First Beneficiary, if it is carried out within 270 (two hundred and seventy) Business Days prior to the date on which any Counterparty (or any Settlor) becomes subject to a Concurso Judgment. The Creditors may assign their rights hereunder in accordance with the provisions of the Financing Documents (including those derived herefrom).

The Trustee may not assign its rights and obligations hereunder; however, it shall have the right to resign to act as Trustee, in accordance with the provisions of Clause Fifteenth above.

**EIGHTEENTH. Instructions and Communications to the Trustee.** The Parties hereby agree that all instructions, notices, requests, responses, as well as any other kinds of communications required or allowed pursuant to the provisions hereof, shall be in writing and shall be rendered effective as set forth in Clause Twenty Third. The aforementioned instructions may be delivered by any of the means agreed to in advance by the Parties, which may include original copy directly delivered at the mentioned domiciles, by certified mail, with

acknowledgement of receipt or via facsimile transmission, e-mail in PDF format or any other alternate means of communication agreed upon by the Parties, provided that the provisions of this Clause are duly complied with.

For purposes of the notices and instructions delivered to the Trustee pursuant to this Agreement, this Trust shall be identified by the contract number hereof and by the authorized and duly registered signature or signatures of whomever requests a transaction or service, which shall be a part of the instructions delivered to the Trustee.

For purposes of the foregoing, the Trustee represents that it has implemented certain mechanisms and/or proceedings for the receipt and execution of instructions, inclusive of those transmitted via facsimile transmission, e-mail in PDF format or other transmission and/or communication means; in light thereof, the Parties, as the case may be, shall execute together with the Trustee the documents necessary to that effect, which documents shall be provided by the latter.

The Parties acknowledge and agree that the Trustee shall be authorized to execute, on banking Business Days and hours, solely and exclusively the instructions issued pursuant to this Agreement and the mentioned security procedures.

As per the provisions of article 52 of the LIC, the Parties agree that the Trustee shall not be liable in the event it suspends or cancels the actions corresponding to any instruction issued by the Settlors' Representative and/or the First Beneficiary, as the case may be, upon the occurrence of any of the events established in such article. The Trustee shall be bound to deliver written notice to the Parties in respect of any action it may execute in accordance with the provisions of the mentioned article.

The Settlors and the First Beneficiary, as aware of the risks implied in virtue of the issuance of instructions by electronic means such as errors, security risks and lack of confidentiality, as well as of the possibility of fraudulent actions derived therefrom, have convened with the Trustee that the delivery of all kinds of instructions related to this Agreement via telex or facsimile transmission, e-mail in PDF format and/or original copies, shall be contained in letterheaded pages. In virtue of the foregoing, the Settlors and the First Beneficiary hereby authorize the Trustee to execute the instructions received thereby through the mentioned means, in virtue of which they hereby release the Trustee from any liability derived from said transmissions and the Settlors agree to jointly indemnify the Trustee in terms of the indemnity provisions established in this Agreement solely in respect of the instructions delivered to the Trustee through the mentioned means, except in such cases in which the Trustee has acted with bad faith, willful misconduct or negligence.

The Trustee shall not be obligated to review the authenticity of said instructions or communications nor to verify the identity of the sender or of the confirming party, thus, the Parties hereto expressly acknowledge to be obligated in virtue of any instruction or communication delivered in their name and accepted by the Trustee, except in such cases in which the lack of authenticity of the instruction or communication is apparent. Notwithstanding the

foregoing, the Trustee will be authorized to request confirmation of any transmission received in accordance with the provisions of this Clause, in the understanding, however, that the Trustee shall notify the corresponding Party on the same Business Day on which it receives any instruction.

In light of the foregoing, the Settlors' Representative and the First Beneficiary appoint the individuals whose names and signatures appear in **Schedule P** hereto (each, an "Authorized Officer") to issue said instructions to the Trustee, in the understanding, however, that said Schedule may be periodically amended by each of the Settlors or the First Beneficiary, as the case may be, by the delivery of a written notice pursuant to the provisions of this Agreement. The Trustee is authorized to act in accordance with the instructions transmitted pursuant to this Clause.

In the event that the corresponding instructions are not delivered in accordance with the foregoing provisions and/or the Trustee is unable to make a confirmation call in respect thereto, the Parties expressly and irrevocably instruct the Trustee to refrain from executing such instructions, except in urgent cases.

In order for the Trustee to act in accordance with the instruction letters described herein, such instruction letters shall comply with the following minimum requirements:

(a) Be addressed to Banco Nacional de México, S.A., integrante del Grupo Financiero Banamex;

(b) Make reference to the Trust number [*]; and

(c) Contain the express and clear instructions to be executed by the Trustee, expressly mentioning any specific amounts, sums or activities.

In the event the Trustee acts as per the instructions duly issued by whoever is authorized thereto, pursuant to this Agreement and in accordance with the terms, conditions and purposes hereof, its actions shall not result in any liabilities whatsoever against said Trustee.

**NINETEENTH. Appointment of the Settlors' Representative.** Each Settlor, in its capacity as Settlor and Counterparty, as the case may be, hereby irrevocably appoints Cemex SAB (hereinafter, the "Settlors´ Representative") as its true and legitimate representative, agent and attorney-in-fact (i) for purposes of receiving in name of each Settlor and Counterparty, any communication delivered by the First Beneficiary or the Trustee pursuant to this Agreement; (ii) receive in name of each Settlor and Counterparty, copies of the subpoenas, claims and other documentation related to any proceeding and (iii) if the case may be, to receive any funds pursuant to the provisions of Clause Sixth. As a consequence of the above, any notice, communication or, if the case, transfer of funds destined to the Settlors and/or Counterparty and delivered to the Settlors' Representative, shall have the same legal effects as if it were directly delivered to each Settlor and/or Counterparty. Each of the Settlors and Counterparties hereby authorizes and instructs the Settlors' Representative to accept such communications in each of their names. The appointment of the Settlors' Representative

shall be irrevocable until the appointment of a successor for the Settlors' Representative, in which case such appointment shall be subject to the authorization of the First Beneficiary and notified to the Trustee.

The power of attorney granted pursuant to this Clause Nineteenth constitutes an agency or a special power of attorney for lawsuits and collections, granted in accordance with the first paragraph of Article 2554 of the Civil Code. For purposes of the provisions of article 2555 of the Civil Code, the special power of attorney granted hereby shall be formalized in the public instrument containing this Agreement and before the corresponding notary public. In terms of article 2596 of the Civil Code, the power of attorney granted hereby shall be irrevocable in virtue of it being granted in the compliance of an obligation, and as a condition of a bilateral agreement.

**TWENTIETH. Expenses and costs of the Trustee.** As compensation for entering into this Agreement and the compliance of its obligations hereby, the Settlors shall pay to the Trustee the corresponding fees in accordance with **Schedule J** hereof.

The Settlors agree to jointly pay all reasonable costs and expenses derived from the entering into of this Agreement and its ratification before notary public. Additionally, the Settlors agree to jointly pay to Trustee and the First Beneficiary, as soon as it is requested, the reasonable and documented costs and expenses incurred by the Trustee and the First Beneficiary as a result of any amendment or addition to this Agreement (and any Schedule hereof), as well as any other reasonable and documented expenses or costs, if any, related to the enforceability of this Agreement.

**TWENTY FIRST. Term.** This Agreement shall be effective from the date hereof and shall remain in full force and effect until the date on which the purposes set forth herein have been achieved, provided that (a) the term of this Agreement shall not exceed the maximum term permitted by law and (b) this Agreement shall automatically terminate, without need of any notice whatsoever, from any Party hereto, on the Termination Date, in accordance with the terms of the Financing Documents, and only if all the expenses and fees of the Trustee have been covered. Upon termination of this Agreement, the balance, if any, of the Trust Assets, shall be returned to each Settlor proportionally to their contributions, as the Settlors instruct the Trustee.

**TWENTY SECOND. Reversion.** The Settlors shall have the right so that, upon termination of this Agreement pursuant to the provisions of Clause Twenty First hereof, all present or future assets or rights delivered by each of the Settlors or to which the Settlors are entitled to and which are considered as a part of the Trust Assets, be returned to them in accordance with the instruction given by the Settlors' Representative to the Trustee.

THE TRANSFER OF THE TRUST ASSETS TO THE TRUSTEE, IN ACCORDANCE WITH THIS AGREEMENT DOES NOT CONSTITUTE, NOR SHALL BE INTERPRETED OR DEEMED AS A SALE IN ACCORDANCE WITH SECTION IV A, OF ARTICLE 14 OF THE FEDERAL TAX CODE, AS THE SETTLORS HAVE THE RIGHT OF REVERSION IN ORDER TO RECOVER LEGAL TITLE TO THE TRUST ASSETS, IN TERMS HEREOF.

**TWENTY THIRD. Notices and Domiciles.** All notices and communications delivered or sent under this Agreement shall be in writing, in Spanish and sent or delivered to the Settlors´ Representative, the Trustee and the First Beneficiary; in the event of notices or general announcements, those shall be sent or delivered to the following domiciles, fax numbers, or e-mail addresses in PDF format (as the case may be), or in any other domicile, fax number or e-mail address (as the case may be) specified by each of the Parties upon prior written notice sent to the other Parties to this Trust, provided, however, that, (i) all notices via fax or e-mail address in PDF formats shall be confirmed by a document with the original signature of the Party which sent such notice, within the following 3 (three) Business Days, and it shall be evidenced in leatherhead paper, (ii) all notices and communications addressed to the First Beneficiary shall be translated into English, and the Settlors will jointly bear the related costs, and (iii) notices by the First Beneficiary may be sent in English, which may be translated into Spanish by the recipient, and the Settlors will jointly bear the costs of such translation. All notices and communications shall be effective on the day following its delivery, if delivered in the addressee's domicile, and if sent via fax or e-mail at the moment the addressee issues a response via fax, e-mail or any other written means.

**To the Settlors, Second Beneficiaries and Counterparties, through the Settlors´ Representative:**

Ave. Ricardo Margáin Zozaya # 325
Col. Valle del Campestre
Garza García, Nuevo León 66265
México
Facsimile: 52(81)8888-4399
Attention: Legal vicedirector

**To the First Beneficiary:**

1 King's Arms Yard
Third Floor
London EC2M 7AF
United Kingdom
Facsimile: (44) 207-397-3601
Attention: Sajada Afzal

**To the Trustee:**

Calzada del Valle No. 350 Oriente 1er. Piso
Col. Del Valle
San Pedro Garza García, Nuevo León 66220
Mexico
Facsimile: 52(81)1226-2097
Attention: [*]

**TWENTY FOURTH. Schedules.** All of the Schedules hereof are an integral part hereto, as if they were inserted verbatim.

**TWENTY FIFTH. Conflict.** In an event of conflict between the provisions hereunder and the provisions of the Intercreditor Agreement or the Financing Documents, the provisions of the Intercreditor

Agreement or the Financing Documents shall prevail; provided that the Trustee does not have, and shall not have, the obligation to know or interpret the content, terms and conditions of the Financing Documents and other related documents (except for this Agreement).

**TWENTY SIXTH. Indemnity**. (a) Except if the relevant damages, losses or responsibilities had been covered in accordance with Clause 16 of the Intercreditor Agreement, the Settlors, on a joint and several basis, agree to indemnify and hold harmless each of the Trustee (including without limitation, its trust delegates, employees and representatives), the First Beneficiary and any and all the Beneficiary Creditors, their respective directors, employees, advisors and affiliates, from and against any and any all claims, of any nature whatsoever, for damages, losses and any other responsibilities (except to the extent any such claim is determined to have resulted from such the Trustee's or the First Beneficiary's gross negligence or willful misconduct), that may be incurred by or asserted or awarded against, the Trustee, the First Beneficiary or the Beneficiary Creditors, their respective directors, employees, advisors and affiliates, in each case arising out of or in connection with the defense of the Trust Estate, the exercise of their respective rights hereunder, this Agreement or the obligations of each such party hereunder, including, without limitation, from and against and any all claims, damages, losses, liabilities and expenses (including without limitation reasonable fees and expenses of counsel) that may be incurred by or asserted or awarded against the Trustee, the First Beneficiary or the Beneficiary Creditors, their respective directors, employees, advisors and affiliates.

(b) The obligations of the Settlors set forth in this Clause Twenty Sixth, shall remain in full force and effect for the applicable statute of limitations and notwithstanding the occurrence of the Termination Date, or by any other reason this Agreement may be terminated.

**TWENTY SEVENTH. Expenses**. (a) Except if the relevant fees and expenses had been covered in accordance with the Intercreditor Agreement, all reasonable and documented fees and expenses paid or payable in connection with this Agreement, shall be paid or payable, on a joint and several basis, by the Settlors. The Trustee shall not be obligated to use its own funds to pay any fees or expenses incurred or payable in connection with this Agreement or with the satisfaction of its obligations hereunder and, therefore, the only obligation of the Trustee shall consist of sending to the Settlors, the Counterparties and the First Beneficiary (in this last case, for information purposes), a timely request for additional funds to be provided. The First Beneficiary shall have the right, but not the obligation, if in possession of funds under the Facilities Agreement, the Intercreditor Agreement and other related documents, to pay such fees and expenses, and, upon any such payment, the amounts so paid shall be considered part of the Beneficiary Obligations, shall be secured as set forth herein, and shall bear interest, form the time of payment, pursuant to the terms of the Facilities Agreement.

(b) The obligations of the Settlors set forth in this Clause Twenty Seventh, shall remain in full force and effect for the applicable statute of limitations and notwithstanding the occurrence of the Termination Date.

**TWENTY EIGTH. Certain provisions for the First Beneficiary**. (a) The First Beneficiary shall not have any fiduciary duties to, nor shall it have any duty to protect the interests of, the Settlors, the Counterparties or the Trustee.

(b) In acting as beneficiary hereunder, it shall be deemed that the First Beneficiary is acting through its agency division, which shall be treated as a separate entity from its other divisions and departments thereof. Any information received or acquired by the First Beneficiary, which is received or acquired by another division or department, or otherwise than in its capacity as First Beneficiary hereunder, may be treated as confidential by the First Beneficiary.

(c) In acting or exercising its rights, or complying with its obligations, if any, under this Agreement, including the delivery of any Concurso Notice or any instruction pursuant section (d) of Clause Fourth the First Beneficiary or any other action, in-action or consent under this Agreement, shall act in accordance with the provisions of the Intercreditor Agreement and shall be entitled to request instructions or directions from the Instructing Group or the Super Majority Instructing Group, as the case may be (each as defined in the Intercreditor Agreement) or otherwise in accordance with the terms of the Intercreditor Agreement, and the First Beneficiary shall not be held liable for any delay caused by so doing. In so acting, the Beneficiary shall have the rights, benefits, protections, indemnities and immunities set forth in the Intercreditor Agreement.

(d) The First Beneficiary shall have no obligation to monitor, nor shall it be liable for, the actions or in-actions of other Parties hereto or for any such Parties' compliance with the terms of this Agreement.

(e) The provisions set forth in this Clause Twenty Eighth shall remain in full force and effect for the applicable statute of limitations and notwithstanding the occurrence of the Termination Date, or by any other reason this Agreement may be terminated.

**TWENTY NINTH. Severability.** In the event any of the provisions hereunder are declared by a competent court as invalid or unenforceable, such provision shall be considered and interpreted separately from the other provisions herein, and will not affect in any form the validity, legality or enforceability of this Agreement.

**THIRIETH. Entire Agreement.** This Agreement constitutes the entire agreement between the Parties regarding the scope of this Agreement, and supersedes any past, verbal, or written communication in relation to its scope.

**THIRTY FIRST. Waiver**. Failure or delay by any of the Parties to exercise any of the rights, remedies, faculties or privileges provided in this Agreement (whether partially or individually), shall not be deemed or interpreted as a waiver thereof or as a waiver of the not exercised rights. Any notice or litigation against the incumbent Settlor shall not constitute a waiver of any of the rights of the First Beneficiary to undertake any other or further action.

**THIRTY SECOND. Novation.** The execution of this Agreement, shall not constitute a novation, amendment or payment of the Beneficiary Obligations.

**THIRTY THIRTH. Applicable Law and Jurisdiction.** This Agreement shall be governed by, and construed in accordance with the valid laws of Mexico.

The parties hereto, irrevocably submit to the exclusive jurisdiction and competence of the courts having a seat in Mexico City, Federal District, Mexico, in respect of any claim or legal proceeding related to the interpretation or performance of this Agreement and therefore waive any other jurisdiction to which they may be entitled to by virtue of their present or future domicile, or for any other reason.

**THIRTY FOURTH. "Know your Client" Trustee Policy.** In accordance to the Trustee policies for the acceptance of new businesses, the Parties hereby ratify and represent that the updated information provided in the form delivered to the Trustee known as Know Your Client and the documentation attached therewith, is true and accurate.

[**signature page follows**]

**IN CONSIDERATION OF THE FOREGOING**, this Agreement is executed on 17, September 2012.

**THE SETTLORS (signature page 1 of 2)**

CEMEX Costa Rica, S.A.
CEMEX Dominicana, S.A.
Cemex Materials LLC
CEMEX NY Corporation
Cemex Research Group AG
Construction Funding Corporation
Gulf Coast Portland Cement Co.
Sunbulk Shipping N.V.
Administradora de Proyectos de Energia, S.A.P.I. de C.V.
Arkio de México, S.A. de C.V.
Aviación Comercial de América, S.A. de C.V.
Carbonifera de San Patricio, S.A. de C.V.
Cedice Caribe, S.A. de C,V.
Cementos Anáhuac, S.A.
Cementos Guadalajara, S.A. de C.V.
Cementos Mexicanos, S.A. de C.V.
Cementos Monterrey, S.A. de C.V.
Cementos Tolteca, S.A. de C.V.
Cemex, S.A.B. de C.V.
Cemex Agregados, S.A. de C.V.
Cemex Central, S.A. de C.V.
Cemex Concretos, S.A. de C.V.
Cemex Internacional, S.A. de C.V.
Cemex México, S.A. de C.V.
Cemex Shared Services Americas, S.A. de C.V.
Cemex Transporte, S.A. de C.V.
Cemex Vivienda, S.A. de C.V.
Cemexnet, S.A. de C.V.
Centro Distribuidor de Cementa, S.A. de C.V.
Camercializadora Construrama, S.A. de C.V.
Compañia De Transportes Del Mar De Cortes, S.A. de C.V.
Compañia Minera Atoyac, S.A. de C.V.
Concretos Monterrey, S.A. de C.V.
Construcciones y Mantenimientos Viales, S.A. de C.V.

/s/ Roger Saldaña Madero
By: Roger Saldaña Madero
Title: Attorney in Fact

/s/ René Delgadillo Galván
By: René Delgadillo Galván
Title: Attorney in Fact

**THE SETTLORS (signature page 2 of 2)**

Construmexcla, S.A. de C.V.
Empresas Tolteca de Mexico, S.A. de C.V.
Fujur, S.A. de C.V.
Granos y Terrenos, S.A. de C.V.
Impra Café, S.A. de C.V.
Inmobiliaria Río La Silla, S.A. de C.V.
Inmobiliaria Río San Fernando, S.A. de C.V.
Inmobiliaria Río San Martin, S.A. de C.V.
Inmobiliaria Valle del Campestre, S.A. de C.V.
Inmobiliaria y Servicios Turcem, S.A. de C.V.
Mercis, S.A. de C.V.
Mexcement Holdings, S.A. de C.V.
Neoris Consulting Services, S.A. de C.V.
Neoris de México, S.A. de C.V.
Neoris Outsourcing Services, S.A de C.V.
Petrocemex, S.A. de C.V.
Pro Ambiente, S.A. de C.V.
Profesionales en Logistica de México, S.A. de C.V.
Proveedora de Fibras Textiles, S.A. de C.V.
Proveedora Mexicana de Materiales, S.A. de C.V.
Rendimiento Alternativo, S.A. de C.V.
Servicios Agregados Cemex, S.A. de C.V.
Servicios Cemento Cemex, S.A. de C.V.
Servicios Cemex México, S.A. de C.V.
Servicios Concreto Cemex, S.A. de C.V.
Servicios para la Autoconstrucción, S.A. de C.V.
Servicios Proambiente, S.A. de C.V.
Servicios Profesionales Cemex, S.A. de C.V.
Servicios Promexma, S.A. de C.V.
Servicios Transporte Cemex, S.A. de C.V.
Sinergia Deportiva, S.A. de C.V.
Tecnologías de Recursos Minerales, S.A. de C.V.
Teg Energia, S.A. de C.V.
Ventika, S.A. de C.V.
Ventika II, S.A. de C.V.
Visión Global en Infraestructura y Desarrollo, S.A. de C.V.

/s/ Roger Saldaña Madero
By: Roger Saldaña Madero
Title: Attorney in Fact

/s/ René Delgadillo Galván
By: René Delgadillo Galván
Title: Attorney in Fact

**THE TRUSTEE**

Banco Nacional de México, S.A., integrante del Grupo Financiero Banamex

/s/ Andrés Cárdenas Ortiz Monasterio
By: Andrés Cárdenas Ortiz Monasterio
Title: Attorney in Fact

**THE FIRST BENEFICIARY**
Wilmington Trust (London) Limited,
in its capacity as Security Agent,
on behalf and for the benefit of the
Original Creditors and the Refinancing Creditors

/s/ Maria de los Ángeles Montemayor Garza
By: Maria de los Ángeles Montemayor Garza
Title: Representative

/s/ Elva Nelly Wing Treviño
By: Elva Nelly Wing Treviño
Title: Representative

**Acknowledged and Agreed with the Appearance of:**

**THE COUNTERPARTIES**

Aviación Comercial de América, S.A. de C.V.
Carbonífera de San Patricio, S.A. de C.V.
Cementos Guadalajara, S.A. de C.V.
Cemex, S.A.B. de C.V.
Cemex Agregados, S.A. de C.V.
Cemex Central, S.A. de C.V.
Cemex Concretos, S.A. de C.V.
Cemex Internacional, S.A. de C.V.
Cemex México, S.A. de C.V.
Cemex Shared Services Americas, S.A. de C.V.
Cemex Transporte, S.A. de C.V.
Cemex Vivienda, S.A. de C.V.
Centro Distribuidor de Cemento, S.A. de C.V.
Compañía de Transportes del Mar de Cortés, S.A. de C.V.
Compañía Minera Atoyac, S.A. de C.V.
Construmexcla, S.A. de C.V.
Corporación Gouda, S.A. de C.V.
Empresas Tolteca de México, S.A. de C.V.
Fujur, S.A. de C.V.
Granos y Terrenos, S.A. de C.V.
Inmobiliaria Cemex Huatulco, S.A. de C.V.
Inmobiliaria Ferri, S.A. de C.V.
Inmobiliaria Río La Silla, S.A. de C.V.
Maderas y Granos de la Laguna, S.A. de C.V.
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Sinergia Deportiva, S.A. de C.V.
Teg Energía, S.A. de C.V.
Ventika, S.A. de C.V.

/s/ René Delgadillo Galván
By: René Delgadillo Galván
Title: Attorney in Fact

**Schedule 1**

**Settlors and Second Place Beneficiaries**

CEMEX Costa Rica, S.A.

CEMEX Dominicana, S.A.

Cemex Materials LLC

CEMEX NY Corporation

Cemex Research AG

Construction Funding Corporation

Gulf Coast Portland Co.

Sunbulk Shipping N.V.

Administradora de Proyectos de Energía, S.A.P.I. de C.V.

Arkio de México, S.A. de C.V.

Aviación Comercial de América, S.A. de C.V.

Carbonífera de San Patricio, S.A. de C.V.

Cedice Caribe, S.A. de C.V.

Cementos Anáhuac, S.A.

Cementos Guadalajara, S.A. de C.V.

Cementos Mexicanos, S.A. de C.V.

Cementos Monterrey, S.A. de C.V.

Cementos Tolteca, S.A. de C.V.

Cemex, S.A.B. de C.V.

Cemex Agregados, S.A. de C.V.

Cemex Central, S.A. de C.V.

Cemex Concretos, S.A. de C.V.

Cemex Internacional, S.A. de C.V.

Cemex México, S.A. de C.V.

Cemex Shared Services Americas, S.A. de C.V.

Cemex Transporte, S.A. de C.V.

Cemex Vivienda, S.A. de C.V.

Cemexnet, S.A. de C.V.

Centro Distribuidor de Cemento, S.A. de C.V.

Comercializadora Construrama, S.A. de C.V.

Compañía de Transportes del Mar de Cortés, S.A. de C.V.

Compañía Minera Atoyac, S.A. de C.V.

Concretos Monterrey, S.A. de C.V.

Construcciones y Mantenimientos Viales, S.A. de C.V.

Construmexcla, S.A. de C.V.

Empresas Tolteca de México, S.A. de C.V.

Fujur, S.A. de C.V.

Granos y Terrenos, S.A. de C.V.

Impra Café, S.A. de C.V.

Inmobiliaria Río La Silla, S.A. de C.V.

Inmobiliaria Río San Fernando, S.A. de C.V.

Inmobiliaria Río San Martín, S.A. de C.V.

Inmobiliaria Valle del Campestre, S.A. de C.V.

Inmobiliaria y Servicios Turcem, S.A. de C.V.

Mercis, S.A. de C.V.

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Neoris de México, S.A. de C.V.

Neoris Outsourcing Services, S.A de C.V.

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Servicios Cemex México, S.A. de C.V.

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Ventika, S.A. de C.V.

Ventika II, S.A. de C.V.

Visión Global en Infraestructura y Desarrollo, S.A. de C.V.

**Schedule 2**

**Counterparties**

Aviación Comercial de América, S.A. de C.V.

Carbonífera de San Patricio, S.A. de C.V.

Cementos Guadalajara, S.A. de C.V.

Cemex, S.A.B. de C.V.

Cemex Agregados, S.A. de C.V.

Cemex Central, S.A. de C.V.

Cemex Concretos, S.A. de C.V.

Cemex Internacional, S.A. de C.V.

Cemex México, S.A. de C.V.

Cemex Shared Services Americas, S.A. de C.V.

Cemex Transporte, S.A. de C.V.

Cemex Vivienda, S.A. de C.V.

Centro Distribuidor de Cemento, S.A. de C.V.

Compañía de Transportes del Mar de Cortés, S.A. de C.V.

Compañía Minera Atoyac, S.A. de C.V.

Construmexcla, S.A. de C.V.

Corporación Gouda, S.A. de C.V.

Empresas Tolteca de México, S.A. de C.V.

Fujur, S.A. de C.V.

Granos y Terrenos, S.A. de C.V.

Inmobiliaria Cemex Huatulco, S.A. de C.V.

Inmobiliaria Ferri, S.A. de C.V.

Inmobiliaria Río La Silla, S.A. de C.V.

Maderas y Granos de la Laguna, S.A. de C.V.

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Reservas Ecológicas Sustentables La Laguna, S.A. de C.V.

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Servicios Profesionales Cemex, S.A. de C.V.

Servicios Promexma, S.A. de C.V.

Servicios Transporte Cemex, S.A. de C.V.

Sinergia Deportiva, S.A. de C.V.

Teg Energía, S.A. de C.V.

Ventika, S.A. de C.V.

**[INTENTIONALLY LEFT BLANK]**

**Schedule A**

**Copy of Facilities Agreement**

**Schedule B**

**Copy of Intercreditor Agreement**

**Schedule C**

**Copy of Settlors Powers of Attorney**

**Schedule D**

**Copy of First Beneficiary Powers of Attorney**

**Schedule E**

**Form of Accession Agreement**

**Schedule F**

**Mexican Company Credit Agreements**

5 6

**Schedule G**

**Form of Contribution Agreement**

Contribution Agreement (the "Agreement") to the Trust Agreement (as hereinafter defined) entered into by and between [ •], as settlor (the "Settlor"); Banco Nacional de México, S.A., integrante del Grupo Financiero Banamex, as trustee (the " Trustee");Cemex, S.A.B. de C.V. in its capacity as Settlors' Representative; and with the appearance of [*], [*] and [*], in their capacity as Counterparties, pursuant to the following Recitals, Representations and Clauses:

**RECITALS**

I. On September 17, 2012, an Irrevocable Administration Trust Agreement with Reversion Rights Number F/111523-3 was entered into (the " Trust Agreement"). Capitalized terms used herein and not otherwise defined shall have the meaning given to such terms in the Trust agreement.

II. The Settlor is the holder of the Lender Rights in respect of the [Intercompany Credit Agreements] [Mexican Company Credit Agreements] as described in the document attached hereto as **Schedule A** (the "Additional Lender Rights"), to which, as the case may be, such [Intercompany Credit Agreement] [Mexican Company Credit Agreement] is also attached.

III. Pursuant to Clause Second of the Trust Agreement, the Settlor hereby contributes to the trust created under the Trust Agreement, the Additional Lender Rights to be part of the Trust Asserts.

**REPRESENTATIONS**

Except as provided hereunder, each of the Parties on this date represents and ratifies, each of the Representations made in the Trust Agreement, which are incorporated herein by reference as if set forth verbatim.

IN CONSIDERATION OF THE FOREGOING, and in consideration of the obligations, agreements and representations established hereunder, the parties hereto agree to the following:

**CLAUSES**

**FIRST. Definitions.** The following capitalized terms used herein shall have the meanings ascribed below or otherwise ascribed thereto in the Trust Agreement, the singular form shall have the same meaning when used in their plural form and vice versa:

"Additional Lender Rights" shall have the meaning ascribed to such term in Recital II hereof, in the understanding, however, that the Additional Lender Rights shall be considered as part of the "Lender Rights", as such term is defined in and for purposes of, the Trust Agreement, and shall be part of the Trust Assets.

"Agreement" shall have the meaning ascribed to such term in the Preamble of this Agreement.

"First Beneficiary" has the meaning ascribed to such term in the Preamble of this Agreement.

"Trust Agreement" shall have the meaning ascribed to such term in Recital I of this Agreement.

"Trustee" shall have the meaning ascribed to such term in the Preamble of this Agreement.

"Settlor" shall have the meaning ascribed to such term in the Preamble of this Agreement.

**SECOND. Contribution of the Additional Lender Rights to the Trust Agreement .** The Settlor transfers to the Trustee the Additional Lender Rights, which shall be subject to the Trust Agreement and will be part of the Trust Assets. By the execution hereof, each of the Counterparties expressly, acknowledges, accepts and agrees to the affectation of the Additional Lender Rights in terms hereto.

**THIRD. Notice to the First Beneficiary.** The Trustee hereby agrees to notify in writing the First Beneficiary regarding the celebration of this Agreement, and the contribution of the Additional Lender Rights for all the effects foreseen in the Trust Agreement, within the next fifteen (15) Business Days from the date hereof.

**FOURTH. Ratification of the Terms in the Trust Agreements.** The parties hereby confirm, accept and ratify all the terms and conditions in the Trust Agreement which is and continues to be in full force and effect, and they adhere to such Agreement, in all its terms, without reservation or limitation whatsoever.

**FIFTH. No Novation.** The execution hereof shall not constitute a novation of the parties' obligations in terms of the Trust Agreement.

**SIXTH. Notices.** All notices and any communication in terms of this Agreement and the Trust Agreement, shall be delivered to each of the Parties hereto, pursuant to the terms and domiciles provided in Clause Twenty Third of the Trust Agreement.

**SEVENTH. Exhibits**. All exhibits hereunder are an integral part hereto, as if set forth verbatim.

**EIGHTH**. **Applicable Law and Jurisdiction**. This Agreement shall be governed by, and construed in accordance with the valid laws of Mexico.

In connection with the interpretation and performance of this Agreement, the parties hereto hereby irrevocably submit to the exclusive jurisdiction of the competent courts located in Mexico City, Federal District, Mexico, in respect of any claim or legal proceeding derived from this Agreement and therefore waive any other jurisdiction to which they may be entitled to in the future by virtue of their domicile, or for any other reason whatsoever.

**IN CONSIDERATION OF THE FOREGOING**, this Agreement is signed on [*], 2012

[signature page follows]

**THE SETTLOR**

[•]

By:
Title: Attorney in Fact

**THE TRUSTEE**

Banco Nacional de México, S.A., integrante del Grupo Financiero Banamex

By:
Title: Attorney in Fact

**THE FIRST BENEFICIARY**
Wilmington Trust (London) Limited

By:
Title: Attorney in Fact

THE SETTLOR'S REPRESENTATIVE
Cemex, S.A.B. de C.V.

By:
Title: Attorney in Fact

**Acknowledged and Agreed with the Appearance of :**

**THE COUNTERPARTIES**

[•]

By:
Title: Attorney in Fact

**Schedule H**

**Form of Concurso Notice**

[Date]

Banco Nacional de México, S.A.,
integrante del Grupo Financiero Banamex
Atención: Delegado Fiduciario, [*]

Gentlemen:

Reference is made to the Irrevocable Administration Trust Agreement with Reversion Rights No. F/111523-3 dated September 17, 2012 (as amended, supplemented or amended and restated from time to time, the "Trust Agreement"). Capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the Trust Agreement.

In terms of Clause Forth and other applicable provisions of the Trust Agreement, we hereby inform you that on [ •][•] ,[•] a competent court in Mexico has issued a judgment declaring the Concurso Proceeding of [*], as evidenced by the [publication of the Concurso Judgment by the corresponding court, in the court bulletin board or in the judicial bulletin/the personal service of the Concurso Judgment delivered by the conciliator or receiver/the publication of the extract of the Concurso Judgment in the Official Gazette of the Federation/any other form provided for under the LCM and other applicable legal provisions, attached hereto as **Sole Schedule**.

[•]

By:
Title: Attorney in Fact

**Schedule I**

**Authorized Officers**

61

**Schedule J**

**Trustee's Fees**

62

**Exhibit 4.39**

**CEMEX FINANCE LLC**
**(formerly CEMEX ESPAÑA FINANCE LLC)**

$106,586,333.79 9.66% Senior Notes due 2017

# NOTE PURCHASE AGREEMENT

Dated as of September 17, 2012

**TABLE OF CONTENTS**

**CEMEX FINANCE LLC**
**c/o CEMEX España, S.A.**
**Hernandez de Tajada No. 1**
**28027 Madrid, Spain**

$106,586,333.79 9.66% Senior Notes due 2017

as of September 17, 2012

TO EACH OF THE PURCHASERS LISTED ON THE ATTACHED SCHEDULE A:

Ladies and Gentlemen:

CEMEX ESPAÑA, S.A., a corporation organized under the laws of the Kingdom of Spain (" CEMEX España"), and its wholly owned indirect Subsidiary CEMEX FINANCE LLC, formerly CEMEX España Finance LLC, a limited liability company organized under the laws of Delaware (the "Company"), agree with the Purchasers listed on the attached Schedule A (the "Purchasers") to this Note Purchase Agreement (as amended, modified or supplemented, this "Agreement") as follows:

**Recitals**

WHEREAS, pursuant to a Consolidated Amended and Restated Note Purchase Agreement dated as of August 14, 2009 (as amended, the " 2009 Note Purchase Agreement"), the Company issued $882,407,495.57 aggregate principal amount of its 8.91% Senior Notes, Series A, due 2014 (the " 2009 Series A Notes"), and ¥1,185,389,696.06 aggregate principal amount of its 6.625% Senior Notes, Series B, due 2014 (the " 2009 Series B Notes", and, together with the 2009 Series A Notes, the "Old Notes"), to the purchasers named on Schedule A thereto (together with any persons who became subsequent purchasers of Old Notes in accordance with Section 13.2 of the 2009 Note Purchase Agreement, the " 2009 Noteholders");

WHEREAS, the Purchasers have elected (i) to unilaterally, unconditionally and irrevocably extinguish the amounts and any other obligations owing to them under the Old Notes and the 2009 Note Purchase Agreement (the " Extinguishments") and for the New Notes (as defined herein) to be issued to them; and (ii) to enter into the Facilities Agreement (as defined herein);

WHEREAS, in connection with the Extinguishments, the Old Notes held by each Purchaser as a "holder" under the 2009 Note Purchase Agreement will be returned and cancelled, all as provided herein and in the Facilities Agreement (as defined herein);

WHEREAS, the Purchasers are entering into that certain Facilities Agreement dated on or about the date hereof among CEMEX, S.A.B. de C.V., a stock corporation organized under the laws of the United Mexican States (the " Parent"), each of the borrowers, guarantors and security providers listed in Part I of Schedule 1 thereto, the other financial institutions listed in Part II of Schedule 1 thereto, the agent named therein and the security agent named therein (as amended, restated, supplemented, waived or otherwise modified from time to time, the " Facilities Agreement"); and

WHEREAS, CEMEX España, the Company and the Purchasers desire to enter into this Agreement to provide for the issuance of the New Notes (as defined herein) with terms and conditions consistent with those specified for such New Notes in the Facilities Agreement and subject always to the terms of the Facilities Agreement.

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

**1. AUTHORIZATION OF NEW NOTES.**

The Company will authorize the issuance of $106,586,333.79 aggregate principal amount of its 9.66% Senior Notes due February 14, 2017 (the " New Notes"), such term to include any Additional New Notes, and any such notes issued in substitution therefor pursuant to Section 13 of this Agreement). The New Notes shall be substantially in the form set out in Exhibit 1 with such changes therefrom, if any, as may be approved by the Purchasers and the Company. Certain capitalized terms used in this Agreement are defined in Schedule B; references to a "Schedule" or an "Exhibit" are, unless otherwise specified, to a Schedule or an Exhibit attached to this Agreement. Capitalized terms used in this Agreement but not defined in Schedule B have the meanings ascribed to them in the Facilities Agreement.

**2. RETURN OF OLD NOTES; ISSUANCE OF NEW NOTES.**

Subject to the terms and conditions of this Agreement and the Facilities Agreement, upon delivery by each Purchaser to the Company of the Old Notes held by it in accordance with the provisions of Section 3, each Purchaser shall receive from the Company New Notes in the principal amount specified opposite such Purchaser's name on Schedule A. The obligations of each Purchaser hereunder are several and not joint obligations and no Purchaser shall have any liability to any other Person for the performance or non-performance by any other Purchaser hereunder. Upon the issuance of New Notes following the delivery of Old Notes held by the Purchasers or an executed Certificate Regarding Lost Note in the form attached hereto as Exhibit 2 (the "Lost Note Certificate") to the Company in accordance with the provisions of Section 3, the Old Notes delivered by such Purchasers (or in respect of which a Lost Note Certificate is delivered by such Purchasers) shall be cancelled.

**3. CLOSING.**

The return of the Old Notes to the Company and the issuance of the New Notes to the Purchasers shall occur at the offices of Skadden, Arps, Slate, Meagher & Flom, LLP, Four Times Square, New York, New York, at 8:00 a.m., New York time, at a closing (the 'Closing") on the Effective Date. At the Closing, each Purchaser shall deliver its Old Note(s) or Lost Note Certificate to the Company. Upon the delivery of the Old Notes to the Company by each Purchaser, the Company will deliver to each Purchaser New Notes in the form of a single New Note (or such greater number of New Notes in denominations of at least $200,000, as such Purchaser may request) in the principal amount specified opposite such Purchaser's name on

Schedule A, dated the date of the Closing and registered in the name of such Purchaser (or in the name of such Purchaser's nominee). If at the Closing the Company shall fail to tender such New Notes to any Purchaser as provided above in this Section 3, and such Purchaser shall have delivered its Old Notes or Lost Note Certificate to the Company, or any of the conditions specified in Section 4 shall not have been fulfilled to any Purchaser's reasonable satisfaction, such Purchaser shall, at such Purchaser's election, be relieved of all further obligations under this Agreement, without thereby waiving any rights such Purchaser may have by reason of such failure or such nonfulfillment.

## 4. CONDITIONS TO CLOSING.

The obligation of each Purchaser to deliver its Old Note(s) to the Company and accept the delivery of New Notes at the Closing is subject to the fulfillment to such Purchaser's satisfaction, prior to or at the Closing, of the following conditions. If any Purchaser does not deliver its Old Note(s), the Company will require a Lost Note Certificate.

### 4.1. Representations and Warranties.

The representations and warranties of CEMEX España and the Company in the Facilities Agreement shall be correct when made and at the time of the Closing (except for such representations and warranties made as of a specific earlier date).

### 4.2. Performance.

CEMEX España and the Company shall have performed and complied with all agreements and conditions contained in this Agreement required to be performed or complied with by them prior to or at the Closing.

### 4.3. Compliance Certificates.

(a) *Officer's Certificate*. Each of CEMEX España and the Company shall have delivered to such Purchaser an Officer's Certificate, dated the date of the Closing, certifying that the conditions specified in Sections 4.1 and 4.2 have been fulfilled.

(b) *Secretary's Certificate*. Each of the Company and CEMEX España shall have delivered to such Purchaser a certificate, signed by the Secretary of the Company and the Secretary of CEMEX España, respectively, certifying as to the resolutions attached thereto and other corporate proceedings taken by it relating to the authorization, execution and delivery of the Finance Documents to which it is a party.

### 4.4. Issuance of New Notes Permitted By Applicable Law, etc.

On the date of the Closing, the return and cancellation of the Old Notes held by the Purchasers and the issuance of the New Notes to the Purchasers shall (a) be permitted by the laws and regulations of each jurisdiction to which each Purchaser is subject, without recourse to provisions (such as Section 1405(a)(8) of the New York Insurance Law) permitting limited investments by insurance companies without restriction as to the character of the particular investment and (b) not violate any applicable law or regulation (including, without limitation,

Regulation T, U or X of the Board of Governors of the Federal Reserve System). If requested by any Purchaser, such Purchaser shall have received an Officer's Certificate certifying as to such matters of fact as such Purchaser may reasonably specify to enable such Purchaser to determine whether such return, cancellation and issuance is so permitted.

**4.5. Facilities Agreement.**

Parent and CEMEX España, and all other parties to the Facilities Agreement, shall have executed and delivered the Facilities Agreement, and the conditions precedent to the effectiveness of the Facilities Agreement as set forth therein under the definition of " Effective Date" shall have occurred or been waived in accordance with the provisions of the Facilities Agreement.

**4.6. Payment of Special Counsel Fees.**

Without limiting the provisions of Section 15.1, the Company shall have paid on or before the Closing the fees, charges and disbursements of the Purchasers' special counsel to the extent reflected in a statement of such counsel rendered to the Company at least three Business Days prior to the Closing.

**4.7. Private Placement Number.**

A Private Placement number issued by Standard & Poor's CUSIP Service Bureau (in cooperation with the SVO) shall have been obtained for the New Notes.

**4.8. New Note Guarantee.**

CEMEX España shall have executed and delivered to each Purchaser a counterpart of the New Note Guarantee and the New Note Guarantee shall be in full force and effect as of the Effective Date.

**4.9. Agent for Service of Process.**

CT Corporation System shall have accepted its appointment by the Company and Guarantor as the agent for service of process for the Company and the Guarantor in the City of New York, State of New York, from the date of the Closing to and including December 31, 2017, and the Purchasers shall have received evidence of such acceptance.

## 5. THE FACILITIES AGREEMENT.

To the maximum extent permitted by law: (i) in the event of any inconsistency or conflict between the Intercreditor Agreement and any other Finance Document, the Intercreditor Agreement will prevail; and (ii) in the event of any inconsistency or conflict between the Facilities Agreement and any other Finance Document (other than the Intercreditor Agreement), the terms of the Facilities Agreement will prevail. The Facilities Agreement, as in effect on the date hereof, is attached hereto as Exhibit 3.

## 6. REPRESENTATIONS AND WARRANTIES OF CEMEX ESPAÑA AND THE COMPANY; REPRESENTATIONS OF THE PURCHASERS.

### 6.1. Representations and Warranties of CEMEX España and the Company.

CEMEX España and the Company represent and warrant to the Purchasers that:

(a) *Private Offering by the Company.* Neither the Company nor anyone acting on its behalf has offered the New Notes or any similar securities for sale to, or solicited any offer to buy any of the same from, or otherwise approached or negotiated in respect thereof with, any Person other than the Purchasers and not more than 59 other Institutional Investors (as defined in clause (c) of the definition of such term), each of which has been offered the New Notes at a private sale for investment. Neither the Company nor anyone acting on its behalf has taken, or will take, any action that would subject the issuance of the New Notes to the registration requirements of Section 5 of the Securities Act.

(b) *Foreign Assets Control Regulations, etc.* The issuance of the New Notes by the Company hereunder will not violate the Trading with the Enemy Act, as amended, or any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto. Without limiting the foregoing, neither CEMEX España nor any Subsidiary (i) is or will become a blocked person described in the Anti-Terrorism Order or the Department of the Treasury Rule or (ii) knowingly engages or will engage in any dealings or transactions with any such person.

(c) *Foreign Corrupt Practices Act.* The issuance of the New Notes by the Company hereunder will not cause any Purchaser to be in violation of any provision of the U.S. Foreign Corrupt Practices Act of 1977 or other applicable national or local law regulating the payments of bribes to government officials or employees.

### 6.2. Representations of the Purchasers.

(a) *Purchase for Investment*. Each Purchaser represents that it is acquiring the New Notes for its own account or for one or more separate accounts maintained by it or for the account of one or more pension or trust funds and not with a view to the distribution thereof; provided that the disposition of such Purchaser's or such pension or trust funds' property shall at all times be within such Purchaser's or such pension or trust funds' control. Each Purchaser understands that the New Notes have not been registered under the Securities Act and may be resold only if registered pursuant to the provisions of the Securities Act or if an exemption from registration is available, except under circumstances where neither such registration nor such an exemption is required by law, and that the Company is not required to register the New Notes.

(b) *Accredited Investor.* Each Purchaser represents that it is an "accredited investor" within the meaning of Rule 501(a)(1), (2) or (3) under the Securities Act or an entity in which all of the equity owners are accredited investors within the meaning of Rule 501(a)(1), (2) or (3) under the Securities Act.

**7. CONSULTATION WITH NOTEHOLDERS.**

Each of CEMEX España and the Company agrees that if it solicits, participates in or initiates discussion of a substantive nature with any Creditor in its capacity as a Creditor concerning any matter that, if pursued, in substantial likelihood would result in an amendment, variation, modification, waiver, override, replacement or supplement of any terms of the Facilities Agreement, this Agreement, the New Note Guarantee, the New Notes or any other Finance Documents and such amendment, variation, modification, waiver, override, replacement or supplement would require a consent by either Majority Creditors, Super Majority Creditors or all Creditors, in each case directly affecting the Purchasers in a substantive manner, then it shall also promptly consult on such matter in good faith with the Noteholders' Representative.

**8. MATURITY; PREPAYMENT OF THE NEW NOTES; INCREASE IN INTEREST RATE.**

**8.1. Stated Maturity.**

The entire principal amount of the New Notes shall become due and payable on February 14, 2017 except in the event that any of the circumstances set out in Clause 5.1 (*Spring Back Dates*) of the Facilities Agreement occur, at which point the entire principal amount of the New Notes shall become due and payable in accordance with the terms of the Facilities Agreement.

**8.2. Scheduled Amortization.**

Repayment of the New Notes shall be made in accordance with Clause 5 ( *Repayment*) and Clause 7 (*Mandatory Prepayment and Segregated Accounts*) of the Facilities Agreement.

**8.3. Optional Prepayments.**

Subject to and in accordance with Clause 6.2 ( *Voluntary Prepayment*) and Clause 6.4 (*Right of repayment in relation to a single Creditor*) of the Facilities Agreement, the Company may, at its option, upon notice as provided below, prepay at any time all, or from time to time any part of the New Notes at 100% of the principal amount so prepaid, together with interest accrued but unpaid thereon to the date of such prepayment. The Company will give each holder of New Notes written notice of each optional prepayment under this Section 8.3 in accordance with Clause 6.2 ( *Voluntary Prepayment*) and Clause 6.4 (*Right of repayment in relation to a single Creditor*) of the Facilities Agreement.

**8.4. Replacement of Affected Holder for Tax Reasons.**

If the Company or CEMEX España (assuming that CEMEX España is required to make a payment) shall deliver to each holder (each, an " Affected Holder") to which an Additional Payment would be payable by the Company or CEMEX España on the occasion of the next payment by the Company or CEMEX España in respect of such New Notes (in the case of CEMEX España, in an amount greater than 10% of the amount which CEMEX España would have been obligated to pay exclusive of the requirements of Section 14.4) (the date of such next payment in respect of which such Additional Payment will be due is herein referred to as the "Affected Payment Date") written notice of a Responsible Officer (with respect to each incident

in which a Related Tax is initially levied by a Taxing Jurisdiction that would result in the payment of an Additional Payment, a "Tax Prepayment Notice") setting forth in reasonable detail the nature of the Related Tax in respect of such Additional Payment and confirming that:

(a) such Related Tax is required, under the laws of such Taxing Jurisdiction, to be withheld or deducted from the payment due to such Affected Holders on such Affected Payment Date and that such payment is the first payment in respect of which such particular Related Tax must be withheld (it being understood that the payment immediately following and reflecting a change in a pre-existing Related Tax shall be deemed the first payment with respect to such Related Tax), *provided* that if the enactment of the statute or regulation, the amendment of an existing statute or regulation or the adoption or amendment of a treaty giving rise to a Related Tax occurs less than 180 days prior to the due date of a payment in respect of the New Notes that is subject to such Related Tax, then, at the election of the Company, the first payment in respect of the New Notes, the due date of which is more than 180 days after such enactment, shall be deemed to be such first payment; and

(b) as of the date of such opinion, such Related Tax would be required to be withheld from similar future payments to such Affected Holders;

then, in accordance with Clause 37.4 (*Replacement of Creditor*) of the Facilities Agreement, the Company may replace such Affected Holder.

**8.5. Allocation of Partial Prepayments.**

In the case of each partial prepayment of the New Notes pursuant to Section 8.3, the principal amount of the New Notes to be prepaid shall be allocated among all of the New Notes at the time outstanding in proportion, as nearly as practicable, to the respective unpaid principal amounts thereof not theretofore called for prepayment.

**8.6. Mandatory Prepayment upon Disposal of CEMEX España or the Company.**

In the case of a Disposal of all of the shares in CEMEX España or in the Company, each of CEMEX España and the Company shall ensure that upon completion of the Disposal the New Notes are prepaid in full.

**8.7. Maturity; Surrender, etc.**

In the case of each prepayment of New Notes pursuant to this Section 8, the principal amount of each New Note to be prepaid shall mature and become due and payable on the date fixed for such prepayment, together with interest on such principal amount accrued to such date. From and after such date, unless the Company shall fail to pay such principal amount when so due and payable as aforesaid, interest on such principal amount shall cease to accrue. Any New Note paid or prepaid in full shall be surrendered to the Company and cancelled and shall not be reissued, and no New Note shall be issued in lieu of any prepaid principal amount of any New Note.

**8.8. Purchase of New Notes.**

Except as permitted by Clause 8.4 (*Prepayment in accordance with Agreement*) and Clause 26.1 (*Permitted Debt Purchase Transactions*) of the Facilities Agreement, to which this Section 8.8 shall not apply, CEMEX España and the Company will not, nor will CEMEX España or the Company permit any Affiliate (to the extent that the Company or CEMEX España controls such Affiliate), to purchase, redeem, prepay or otherwise acquire, directly or indirectly, any of the outstanding New Notes except (a) upon the payment or prepayment of the New Notes in accordance with the terms of this Agreement and the New Notes or (b) pursuant to an offer to purchase made by any Obligor or an Affiliate pro rata to the holders of all New Notes at the time outstanding upon the same terms and conditions. Any such offer pursuant to the preceding clause (b) shall provide each holder with sufficient information to enable it to make an informed decision with respect to such offer, and shall remain open for at least 30 Business Days. If the Required Holders accept such offer, the Company shall promptly notify the remaining holders of such fact and the expiration date for the acceptance by holders of New Notes of such offer shall be extended by the number of days necessary to give each such remaining holder at least five Business Days from its receipt of such notice to accept such offer. The Company will promptly cancel all New Notes acquired by it or any Affiliate pursuant to any payment, prepayment or purchase of New Notes pursuant to any provision of this Agreement, and no New Notes may be issued in substitution or exchange for any such acquired or purchased New Notes.

**9. FEES.**

The Parent shall pay to each Purchaser the fees described in Clause 12 ( *Fees*) of the Facilities Agreement in the amounts specified therein and in accordance with the provisions thereof.

**10. INTEREST.**

**10.1. Interest Rate.**

Interest on the unpaid balance of each New Note shall initially be at the rate of 9.66% per annum from the Effective Date. Such interest shall be computed on the basis of a 360-day year of twelve 30-day months.

**10.2. Adjustments to Interest Rate.**

Interest payable on the New Notes shall be adjusted in accordance with the terms and provisions of the Facilities Agreement, including but not limited to Clause 9 (*Interest)* of the Facilities Agreement. Notwithstanding the foregoing, in no event shall the interest rate be less than 8.91% on the New Notes.

**11. EVENTS OF DEFAULT.**

An "Event of Default" shall exist if any Event of Default (as defined in the Facilities Agreement) occurs under any of Clauses 24.1 ( *Non-Payment*) to 24.15 (*Failure to Perform Payment Obligations*) of the Facilities Agreement.

## 12. REMEDIES ON DEFAULT, ETC.

### 12.1. Acceleration.

If an Event of Default described in Section 11 has occurred and is continuing, any holders of the New Notes at the time outstanding may at any time at their option, by notice or notices to the Company, declare their New Notes then outstanding to be immediately due and payable, subject to the prior authorization of the Majority Creditors of the taking of such action.

Upon any New Notes becoming due and payable under this Section 12.1, whether automatically or by declaration, such New Notes will forthwith mature and the entire unpaid principal amount of such New Notes, plus all accrued and unpaid interest thereon, shall be immediately due and payable, in each and every case without presentment, demand, protest or further notice, all of which are hereby waived. The Company acknowledges, and the parties hereto agree, that each holder of a New Note has the right to maintain its investment in the New Notes free from repayment by the Company (except as herein specifically provided for).

### 12.2. Other Remedies.

If the Company defaults in the payment of any principal or any interest on any New Note when the same becomes due and payable, whether at maturity or at a date fixed for prepayment or by declaration or otherwise, any holder or holders of New Notes at the time outstanding affected by such default may at any time, at its or their option, take action available to it to recover any amount due to it under the New Notes and this Agreement, other than the taking of the actions under Clause 24.16 (*Acceleration*) of the Facilities Agreement except as contemplated by that clause. If any Default or Event of Default has occurred and is continuing, and irrespective of whether any New Notes have become or have been declared immediately due and payable under Section 12.1, the holder of any New Note at the time outstanding may proceed, subject to the prior authorization of the Majority Creditors of the taking of such action, to protect and enforce the rights of such holder by an action at law, suit in equity or other appropriate proceeding, whether for the specific performance of any agreement contained herein or in any New Note, or for an injunction against a violation of any of the terms hereof or thereof, or in aid of the exercise of any power granted hereby or thereby or by law or otherwise.

### 12.3. Rescission.

At any time after any New Notes have been declared due and payable pursuant to Section 12.1, the Required Holders by written notice to the Company may rescind and annul any such declaration and its consequences if (a) the Company has paid all overdue interest on the New Notes, all principal of any New Notes that are due and payable and are unpaid other than by reason of such declaration, and all interest on such overdue principal and (to the extent permitted by applicable law) any overdue interest in respect of the New Notes, at the Default Rate, (b) all Events of Default and Defaults, other than non-payment of amounts that have become due solely by reason of such declaration, have been cured or have been waived pursuant to Section 17 and (c) no judgment or decree has been entered for the payment of any monies due pursuant hereto or to the New Notes. No rescission and annulment under this Section 12.3 will extend to or affect any subsequent Event of Default or Default or impair any right consequent thereon.

**12.4. No Waivers or Election of Remedies, Expenses, etc.**

No course of dealing and no delay on the part of any holder of any New Note in exercising any right, power or remedy shall operate as a waiver thereof or otherwise prejudice such holder's rights, powers or remedies. No right, power or remedy conferred by this Agreement or by any New Note upon any holder thereof shall be exclusive of any other right, power or remedy referred to herein or therein or now or hereafter available at law, in equity, by statute or otherwise. Without limiting the obligations of the Company under Section 15, the Company will pay to the holder of each New Note on demand such further amount as shall be sufficient to cover all costs and expenses of such holder incurred in any enforcement or collection under this Section 12, including, without limitation, reasonable attorneys' fees, expenses and disbursements.

## 13. REGISTRATION; EXCHANGE; SUBSTITUTION OF NEW NOTES.

**13.1. Registration of New Notes.**

The Company shall keep at its principal executive office a register for the registration and registration of transfers of New Notes. The name and address of each holder of one or more New Notes, each transfer thereof and the name and address of each transferee of one or more New Notes shall be registered in such register. Prior to due presentment for registration of transfer, the Person in whose name any New Note shall be registered shall be deemed and treated as the owner and holder thereof for all purposes hereof, and the Company shall not be affected by any notice or knowledge to the contrary. The Company shall give to any holder of a New Note that is an Institutional Investor promptly upon request therefor a complete and correct copy of the names and addresses of all registered holders of New Notes.

**13.2. Transfer and Exchange of New Notes.**

Upon surrender of any New Note at the principal executive office of the Company for registration of transfer or exchange (and in the case of a surrender for registration of transfer, duly endorsed or accompanied by a written instrument of transfer duly executed by the registered holder of such New Note or his attorney duly authorized in writing and accompanied by the address for notices of each transferee of such New Note or part thereof), and the satisfaction of the requirements of Clause 25.1 (*Assignments and transfers by the Creditors*) of the Facilities Agreement, the Company shall execute and deliver, at the Company's expense (except as provided below), one or more new New Notes (as requested by the holder thereof) in exchange therefor, in an aggregate principal amount equal to the unpaid principal amount of the surrendered New Note. Each such new New Note shall be payable to such Person as such holder may request and shall be substantially in the form of the New Note originally issued hereunder. Each such new New Note shall be dated and bear interest from the date to which interest shall have been paid on the surrendered New Note or dated the date of the surrendered New Note if no interest shall have been paid thereon. The Company may require payment of a sum sufficient to cover any stamp tax or governmental charge imposed in respect of any such transfer of New Notes. New Notes shall not be transferred in denominations of less than $200,000, *provided* that if necessary to enable the registration of transfer by a holder of its entire holding of New Notes, one New Note may be in a denomination of less than $200,000. Any transferee, by its acceptance of a New Note registered in its name (or the name of its nominee), shall be deemed to have made the representations set forth in Section 6.2 and shall be deemed to be a Creditor under the Facilities Agreement.

**13.3. Replacement of New Notes.**

Upon receipt by the Company of evidence reasonably satisfactory to it of the ownership of and the loss, theft, destruction or mutilation of any New Note (which evidence shall be, in the case of an Institutional Investor, notice from such Institutional Investor of such ownership and such loss, theft, destruction or mutilation), and

(a) in the case of loss, theft or destruction, of indemnity reasonably satisfactory to it ( *provided* that if the holder of such New Note is, or is a nominee for, an original Purchaser or another holder of a New Note with a minimum net worth of at least $50,000,000, such Person's own unsecured agreement of indemnity shall be deemed to be satisfactory), or

(b) in the case of mutilation, upon surrender and cancellation thereof,

the Company at its own expense shall execute and deliver, in lieu thereof, a new New Note, dated and bearing interest from the date to which interest shall have been paid on such lost, stolen, destroyed or mutilated New Note or dated the date of such lost, stolen, destroyed or mutilated New Note if no interest shall have been paid thereon.

**13.4. Additional New Notes.**

In the event that a 2009 Noteholder elects to exchange into the Facilities Agreement in accordance with Clause 25.11 ( *Acceding Creditors*) of the Facilities Agreement (such person, an "Acceding Purchaser"), following the delivery of Old Notes held by such Acceding Purchaser or an executed Lost Note Certificate to the Company, (a) the Old Notes delivered by such Purchasers (or in respect of which a Lost Note Certificate is delivered by such Purchasers) shall be cancelled; (b) the Company shall, subject to compliance with any other provision of this Agreement, without the consent of the holders, create and issue pursuant to this Agreement, New Notes (such New Notes, the "Additional New Notes") to such Acceding Purchaser that shall have the terms and conditions identical to those of the other New Notes, except with respect to:

(i) the date of issuance of such Additional New Note; and

(ii) the amount of interest payable on the first Interest Payment Date therefor;

and (c) such Acceding Purchaser shall, from and after the issuance and purchase of the applicable Additional New Note pursuant to clause (b) above, be considered for all purposes of this Agreement and the other New Note Documents a Purchaser and a holder.

The New Notes issued on the date hereof and any Additional New Notes shall be treated as a single series for all purposes under this Agreement; provided that the Company may use different CUSIP or other similar numbers among New Notes issued on the date hereof and among Additional New Notes to the extent required to comply with securities or tax law requirements. The Company, CEMEX España or any of its Affiliates will not (directly or indirectly) pay or

cause to be paid any remuneration or additional compensation or fee to any Acceding Purchaser that was not paid to original Purchasers unless such remuneration or additional compensation or fee is concurrently paid on the same terms, ratably to each of the original Purchasers.

## 14. PAYMENTS ON NEW NOTES.

### 14.1. Facilities Agreement.

Payments of principal and interest becoming due and payable on the New Notes shall be made in accordance with Clause 31 ( *Payment Mechanics*) of the Facilities Agreement; *provided* that, if any payment of principal or interest that is due and payable is not made pursuant to Clause 31 ( *Payment Mechanics*) of the Facilities Agreement, then such payment shall be made in accordance with this Section 14.

### 14.2. Place of Payment.

Subject to Section 14.1 and Section 14.3, payments of principal and interest becoming due and payable on the New Notes shall be made in New York, New York at CEMEX NY Corporation, 590 Madison Avenue, 41st Floor, New York, NY 10022. The Company may at any time, by notice to each holder of a New Note, change the place of payment of the New Notes so long as such place of payment shall be either the principal office of the Company in the United States or the principal office of a bank or trust company in the United States.

### 14.3. Home Office Payment.

Subject to Section 14.1, so long as any Purchaser or a nominee of such Purchaser shall be the holder of any New Note, and notwithstanding anything contained in Section 14.2 or in such New Note to the contrary, the Company will pay all sums becoming due on such New Note for principal and interest by the method and at the address specified for such purpose below such Purchaser's name on Schedule A, or by such other method or at such other address as such Purchaser shall have from time to time specified to the Company in writing for such purpose, without the presentation or surrender of such New Note or the making of any notation thereon, except that upon written request of the Company made concurrently with or reasonably promptly after payment or prepayment in full of any New Note, such Purchaser shall surrender such New Note for cancellation, reasonably promptly after any such request, to the Company at its principal executive office or at the place of payment most recently designated by the Company pursuant to Section 14.2. Prior to any sale or other disposition of any New Note held by any Purchaser or its nominee, such Purchaser will, at its election, either endorse thereon the amount of principal paid thereon and the last date to which interest has been paid thereon or surrender such New Note to the Company in exchange for a new New Note or New Notes pursuant to Section 13.2. The Company will afford the benefits of this Section 14.3 to any Institutional Investor that is the direct or indirect transferee of any New Note purchased by any Purchaser under this Agreement and that has made the same agreement relating to such New Note as such Purchaser has made in this Section 14.3.

**14.4. Tax Indemnification.**

(a) *Payments Free and Clear*. All payments to be made by the Company under this Agreement and the New Notes will be made free and clear of, and without withholding or deduction for or on account of, any present or future taxes, levies, imposts, duties, charges, assessments or fees of whatever nature, but excluding franchise taxes and taxes imposed on or measured by any holder's net income or receipts (such non-excluded items, " Related Taxes") imposed or levied by or on behalf of Spain, the United States or any jurisdiction from or through which any amount is paid by the Company pursuant to the terms of this Agreement or the New Notes (or any political subdivision or taxing authority of or in any such jurisdiction) (a " Taxing Jurisdiction"), unless the withholding or deduction of any such Related Tax is required by law.

(b) *Gross-Up, etc*. If any deduction or withholding for any present or future Related Tax of a Taxing Jurisdiction shall at any time be required in respect of any amount to be paid by the Company under this Agreement or the New Notes, the Company will promptly (i) pay over to the government or taxing authority of the Taxing Jurisdiction imposing such Related Tax the full amount required to be deducted or withheld by the Company (including the full amount required to be deducted or withheld from or otherwise paid by the Company in respect of any Additional Payment required to be made pursuant to clause (ii) of this Section 14.4(b)) and (ii) except as expressly provided below, pay to each holder entitled under this Agreement to receive the payment from which the amount referred to in the foregoing clause (i) has been so deducted or withheld such additional amount as is necessary in order that the amount received by such holder after any required deduction or withholding of Related Tax (including, without limitation, any required deduction, withholding or other payment of Related Tax on or with respect to such additional amount) shall equal the amount such holder would have received had no such deduction, withholding or other payment of Related Tax been paid (the "Additional Payment"), and if any holder pays any amount in respect of any Related Tax on any payment due from the Company hereunder or under the New Notes, or penalties or interest thereon, then the Company shall reimburse such holder for that payment upon demand, provided that no payment of any Additional Payment, or of any such reimbursement in respect of any such payment made by any such holder, shall be required to be made for or on account of:

(A) any Related Tax that would not have been imposed but for the existence of any present or former connection between such holder and the Taxing Jurisdiction or any territory or possession or area subject to the jurisdiction of the Taxing Jurisdiction, other than the mere holding of the relevant New Note, including, without limitation, such holder's being or having been a citizen or resident thereof, or being or having been present or engaged in a trade or business therein or having an establishment therein;

(B) any such holder that is not a resident of the United States of America or, with respect to any payment hereunder or under the New Notes owing to such holder, all or any part of which represents income that is not subject to United States tax as income of a resident of the United States of America to the extent that, had such holder been a resident of the United States of America or had the payment been so subject to United States tax, or had the

payment been made to a location within the United States of America, the provisions of a statute, treaty or regulation of the Taxing Jurisdiction would have enabled an exemption to be claimed from the Related Tax in respect of which an Additional Payment would otherwise have been payable; or

(C) any combination of the items or conditions described in clause (A) or clause (B) of this Section 14.4(b); and

provided further that the Company shall not be obliged to pay any Additional Payment to any holder of a New Note in respect of Related Taxes to the extent such Related Taxes exceed the Related Taxes that would have been payable but for the delay or failure by such holder (after receiving a written request from CEMEX España or the Company to make such filing and including copies (together with instructions in English) of forms, certificates, documents, applications or other reasonably required evidence (collectively, "Forms") to be filed) in the filing with an appropriate Governmental Authority or otherwise of Forms required to be filed by such holder to avoid or reduce such Related Taxes and that in the case of any of the foregoing would not result in any confidential income tax return information being revealed, either directly or indirectly, to any Person and such delay or failure could have been lawfully avoided by such holder, provided that such holder shall be deemed to have satisfied the requirements of this proviso upon the good faith completion and submission of such Forms as may be specified in a written request of the Company no later than 45 days after receipt by such holder of such written request.

(c) *Official Receipt*. If the Company shall make any such Additional Payment, it will promptly furnish each holder receiving such Additional Payment under this Section 14.4 an official receipt issued by the relevant taxation or other authorities involved for all amounts deducted or withheld as aforesaid.

(d) *Other*. Each holder agrees to use its best efforts to comply (after a reasonable period to respond) with a written request of the Company delivered to such holder to provide information (other than any confidential or proprietary information) concerning the nationality, residence or identity of such holder, and to make such declaration or other similar claim or reporting requirement regarding such information (copies of the forms of which declaration, claim or reporting requirement shall have been provided to such holder by the Company), that is required by a statute, treaty or regulation of the Taxing Jurisdiction as a precondition to exemption from all or part of any Related Tax. The Company agrees to reimburse each holder for such holder's reasonable out-of-pocket expenses, if any, incurred in complying with any such request of such Person.

(e) *Tax Refund.* If the Company makes an Additional Payment under this Section 14.4 for the account of any Person and such Person is entitled to a refund of any portion of the tax (a "Tax Refund"), to which such payment is attributable, and such Tax Refund may be obtained by filing one or more Forms, then such Person shall after receiving a written request therefor from the Company (which request shall specify in reasonable detail the Forms to be filed), file such Forms. If such Person subsequently receives such Tax Refund, and such Person is readily able to identify the Tax Refund as being attributable to the tax with respect to which an Additional Payment was made, then such Person shall reimburse the Company such amount as

such Person shall determine acting in good faith to be the proportion of the Tax Refund, together with any interest received thereon, attributable to such Additional Payment as will leave such Person after the reimbursement (including such interest) in no better or worse position than it would have been if the Additional Payment had not been required. Nothing in this clause (e) shall obligate any holder to disclose any information regarding its tax affairs or computations to the Company.

(f) *Survival*. The obligations of the Company and the holders under this Section 14.4 shall survive the payment in full of the New Notes and the termination of this Agreement.

**14.5. Currency of Payment.**

(a) *Payment in Dollars.* All payments under the New Notes shall be made in Dollars.

(b) *Certain Expenses.* If any expense required to be reimbursed pursuant to this Agreement or the New Notes is originally incurred in a currency other than Dollars, the Company shall nonetheless make reimbursement of that expense in Dollars, in an amount equal to the amount in Dollars that would have been required for the Person that incurred such expense to have purchased, in accordance with normal banking procedures, the sum paid in such other currency (after any premium and costs of exchange) on the day that expense was originally incurred.

(c) *Payments Not in Dollars.* To the fullest extent permitted by applicable law, the obligations of the Company in respect of any amount due under or in respect of this Agreement and the New Notes shall (notwithstanding any payment in any other currency, whether as a result of any judgment or order or the enforcement thereof, the realization of any security, the liquidation of any Obligor, any voluntary payment by any Obligor or otherwise) be discharged only to the extent of the amount in Dollars that each holder entitled to receive such payment may, in accordance with normal banking procedures, purchase with the sum paid in such other currency (after any premium and costs of exchange) on the Business Day immediately following the day on which such holder receives such payment. If the amount in Dollars that may be so purchased for any reason falls short of the amount originally due, the Company shall indemnify and save harmless such holder from and against all loss or damage arising out of or as a result of such deficiency. This indemnity shall constitute an obligation separate and independent from the other obligations contained in this Agreement and the New Notes, shall give rise to a separate and independent cause of action, shall apply irrespective of any indulgence granted by such holder from time to time and shall continue in full force and effect notwithstanding any judgment or order for a liquidated sum in respect of an amount due under this Agreement or the New Notes or under any judgment or order.

**15. EXPENSES, ETC.**

**15.1. Transaction Expenses.**

Whether or not the transactions contemplated hereby are consummated, the Company and CEMEX España will pay all reasonable costs and expenses (including reasonable attorneys' fees

of one special U.S. counsel) incurred by the Purchasers in connection with such transactions and in connection with any amendments, waivers or consents under or in respect of this Agreement, the Finance Documents, the New Note Guarantee or the New Notes (whether or not such amendment, waiver or consent becomes effective), including, without limitation: (a) the costs and expenses incurred in enforcing or defending (or determining whether or how to enforce or defend) any rights under this Agreement, the Finance Documents, the New Note Guarantee or the New Notes or in responding to any subpoena or other legal process or informal investigative demand issued in connection with this Agreement, the Finance Documents, the New Note Guarantee or the New Notes, or by reason of being a holder of any New Note; (b) the costs and expenses, including financial advisors' fees, incurred in connection with the insolvency or bankruptcy of the Company, CEMEX España or any Subsidiary, the Parent or any subsidiary of the Parent or in connection with any work-out or restructuring of the transactions contemplated hereby, by the New Note Guarantee and by the New Notes; and (c) the fees and costs incurred in connection with the initial filing of this Agreement and all related documents and financial information, and all subsequent annual and interim filings of documents and financial information related to this Agreement (*provided* the Company shall not be required to pay more than $2,500 per year in respect of subsequent annual and interim filings), with the SVO. The Company and CEMEX España will pay, and will save each Purchaser and each other holder of a New Note harmless from, all claims in respect of the fees, costs or expenses, if any, of brokers and finders (other than those retained by any Purchaser). Amounts payable pursuant to this Section 15.1 shall be payable in Dollars.

**15.2. Survival.**

The obligations of the Company and CEMEX España under this Section 15 will survive the payment or transfer of any New Note, the enforcement, amendment or waiver of any provision of this Agreement, the New Note Guarantee or the New Notes, the termination of this Agreement and the termination of the Facilities Agreement.

## 16. SURVIVAL OF REPRESENTATIONS AND WARRANTIES; ENTIRE AGREEMENT.

All representations and warranties contained herein shall survive the execution and delivery of this Agreement and the related New Notes, the purchase or transfer by any Purchaser of any such New Note or portion thereof or interest therein and may be relied upon by any subsequent holder of any such New Note, regardless of any investigation made at any time by or on behalf of any Purchaser or any other holder of any such New Note. All statements contained in any certificate or other instrument delivered by or on behalf of the Company or CEMEX España pursuant to this Agreement shall be deemed representations and warranties of the Company or CEMEX España, as applicable, under this Agreement. Subject to the preceding sentence, this Agreement, the New Notes, the New Note Guarantee and the Finance Documents (to the extent applicable) embody the entire agreement and understanding between the Purchasers and the Company and CEMEX España and supersede all prior agreements and understandings relating to the subject matter hereof.

## 17. AMENDMENT AND WAIVER.

### 17.1. Requirements.

This Agreement, the New Note Guarantee and the New Notes may be amended, and the observance of any term hereof or of the New Notes may be waived (either retroactively or prospectively), with (and only with) the written consent of CEMEX España, the Company and the Required Holders, except that (a) no amendment or waiver of any of the provisions of Section 1, 2, 3, 4, 5, 6, 10 or 21 hereof, or any defined term (as it is used in any such Section), will be effective as to any holder unless consented to by such holder in writing and (b) no such amendment or waiver may, without the written consent of the holder of each New Note at the time outstanding affected thereby, (i) subject to the provisions of Section 12 relating to acceleration or rescission, change the amount or time of any prepayment or payment of principal of, or reduce the rate or change the time of payment or method of computation of interest on, the New Notes, (ii) change the percentage of the principal amount of the New Notes the holders of which are required to consent to any such amendment or waiver or (iii) amend Section 8, 11, 12, 14.5, 14.6, 17 or 20; *provided, however*, that if in accordance with Clause 37 (*Amendments and Waivers*) of the Facilities Agreement, the requisite Creditors consent to any amendment to or waiver of any provision of the Facilities Agreement, the holders of New Notes shall be deemed to have consented to such amendment to or waiver under this Agreement, the New Note Guarantee and the New Notes. If requested, by CEMEX España or the Company in connection with an amendment or waiver to this Agreement, the New Note Guarantee or the New Notes described in the preceding sentence, the holders of New Notes shall execute a consent to implement such amendment or waiver.

### 17.2. Solicitation of Holders of New Notes.

(a) *Solicitation*. The Company will provide each holder of the New Notes (irrespective of the amount of New Notes then owned by it) with sufficient information, sufficiently far in advance of the date a decision is required, to enable such holder to make an informed and considered decision with respect to any proposed amendment, waiver or consent in respect of any of the provisions hereof, of the New Note Guarantee or of the New Notes. The Company will deliver executed or true and correct copies of each amendment, waiver or consent effected pursuant to the provisions of this Section 17 to each holder of outstanding New Notes promptly following the date on which it is executed and delivered by, or receives the consent or approval of, the requisite holders of New Notes.

(b) *Payment*. The Company, CEMEX España or any of its Affiliates will not directly or indirectly pay or cause to be paid any remuneration, whether by way of supplemental or additional interest, fee or otherwise, or grant any security, to any holder as consideration for or as an inducement to the entering into by any holder of any waiver or amendment of any of the terms and provisions hereof or of the New Note Guarantee or of the Finance Documents (to the extent applicable) unless such remuneration is concurrently paid, or security is concurrently granted, on the same terms, ratably to each holder then outstanding even if such holder did not consent to such waiver or amendment.

**17.3. Binding Effect, etc.**

Any amendment or waiver consented to as provided in this Section 17 applies equally to all holders of New Notes and is binding upon them and upon each future holder of any New Note and upon CEMEX España and the Company without regard to whether such New Note has been marked to indicate such amendment or waiver. No such amendment or waiver will extend to or affect any obligation, covenant, agreement, Default or Event of Default not expressly amended or waived or impair any right consequent thereon. No course of dealing between the Company, CEMEX España or any of its Affiliates and the holder of any New Note nor any delay in exercising any rights hereunder, under the New Note Guarantee or under any New Note or under the Finance Documents (to the extent applicable) shall operate as a waiver of any rights of any holder of such New Note. As used herein, the term "this Agreement" and references thereto shall mean this Agreement as it may from time to time be amended or supplemented.

**17.4. New Notes held by Company, etc.**

Solely for the purpose of determining whether the holders of the requisite percentage of the aggregate principal amount of New Notes then outstanding approved or consented to any amendment, waiver or consent to be given under this Agreement, the New Note Guarantee or the New Notes, or have directed the taking of any action provided herein, in the New Note Guarantee or in the New Notes to be taken upon the direction of the holders of a specified percentage of the aggregate principal amount of New Notes then outstanding, New Notes directly or indirectly owned by the Company, CEMEX España or any of its Affiliates shall be deemed not to be outstanding.

**18. NOTICES.**

All notices and communications shall be provided as set forth in Clause 33 ( *Notices*) of the Facilities Agreement, with a copy to (which such copy shall not constitute notice):

Bracewell & Giuliani LLP
Goodwin Square
225 Asylum Street
Suite 2600
Hartford, Connecticut 06103
Attention: Renée M. Dailey
Facsimile: (860) 246-3201

**19. REPRODUCTION OF DOCUMENTS.**

This Agreement and all documents relating thereto, including, without limitation, (a) consents, waivers and modifications that may hereafter be executed, (b) documents received by any Purchaser at the Closing (except the New Notes themselves) and (c) financial statements, certificates and other information previously or hereafter furnished to any Purchaser, may be reproduced by such Purchaser by any photographic, photostatic, microfilm, microcard, miniature photographic or other similar process and such Purchaser may destroy any original document so reproduced. Each of CEMEX España and the Company agrees and stipulates that, to the extent permitted by applicable law, any such reproduction shall be admissible in evidence as the

original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made by such Purchaser in the regular course of business) and any enlargement, facsimile or further reproduction of such reproduction shall likewise be admissible in evidence. This Section 19 shall not prohibit CEMEX España, the Company or any other holder from contesting any such reproduction to the same extent that it could contest the original, or from introducing evidence to demonstrate the inaccuracy of any such reproduction.

**20. CONFIDENTIAL INFORMATION.**

For the purposes of this Section 20, "Confidential Information" means information delivered to any Purchaser by or on behalf of CEMEX España or any Subsidiary in connection with the transactions contemplated by or otherwise pursuant to this Agreement that is proprietary in nature and that was clearly marked or labeled or otherwise adequately identified when received by such Purchaser as being confidential information of CEMEX España or any Subsidiary; provided that such term does not include information that (a) was publicly known or otherwise known to such Purchaser prior to the time of such disclosure, (b) subsequently becomes publicly known through no act or omission by such Purchaser or any Person acting on the behalf of such Purchaser, (c) otherwise becomes known to such Purchaser other than through disclosure by CEMEX España or any Subsidiary or (d) constitutes financial statements delivered to such Purchaser under Clause 20.1 ( *Financial statements*) of the Facilities Agreement that are otherwise publicly available. Each Purchaser will maintain the confidentiality of such Confidential Information in accordance with procedures adopted by such Purchaser in good faith to protect confidential information of third parties delivered to such Purchaser; provided that such Purchaser may deliver or disclose Confidential Information to (i) such Purchaser's directors, trustees, officers, employees, agents, attorneys and affiliates (to the extent such disclosure reasonably relates to the administration of the investment represented by such Purchaser's New Notes), (ii) such Purchaser's financial advisors and other professional advisors who agree to hold confidential the Confidential Information substantially in accordance with the terms of this Section 20, (iii) any other holder of any New Note, (iv) any Institutional Investor to which such Purchaser sells or offers to sell such New Note or any part thereof or any participation therein (if such Person has agreed in writing prior to its receipt of such Confidential Information to be bound by the provisions of this Section 20), (v) any Person from which such Purchaser offers to purchase any security of the Company or CEMEX España (if such Person has agreed in writing prior to its receipt of such Confidential Information to be bound by the provisions of this Section 20), (vi) any federal or state regulatory authority having jurisdiction over such Purchaser, (vii) the National Association of Insurance Commissioners or any similar organization, or any nationally recognized rating agency that requires access to information about such Purchaser's investment portfolio or (viii) any other Person to which such delivery or disclosure may be necessary or appropriate (w) to effect compliance with any law, rule, regulation or order applicable to such Purchaser, (x) in response to any subpoena or other legal process, (y) in connection with any litigation to which such Purchaser is a party or (z) if an Event of Default has occurred and is continuing, to the extent such Purchaser may reasonably determine such delivery and disclosure to be necessary or appropriate in the enforcement or for the protection of the rights and remedies under such Purchaser's New Notes, the New Note Guarantee, the Finance Documents and this Agreement. Each holder of a New Note, by its acceptance of a New Note, will be deemed to have agreed to be bound by and to be entitled to the benefits of this Section 20

as though it were a party to this Agreement. On reasonable request by CEMEX España in connection with the delivery to any holder of a New Note of information required to be delivered to such holder under this Agreement or requested by such holder (other than a holder that is a party to this Agreement or its nominee), such holder will enter into an agreement with CEMEX España embodying the provisions of this Section 20.

## 21. SUBSTITUTION OF PURCHASER.

Subject to Clause 25 (*Changes to the Creditors*) of the Facilities Agreement, each Purchaser shall have the right to substitute any one of such Purchaser's Affiliates as the acquirer of the New Notes that such Purchaser has agreed to acquire upon delivery of its Old Note(s) to the Company hereunder, by written notice to the Company, which notice shall be signed by both such Purchaser and such Affiliate, shall contain such Affiliate's agreement to be bound by this Agreement and shall contain a confirmation by such Affiliate of the accuracy with respect to it of the representations set forth in Section 6.2. Upon receipt of such notice, wherever the word "Purchaser" is used in this Agreement (other than in this Section 21), such words shall be deemed to refer to such Affiliate in lieu of such Purchaser. In the event that such Affiliate is so substituted as a purchaser hereunder and such Affiliate thereafter transfers to such Purchaser all of the New Notes then held by such Affiliate, upon receipt by the Company of notice of such transfer, wherever the word "Purchaser" is used in this Agreement (other than in this Section 21), such words shall no longer be deemed to refer to such Affiliate, but shall refer to such Purchaser, and such Purchaser shall have all the rights of an original holder of the New Notes under this Agreement.

## 22. MISCELLANEOUS.

### 22.1. Successors and Assigns.

All covenants and other agreements contained in this Agreement by or on behalf of any of the parties hereto bind and inure to the benefit of their respective successors and assigns (including, without limitation, any subsequent holder of a New Note) whether so expressed or not.

### 22.2. Payments Due on Non-Business Days.

Anything in this Agreement or the New Notes to the contrary notwithstanding, any payment of principal of or interest on any New Note that is due on a date other than a Business Day shall be made on the next succeeding Business Day in the same calendar Month (if there is one) or the preceding Business Day (if there is not) without including the additional days elapsed in the computation of the interest payable on such next succeeding Business Day.

### 22.3. Severability.

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall (to the full extent permitted by law) not invalidate or render unenforceable such provision in any other jurisdiction.

**22.4. Construction.**

Each covenant contained herein shall be construed (absent express provision to the contrary) as being independent of each other covenant contained herein, so that compliance with any one covenant shall not (absent such an express contrary provision) be deemed to excuse compliance with any other covenant. Where any provision herein refers to action to be taken by any Person, or that such Person is prohibited from taking, such provision shall be applicable whether such action is taken directly or indirectly by such Person.

**22.5. Counterparts.**

This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which together shall constitute one instrument. Each counterpart may consist of a number of copies hereof, each signed by less than all, but together signed by all, of the parties hereto.

**22.6. Governing Law.**

This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the law of the State of New York excluding choice-of-law principles of the law of such State that would require the application of the laws of a jurisdiction other than such State.

**22.7. Jurisdiction; Service of Process.**

EACH OF CEMEX ESPAÑA AND THE COMPANY HEREBY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT AND/OR ANY OTHER NEW NOTE DOCUMENT, OR ANY ACTION OR PROCEEDING TO EXECUTE OR OTHERWISE ENFORCE ANY JUDGMENT IN RESPECT OF ANY BREACH HEREUNDER OR UNDER ANY OTHER NEW NOTE DOCUMENT, BROUGHT BY ANY HOLDER OF A NEW NOTE AGAINST CEMEX ESPAÑA OR THE COMPANY OR ANY OF THEIR RESPECTIVE PROPERTIES, MAY BE BROUGHT BY SUCH HOLDER OF A NEW NOTE IN THE COURTS OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK OR ANY NEW YORK STATE COURT SITTING IN NEW YORK COUNTY, AS SUCH HOLDER OF A NEW NOTE MAY IN ITS SOLE DISCRETION ELECT, AND BY THE EXECUTION AND DELIVERY OF THIS AGREEMENT EACH OF CEMEX ESPAÑA AND THE COMPANY IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF EACH SUCH COURT AND AGREES THAT PROCESS SERVED EITHER PERSONALLY OR BY REGISTERED MAIL ON CEMEX ESPAÑA, THE COMPANY OR A DESIGNATED AGENT SHALL CONSTITUTE, TO THE EXTENT PERMITTED BY LAW, ADEQUATE SERVICE OF PROCESS IN ANY SUCH SUIT, AND EACH OF CEMEX ESPAÑA AND THE COMPANY IRREVOCABLY WAIVES AND AGREES NOT TO ASSERT, BY WAY OF MOTION, AS A DEFENSE OR OTHERWISE, ANY CLAIM THAT IT IS NOT SUBJECT TO THE JURISDICTION OF ANY SUCH COURT. RECEIPT OF PROCESS SO SERVED SHALL BE CONCLUSIVELY PRESUMED AS EVIDENCED BY A DELIVERY RECEIPT

FURNISHED BY THE UNITED STATES POSTAL SERVICE OR ANY COMMERCIAL DELIVERY SERVICE. WITHOUT LIMITING THE FOREGOING, EACH OF CEMEX ESPAÑA AND THE COMPANY HEREBY APPOINTS, IN THE CASE OF ANY SUCH ACTION OR PROCEEDING BROUGHT IN THE COURTS OF OR IN THE STATE OF NEW YORK, CT CORPORATION SYSTEM, 111 EIGHTH AVENUE, NEW YORK, NEW YORK 10011, TO RECEIVE, FOR IT AND ON ITS BEHALF, SERVICE OF PROCESS IN THE STATE OF NEW YORK WITH RESPECT THERETO AT ANY AND ALL TIMES. EACH OF CEMEX ESPAÑA AND THE COMPANY WILL TAKE ANY AND ALL ACTION, INCLUDING THE EXECUTION AND FILING OF ALL SUCH DOCUMENTS AND INSTRUMENTS AND TIMELY PAYMENTS OF FEES AND EXPENSES, AS MAY BE NECESSARY TO EFFECT AND CONTINUE THE APPOINTMENT OF SUCH AGENT IN FULL FORCE AND EFFECT, OR IF NECESSARY BY REASON OF ANY FACT OR CONDITION RELATING TO SUCH AGENT, TO REPLACE SUCH AGENT (BUT ONLY AFTER HAVING GIVEN NOTICE THEREOF TO EACH HOLDER OF NEW NOTES AND ANY SUCCESSOR AGENT IS REASONABLY ACCEPTABLE TO REQUIRED HOLDERS). EACH OF CEMEX ESPAÑA AND THE COMPANY AGREES THAT SERVICE OF PROCESS UPON SUCH AGENT SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON EACH OF CEMEX ESPAÑA AND THE COMPANY IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY SUCH COURT. EACH OF CEMEX ESPAÑA AND THE COMPANY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL CLAIM OR ERROR BY REASON OF ANY SUCH SERVICE IN SUCH MANNER AND AGREES THAT SUCH SERVICE SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON EACH OF CEMEX ESPAÑA AND THE COMPANY IN ANY SUCH SUIT, ACTION OR PROCEEDING AND SHALL, TO THE FULLEST EXTENT PERMITTED BY LAW, BE TAKEN AND HELD TO BE VALID AND PERSONAL SERVICE UPON AND PERSONAL DELIVERY TO EACH OF CEMEX ESPAÑA AND THE COMPANY. IN ADDITION, EACH OF CEMEX ESPAÑA AND THE COMPANY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE IN ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT AND/OR ANY OTHER NEW NOTE DOCUMENT BROUGHT IN SUCH COURTS, AND HEREBY IRREVOCABLY WAIVES ANY CLAIM THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. NOTHING HEREIN SHALL IN ANY WAY BE DEEMED TO LIMIT THE ABILITY OF ANY HOLDER OF A NEW NOTE TO SERVE ANY SUCH WRITS, PROCESS OR SUMMONSES IN ANY MANNER PERMITTED BY APPLICABLE LAW OR TO OBTAIN JURISDICTION OVER CEMEX ESPAÑA OR THE COMPANY IN SUCH OTHER JURISDICTION, AND IN SUCH MANNER, AS MAY BE PERMITTED BY APPLICABLE LAW. NOTHING IN THIS SECTION 22.7 SHALL BE DEEMED TO LIMIT ANY OTHER SUBMISSION TO JURISDICTION, WAIVER OR OTHER AGREEMENT BY CEMEX ESPAÑA OR THE COMPANY CONTAINED IN ANY OTHER NEW NOTE DOCUMENT. TO THE EXTENT THAT CEMEX ESPAÑA OR THE COMPANY HAS OR HEREAFTER MAY ACQUIRE ANY IMMUNITY FROM JURISDICTION OF ANY COURT OR FROM ANY LEGAL PROCESS (WHETHER THROUGH SERVICE OR NOTICE, ATTACHMENT PRIOR TO JUDGMENT, ATTACHMENT IN AID OF EXECUTION OR

OTHERWISE) WITH RESPECT TO ITSELF OR ITS PROPERTY, EACH OF CEMEX ESPAÑA AND THE COMPANY HEREBY IRREVOCABLY WAIVES SUCH IMMUNITY IN RESPECT OF ITS OBLIGATIONS UNDER THIS AGREEMENT AND THE OTHER NEW NOTE DOCUMENTS.

**22.8. Judgment Currency.**

Each of CEMEX España and the Company agrees that if, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or under the New Notes in any currency into another currency, to the fullest extent permitted by law, the rate of exchange used shall be that at which in accordance with normal banking procedures a holder could purchase such first currency with such other currency on the Business Day preceding that on which final judgment is given.

* * * * *

The execution hereof by the Purchasers shall constitute a contract among CEMEX España, the Company and the Purchasers for the uses and purposes hereinabove set forth.

Very truly yours,

CEMEX ESPAÑA, S.A.

By: /s/ Héctor José Vela Dib
Name: Héctor José Vela Dib
Title: Attorney-In-Fact

CEMEX FINANCE LLC

By: /s/ Héctor José Vela Dib
Name: Héctor José Vela Dib
Title: Attorney-In-Fact

Acknowledged by:
CITIBANK INTERNATIONAL PLC, as Agent

By: /s/ R. Brody
Name: Mrs. R. Brody
Title: Vice President

ALLSTATE LIFE INSURANCE COMPANY

By: /s/ Orlando Purpura
Name: Orlando Purpura
Title: AUTHORIZED SIGNATORY

By: /s/ Mark W. (Sam) Davis
Name: Mark W. (Sam) Davis
Title: AUTHORIZED SIGNATORY

CVI GVF (LUX) MASTER S.a.r.l.
By Carval Investors, LLC
its attorney-in-fact

By: /s/ Tiffany Parr
Name: Tiffany Parr
Title: Authorized Signer

PRIMERICA LIFE INSURANCE COMPANY

By: Conning, as Investment Manager

By: /s/ Samuel Otchere
Name: Samuel Otchere
Title: Director

NATIONAL BENEFIT LIFE INSURANCE COMPANY

By: Conning, Inc., as Investment Manager

By: /s/ Samuel Otchere
Name: Samuel Otchere
Title: Director

SWISS RE LIFE & HEALTH AMERICA INC.

By: Conning, Inc., as Investment Manager

By: /s/ Samuel Otchere
Name: Samuel Otchere
Title: Director

WESTPORT INSURANCE CORPORATION

By: Conning, Inc., as Investment Manager

By: /s/ Samuel Otchere
Name: Samuel Otchere
Title: Director

**HARTFORD LIFE AND ACCIDENT INSURANCE COMPANY**
**HARTFORD LIFE INSURANCE COMPANY**

By: Hartford Investment Management Company
Their Agent and Attorney-In-Fact

By: /s/ Kenneth W. Day
Name: Kenneth W. Day
Title: Vice President

INSIGHT LDI SOLUTIONS PLUS PLC, IN RESPECT OF
THE INSIGHT LOAN FUND

By: /s/ Alex Veroude
Name: Alex Veroude
Title: Head of Credit

By: /s/ Ranbir Singh Lakhpuri
Name: Ranbir Singh Lakhpuri
Title: Portfolio Manager

NORTHERN TRUST FIDUCIARY SERVICES (IRELAND) LTD, IN THEIR CAPACITY AS CUSTODIAN FOR INSIGHT LDI SOLUTIONS PLUS PLC, IN RESPECT OF THE INSIGHT LOAN FUND

By: /s/ Ken Lambe
Name: Ken Lambe
Title: Director

JPMORGAN HIGH YIELD FUND

By: /s/ William J. Morgan
Name: William J. Morgan
Title: Managing Director

PACHOLDER HIGH YIELD FUND, INC.

By: /s/ William J. Morgan
Name: William J. Morgan
Title: Managing Director

COMMINGLED PENSION FUND TRUST FUND
(DISTRESSED DEBT OPPORTUNITIES) OF JPMORGAN
CHASE BANK, N.A.

By: /s/ William J. Morgan
Name: William J. Morgan
Title: Managing Director

J.P. MORGAN DISTRESSED DEBT OPPORTUNITIES
MASTER FUND, LTD

By: /s/ William J. Morgan
Name: William J. Morgan
Title: Managing Director

JPMORGAN CORE PLUS BOND FUND

By: /s/ William J. Morgan
Name: William J. Morgan
Title: Managing Director

JPMORGAN STRATEGIC INCOME OPPORTUNITIES FUND

By: /s/ William J. Morgan
Name: William J. Morgan
Title: Managing Director

PHL VARIABLE INSURANCE COMPANY

By: /s/ Nelson Correa
Name: Nelson Correa
Title: Its Duly Authorized Officer

PHOENIX LIFE INSURANCE COMPANY

By: /s/ Nelson Correa
Name: Nelson Correa
Title: Senior Managing Director, Private Placements

QP SFM CAPITAL HOLDINGS LIMITED

By: /s/ Thomas L. O'Grady
Name: Thomas L. O'Grady
Title: Attorney-in-Fact

SCHEDULE A

INFORMATION RELATING TO THE PURCHASERS

| Name of Purchaser | Principal Amount |
|---|---|
| **Tax ID. No.** | |
| **Payment Instructions:** | |
| **In case of all notices with respect to payments:** | |
| **Delivery of Notes after closing:** | |
| **Notices and communications:** | |
| **Signature Block Format:** | |
| **Nominee:** | |

SCHEDULE B

DEFINED TERMS

As used herein, the following terms have the respective meanings set forth below or set forth in the Section hereof following such term:

"2009 Note Purchase Agreement" is defined in the Recitals.

"2009 Noteholders" is defined in the Recitals.

"2009 Series A Notes" is defined in the Recitals.

"2009 Series B Notes" is defined in the Recitals.

"Acceding Purchaser" is defined in Section 13.4.

"Additional New Notes" is defined in Section 13.4.

"Additional Payment" is defined in Section 14.4(b); when used herein with respect to any Guarantor, such term shall have the meaning assigned thereto in the New Note Guarantee.

"Affected Holder" is defined in Section 8.4.

"Affected Payment Date" is defined in Section 8.4.

"Affiliate" means, at any time, and with respect to any Person, (a) any other Person that at such time directly or indirectly through one or more intermediaries Controls, or is Controlled by, or is under common Control with, such first Person and (b) any Person beneficially owning or holding, directly or indirectly, 10% or more of any class of voting or equity interests of CEMEX España or any Subsidiary or any corporation of which CEMEX España and its Subsidiaries beneficially own or hold, in the aggregate, directly or indirectly, 10% or more of any class of voting or equity interests. As used in this definition, "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise. Unless the context otherwise clearly requires, any reference to an "Affiliate" is a reference to an Affiliate of CEMEX España.

"Agreement" is defined in the introduction hereto.

"CEMEX España" means (a) CEMEX España, S.A., a corporation organized under the laws of the Kingdom of Spain, and (b) any Person that, as a result of a combination, merger or asset transfer permitted by Clause 22.7 ( *Merger*) of the Facilities Agreement, assumes the obligations of CEMEX España under the New Note Guarantee, the Facilities Agreement and this Agreement. As of Closing, CEMEX España has a Rating that is separate from the Rating of the Parent.

"Closing" is defined in Section 3.

"Company" is defined in the introduction hereto.

"Confidential Information" is defined in Section 20.

"Default" means an event or condition the occurrence or existence of which if it continues uncured would, with the lapse of time or the giving of notice or both, become an Event of Default.

"Default Rate" means, with respect to any New Note, that rate of interest that is set forth in Clause 9.2 ( *Default interest*) in the Facilities Agreement.

"Department of the Treasury Rule" means Blocked Persons, Specially Designated Nationals, Specifically Designated Terrorists, Foreign Terrorist Organizations, and Specially Designated Narcotics Traffickers: Additional Designations of Terrorism-Related Blocked Persons, 66 Fed. Reg. 54,404 (2001).

"Dollar" and the sign "$" mean lawful currency of the United States of America.

"Event of Default" is defined in Section 11.

"Extinguishments" is defined in the Recitals.

"Facilities Agreement" is defined in the Recitals.

"Forms" is defined in Section 14.4(b).

"Governmental Authority" means

(a) the government of

(i) the Kingdom of Spain, the United States of America or any State or other political subdivision thereof, or

(ii) any jurisdiction in which CEMEX España or any Subsidiary conducts all or any part of its business, or that asserts jurisdiction over any properties of CEMEX España or any Subsidiary, or

(b) any entity exercising executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, any such government.

"Guarantor" means CEMEX España.

"holder" means, with respect to any New Note, the Person in whose name such New Note is registered in the register maintained by the Company pursuant to Section 13.1.

"Institutional Investor" means (a) any original purchaser of a New Note, (b) any holder of a New Note holding more than $5,000,000 of the aggregate principal amount of the New Notes then outstanding, and (c) any bank, trust company, savings and loan association or other financial institution, any pension plan, any investment company, any insurance company, any broker or dealer, or any other similar financial institution or entity, regardless of legal form.

"Japanese yen" and the sign "¥" mean lawful currency of Japan.

"Lost Note Certificate" is defined in Section 2.

"Majority Creditors" has the meaning set forth in the Facilities Agreement.

"New Note Documents" means this Agreement, the New Notes and the New Note Guarantee.

"New Note Guarantee" means a USPP Note Guarantee to be entered into by CEMEX España in favor of the holders of New Notes, as amended, modified or supplemented from time to time.

"New Notes" is defined in Section 1.

"Noteholders' Representative" means Bracewell and Giuliani LLP or such other representative of the holders of New Notes as may be appointed by the Required Holders from time to time.

"Obligor" means the Company and CEMEX España.

"Officer's Certificate" means a certificate of a Senior Financial Officer or of any other officer of CEMEX España or of an officer of the Company whose responsibilities extend to the subject matter of such certificate.

"Old Notes" is defined in the Recitals.

"Parent" is defined in the Recitals.

"Person" means an individual, partnership, corporation, limited liability company, association, trust, unincorporated organization, or a government or agency or political subdivision thereof.

"property" or "properties" means, unless otherwise specifically limited, real or personal property of any kind, tangible or intangible, choate or inchoate.

"Purchasers" is defined in the introduction hereto.

"Related Taxes" is defined in Section 14.4(a).

"Required Holders" means, at any time, the holders of more than 50% of the aggregate principal amount of the New Notes at the time outstanding (exclusive of New Notes then owned by the Company or any of its Affiliates).

"Responsible Officer" means any Senior Financial Officer and any other officer of CEMEX España with responsibility for the administration of the relevant portion of this Agreement.

"Securities Act" means the Securities Act of 1933, as amended from time to time.

"Senior Financial Officer" means the Financing Director or the Treasurer of CEMEX España or any other person authorized by the Board of Directors of CEMEX España to act on behalf of CEMEX España.

"Subsidiary" means, as to any Person, any corporation, association or other business entity in which such Person or one or more of its Subsidiaries or such Person and one or more of its Subsidiaries owns sufficient equity or voting interests to enable it or them (as a group) ordinarily, in the absence of contingencies, to elect a majority of the directors (or Persons performing similar functions) of such entity, and any partnership or joint venture if more than a 50% interest in the profits or capital thereof is owned by such Person or one or more of its Subsidiaries or such Person and one or more of its Subsidiaries (unless such partnership can and does ordinarily take major business actions without the prior approval of such Person or one or more of its Subsidiaries). Unless the context otherwise clearly requires, any reference to a "Subsidiary" is a reference to a Subsidiary of CEMEX España.

"SVO" means the Securities Valuation Office of the National Association of Insurance Commissioners, or any successor thereto.

"Tax Prepayment Notice" is defined in Section 8.4.

"Tax Refund" is defined in Section 14.4(e).

"Taxing Jurisdiction" is defined in Section 14.4(a).

EXHIBIT 1

**FORM OF NEW NOTE**

**CEMEX FINANCE LLC**

**9.66% SENIOR NOTE DUE FEBRUARY 14, 2017**

No.[ ] [Date]

$[ ] PPN

FOR VALUE RECEIVED, the undersigned, CEMEX FINANCE LLC (herein called the "Company"), a limited liability company organized and existing under the laws of Delaware, hereby promises to pay to [ ], or registered assigns, the principal sum of [ ] DOLLARS ($ ) on February 14, 2017, with interest (computed on the basis of a 360-day year of twelve 30-day months) (a) on the unpaid balance thereof initially at the rate of 9.66% per annum from the date hereof, payable (i) initially, on the 15th day of the Month falling after the Month in which the Effective Date occurs and (ii) thereafter, quarterly, on the 15th day of March, June, September and December in each year, commencing with the March 15th, June 15th, September 15th or December 15th next succeeding the date hereof, semi-annually or monthly, if CEMEX, S.A.B. de C.V. (the "Parent") shall have chosen such option, pursuant to Clause 10.1 ( *Selection of Interest Periods*) of the Facilities Agreement dated on or about the date hereof among the Parent, each of the borrowers, guarantors and security providers listed in Part I of Schedule 1 thereto, the financial institutions listed in Part II of Schedule 1 thereto, the agent named therein and the security agent named therein (as amended, restated, supplemented or otherwise modified from time to time, the "Facilities Agreement"), until the principal hereof shall have become due and payable, and (b) to the extent permitted by law on any overdue payment (including any overdue prepayment) of principal, any overdue payment of interest, payable quarterly as aforesaid (or, at the option of the registered holder hereof, on demand), at a rate per annum from time to time equal to the greater of (i) 2% over the then applicable interest rate on this Note or (ii) 2% over the rate of interest publicly announced by Citibank, N.A. from time to time in New York, New York as its "base" or "prime" rate.

Payments of principal of and interest on this Note are to be made in U.S. dollars in accordance with Clause 31 ( *Payment Mechanics*) of the Facilities Agreement; *provided* that, if any payment of principal and interest on this Note is not made in accordance with Clause 31 ( *Payment Mechanics*) of the Facilities Agreement, such payments are to be made in U.S. dollars at CEMEX NY Corporation, 590 Madison Avenue, 41st Floor, New York, NY 10022 or at such other place as the Company shall have designated by written notice to the holder of this Note as provided in the Note Purchase Agreement referred to below.

This Note (herein called this "Note") is one of the Senior Notes issued pursuant to the Note Purchase Agreement, dated as of September 17, 2012 (as from time to time amended, supplemented or modified, the "Note Purchase Agreement"), among the Company, CEMEX España, S.A. and the respective Purchasers named therein and is entitled to the benefits thereof. Each holder of this Note will be deemed, by its acceptance hereof, (i) to have agreed to the

confidentiality provisions set forth in Clause 38 ( *Confidentiality*) of the Facilities Agreement and Section 20 of the Note Purchase Agreement and (ii) to have made the representations set forth in Section 6.2 of the Note Purchase Agreement.

This Note is a registered Note and, as provided in the Note Purchase Agreement, upon surrender of this Note for registration of transfer, duly endorsed, or accompanied by a written instrument of transfer duly executed by the registered holder hereof or such holder's attorney duly authorized in writing, and upon the satisfaction of the other provisions of the Note Purchase Agreement, a new Note for a like principal amount will be issued to, and registered in the name of, the transferee. Prior to due presentment for registration of transfer, the Company may treat the Person in whose name this Note is registered as the owner hereof for the purpose of receiving payment and for all other purposes, and the Company will not be affected by any notice to the contrary.

The Company will make required prepayments of principal on the dates and in the amounts required by the Note Purchase Agreement. This Note is also subject to optional prepayment, in whole or from time to time in part, at the times and on the terms specified in the Note Purchase Agreement, but not otherwise.

If an Event of Default, as defined in the Note Purchase Agreement, occurs and is continuing, the principal of this Note may be declared or otherwise become due and payable in the manner, at the price and with the effect provided in the Note Purchase Agreement.

This Note shall be construed and enforced in accordance with, and the rights of the issuer and holder hereof shall be governed by, the law of the State of New York excluding choice-of-law principles of the law of such State that would require the application of the laws of a jurisdiction other than such State.

CEMEX FINANCE LLC

By: _____
Name: _____
Title: _____

EXHIBIT 2

**FORM OF CERTIFICATE REGARDING LOST NOTE**

The undersigned, [INSERT PURCHASER], (the "Purchaser") hereby certifies to CEMEX Finance LLC (the "Issuer") and to CEMEX España, S.A. (the "Guarantor") as follows:

1. The Issuer has delivered a Note, dated [ ], [a copy of which is attached hereto] (the " Note") to the Purchaser in connection with the Consolidated Amended and Restated Note Purchase Agreement, dated as of August 14, 2009 (as amended, restated, supplemented or otherwise modified from time to time), among the Issuer, CEMEX España, S.A. and the other purchasers that are or may from time to time become a party thereto.
2. The Purchaser has caused a diligent search of its files and vault to be made in order to find the Note and the Note has not been found. The Note has been inadvertently lost, misplaced or destroyed.
3. The Purchaser has taken no action to give or further pledge, sell, assign, transfer, endorse in blank or otherwise or in any other manner dispose of the Note to any person, firm or corporation, nor has any record or correspondence been found which indicates that the Purchaser has entrusted the possession of the Note to any person, firm or corporation for safekeeping or for any other purpose.
4. The Purchaser hereby agrees to indemnify and hold harmless the Issuer and the Guarantor and any other guarantor of the Issuer's or the Guarantor's obligations under the Note and their respective successors and assigns, of and from any loss, damage or claim resulting from the Purchaser's loss or misplacement of the Note.
5. The Purchaser hereby agrees that if the Note is subsequently found by the Purchaser or comes into the Purchaser's possession, the Purchaser will immediately surrender the Note to the Issuer for cancellation.

Dated: [•] , 2012

[INSERT PURCHASER]

By: _____
Name:
Title:

By: _____
Name:
Title:

STATE OF )
)
COUNTY OF )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that , whose name as of , a , is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, s/he, as such and with full authority, executed the same voluntarily for and as the act of said .

Given under my hand and official seal this the day of , 2012.

Notary Public

My commission expires: _____

**Exhibit 4.40**

**USPP NOTE GUARANTEE**

THIS USPP NOTE GUARANTEE dated as of September 17, 2012 (this "**Guarantee**") is executed in favor of the holders.

W I T N E S S E T H:

WHEREAS, pursuant to a Consolidated Amended and Restated Note Purchase Agreement dated as of August 14, 2009 (as amended, the "**2009 Note Purchase Agreement**"), CEMEX Finance LLC, formerly CEMEX España Finance LLC ("**CEMEX Finance**") issued $882,407,495.57 aggregate principal amount of its 8.91% Senior Notes, Series A, due 2014 (the "**2009 Series A Notes**"), and ¥1,185,389,696.06 aggregate principal amount of its 6.625% Senior Notes, Series B, due 2014 (the "**2009 Series B Notes**", and, together with the 2009 Series A Notes, the "**Old Notes**"), to the purchasers named on Schedule A thereto (together with any persons who became subsequent purchasers of Old Notes in accordance with Section 13.2 of the 2009 Note Purchase Agreement, the "**2009 Noteholders**");

WHEREAS, the Purchasers have elected (i) to unilaterally, unconditionally and irrevocably extinguish the amounts and any other obligations owing to them under the Old Notes and the 2009 Note Purchase Agreement (the "**Extinguishments**") and for the New Notes (as defined herein) to be issued to them; and (ii) to enter into the Facilities Agreement (as defined herein);

WHEREAS, in connection with the Extinguishments, the Old Notes held by each purchaser as a "holder" under the 2009 Note Purchase Agreement will be returned and cancelled in connection with such extinguishment;

WHEREAS, the Issuer and CEMEX España, S.A., a corporation organized under the laws of the Kingdom of Spain ("**CEMEX España**") have entered into a new note purchase agreement (the "**USPP Note Agreement**") with the purchasers listed in Schedule A thereto (the "**Purchasers**") pursuant to which the Issuer has issued $106,586,333.79 aggregate principal amount of its 9.66% Senior Notes due February 14, 2017 (the "**New Notes**");

WHEREAS, contemporaneously with the entry into this Guarantee and the USPP Note Agreement, the Issuer, CEMEX España and the holders have entered into that certain Facilities Agreement dated on or about the date hereof among CEMEX, S.A.B. de C.V. (the "**Parent**"), each of the borrowers, guarantors and security providers listed in Part I of Schedule 1 thereto, the other financial institutions listed in Part II of Schedule 1 thereto, the agent named therein and the security agent named therein (as amended, restated, supplemented, waived or otherwise modified from time to time, the "**Facilities Agreement**");

WHEREAS, in connection with the entry into the USPP Note Agreement and the issuance of the New Notes, the undersigned desires to grant this Guarantee to the holders with respect to the New Notes; and

WHEREAS, the undersigned will benefit from the Extinguishments and the issuance of New Notes pursuant to the USPP Note Agreement and is willing to guarantee the Liabilities (as defined below) as hereinafter set forth;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned agrees as follows:

1. Definitions. Capitalized terms used but not defined herein have the respective meanings assigned to such terms in the USPP Note Agreement.

2. Guarantee. Effective as of the Effective Date (as defined in the Facilities Agreement), the undersigned hereby, unconditionally and irrevocably, as primary obligor and not merely as surety, guarantees the full and prompt payment when due, whether by acceleration or otherwise, and at all times thereafter, of all obligations of the Issuer, howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, now or hereafter existing, or due or to become due, under the USPP Note Agreement, the New Notes or any other Finance Document (as defined in the Facilities Agreement), as the same may be amended, modified, extended or renewed from time to time, and the undersigned further agrees to pay all costs and expenses (including reasonable attorneys' fees and expenses) paid or incurred by the holders in enforcing this Guarantee or any other applicable New Note Document against the undersigned (all of the foregoing obligations, collectively, the "**Liabilities**"*)*; provided that the liability of the undersigned hereunder shall be limited to the maximum amount of the Liabilities which the undersigned may guarantee without rendering this Guarantee void or voidable under any applicable fraudulent conveyance or fraudulent transfer law.

This Guarantee shall in all respects be a continuing, irrevocable, absolute and unconditional guarantee of payment and performance and not only collectibility, and shall remain in full force and effect (notwithstanding, without limitation, the dissolution of the undersigned or any other circumstance) until all Liabilities have been paid in full.

3. Reinstatement. The undersigned further agrees that if at any time all or any part of any payment theretofore applied by any holder to any of the Liabilities is or must be rescinded or returned by such holder for any reason whatsoever (including, without limitation, the insolvency, bankruptcy or reorganization of the Issuer or the undersigned), such Liabilities shall, for purposes of this Guarantee, to the extent that such payment is or must be rescinded or returned, be deemed to have continued in existence, notwithstanding such application by such holder, and this Guarantee shall continue to be effective or be reinstated, as the case may be, as to such Liabilities, all as though such application by such holder had not been made.

4. Representations and Warranties. The representations and warranties of CEMEX España in the Facilities Agreement shall be correct when made and at the time of effectiveness of this Guarantee (except for such representations and warranties made as of a specific earlier date).

5. Permitted Actions. Any holder may, subject to the terms of the other Finance Documents, from time to time, at its sole discretion and without notice to the undersigned, take any or all of the following actions: (a) retain or obtain a security interest in any property to secure any of the Liabilities or any obligation hereunder, (b) retain or obtain the primary or

secondary obligation of any obligor or obligors, in addition to the undersigned, with respect to any of the Liabilities, (c) amend, modify or waive any provision of the USPP Note Agreement, its New Notes or any other Finance Document (as defined in the Facilities Agreement), (d) extend or renew any of the Liabilities for one or more periods (whether or not longer than the original period), alter or exchange any of the Liabilities, or release or compromise any obligation of the undersigned hereunder or any obligation of any nature of any other obligor with respect to any of the Liabilities, (e) release any security interest in, or surrender, release or permit any substitution or exchange for, all or any part of any property securing any of the Liabilities or any obligation hereunder, or extend or renew for one or more periods (whether or not longer than the original period) or release, compromise, alter or exchange any obligations of any nature of any obligor with respect to any such property and (f) resort to the undersigned for payment of any of the Liabilities when due, whether or not such holder shall have resorted to any property securing any of the Liabilities or any obligation hereunder or shall have proceeded against any other obligor primarily or secondarily obligated with respect to any of the Liabilities.

6. Subrogation. Notwithstanding any payment made by or for the account of the undersigned pursuant to this Guarantee, the undersigned shall not be subrogated to any right of any holder until such time as this Guarantee shall have been discontinued as to the undersigned and the holders shall have received payment of the full amount of all Liabilities.

7. Waivers. The undersigned hereby expressly waives (a) notice of the acceptance by any holder of this Guarantee, (b) notice of the existence or creation or non-payment of all or any of the Liabilities, (c) presentment, demand, notice of dishonor, protest, and all other notices whatsoever and (d) all diligence in collection or protection of or realization upon any Liabilities or any security for or guarantee of any Liabilities.

8. Assignments. Any holder may from time to time, without notice to the undersigned, assign any New Note in accordance with the USPP Note Agreement; and, notwithstanding any such assignment or any subsequent assignment thereof, such Liabilities shall be and remain Liabilities for purposes of this Guarantee, and each and every immediate and successive assignee of any of the Liabilities or of any interest therein shall, to the extent of the interest of such assignee in the Liabilities, be entitled to the benefits of this Guarantee to the same extent as if such assignee were an original holder.

9. Delay not Waiver, etc. No delay on the part of any holder in the exercise of any right or remedy shall operate as a waiver thereof, and no single or partial exercise by any holder of any right or remedy shall preclude other or further exercise thereof or the exercise of any other right or remedy; nor shall any modification or waiver of any provision of this Guarantee be binding upon any holder except as expressly set forth in a writing duly signed and delivered on behalf of such holder. No action of any holder permitted hereunder shall in any way affect or impair the rights of any other holder or the obligations of the undersigned under this Guarantee. For purposes of this Guarantee, Liabilities shall include all obligations of the Issuer to any holder arising under or in connection with any New Note Document, notwithstanding any right or power of the Issuer or anyone else to assert any claim or defense as to the invalidity or unenforceability of any obligation, and no such claim or defense shall affect or impair the obligations of the undersigned hereunder.

10. Currency of Payments, etc.

(a) Payment in Dollars

All payments under the New Notes by the undersigned pursuant to this Guarantee shall be made in Dollars to the holders for their ratable benefit by the method and at the address specified in the USPP Note Agreement.

To the fullest extent permitted by applicable law, the obligations of the undersigned in respect of any amount due under or in respect of this Guarantee with respect to the New Notes shall (notwithstanding any payment in any other currency, whether as a result of any judgment or order or the enforcement thereof or otherwise) be discharged only to the extent of the amount in Dollars that each holder entitled to receive such payment may, in accordance with normal banking procedures, purchase with the sum paid in such other currency (after any premium and costs of exchange) on the Business Day immediately following the day on which such holder receives such payment. If the amount in Dollars that may be so purchased for any reason falls short of the amount originally due, the undersigned shall indemnify and save harmless such holder from and against all loss or damage arising out of or as a result of such deficiency; if the amount in Dollars that may be so purchased exceeds the amount originally due, such holder shall remit to the undersigned for their ratable benefit such excess. This indemnity shall constitute an obligation separate and independent from the other obligations contained in this Guarantee, shall give rise to a separate and independent cause of action, shall apply irrespective of any indulgence granted by such holder from time to time and shall continue in full force and effect notwithstanding any judgment or order for a liquidated sum in respect of an amount due under this Guarantee or under any judgment or order.

(b) If any expense required to be reimbursed pursuant to this Guarantee is originally incurred in a currency other than Dollars, the undersigned shall nonetheless make reimbursement of that expense in Dollars, in an amount equal to the amount in Dollars that would have been required for the Person that incurred such expense to have purchased, in accordance with normal banking procedures, the sum paid in such other currency (after any premium and costs of exchange) on the day that expense was originally incurred.

11. Successors and Assigns. This Guarantee shall be binding upon the undersigned and the successors and assigns of the undersigned; and to the extent that the Issuer or the undersigned is a partnership, corporation, limited liability company or other entity, all references herein to such entity shall be deemed to include any successor or successors, whether immediate or remote, to such entity. The term “undersigned” as used herein shall mean all parties executing this Guarantee and each of them, and all such parties shall be jointly and severally obligated hereunder.

12. Governing Law; Severability. This Guarantee shall be construed in accordance with and governed by the laws of the State of New York applicable to contracts made and to be performed entirely within such state. Wherever possible each provision of this Guarantee shall be

interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Guarantee shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Guarantee.

13. Counterparts; Additional Guarantors; Release; Amendments . This Guarantee may be executed in any number of counterparts and by the different parties hereto on separate counterparts, and each such counterpart shall be deemed to be an original but all such counterparts shall together constitute one and the same Guarantee. At any time after the date of this Guarantee, one or more additional Persons may become parties hereto by executing and delivering to the holders a counterpart of this Guarantee. Immediately upon such execution and delivery (and without any further action), each such additional Person will become a party to, and will be bound by all of the terms of, this Guarantee. This Guarantee may be amended pursuant to Section 17 of the USPP Note Agreement.

14. Notices. All notices and communications provided for hereunder shall be in writing and sent to the undersigned at its facsimile number or address, as applicable, specified on Schedule I (a) by telecopy if the sender on the same day sends a confirming copy of such notice by a recognized overnight delivery service (charges prepaid), (b) by registered or certified mail with return receipt requested (postage prepaid) or (c) by a recognized overnight delivery service (with charges prepaid).

15. Judgment Currency. The undersigned agrees that if, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder in Dollars into another currency, to the fullest extent permitted by law, the rate of exchange used shall be that at which in accordance with normal banking procedures a holder could purchase Dollars with such other currency on the Business Day preceding that on which final judgment is given.

16. Tax Indemnification. All payments by the undersigned hereunder shall be made free and clear of, and without any withholding or deduction for or on account of, any present or future Related Taxes imposed or levied by or on behalf of Spain, the United States or any jurisdiction from or through which any amount is paid by the undersigned pursuant to the terms of this Guarantee (or any political subdivision or taxing authority of or in any such jurisdiction) (a "**Taxing Jurisdiction**"), unless the withholding or deduction of any Related Tax is required by law. If any deduction or withholding for any present or future Related Tax of a Taxing Jurisdiction shall at any time be required in respect of any amount to be paid by the undersigned under this Guarantee, the undersigned will promptly (i) pay over to the government or taxing authority of the Taxing Jurisdiction imposing such Related Tax the full amount required to be deducted or withheld by the undersigned (including the full amount required to be deducted or withheld from or otherwise paid by the undersigned in respect of any Additional Payment required to be made pursuant to clause (ii) below) and (ii) except as expressly provided below, pay to each holder entitled to receive the payment from which the amount referred to in the foregoing clause (i) has been so deducted or withheld such additional amount as is necessary in order that the amount received by such holder after any required deduction or withholding of Related Tax (including, without limitation, any required deduction, withholding or other payment of Related Tax on or with respect to such additional amount) shall equal the amount such holder would have received hereunder had no such deduction, withholding or other

payment of Related Tax been paid (the "**Additional Payment**"), and if any holder pays any amount in respect of any Related Tax on any payment due from the undersigned hereunder, or penalties or interest thereon, then the undersigned shall reimburse such holder for that payment upon demand, provided that no payment of any Additional Payment, or of any such reimbursement in respect of any such payment made by any such holder, shall be required to be made for or on account of:

(a) any Related Tax that would not have been imposed but for the existence of any present or former connection between such holder and the Taxing Jurisdiction or any territory or possession or area subject to the jurisdiction of the Taxing Jurisdiction, other than the mere holding of the relevant New Note, including, without limitation, such holder's being or having been a citizen or resident thereof, or being or having been present or engaged in a trade or business therein or having an establishment therein;

(b) any such holder that is not a resident of the United States of America or, with respect to any payment hereunder owing to such holder, all or any part of which represents income that is not subject to United States tax as income of a resident of the United States of America to the extent that, had such holder been a resident of the United States of America or had the payment been so subject to United States tax, or had the payment been made to a location within the United States of America, the provisions of a statute, treaty or regulation of the Taxing Jurisdiction would have enabled an exemption to be claimed from the Related Tax in respect of which an Additional Payment would otherwise have been payable; or

(c) any combination of the items or conditions described in clause (a) or clause (b) above; and

provided further that the undersigned shall not be obliged to pay any Additional Payment to any holder in respect of Related Taxes to the extent such Related Taxes exceed the Related Taxes that would have been payable but for the delay or failure by such holder (after receiving a written request from the undersigned to make such filing and including copies (together with instructions in English) of any forms, certificates, documents, applications or other reasonably required evidence (collectively, "**Forms**"), to be filed) in the filing with an appropriate Governmental Authority or otherwise of Forms required to be filed by such holder to avoid or reduce such Related Taxes and that in the case of any of the foregoing would not result in any confidential income tax return information being revealed, either directly or indirectly, to any Person and such delay or failure could have been lawfully avoided by such holder, provided that such holder shall be deemed to have satisfied the requirements of this proviso upon the good faith completion and submission of such Forms as may be specified in a written request of the undersigned no later than 45 days after receipt by such holder of such written request.

If the undersigned shall make any such Additional Payment, the undersigned will promptly furnish each holder receiving such Additional Payment an official receipt issued by the relevant taxation or other authorities involved for all amounts deducted or withheld as aforesaid.

By acceptance of the benefits hereof, each holder agrees to use its best efforts to comply (after a reasonable period to respond) with a written request of the undersigned delivered to such

holder to provide information (other than any confidential or proprietary information) concerning the nationality, residence or identity of such holder, and to make such declaration or other similar claim or reporting requirement regarding such information (copies of the forms of which declaration, claim or reporting requirement shall have been provided to such holder by the undersigned), that is required by a statute, treaty or regulation of the Taxing Jurisdiction as a precondition to exemption from all or part of any Related Tax. The undersigned agrees to reimburse each holder for such holder's reasonable out-of-pocket expenses, if any, incurred in complying with any such request of such Person.

If the undersigned makes an Additional Payment under this Section 16 for the account of any Person and such Person is entitled to a refund of any portion of the tax (a "**Tax Refund**"), to which such payment is attributable, and such Tax Refund may be obtained by filing one or more Forms, then such Person shall after receiving a written request therefore from the Issuer or the undersigned (which request shall specify in reasonable detail the Forms to be flied), file such Forms. If such Person subsequently receives such a Tax Refund, and such Person is readily able to identify the Tax Refund as being attributable to the tax with respect to which an Additional Payment was made, then such Person shall reimburse the undersigned such amount as such Person shall determine acting in good faith to be the proportion of the Tax Refund, together with any interest received thereon, attributable to such Additional Payment as will leave such Person after the reimbursement (including such interest) in no better or worse position than it would have been if the Additional Payment had not been required. Nothing in this paragraph shall obligate any holder to disclose any information regarding its tax affairs or computations to the undersigned.

17. Jurisdiction; Service of Process. THE UNDERSIGNED HEREBY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS GUARANTEE, OR ANY ACTION OR PROCEEDING TO EXECUTE OR OTHERWISE ENFORCE ANY JUDGMENT IN RESPECT OF ANY BREACH HEREUNDER, BROUGHT BY ANY HOLDER AGAINST THE UNDERSIGNED OR ANY OF ITS PROPERTIES, MAY BE BROUGHT BY SUCH HOLDER IN THE COURTS OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK OR ANY NEW YORK STATE COURT SITTING IN NEW YORK COUNTY, AS SUCH HOLDER MAY IN ITS SOLE DISCRETION ELECT, AND BY THE EXECUTION AND DELIVERY OF THIS GUARANTEE THE UNDERSIGNED IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF EACH SUCH COURT AND AGREES THAT PROCESS SERVED EITHER PERSONALLY OR BY REGISTERED MAIL ON THE UNDERSIGNED OR A DESIGNATED AGENT OF THE UNDERSIGNED SHALL CONSTITUTE, TO THE EXTENT PERMITTED BY LAW, ADEQUATE SERVICE OF PROCESS IN ANY SUCH SUIT, AND THE UNDERSIGNED IRREVOCABLY WAIVES AND AGREES NOT TO ASSERT, BY WAY OF MOTION, AS A DEFENSE OR OTHERWISE, ANY CLAIM THAT IT IS NOT SUBJECT TO THE JURISDICTION OF ANY SUCH COURT. RECEIPT OF PROCESS SO SERVED SHALL BE CONCLUSIVELY PRESUMED AS EVIDENCED BY A DELIVERY RECEIPT FURNISHED BY THE UNITED STATES POSTAL SERVICE OR ANY COMMERCIAL DELIVERY SERVICE. WITHOUT LIMITING THE FOREGOING, THE UNDERSIGNED HEREBY APPOINTS, IN THE CASE OF ANY SUCH ACTION OR PROCEEDING BROUGHT IN THE COURTS OF OR IN THE STATE OF NEW YORK, CT

CORPORATION SYSTEM, 111 EIGHTH AVENUE, NEW YORK, NEW YORK 10011, TO RECEIVE, FOR IT AND ON ITS BEHALF, SERVICE OF PROCESS IN THE STATE OF NEW YORK WITH RESPECT THERETO AT ANY AND ALL TIMES. THE UNDERSIGNED WILL TAKE ANY AND ALL ACTION, INCLUDING THE EXECUTION AND FILING OF ALL SUCH DOCUMENTS AND INSTRUMENTS AND TIMELY PAYMENTS OF FEES AND EXPENSES, AS MAY BE NECESSARY TO EFFECT AND CONTINUE THE APPOINTMENT OF SUCH AGENT IN FULL FORCE AND EFFECT, OR NECESSARY BY REASON OF ANY FACT OR CONDITION RELATING TO SUCH AGENT, TO REPLACE SUCH AGENT (BUT ONLY AFTER HAVING GIVEN NOTICE THEREOF TO EACH HOLDER OF NEW NOTES AND ANY SUCCESSOR AGENT IS REASONABLY ACCEPTABLE TO REQUIRED HOLDERS). THE UNDERSIGNED AGREES THAT SERVICE OF PROCESS UPON SUCH AGENT SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON THE UNDERSIGNED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY SUCH COURT. THE UNDERSIGNED IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL CLAIM OR ERROR BY REASON OF ANY SUCH SERVICE IN SUCH MANNER AND AGREES THAT SUCH SERVICE SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON THE UNDERSIGNED IN ANY SUCH SUIT, ACTION OR PROCEEDING AND SHALL, TO THE FULLEST EXTENT PERMITTED BY LAW, BE TAKEN AND HELD TO BE VALID AND PERSONAL SERVICE UPON AND PERSONAL DELIVERY TO THE UNDERSIGNED. IN ADDITION, THE UNDERSIGNED HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE IN ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS GUARANTEE BROUGHT IN SUCH COURTS, AND HEREBY IRREVOCABLY WAIVES ANY CLAIM THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. NOTHING HEREIN SHALL IN ANY WAY BE DEEMED TO LIMIT THE ABILITY OF ANY HOLDER TO SERVE ANY SUCH WRITS, PROCESS OR SUMMONSES IN ANY MANNER PERMITTED BY APPLICABLE LAW OR TO OBTAIN JURISDICTION OVER THE UNDERSIGNED IN SUCH OTHER JURISDICTION, AND IN SUCH MANNER, AS MAY BE PERMITTED BY APPLICABLE LAW. NOTHING IN THIS PARAGRAPH SHALL BE DEEMED TO LIMIT ANY OTHER SUBMISSION TO JURISDICTION, WAIVER OR OTHER AGREEMENT. BY THE UNDERSIGNED CONTAINED IN ANY OTHER NEW NOTE DOCUMENT. TO THE EXTENT THAT THE UNDERSIGNED HAS OR HEREAFTER MAY ACQUIRE ANY IMMUNITY FROM JURISDICTION OF ANY COURT OR FROM ANY LEGAL PROCESS (WHETHER THROUGH SERVICE OR NOTICE, ATTACHMENT PRIOR TO JUDGMENT, ATTACHMENT IN AID OF EXECUTION OR OTHERWISE) WITH RESPECT TO ITSELF OR ITS PROPERTY, THE UNDERSIGNED HEREBY IRREVOCABLY WAIVES SUCH IMMUNITY IN RESPECT OF ITS OBLIGATIONS UNDER THIS GUARANTEE.

IN WITNESS WHEREOF, this Guarantee has been duly executed and delivered as of the day and year first above written.

CEMEX ESPAÑA, S.A.

By: /s/ Héctor José Vela Dib

Name: Héctor José Vela Dib

Title: Attorney-in-Fact

SCHEDULE I
ADDRESSES FOR NOTICES

c/o CEMEX España, S.A.
Hernández de Tejada No. 1
28027 Madrid, Spain
Facsimile number:+ 3491 377-6500
Phone number: + 3491 377-6505
Attention: Francisco Lopez and Francisco Javier Garcia Ruiz de Morales

with a copy to

CEMEX, S.A.B. de C.V.
Ave. Ricardo Margáin Zozaya, n° 325
Col. Valle del Campestre
Garza García NL, 66265
Mexico
Facsimile number: +52 81 8888-4519
Attention: Francisco Contreras

**Exhibit 4.41**

**EXECUTION VERSION**

CEMEX, S.A.B. de C.V.

THE NOTE GUARANTORS PARTY HERETO

AND

COMPUTERSHARE TRUST COMPANY, N.A.,

AS TRUSTEE

9.50% SENIOR SECURED NOTES DUE 2018

INDENTURE

Dated as of September 17, 2012

**TABLE OF CONTENTS**

ARTICLE VII

TRUSTEE



ARTICLE VIII

DEFEASANCE; DISCHARGE OF INDENTURE



ARTICLE IX

AMENDMENTS



ARTICLE X

NOTE GUARANTEES

INDENTURE, dated as of September 17, 2012, among CEMEX, S.A.B. de C.V., a *sociedad anónima bursátil de capital variable* organized under the laws of the United Mexican States (the "Issuer"), the guarantors listed on Schedule I hereto, as guarantors of the Issuer's obligations under this Indenture and the Notes, and Computershare Trust Company, N.A. (the "Trustee"), as trustee.

Each party agrees as follows for the benefit of the other parties and for the equal and ratable benefit of the Holders of the Issuer's 9.50% Senior Secured Notes due 2018 (the "Notes") issued hereunder.

## ARTICLE I

## DEFINITIONS AND INCORPORATION BY REFERENCE

Section 1.1 Definitions.

"Acquired Indebtedness" means Indebtedness of a Person or any of its Subsidiaries existing at the time such Person becomes a Restricted Subsidiary or at the time it merges or consolidates with the Issuer or any of its Restricted Subsidiaries or is assumed in connection with the acquisition of assets from such Person. Such Indebtedness will be deemed to have been Incurred at the time such Person becomes a Restricted Subsidiary or at the time it merges or consolidates with the Issuer or a Restricted Subsidiary or at the time such Indebtedness is assumed in connection with the acquisition of assets from such Person.

"Acquired Subsidiary" means any Subsidiary acquired by the Issuer or any other Subsidiary after the Issue Date in an Acquisition, and any Subsidiaries of such Acquired Subsidiary on the date of such Acquisition.

"Acquiring Subsidiary" means any Subsidiary formed by the Issuer or one of its Subsidiaries solely for the purpose of participating as the acquiring party in any Acquisition, and any Subsidiaries of such Acquiring Subsidiary acquired in such Acquisition.

"Acquisition" means any merger, consolidation, acquisition or lease of assets, acquisition of securities or business combination or acquisition, or any two or more of such transactions, if, upon the completion of such transaction or transactions, the Issuer or any Restricted Subsidiary thereof has acquired an interest in any Person who would be deemed to be a Restricted Subsidiary under this Indenture and was not a Restricted Subsidiary prior thereto.

"Additional Amounts" has the meaning assigned to it in Section 3.21(b).

"Additional Note Certificate" has the meaning assigned to it in Section 2.14(b).

"Additional Note Guarantors" means New Sunward Holding B.V., CEMEX Concretos, S.A. de C.V. and Empresas Tolteca de México, S.A. de C.V.

"Additional Note Supplemental Indenture" means a supplement to this Indenture duly executed and delivered by the Issuer, each Note Guarantor and the Trustee pursuant to Article IX providing for the issuance of Additional Notes.

"Additional Notes" has the meaning assigned to it in Section 2.14(a).

"Affiliate" means, with respect to any specified Person, any other Person who directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, such specified Person. The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise. For purposes of this definition, the terms "controlling," "controlled by" and "under common control with" have correlative meanings.

"Affiliate Transaction" has the meaning assigned to it in Section 3.18(a).

"Agent Members" has the meaning assigned to it in Section 2.7(b).

"Agents" means, collectively, the Registrar, any co-Registrar, the Paying Agents, the Transfer Agent and any other agent appointed by the Issuer hereunder.

"Applicable Procedures" means, with respect to any transfer or exchange of or for beneficial interests in a Global Note, the rules and procedures of DTC, Euroclear and Clearstream, as the case may be, that apply to such transfer or exchange.

"Asset Sale" means any direct or indirect sale, disposition, issuance, conveyance, transfer, lease (other than an operating lease entered into in the ordinary course of business), assignment or other transfer, including a Sale and Leaseback Transaction (each, a "disposition") by the Issuer or any Restricted Subsidiary of:

(a) any Capital Stock other than Capital Stock of the Issuer; or

(b) any property or assets (other than cash, Cash Equivalents or Capital Stock) of the Issuer or any Restricted Subsidiary;

Notwithstanding the preceding, the following will not be deemed to be Asset Sales:

(1) the disposition of all or substantially all of the assets of the Issuer and its Restricted Subsidiaries as permitted under Section 3.12;

(2) any disposition of equipment that is not usable or is obsolete or worn out equipment in the ordinary course of business or any disposition of inventory or goods (or other assets) held for sale or no longer used in the ordinary course of business;

(3) dispositions of assets in any fiscal year with a Fair Market Value not to exceed U.S.$25 million in the aggregate;

(4) for purposes of Section 3.12 only, the making or disposition of a Permitted Investment or Restricted Payment permitted under Section 3.11;

(5) a disposition to the Issuer or a Restricted Subsidiary, including a Person that is or will become a Restricted Subsidiary immediately after the disposition;

(6) the creation of a Lien permitted under this Indenture (other than a deemed Lien in connection with a Sale and Leaseback Transaction);

(7) (i) the disposition of Receivables Assets pursuant to a Qualified Receivables Transaction and (ii) the disposition of other accounts receivable in the ordinary course of business;

(8) the disposition of any asset constituted by a license of intellectual property in the ordinary course of business;

(9) the disposition of inventory pursuant to an Inventory Financing or similar arrangement that is otherwise permitted under this Indenture;

(10) the disposition of any asset compulsorily acquired by a governmental authority; and

(11) sales, transfers and other dispositions of Investments in joint ventures to the extent required by, or made pursuant to, customary buy/sell arrangements between the joint venture parties set forth in joint venture arrangements and similar binding arrangements.

"Asset Sale Offer" has the meaning assigned to it in Section 3.12(c).

"Asset Sale Offer Amount" has the meaning assigned to it in Section 3.12(c).

"Asset Sale Offer Notice" means notice of an Asset Sale Offer made pursuant to Section 3.12, which shall be mailed first class, postage prepaid, to each record Holder as shown on the Note Register within 20 days following the 365th day after the receipt of Net Cash Proceeds of any Asset Sale, with a copy to the Trustee, which notice shall govern the terms of the Asset Sale Offer, and shall state:

(1) the circumstances of the Asset Sale or Sales, the Net Cash Proceeds of which are included in the Asset Sale Offer, that an Asset Sale Offer is being made pursuant to Section 3.12(c), and that all Notes that are timely tendered will be accepted for payment;

(2) the Asset Sale Offer Amount and the Asset Sale Offer Payment Date, which date shall be a Business Day no earlier than 30 days nor later than 60 days from the date the Asset Sale Offer Notice is mailed (other than as may be required by law);

(3) that any Notes or portions thereof not tendered or accepted for payment will continue to accrue interest;

(4) that, unless the Issuer defaults in the payment of the Asset Sale Offer Amount with respect thereto, all Notes or portions thereof accepted for payment pursuant to the Asset Sale Offer shall cease to accrue interest from and after the Asset Sale Offer Payment Date;

(5) that any Holder electing to have any Notes or portions thereof purchased pursuant to the Asset Sale Offer will be required to surrender such Notes, with the form entitled "Option of Holder to Elect Purchase" on the reverse of such Notes completed, to the Paying Agent at the address specified in the notice prior to the close of business on the third Business Day preceding the Asset Sale Offer Payment Date;

(6) that any Holder shall be entitled to withdraw such election if the Paying Agent receives, not later than the close of business on the second Business Day preceding the Asset Sale Offer Payment Date, a facsimile transmission or letter, setting forth the name of the Holder, the principal amount of Notes delivered for purchase, and a statement that such Holder is withdrawing such Holder's election to have such Notes or portions thereof purchased pursuant to the Asset Sale Offer;

(7) that any Holder electing to have Notes purchased pursuant to the Asset Sale Offer must specify the principal amount that is being tendered for purchase, which principal amount must be U.S.$200,000 and in integral multiples of U.S.$1,000 in excess thereof;

(8) that any Holder of Certificated Notes whose Certificated Notes are being purchased only in part will be issued new Certificated Notes equal in principal amount to the unpurchased portion of the Certificated Note or Notes surrendered, which unpurchased portion will be equal in principal amount to U.S.$200,000 and in integral multiples of U.S.$1,000 in excess thereof;

(9) that the Trustee will return to the Holder of a Global Note that is being purchased in part, such Global Note with a notation on the schedule of increases or decreases thereof adjusting the principal amount thereof to be equal to the unpurchased portion of such Global Note; and

(10) any other information necessary to enable any Holder to tender Notes and to have such Notes purchased pursuant to Section 3.12.

"Asset Sale Offer Payment Date" has the meaning assigned to it in Section 3.12(f).

"Authenticating Agent" has the meaning assigned to it in Section 2.2(b).

"Authorized Agent" has the meaning assigned to it in Section 12.7(c).

"Axtel Share Forward Transactions" means (a) the Axtel share forward transaction that is governed by a long form confirmation originally dated January 22, 2009, as replaced by a long form confirmation dated September 28, 2010, as further replaced by a long form confirmation dated March 19, 2012, between Credit Suisse International and Centro Distribuidor de Cemento, S.A. de C.V. (References: External ID: 16059563R4-Risk ID: 10008383); and (b) the Axtel share forward transaction that is governed by a long form confirmation dated March 13, 2009, as replaced by a long form confirmation dated September 22, 2009, as replaced by a long form confirmation dated September 28, 2011, between BBVA Bancomer, S.A., Institución de Banca Múltiple, Grupo Financiero BBVA Bancomer and Centro Distribuidor de Cemento, S.A. de C.V. (Reference: EQS-1428-MX5371953); and, in each case, any replacements, amendments or renewals thereof that are entered into on then prevailing market terms with the underlying amounts not greater than the original underlying amounts.

"Bancomext Facility" means the U.S.$250,000,000 credit agreement ( *Crédito Simple*), dated October 14, 2008, as amended from time to time (*provided* that the principal amount thereof does not increase above the principal amount outstanding as of August 14, 2009 (except by the amount of any capitalized interest if so provided by such facility and on those terms as of August 14, 2009) less the amount of any repayments and prepayments made in respect of such facility), among the Issuer, as borrower, Banco Nacional de Comercio Exterior, S.N.C., as lender, and CEMEX México, as guarantor, and secured by a mortgage of cement plants in Mérida, Yucatán, Mexico and Ensenada, Baja California, Mexico.

"Bankruptcy Event of Default" means:

(1) the entry by a court of competent jurisdiction of: (i) a decree or order for relief in respect of any Bankruptcy Party in an involuntary case or proceeding under any Bankruptcy Law or (ii) a decree or order (A) adjudging any Bankruptcy Party a bankrupt or insolvent, in *concurso mercantil* or *quiebra*, (B) approving as properly filed a petition seeking reorganization, *concurso mercantil*, arrangement, adjustment or composition of, or in respect of, any Bankruptcy Party under any Bankruptcy Law, (C) appointing a Custodian of any Bankruptcy Party or of any substantial part of the property of any Bankruptcy Party, or (D) ordering the winding-up or liquidation of the affairs of any Bankruptcy Party, and in each case, the continuance of any such decree or order for relief or any such other decree or order unstayed and in effect for a period of 60 consecutive calendar days; or

(2) (i) the commencement by any Bankruptcy Party of a voluntary case or proceeding under any Bankruptcy Law or of any other case or proceeding to be adjudicated a bankrupt or insolvent, in *concurso mercantil* or *quiebra*, (ii) the consent by any Bankruptcy Party to the entry of a decree or order for relief in respect of such Bankruptcy Party in an involuntary case or proceeding under any Bankruptcy Law or to the commencement of any bankruptcy or insolvency case or proceeding against any Bankruptcy Party, (iii) the filing by any Bankruptcy Party of a petition or answer or consent seeking reorganization, *concurso mercantil*, or relief under any

Bankruptcy Law, (iv) the consent by any Bankruptcy Party to the filing of such petition or to the appointment of or taking possession by a Custodian of any Bankruptcy Party or of any substantial part of the property of any Bankruptcy Party, (v) the making by any Bankruptcy Party of an assignment for the benefit of creditors, (vi) the admission by any Bankruptcy Party in writing of its inability to pay its debts generally as they become due, or (vii) the approval by stockholders of any Bankruptcy Party of any plan or proposal for the liquidation or dissolution of such Bankruptcy Party, or (viii) the taking of corporate action by any Bankruptcy Party in furtherance of any action referred to in clauses (i) – (vii) above.

"Bankruptcy Law" means Title 11, U.S. Code or any similar Federal, state or non-U.S. law for the relief of debtors, including the Mexican *Ley de Concursos Mercantiles* and Spanish Law 22/2003 of 9 July (*Ley 22/2003 de 9 de julio, Concursal*), as amended.

"Bankruptcy Party" means the Issuer and any Significant Subsidiary of the Issuer or group of Subsidiaries that, taken together would constitute a Significant Subsidiary of the Issuer.

"Banobras Facility" means a revolving loan agreement (*Contrato de Apertura de Crédito en Cuenta Corriente*), dated April 22, 2009, among CEMEX Concretos, S.A. de C.V., as borrower and Banco Nacional de Obras y Servicios Públicos, S.N.C., as lender, as in effect on the Issue Date and as amended from time to time, and secured by a mortgage of Planta Yaqui in Hermosillo, Sonora, Mexico.

"Board of Directors" means, as to any Person, the board of directors, management committee or similar governing body of such Person or any duly authorized committee thereof.

"Business Day" means any day that is not a Saturday, Sunday or other day on which commercial banks in New York, New York, Golden, Colorado (or any other place where the Corporate Trust Office may be located from time to time), Mexico City, Madrid, Amsterdam, London, Paris or Zurich are authorized or required by law, regulation or other governmental action to remain closed.

"Capital Stock" means:

(1) with respect to any Person that is a corporation, any and all shares, interests, participations or other equivalents (however designated and whether or not voting) of corporate stock, including each class of Common Stock and Preferred Stock of such Person;

(2) with respect to any Person that is not a corporation, any and all partnership or other equity or ownership interests of such Person; and

(3) any warrants, rights or options to purchase any of the instruments or interests referred to in clause (1) or (2) above, but excluding any Indebtedness exchangeable into such equity interest in existence on the Issue Date or Incurred pursuant to Section 3.9.

"Capitalized Lease Obligations" means, as to any Person, the obligations of such Person under a lease that are required to be classified and accounted for as capital lease obligations under GAAP. For purposes of the definition, the amount of such obligations at any date will be the capitalized amount of such obligations at such date, determined in accordance with GAAP.

"Cash Equivalents" means:

(1) marketable direct obligations issued by, or unconditionally guaranteed by, the United States government, the United Kingdom or any member nation of the European Union or issued by any agency thereof and backed by the full faith and credit of the United States, the United Kingdom, such member nation of the European Union or any European Union central bank, in each case maturing within one year from the date of acquisition thereof;

(2) marketable direct obligations issued by the Mexican government, or issued by any agency thereof, including but not limited to, *Certificados de la Tesorería de la Federación* (Cetes) or *Bonos de Desarrollo del Gobierno Federal* (Bondes), in each case, issued by the government of Mexico and maturing not later than one year after the acquisition thereof;

(3) marketable direct obligations issued by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof maturing within one year from the date of acquisition thereof and, at the time of acquisition, having one of the two highest ratings obtainable from either S&P or Fitch or any successor thereto;

(4) commercial paper or corporate debt obligations maturing no more than one year from the date of creation thereof and, at the time of acquisition, having a rating of at least A-1 or AAA from S&P, at least F-1 or AAA from Fitch or P-1 or Aaa from Moody's;

(5) demand deposits, certificates of deposit, time deposits or bankers' acceptances or other short-term unsecured debt obligations (and any cash or deposits in transit in any of the foregoing) maturing within one year from the date of acquisition thereof issued by (a) any bank organized under the laws of the United States of America or any state thereof or the District of Columbia, the United Kingdom or any country of the European Union, (b) any U.S. branch of a non-U.S. bank having at the date of acquisition thereof combined capital and surplus of not less than U.S.$500 million, or (c) in the case of Mexican peso deposits, any financial institution in good standing with Banco de México organized under the laws of Mexico;

(6) repurchase obligations with a term of not more than seven days for underlying securities of the types described in clause (1) and (2) above entered into with any bank meeting the qualifications specified in clause (5) above;

(7) investments in money market funds which invest substantially all of their assets in securities of the types described in clauses (1) through (6), (8) and (9);

(8) certificates of deposit issued by any of Nacional Financiera, S.N.C., Banco Nacional de Comercio Exterior, S.N.C., Banco Nacional de Obras y Servicios Públicos, S.N.C. or any other development bank controlled by the Mexican government;

(9) any other debt instrument rated "investment grade" (or the local equivalent thereof according to local criteria in a country in which the Issuer or a Restricted Subsidiary operates and in which local pensions are permitted by law to invest) with maturities of 12 months or less from the date of acquisition; and

(10) Investments in mutual funds, managed by banks, with a local currency credit rating of at least MxAA by S&P or other equally reputable local rating agency, that invest principally in marketable direct obligations issued by the Mexican Government, or issued by any agency or instrumentality thereof.

In the case of Investments by any Restricted Subsidiary, Cash Equivalents will also include (a) investments of the type and maturity described in clauses (1) through (10) of any Restricted Subsidiary outside of Mexico in the country in which such Restricted Subsidiary operates, which Investments or obligors (or the parents of such obligors) have ratings described in such clauses or equivalents ratings from comparable foreign rating agencies, (b) local currencies and other short-term investments utilized by Restricted Subsidiaries in accordance with normal investment practices for cash management in investments analogous to the foregoing investments in clauses (1) through (10) and in this paragraph and (c) investments of the type described in clauses (1) through (9) maturing within one year of the Issue Date.

"CEMEX España" means CEMEX España, S.A. and its successors and assigns.

"CEMEX México" means CEMEX México, S.A. de C.V. and its successors and assigns.

"Certificados Bursátiles" means debt securities issued by the Issuer guaranteed (por aval) by CEMEX México and Empresas Tolteca de México, S.A. de C.V. in the Mexican capital markets with the approval of the Mexican National Banking and Securities Commission ( *Comisión Nacional Bancaria y de Valores*) and listed on the Mexican Stock Exchange ( *Bolsa Mexicana de Valores, S.A.B. de C.V.*).

"Certificated Note" means any Note issued in fully registered form, other than a Global Note, which shall be substantially in the form of Exhibit A hereto, with appropriate legends as specified in Section 2.8 and Exhibit A.

"Change of Control" means the beneficial ownership (within the meaning of Rule 13d-3 promulgated by the Commission under the Exchange Act) of twenty percent (20%) or more in voting power of the outstanding Voting Stock of the Issuer is acquired by any Person; *provided* that the acquisition of beneficial ownership of Capital Stock of the Issuer by Lorenzo H. Zambrano or any member of his immediate family shall not constitute a Change of Control.

"Change of Control Notice" means notice of a Change of Control Offer made pursuant to Section 3.8, which shall be mailed first-class, postage prepaid, to each record Holder as shown on the Note Register within 30 days following the date upon which a Change of Control occurred, with a copy to the Trustee, which notice shall govern the terms of the Change of Control Offer and shall state:

(1) that a Change of Control has occurred, the circumstances or events causing such Change of Control and that a Change of Control Offer is being made pursuant to Section 3.8, and that all Notes that are timely tendered will be accepted for payment;

(2) the Change of Control Payment, and the Change of Control Payment Date, which date shall be a Business Day no earlier than 30 calendar days nor later than 60 calendar days subsequent to the date such notice is mailed (other than as may be required by law);

(3) that any Notes or portions thereof not tendered or accepted for payment will continue to accrue interest;

(4) that, unless the Issuer defaults in the payment of the Change of Control Payment with respect thereto, all Notes or portions thereof accepted for payment pursuant to the Change of Control Offer shall cease to accrue interest from and after the Change of Control Payment Date;

(5) that any Holder electing to have any Notes or portions thereof purchased pursuant to a Change of Control Offer will be required to tender such Notes, with the form entitled "Option of Holder to Elect Purchase" on the reverse of such Notes completed, to the Paying Agent at the address specified in the notice prior to the close of business on the third Business Day preceding the Change of Control Payment Date;

(6) that any Holder shall be entitled to withdraw such election if the Paying Agent receives, not later than the close of business on the second Business Day preceding the Change of Control Payment Date, a facsimile transmission or letter, setting forth the name of the Holder, the principal

amount of Notes delivered for purchase, and a statement that such Holder is withdrawing such Holder's election to have such Notes or portions thereof purchased pursuant to the Change of Control Offer;

(7) that any Holder electing to have Notes purchased pursuant to the Change of Control Offer must specify the principal amount that is being tendered for purchase, which principal amount must be U.S.$200,000 and in integral multiples of U.S.$1,000 in excess thereof;

(8) that any Holder of Certificated Notes whose Certificated Notes are being purchased only in part will be issued new Certificated Notes equal in principal amount to the unpurchased portion of the Certificated Note or Notes surrendered, which unpurchased portion will be equal in principal amount to U.S.$200,000 and in integral multiples of U.S.$1,000 in excess thereof;

(9) that the Trustee will return to the Holder of a Global Note that is being purchased in part, such Global Note with a notation on Schedule A thereof adjusting the principal amount thereof to be equal to the unpurchased portion of such Global Note; and

(10) any other information necessary to enable any Holder to tender Notes and to have such Notes purchased pursuant to Section 3.8(b).

"Change of Control Offer" has the meaning assigned to it in Section 3.8(b).

"Change of Control Payment" has the meaning assigned to it in Section 3.8(a).

"Change of Control Payment Date" has the meaning assigned to it in Section 3.8(b).

"Clearstream" means Clearstream Banking, *société anonyme*, or the successor to its securities clearance and settlement operations.

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

"Collateral" means "Transaction Security" as defined in the Intercreditor Agreement from time to time.

"Commission" means the U.S. Securities and Exchange Commission.

"Commodity Price Purchase Agreement" means, in respect of any Person, any forward contract, commodity swap agreement, commodity option agreement or other similar agreement or arrangement designed to protect such Person from fluctuations in commodity prices.

"Common Stock" of any Person means any and all shares, interests or other participations in, and other equivalents (however designated and whether voting or non-voting)

of such Person's common equity interests, whether outstanding on the Issue Date or issued after the Issue Date, and includes, without limitation, all series and classes of such common equity interests.

"Compensation Related Hedging Obligations" means (i) the obligations of any Person pursuant to any equity option contract, equity forward contract, equity swap, warrant, rights or other similar agreement designed to hedge risks or obligations relating to employee, director or consultant compensation, pension, benefits or similar activities of the Issuer and/or any of its Subsidiaries and (ii) the obligations of any Person pursuant to any agreement that requires another Person to make payments or deliveries that are otherwise required to be made by the first Person relating to employee, director or consultant compensation, pension, benefits or similar activities of the Issuer and/or any of its Subsidiaries, in each case in the ordinary course of business.

"Consolidated EBITDA" means, for any Person for any period, Consolidated Net Income for such Person for such period, plus the following, without duplication, to the extent deducted or added in calculating such Consolidated Net Income:

(1) Consolidated Income Tax Expense for such Person for such period;

(2) Consolidated Interest Expense for such Person for such period net of consolidated interest income for such period;

(3) Consolidated Non-cash Charges for such Person for such period;

(4) the amount of any nonrecurring restructuring charge or reserve deducted in such period in computing Consolidated Net Income;

(5) the net effect on income or loss in respect of Hedging Obligations or other derivative instruments, which shall include, for the avoidance of doubt, all amounts not excluded from Consolidated Net Income pursuant to the proviso in clause (9) thereof; and

(6) net income of such Person attributable to minority interests in Subsidiaries of such Person.

*less* (x) all non-cash credits and gains increasing Consolidated Net Income for such Person for such period and (y) all cash payments made by such Person and its Restricted Subsidiaries during such period relating to Consolidated Non-cash Charges that were added back in determining Consolidated EBITDA in any prior period.

"Consolidated Fixed Charge Coverage Ratio" means, for any Person as of any date of determination (the "Fixed Charge Calculation Date"), the ratio of the aggregate amount of Consolidated EBITDA of such Person for the four most recent full fiscal quarters for which financial statements are available ending prior to the date of such determination (the "Four Quarter Period") to Consolidated Fixed Charges for such Person for such Four Quarter Period. For purposes of making the computation referred to above, Material Acquisitions and Material Dispositions (as determined in accordance with GAAP) that have been made by the Issuer or any

of its Restricted Subsidiaries during the Four Quarter Period or subsequent to such Four Quarter Period and on or prior to or simultaneously with the Fixed Charge Calculation Date shall be calculated on a *pro forma* basis assuming that all such Material Acquisitions and Material Dispositions (and the change in any associated fixed charge obligations and the change in Consolidated EBITDA resulting therefrom) had occurred on the first day of the Four Quarter Period. If since the beginning of such period any Person that subsequently became a Restricted Subsidiary or was merged with or into the Issuer or any of its Restricted Subsidiaries since the beginning of such period shall have made any Material Acquisition or Material Disposition that would have required adjustment pursuant to this definition, then the Consolidated Fixed Charge Coverage Ratio shall be calculated giving *pro forma* effect thereto.

For purposes of this definition, whenever *pro forma* effect is to be given to a Material Acquisition or Material Disposition and the amount of income or earnings relating thereto or with respect to other *pro forma* calculations under this definition, such *pro forma* calculations shall be made in good faith by a responsible financial or accounting officer of the Issuer. If any Indebtedness bears a floating rate of interest and is being given *pro forma* effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the Fixed Charge Calculation Date had been the applicable rate for the entire period (taking into account any Hedging Obligations applicable to such Indebtedness). Interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by a responsible financial or accounting officer of the Issuer to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP. For purposes of making the computation referred to above, interest on any Indebtedness under a revolving credit facility computed on a *pro forma* basis shall be computed based upon the average daily balance of such Indebtedness during the applicable period except as set forth in the first paragraph of this definition. Interest on Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a eurocurrency interbank offered rate, or other rate, shall be deemed to have been based upon the rate actually chosen, or, if none, then based upon such optional rate chosen as the Issuer may designate.

Furthermore, in calculating "Consolidated Fixed Charges" for purposes of determining the denominator (but not the numerator) of this "Consolidated Fixed Charge Coverage Ratio,"

(a) interest on outstanding Indebtedness determined on a fluctuating basis as of the date of determination and which will continue to be so determined thereafter will be deemed to have accrued at a fixed rate per annum equal to the rate of interest on such Indebtedness in effect on such date of determination;

(b) if interest on any Indebtedness actually Incurred on such date of determination may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a eurocurrency interbank offered rate, or other rates, then the interest rate in effect on such date of determination will be deemed to have been in effect during the Four Quarter Period; and

(c) notwithstanding clause (a) above, interest on Indebtedness determined on a fluctuating basis, to the extent such interest is covered by Hedging Obligations, will be deemed to accrue at the rate per annum resulting after giving effect to the operation of such agreements.

"Consolidated Fixed Charges" means, for any Person for any period, the sum, without duplication, of:

(1) Consolidated Interest Expense for such Person for such period, plus

(2) to the extent not included in (1) above, payments during such period in respect of the financing costs of financial derivatives in the form of equity swaps, plus

(3) the product of:

(a) the amount of all cash and non-cash dividend payments on any series of Preferred Stock or Disqualified Capital Stock of such Person (other than dividends paid in Qualified Capital Stock) or any Subsidiary of such Person (Restricted Subsidiary in the case of the Issuer) paid, accrued or scheduled to be paid or accrued during such period, excluding dividend payments on Preferred Stock or Disqualified Capital Stock paid, accrued or scheduled to be paid to such Person or another Subsidiary (Restricted Subsidiary in the case of the Issuer), times

(b) a fraction, the numerator of which is one and the denominator of which is one minus the then current effective tax rate of such Person in its principal taxpaying jurisdiction (Mexico, in the case of the Issuer), expressed as a decimal.

"Consolidated Income Tax Expense" means, with respect to any Person for any period, the provision for federal, state and local income and asset taxes payable, including current and deferred taxes, by such Person and its Subsidiaries (Restricted Subsidiaries in the case of the Issuer) for such period as determined on a consolidated basis in accordance with GAAP.

"Consolidated Interest Expense" means, for any Person for any period, the sum of, without duplication determined on a consolidated basis in accordance with GAAP:

(1) the aggregate of cash and non-cash interest expense of such Person and its Subsidiaries (Restricted Subsidiaries in the case of the Issuer) for such period determined on a consolidated basis in accordance with GAAP, including, without limitation the following for such Person and its Subsidiaries (Restricted Subsidiaries in the case of the Issuer) whether or not interest expense in accordance with GAAP:

(a) any amortization or accretion of debt discount or any interest paid on Indebtedness of such Person and its Subsidiaries (Restricted Subsidiaries in the case of the Issuer) in the form of additional Indebtedness,

(b) any amortization of deferred financing costs; *provided* that any such amortization resulting from costs incurred prior to the Issue Date shall be excluded for the calculation of Consolidated Interest Expense,

(c) the net costs under Hedging Obligations relating to Indebtedness (including amortization of fees but excluding foreign exchange adjustments on the notional amounts of the Hedging Obligations),

(d) all capitalized interest,

(e) the interest portion of any deferred payment obligation,

(f) commissions, discounts and other fees and charges Incurred in respect of letters of credit or bankers' acceptances or in connection with sales or other dispositions of accounts receivable and related assets,

(g) any interest expense on Indebtedness of another Person that is Guaranteed by such Person or one of its Subsidiaries (Restricted Subsidiary in the case of the Issuer) or secured by a Lien on the assets of such Person or one of its Subsidiaries (Restricted Subsidiaries in the case of the Issuer), whether or not such Guarantee or Lien is called upon, and

(h) any interest accrued in respect of Indebtedness without a maturity date; and

(2) the interest component of Capitalized Lease Obligations paid, accrued and/or scheduled to be paid or accrued by such Person and its Subsidiaries (Restricted Subsidiaries in the case of the Issuer) during such period.

"Consolidated Net Income" means, with respect to any Person for any period, the aggregate net income (or loss) of such Person and its Subsidiaries for such period on a consolidated basis (after deducting (i) the portion of such net income attributable to minority interests in Subsidiaries of such Person and (ii) any interest paid or accrued in respect of Indebtedness without a maturity date), determined in accordance with GAAP; *provided*, that there shall be excluded therefrom:

(1) net after-tax gains and losses from Asset Sale transactions or abandonments or reserves relating thereto;

(2) net after-tax items classified as extraordinary gains or losses;

(3) the net income (but not loss) of any Subsidiary of such Person (non-guarantor Subsidiary in the case of the Issuer) to the extent that a corresponding amount could not be distributed to such Person at the date of determination as a result of any restriction pursuant to the constituent documents of such Subsidiary (non-guarantor Subsidiary in the case of the Issuer) or any law, regulation, agreement or judgment applicable to any such distribution;

(4) any net income (loss) of any Person (other than the Issuer) if such Person is not a Restricted Subsidiary, except that the Issuer's equity in the net income of any such Person for such period shall be included in such Consolidated Net Income up to the aggregate amount of cash distributed by such Person during such period to the Issuer or a Restricted Subsidiary as a dividend or other distribution (subject, in the case of a dividend or other distribution to a Restricted Subsidiary, to the limitations contained in this clause);

(5) [Reserved];

(6) any restoration to income of any contingency reserve, except to the extent that provision for such reserve was made out of Consolidated Net Income accrued at any time following the Issue Date;

(7) any gain (or loss) from foreign exchange translation or change in net monetary position;

(8) any gain (or loss) from the cumulative effect of changes in accounting principles; and

(9) any net gain or loss (after any offset) resulting in such period from Hedging Obligations or other derivative instruments; *provided* that the net effect on income or loss (including in any prior periods) shall be included upon any termination or early extinguishment of such Hedging Obligations or other derivative instrument, other than any Hedging Obligations with respect to Indebtedness (that is not itself a Hedging Obligation) and that are extinguished concurrently with the termination or other prepayment of such Indebtedness.

"Consolidated Non-cash Charges" means, for any Person for any period, the aggregate depreciation, amortization (including amortization of goodwill and other Intangible Assets) and other non-cash expenses or losses of such Person and its Subsidiaries (Restricted Subsidiaries in the case of the Issuer) for such period, determined on a consolidated basis in accordance with GAAP (excluding any such charge which constitutes an accrual of or a reserve for cash charges for any future period or the amortization of a prepaid cash expense paid in a prior period).

"Consolidated Tangible Assets" means, for any Person at any time, the total consolidated assets of such Person and its Subsidiaries (Restricted Subsidiaries in the case of the Issuer) as set forth on the balance sheet as of the most recent fiscal quarter of such Person, prepared in accordance with GAAP, less Intangible Assets.

"Corporate Trust Office" means the principal office of the Trustee at which at any time its corporate trust business shall be administered, which office at the date hereof is located at 350 Indiana St., Suite 750, Golden, Colorado 80401, or such other address as the Trustee may designate from time to time by notice to the Holders and the Issuer.

"Covenant Defeasance" has the meaning assigned to it in Section 8.1(c).

"Covenant Suspension Event" has the meaning assigned to it in Section 3.22(b).

"Currency Agreement" means, in respect of any Person, any foreign exchange contract, currency swap agreement or other similar agreement as to which such Person is a party designed to hedge foreign currency risk of such Person.

"Custodian" means any receiver, trustee, *conciliador*, assignee, liquidator, sequestrator or similar official under any Bankruptcy Law.

"Default" means an event or condition the occurrence of which is, or with the lapse of time or the giving of notice or both would be, an Event of Default.

"Defaulted Interest" has the meaning assigned to it in Section 2.13 and Section 1, paragraph 2 of the Form of Reverse Side of Note contained in Exhibit A hereto.

"Designated Non-cash Consideration" means the Fair Market Value of non-cash consideration received by the Issuer or a Restricted Subsidiary in connection with an Asset Sale that is so designated as Designated Non-cash Consideration pursuant to an Officer's Certificate setting forth the basis of such valuation.

"Designation" has the meaning assigned to it in Section 3.14(a).

"Designation Amount" has the meaning assigned to it in clause (iii) of Section 3.14(a).

"Disposition" means, with respect to any property, any sale, lease, Sale and Leaseback Transaction, assignment, conveyance, transfer or other disposition thereof.

"Disqualified Capital Stock" means that portion of any Capital Stock which, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable at the option of the Holder thereof), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is redeemable at the sole option of the Holder thereof, in any case, on or prior to the 91st day after the final maturity date of the Notes, but excluding with respect to Mexican companies, any shares of such Mexican company that are part of the variable portion of its Capital Stock and that are redeemable under the Mexican General Law of Business Corporations ( *Ley General de Sociedades Mercantiles* ).

"Distribution Compliance Period" means, in respect of any Regulation S Global Note (or Certificated Note issued in respect thereof pursuant to Section 2.7(c)), the 40 consecutive days beginning on and including the later of (a) the day on which any Notes represented thereby are offered to persons other than distributors (as defined in Regulation S) pursuant to Regulation S or (b) the issue date for such Notes.

"DTC" means The Depository Trust Company, its nominees and their respective successors and assigns, or such other depositary institution hereinafter appointed by the Issuer that is a clearing agency registered under the Exchange Act.

"Equity Offering" has the meaning assigned to it in Section 5 of the Form of Reverse Side of Note contained in Exhibit A hereto.

"Euroclear" means Euroclear Bank S.A./N.V., as operator of the Euroclear System, N.V., or its successor in such capacity.

"Event of Default" has the meaning assigned to it in Section 6.1(a).

"Exchange Act" means the Securities Exchange Act of 1934, as amended, or any successor statute or statutes thereto.

"Existing Senior Notes" means the U.S. Dollar-denominated 9.50% Senior Secured Notes due 2016 guaranteed by the Issuer, the Euro-denominated 9.625% Senior Secured Notes due 2017 guaranteed by the Issuer, the U.S. Dollar-denominated 9.25% Senior Secured Notes due 2020 guaranteed by the Issuer, the Euro-denominated 8.875% Senior Secured Notes due 2017 guaranteed by the Issuer, the U.S. Dollar-denominated 9.000% Senior Secured Notes due 2018 issued by the Issuer, the U.S. Dollar-denominated Floating Rate Senior Secured Notes due 2015 issued by the Issuer and the U.S. Dollar-denominated 9.875% Senior Secured Notes due 2019 and Euro-denominated 9.875% Senior Secured Notes due 2019 guaranteed by the Issuer.

"Fair Market Value" means, with respect to any asset, the price (after taking into account any liabilities relating to such assets) which could be negotiated in an arm's-length free market transaction, for cash, between a willing seller and a willing and able buyer, neither of which is under any compulsion to complete the transaction. Fair Market Value shall be determined, except as otherwise provided, by the Issuer in good faith.

"Financing Agreement" means the financing agreement, dated as of August 14, 2009, entered into among the Issuer and certain of its Subsidiaries, the financial institutions and noteholders party thereto, Citibank International PLC, as administrative agent, and Wilmington Trust (London) Limited, as security agent, as such agreement may be amended, modified or waived from time to time.

"Financing Agreement Indebtedness" means the Indebtedness that is subject to and outstanding under the Financing Agreement.

"Fitch" means Fitch Ratings and any successor to its rating agency business.

"Four Quarter Period" has the meaning assigned to it in the definition of "Consolidated Fixed Charge Coverage Ratio" above.

"French Note Guarantor" has the meaning assigned to it in Section 10.5(a).

"GAAP" means IFRS as in effect as of the date hereof.

"Global Note" means any Note issued in fully registered form to DTC (or its nominee), as depositary for the beneficial owners thereof, which shall be substantially in the form of Exhibit A, with appropriate legends as specified in Section 2.8 and Exhibit A hereto.

"Guarantee" means any obligation, contingent or otherwise, of any Person directly or indirectly guaranteeing any Indebtedness of any other Person:

(1) to purchase or pay, or advance or supply funds for the purchase or payment of, such Indebtedness of such other Person, whether arising by virtue of partnership arrangements, or by agreement to keep-well, to purchase assets, goods, securities or services, to take-or-pay, or to maintain financial statement conditions or otherwise, or

(2) entered into for purposes of assuring in any other manner the obligee of such Indebtedness of the payment thereof or to protect such obligee against loss in respect thereof, in whole or in part,

*provided* that "Guarantee" will not include endorsements for collection or deposit in the ordinary course of business. "Guarantee" used as a verb has a corresponding meaning.

"Guaranteed Obligations" has the meaning assigned to it in Section 10.1(a).

"Hedging Obligations" means the obligations of any Person pursuant to any Interest Rate Agreement, Currency Agreement, Commodity Price Purchase Agreement or any Transportation Agreement, in each case, not entered into for speculative purposes.

"Holder" means the Person in whose name a Note is registered in the Note Register.

"IFRS" means the International Financial Reporting Standards as issued by the International Accounting Standards Board.

"Incur" means, with respect to any Indebtedness or other obligation of any Person, to create, issue, incur (including by conversion, exchange or otherwise), assume, Guarantee or otherwise become liable in respect of such Indebtedness or other obligation on the balance sheet of such Person (and "Incurrence," "Incurred" and "Incurring" will have meanings correlative to the preceding).

"Indebtedness" means with respect to any Person, without duplication:

(1) the principal amount (or, if less, the accreted value) of all obligations of such Person for borrowed money;

(2) the principal amount (or, if less, the accreted value) of all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, including any perpetual bonds, debenture notes or similar instruments without regard to maturity date;

(3) all Capitalized Lease Obligations of such Person;

(4) all obligations of such Person issued or assumed as the deferred purchase price of property, all conditional sale obligations and all payment obligations under any title retention agreement (but excluding trade accounts payable and other accrued liabilities accounted for as current liabilities (in accordance with GAAP) arising in the ordinary course of business) to the extent of any reimbursement obligations in respect thereof;

(5) reimbursement obligations with respect to letters of credit, banker's acceptances or similar credit transactions;

(6) Guarantees and other contingent obligations of such Person in respect of Indebtedness referred to in clauses (1) through (5) above and clauses (8) through (10) below;

(7) all Indebtedness of any other Person of the type referred to in clauses (1) through (6) which is secured by any Lien on any property or asset of the first Person, the amount of such Indebtedness being deemed to be the lesser of the Fair Market Value of such property or asset or the amount of the Indebtedness so secured;

(8) all obligations under Hedging Obligations or other derivatives of such Person;

(9) all liabilities (contingent or otherwise) of such Person in connection with a sale or other disposition of accounts receivable and related assets (not including Qualified Receivables Transactions), irrespective of their treatment under GAAP or IFRS; and

(10) all Disqualified Capital Stock issued by such Person with the amount of Indebtedness represented by such Disqualified Capital Stock being equal to the greater of its voluntary or involuntary liquidation preference and its maximum fixed repurchase price, but excluding accrued dividends, if any; *provided* that:

(a) if the Disqualified Capital Stock does not have a fixed repurchase price, such maximum fixed repurchase price will be calculated in accordance with the terms of the Disqualified Capital Stock as if the Disqualified Capital Stock were purchased on any date on which Indebtedness will be required to be determined pursuant to this Indenture, and

(b) if the maximum fixed repurchase price is based upon, or measured by, the fair market value of the Disqualified Capital Stock, the fair market value will be the Fair Market Value thereof.

"Indenture" means this Indenture, as amended or supplemented from time to time, including the Schedule and Exhibits hereto.

"Intangible Assets" means with respect to any Person all unamortized debt discount and expense, unamortized deferred charges, goodwill, patents, trademarks, service marks, trade names, copyrights and all other items which would be treated as intangibles on the consolidated balance sheet of such Person prepared in accordance with GAAP.

"Intercreditor Agreement" means the intercreditor agreement, dated as of September 17, 2012, entered into among the Issuer and certain of its Subsidiaries, the financial institutions and noteholders party thereto, Citibank International PLC, as facility agent, and the Security Agent, as such agreement may be amended from time to time.

"Interest Payment Date" means the stated due date of an installment of interest on the Notes as specified in the Form of Face of Note contained in Exhibit A hereto.

"Interest Rate Agreement" of any Person means any interest rate protection agreement (including, without limitation, interest rate swaps, caps, floors, collars, derivative instruments and similar agreements) and/or other types of hedging agreements designed to hedge interest rate risk of such Person.

"Inventory Financing" means a financing arrangement pursuant to which the Issuer or any of its Restricted Subsidiaries sells inventory to a bank or other institution (or a special purpose vehicle or partnership incorporated or established by or on behalf of such bank or other institution or an Affiliate of such bank or other institution) and has an obligation to repurchase such inventory to the extent that it is not sold to a third party within a specified period.

"Investment" means, with respect to any Person, any (1) direct or indirect loan, advance or other extension of credit (including, without limitation, a Guarantee) to any other Person, (2) capital contribution (by means of any transfer of cash or other property to others or any payment for property or services for the account or use of others) to any other Person, or (3) purchase or acquisition by such Person of any Capital Stock, bonds, notes, debentures or other securities or evidences of Indebtedness issued by any other Person. "Investment" will exclude accounts receivable, extensions of credit in connection with supplier or customer financings consistent with industry or past practice, advance payment of capital expenditures arising in the ordinary course of business, deposits arising in the ordinary course of business and transactions (other than (i) any sale, lease, license, transfer or other disposal and (ii) the granting or creation of a Lien or the Incurring or permitting to subsist of Indebtedness) conducted in the ordinary course of business on arm's-length terms.

For purposes of Section 3.11, the Issuer will be deemed to have made an "Investment" in an Unrestricted Subsidiary at the time of its Designation, which will be valued at the Fair Market Value of the sum of the net assets of such Unrestricted Subsidiary multiplied by the percentage equity ownership of the Issuer and its Restricted Subsidiaries in such designated Unrestricted Subsidiary at the time of its Designation and the amount of any Indebtedness of such Unrestricted Subsidiary or owed to the Issuer or any Restricted Subsidiary immediately following such Designation. Any property transferred to or from an Unrestricted Subsidiary will be valued at its Fair Market Value at the time of such transfer. If the Issuer or any Restricted Subsidiary sells or otherwise disposes of any Capital Stock of a Restricted Subsidiary (including any issuance and sale of Capital Stock by a Restricted Subsidiary) such that, after giving effect to any such sale or disposition, such Restricted Subsidiary would cease to be a Subsidiary of the Issuer, the Issuer will be deemed to have made an Investment on the date of any such sale or disposition equal to sum of the Fair Market Value of the Capital Stock of such former Restricted Subsidiary held by the Issuer or any Restricted Subsidiary immediately following such sale or other disposition and the amount of any Indebtedness of such former Restricted Subsidiary Guaranteed by the Issuer or any Restricted Subsidiary or owed to the Issuer or any other Restricted Subsidiary immediately following such sale or other disposition. The acquisition by the Issuer or any Restricted Subsidiary of the Issuer of a Person that holds an Investment in a third Person will be deemed to be an Investment by the Issuer or such Restricted Subsidiary in such third Person in an amount equal to the Fair Market Value of the Investments held by the acquired Person in such third Person. Except as otherwise provided in this Indenture, the amount of an Investment will be determined at the time the Investment is made without giving effect to subsequent changes in value.

"Investment Grade Rating" means a rating equal to or higher than BBB- (or the equivalent) by Fitch, Baa3 (or the equivalent) by Moody's and BBB- (or the equivalent) by S&P.

"Investment Return" means, in respect of any Investment (other than a Permitted Investment) made after the Issue Date by the Issuer or any Restricted Subsidiary:

(1) the cash proceeds received by the Issuer upon the sale, liquidation or repayment of such Investment or, in the case of a Guarantee, the amount of the Guarantee upon the unconditional release of the Issuer and its Restricted Subsidiaries in full, less any payments previously made by the Issuer or any Restricted Subsidiary in respect of such Guarantee;

(2) in the case of the Revocation of the Designation of an Unrestricted Subsidiary, an amount equal to the lesser of:

  (a) the Issuer's Investment in such Unrestricted Subsidiary at the time of such Revocation;

  (b) that portion of the Fair Market Value of the net assets of such Unrestricted Subsidiary at the time of Revocation that is proportionate to the Issuer's equity interest in such Unrestricted Subsidiary at the time of Revocation; and

(c) the Designation Amount with respect to such Unrestricted Subsidiary upon its Designation which was treated as a Restricted Payment;

(3) in the event the Issuer or any Restricted Subsidiary makes any Investment in a Person that, as a result of or in connection with such Investment, becomes a Restricted Subsidiary, the existing Investment of the Issuer and its Restricted Subsidiaries in such Person,

in the case of each of (1), (2) and (3), up to the amount of such Investment that was treated as a Restricted Payment under Section 3.11 less the amount of any previous Investment Return in respect of such Investment.

"Issue Date" means the first date of issuance of the Notes under this Indenture and following a Partial Covenant Suspension Event or a Covenant Suspension Event, except under "*Optional Redemption for Changes in Withholding Taxes*" under clause (5) in Exhibit A hereto, Section 3.22 and the definition of "Permitted Liens," the most recent Partial Covenant Reversion Date or Reversion Date, as applicable.

"Issue Date Global Notes" has the meaning assigned to it in Section 2.2(e).

"Issue Date Notes" means the U.S.$500 million aggregate principal amount of Notes originally issued on the Issue Date, and any replacement Notes issued therefor in accordance with this Indenture.

"Issuer" means the party named as such in the introductory paragraph to this Indenture and its successors and assigns.

"Issuer Order" has the meaning assigned to it in Section 2.2(c).

"Legal Defeasance" has the meaning assigned to it in Section 8.1(b).

"Legal Holiday" has the meaning assigned to it in Section 12.6.

"Lien" means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such asset. The Issuer or any Restricted Subsidiary shall be deemed to own, subject to a Lien, any asset that it has acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement, Capitalized Lease Obligations or other title retention lease relating to such asset, or any account receivable transferred by it with recourse (including any such transfer subject to a holdback or similar arrangement that effectively imposes the risk of collectability on the transferor).

"Material Acquisition" means:

(1) an Investment by the Issuer or any Restricted Subsidiary in any other Person pursuant to which such Person will become a Restricted Subsidiary, or will be merged with or into the Issuer or any Restricted Subsidiary;

(2) the acquisition by the Issuer or any Restricted Subsidiary of the assets of any Person (other than a Subsidiary of the Issuer) which constitute all or substantially all of the assets of such Person or comprises any division or line of business of such Person or any other properties or assets of such Person other than in the ordinary course of business; or

(3) any Revocation with respect to an Unrestricted Subsidiary;

in each case which involves an Investment, Designation or payment of consideration in excess of U.S.$25,000,000 (or the equivalent in other currencies).

"Material Disposition" means any Asset Sale and, whether or not constituting an Asset Sale, (1) any sale or other disposition of Capital Stock, (2) any Designation with respect to an Unrestricted Subsidiary and (3) any sale or other disposition of property or assets excluded from the definition of Asset Sale by clause (4) of that definition, in each case which involves an Investment, Designation or payment of consideration in excess of U.S.$25,000,000 (or the equivalent in other currencies).

"Maturity Date" means June 15, 2018.

"Moody's" means Moody's Investors Service, Inc., and any successor to its rating agency business.

"Net Cash Proceeds" means, with respect to any Asset Sale, the proceeds in the form of cash or Cash Equivalents, including payments in respect of deferred payment obligations when received in the form of cash or Cash Equivalents received by the Issuer or any of its Restricted Subsidiaries from such Asset Sale, net of:

(1) reasonable out-of-pocket expenses and fees relating to such Asset Sale (including, without limitation, legal, accounting and investment banking fees and sales commissions);

(2) taxes paid or payable in respect of such Asset Sale after taking into account any reduction in consolidated tax liability due to available tax credits or deductions and any tax sharing arrangements;

(3) repayment of Indebtedness secured by a Lien permitted under this Indenture that is required to be repaid in connection with such Asset Sale; and

(4) appropriate amounts to be provided by the Issuer or any Restricted Subsidiary, as the case may be, as a reserve, in accordance with GAAP, against any liabilities associated with such Asset Sale and retained by the Issuer or any Restricted Subsidiary, as the case may be, after such Asset Sale, including, without limitation, pension and other post-employment benefit liabilities, liabilities related to environmental matters and liabilities under any indemnification obligations associated with such Asset Sale, but excluding any reserves with respect to Indebtedness.

"New Facilities Agreement" means the new facilities agreement, dated as of September 17, 2012, entered into among the Issuer and certain of its Subsidiaries, the financial institutions and noteholders party thereto, Citibank International PLC, as agent, and the Security Agent, as such agreement may be amended, modified or waived from time to time.

"New Facilities Agreement Indebtedness" means the Indebtedness that is subject to and outstanding under the New Facilities Agreement.

"Non-U.S. Person" means a person who is not a U.S. person, as defined in Regulation S.

"Note Custodian" means the custodian with respect to any Global Note appointed by DTC or any successor Person thereto, and shall initially be Computershare Trust Company, N.A.

"Note Guarantee" means any guarantee of the Issuer's Obligations under this Indenture and the Notes by any Note Guarantor pursuant to Article X.

"Note Guarantors" means (i) each of the Issuer's Restricted Subsidiaries that executes this Indenture as a Note Guarantor or an Additional Note Guarantor and (ii) each of the Issuer's Restricted Subsidiaries that in the future executes a supplemental indenture in which such Restricted Subsidiary agrees to be bound by the terms of this Indenture as a Note Guarantor, and their respective successors and assigns; provided that any Person constituting a Note Guarantor as described above shall cease to constitute a Note Guarantor when its respective Note Guarantee is released in accordance with the terms of this Indenture.

"Note Register" has the meaning assigned to it in Section 2.3(a).

"Notes" means the Issuer's 9.50% Senior Secured Notes due 2018, issued and authenticated pursuant to this Indenture.

"Obligations" means, with respect to any Indebtedness, any principal, interest (including, without limitation, Post-Petition Interest), penalties, fees, indemnifications, reimbursements, damages, and other liabilities payable under the documentation governing such Indebtedness, including, in the case of the Notes and the Note Guarantees, this Indenture.

"Officer" means, when used in connection with any action to be taken by the Issuer or a Note Guarantor, as the case may be, the Chairman of the Board, the Chief Executive Officer, the President, the Chief Financial Officer, any Vice President, the Treasurer, the Controller, the Secretary or an attorney-in-fact of the Issuer or such Note Guarantor, as the case may be.

"Officer's Certificate" means a certificate signed on behalf of a Person by an Officer of such Person, who must be the principal executive officer, the principal financial officer, the treasurer, the Corporate Finance Vice President, the principal accounting officer or an attorney-in-fact of such Person, that meets the requirements set forth in this Indenture.

"Opinion of Counsel" means a written opinion of counsel, who, unless otherwise indicated in this Indenture, may be an employee of or counsel for the Issuer or any Note Guarantor, and who shall be reasonably acceptable to the Trustee.

"Outstanding" means, as of the date of determination, all Notes theretofore authenticated and delivered under this Indenture, except:

(1) Notes theretofore canceled by the Trustee or delivered to the Trustee for cancellation;

(2) Notes, or portions thereof, for the payment, redemption or, in the case of an Asset Sale Offer or Change of Control Offer, purchase of which, money in the necessary amount has been theretofore deposited with the Trustee or any Paying Agent (other than the Issuer or an Affiliate of the Issuer) in trust or set aside and segregated in trust by the Issuer or an Affiliate of the Issuer (if the Issuer or such Affiliate is acting as the Paying Agent) for the Holders of such Notes; *provided* that, if Notes (or portions thereof) are to be redeemed or purchased, notice of such redemption or purchase has been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee has been made;

(3) Notes which have been surrendered pursuant to Section 2.9 or Notes in exchange for which or in lieu of which other Notes have been authenticated and delivered pursuant to this Indenture, other than any such Notes in respect of which there shall have been presented to the Trustee proof satisfactory to it that such Notes are held by a protected purchaser in whose hands such Notes are valid obligations of the Issuer; and

(4) solely to the extent provided in Article VIII, Notes which are subject to Legal Defeasance or Covenant Defeasance as provided in Article VIII;

*provided, however,* that in determining whether the Holders of the requisite aggregate principal amount of the Outstanding Notes have given any request, demand, authorization, direction, notice, consent or waiver hereunder, Notes owned by the Issuer, a Note Guarantor or any other obligor upon the Notes or any Affiliate of the Issuer or of such other obligor shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Notes which a Trust Officer of the Trustee actually knows to be so owned shall be so disregarded. Notes so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Notes and that the pledgee is not the Issuer or any other obligor upon the Notes or any Affiliate of the Issuer or of such other obligor.

"Partial Covenant Reversion Date" has the meaning set forth under Section 3.22(e).

"Partial Covenant Suspension Date" has the meaning set forth under Section 3.22(c).

"Partial Covenant Suspension Event" has the meaning set forth under Section 3.22(a).

"Partial Suspended Covenants" has the meaning set forth under Section 3.22(a).

"Partial Suspension Period" has the meaning set forth under Section 3.22(e).

"Paying Agent" has the meaning assigned to it in Section 2.3(a).

"Permitted Asset Swap Transaction" means a transaction consisting substantially of the concurrent (i) disposition by the Issuer or any of its Restricted Subsidiaries of any asset, property or cash consideration (other than a Restricted Subsidiary) in exchange for assets, property or cash consideration transferred to the Issuer or a Restricted Subsidiary, to be used in a Permitted Business or (ii) disposition by the Issuer or any of its Restricted Subsidiaries of Capital Stock of a Restricted Subsidiary in exchange for Capital Stock of another Restricted Subsidiary or of Capital Stock of any Person that becomes a Restricted Subsidiary after giving effect to such transaction; *provided* that any cash or Cash Equivalents received in such a transaction shall constitute Net Cash Proceeds to be applied in accordance with Section 3.12.

"Permitted Business" means the business or businesses conducted by the Issuer and its Restricted Subsidiaries as of the Issue Date and any business ancillary, complementary or related thereto or any other business that would not constitute a substantial change to the general nature of its business from that carried on as of the Issue Date.

"Permitted Indebtedness" has the meaning set forth in Section 3.9(b).

"Permitted Investments" means:

(1) Investments by the Issuer or any Restricted Subsidiary in any Person that is, or that result in any Person becoming, immediately after such Investment, a Restricted Subsidiary or constituting a merger or consolidation of such Person into the Issuer or with or into a Restricted Subsidiary;

(2) any Investment in the Issuer;

(3) Investments in cash and Cash Equivalents;

(4) any extension, modification or renewal of any Investments existing as of the Issue Date (but not Investments involving additional advances, contributions or other investments of cash or property or other increases thereof, other than as a result of the accrual or accretion of interest or original issue discount or payment-in-kind pursuant to the terms of such Investment as of the Issue Date);

(5) Investments permitted pursuant to clause (ii), (vi) or (vii) of Section 3.18(b);

(6) Investments received as a result of the bankruptcy or reorganization of any Person or taken in settlement of or other resolution of claims or disputes, and, in each case, extensions, modifications and renewals thereof;

(7) Investments made by the Issuer or its Restricted Subsidiaries as a result of non-cash consideration permitted to be received in connection with an Asset Sale made in compliance with Section 3.12;

(8) Investments in the form of Hedging Obligations or Compensation Related Hedging Obligations permitted under clause (iv) of Section 3.9(b);

(9) Investments in existence on the Issue Date or made pursuant to binding commitments in effect on the Issue Date or any Investment consisting of any extension, modification or renewal of any Investment existing on the Issue Date; *provided* that the amount of any such Investment may be increased (a) as required by the terms of such Investment as in existence on the Issue Date or (b) as otherwise permitted by this Indenture;

(10) Investments by the Issuer or any Restricted Subsidiary in a Receivables Entity in connection with a Qualified Receivables Transaction which does not constitute an Asset Sale by virtue of clause (7) of the definition thereof; *provided, however*, that any such Investments are made only in the form of Receivables Assets;

(11) Investments in marketable securities or instruments, to fund the Issuer's or a Restricted Subsidiary's pension and other employee-related obligations in the ordinary course of business pursuant to compensation arrangements approved by the Board of Directors or senior management of the Issuer;

(12) any Investment that:

(a) when taken together with all other Investments made pursuant to this clause (12) that are at the time outstanding (net of cash benefits to the Issuer or a Restricted Subsidiary from Investments pursuant to this clause (12)), does not exceed the greater of U.S.$250 million and 3% of Consolidated Tangible Assets; or

(b) when taken together with all other Investments made pursuant to this clause (12) in any fiscal year that are at the time outstanding, does not exceed U.S.$100 million in any fiscal year;

(13) Investments in the Capital Stock of any Person other than a Restricted Subsidiary that are required to be held pursuant to an involuntary governmental order of condemnation, nationalization, seizure or expropriation or other similar order with respect to Capital Stock of such Person (prior to which order such Person was a Restricted Subsidiary); *provided* that such Person contests such order in good faith in appropriate proceedings;

(14) repurchases of Existing Senior Notes or the Notes;

(15) Investments in the SPV Perpetuals or the notes related thereto; *provided* that any payment or other contribution to one of the special purpose vehicles issuing the SPV Perpetuals in connection with such Investment is promptly paid or contributed to the Issuer or a Restricted Subsidiary following receipt thereof;

(16) any Investment that constitutes Indebtedness permitted under clause (viii)(E) of Section 3.9(b); and

(17) (a) Investments to which the Issuer or any of its Restricted Subsidiaries is contractually committed as of the Issue Date in any Person other than a Subsidiary in which the Issuer or any of its Restricted Subsidiaries maintains an Investment in equity securities; and
(b) Investments in any Person other than a Subsidiary in which the Issuer or any of its Restricted Subsidiaries maintains an Investment in equity securities up to U.S.$100 million in any calendar year minus the amount of any guarantees under clause (xviii) of Section 3.9(b).

"Permitted Liens" means any of the following:

(1) statutory Liens of landlords and Liens of carriers, warehousemen, mechanics and materialmen incurred in the ordinary course of business for sums not yet due or the payment of which is being contested in good faith by appropriate proceedings promptly initiated and diligently conducted and for which such reserves or other appropriate provision, if any, as shall be required by GAAP, shall have been made and any other Liens created by operation of law;

(2) Liens Incurred or deposits made in the ordinary course of business in connection with (i) workers' compensation, unemployment insurance and other types of social security or (ii) other insurance maintained by the Issuer and its Subsidiaries in compliance with the New Facilities Agreement (or any refinancing thereof);

(3) Liens for taxes, assessments and other governmental charges the payment of which is being contested in good faith by appropriate proceedings promptly initiated and diligently conducted and for which such reserves or other appropriate provision, if any, as shall be required by GAAP shall have been made;

(4) any attachment or judgment Lien, unless the judgment it secures shall not, within 60 days after the entry thereof, have been discharged or execution thereof stayed pending appeal, or shall not have been discharged within 60 days after the expiration of any such stay;

(5) (i) Liens existing on the Issue Date other than in respect of the Collateral and (ii) Liens in respect of the Collateral to the extent equally and ratably securing the Notes and the Permitted Secured Obligations;

(6) any Lien on property acquired by the Issuer or its Restricted Subsidiaries after the Issue Date that was existing on the date of acquisition of such property; *provided* that such Lien was not incurred in anticipation of such acquisition, and any Lien created to secure all or any part of the purchase price, or to secure Indebtedness incurred or assumed to pay all or any part of the purchase price, of property acquired by the Issuer or any of its Restricted Subsidiaries after the Issue Date; *provided further* that (A) any such Lien permitted pursuant to this clause (6) shall be confined solely to the item or items of property so acquired (including, in the case of any Acquisition of a corporation through the acquisition of 51% or more of the Voting Stock of such corporation, the stock and assets of any Acquired Subsidiary or Acquiring Subsidiary) and, if required by the terms of the instrument originally creating such Lien, other property which is an improvement to, or is acquired for specific use with, such acquired property; and (B) if applicable, any such Lien shall be created within nine months after, in the case of property, its acquisition, or, in the case of improvements, their completion;

(7) any Liens renewing, extending or refunding any Lien permitted by clause (5)(i) above; *provided* that such Lien is not extended to other property (or, instead, is only extended to equivalent property) and the principal amount of Indebtedness secured by such Lien immediately prior thereto is not increased or the maturity thereof reduced, except that the principal amount secured by any such Lien in respect of:

(a) hedging obligations or other derivatives where there are fluctuations in mark-to-market exposures of those hedging obligations or other derivatives,

(b) Indebtedness consisting of any "*Certificados Bursátiles de Largo Plazo*" or the Bancomext Facility, or any Refinancing thereof, where principal may increase by virtue of capitalization of interest, and

(c) the Banobras Facility to the extent additional amounts are drawn thereunder,

may be increased by the amount of such fluctuations, capitalizations or drawings, as the case may be;

(8) Liens on Receivables Assets or Capital Stock of a Receivables Subsidiary, in each case granted in connection with a Qualified Receivables Transaction;

(9) Liens granted pursuant to or in connection with any netting or set-off arrangements entered into in the ordinary course of business;

(10) any Lien permitted by the Trustee, acting pursuant to the instructions of at least 50% of the Holders;

(11) any Lien granted by the Issuer or any of its Restricted Subsidiaries to secure Indebtedness under a Permitted Liquidity Facility; *provided* that: (i) such Lien is not granted in respect of the Collateral, and (ii) the maximum amount of such Indebtedness secured by such Lien does not exceed U.S.$500 million at any time; or

(12) in addition to the Liens permitted by the foregoing clauses (1) through (11), Liens securing obligations of the Issuer and its Restricted Subsidiaries that in the aggregate secure obligations in an amount not in excess of the greater of (i) 5% of Consolidated Tangible Assets and (ii) U.S.$700 million.

"Permitted Liquidity Facility" means a loan facility or facilities made available to the Issuer or any Restricted Subsidiary; *provided* that the aggregate principal amount of utilized and unutilized commitments under such facilities must not exceed U.S.$1 billion (or its equivalent in another currency) at any time.

"Permitted Merger Jurisdiction" has the meaning set forth in Section 4.1(a).

"Permitted Secured Obligations" means (i) the New Facilities Agreement Indebtedness and any refinancing thereof made in accordance with the New Facilities Agreement that is secured by the Collateral, (ii) notes (or similar instruments, including *Certificados Bursátiles*) outstanding on the date of the New Facilities Agreement required to be secured by the Collateral pursuant to their terms, or any refinancing thereof permitted by the New Facilities Agreement, (iii) future Indebtedness secured by the Collateral to the extent permitted by the New Facilities Agreement and (iv) the Existing Senior Notes.

"Person" means an individual, partnership, limited partnership, corporation, company, limited liability company, unincorporated organization, trust or joint venture, or a governmental agency or political subdivision thereof.

"Pesos" means the lawful money of Mexico.

"Post-Petition Interest" means all interest accrued or accruing after the commencement of any insolvency or liquidation proceeding (and interest that would accrue but for the commencement of any insolvency or liquidation proceeding) in accordance with and at the contract rate (including, without limitation, any rate applicable upon default) specified in the agreement or instrument creating, evidencing or governing any Indebtedness, whether or not, pursuant to applicable law or otherwise, the claim for such interest is allowed as a claim in such insolvency or liquidation proceeding.

"Preferred Stock" of any Person means any Capital Stock of such Person that has preferential rights over any other Capital Stock of such Person with respect to dividends, distributions or redemptions or upon liquidation.

"Private Placement Legend" has the meaning assigned to it in Section 2.8(b).

"Purchase Money Indebtedness" means Indebtedness Incurred for the purpose of financing all or any part of the purchase price or cost of construction of any property other than Capital Stock; *provided*, that the aggregate principal amount of such Indebtedness does not exceed the lesser of the Fair Market Value of such property or such purchase price or cost, including any Refinancing of such Indebtedness that does not increase the aggregate principal amount (or accreted amount, if less) thereof as of the date of Refinancing.

"QIB" means a "qualified institutional buyer" as defined in Rule 144A.

"Qualified Capital Stock" means any Capital Stock that is not Disqualified Capital Stock and any warrants, rights or options to purchase or acquire Capital Stock that is not Disqualified Capital Stock that are not convertible into or exchangeable into Disqualified Capital Stock.

"Qualified Receivables Transaction" means any transaction or series of transactions that may be entered into by the Issuer or any Restricted Subsidiary pursuant to which the Issuer or any Restricted Subsidiary may sell, convey, assign or otherwise transfer to a Receivables Entity any Receivables Assets to obtain funding for the operations of the Issuer and its Restricted Subsidiaries:

(1) for which no term of any portion of the Indebtedness or any other obligations (contingent or otherwise) or securities Incurred or issued by any Person in connection therewith:

  (a) directly or indirectly provides for recourse to, or any obligation of, the Issuer or any Restricted Subsidiary in any way, whether pursuant to a Guarantee or otherwise, except for Standard Undertakings,

  (b) directly or indirectly subjects any property or asset of the Issuer or any Restricted Subsidiary (other than Capital Stock of a Receivables Subsidiary) to the satisfaction thereof, except for Standard Undertakings, or

  (c) results in such Indebtedness, other obligations or securities constituting Indebtedness of the Issuer or a Restricted Subsidiary, including following a default thereunder, and

(2) for which the terms of any Affiliate Transaction between the Issuer or any Restricted Subsidiary, on the one hand, and any Receivables Entity, on the other, other than Standard Undertakings and Permitted Investments, are no less favorable than those that could reasonably be expected to be obtained in a comparable transaction at such time on an arm's length basis from a Person that is not an Affiliate of the Issuer, and

(3) in connection with which, neither the Issuer nor any Restricted Subsidiary has any obligation to maintain or preserve a Receivable Entity's financial condition, cause a Receivables Entity to achieve certain levels of operating results, fund losses of a Receivables Entity, or except in connection with Standard Undertakings, purchase assets of a Receivables Entity.

"Rating Agencies" mean Fitch, Moody's and S&P. In the event that Fitch, Moody's or S&P is no longer in existence or issuing ratings, such organization may be replaced by a nationally recognized statistical rating organization (as defined in Rule 15c3-1(c)(2)(vi)(F) of the Exchange Act or any successor provision) designated by the Issuer with notice to the Trustee.

"Receivables Assets" means:

(1) accounts receivable, leases, conditional sale agreements, instruments, chattel paper, installment sale contracts, obligations, general intangibles, and other similar assets, in each case relating to goods, inventory or services of the Issuer and its Subsidiaries,

(2) equipment and equipment residuals relating to any of the foregoing,

(3) contractual rights, Guarantees, letters of credit, Liens, insurance proceeds, collections and other similar assets, in each case related to the foregoing, and

(4) proceeds of all of the foregoing.

"Receivables Entity" means a Receivables Subsidiary or any other Person not an Affiliate of the Issuer, in each case whose sole business activity is to engage in Qualified Receivables Transactions, including to issue securities or other interests in connection with a Qualified Receivables Transaction.

"Receivables Subsidiary" means an Unrestricted Subsidiary of the Issuer that engages in no activities other than Qualified Receivables Transactions and activities related thereto and that is designated by the Issuer as a Receivables Subsidiary. Any such designation by the Issuer will be evidenced to the Trustee by filing with the Trustee an Officer's Certificate of the Issuer.

"Record Date" has the meaning assigned to it in the Form of Face of Note contained in Exhibit A hereto.

"Redemption Date" means, with respect to any redemption of the Notes, the date fixed for such redemption pursuant to this Indenture and the Notes.

"Refinance" means, in respect of any Indebtedness, to issue any Indebtedness in exchange for or to refinance, repay, redeem, replace, defease or refund such Indebtedness in whole or in part. "Refinanced" and "Refinancing" will have correlative meanings.

"Refinancing Indebtedness" means Indebtedness of the Issuer or any Restricted Subsidiary issued to Refinance any other Indebtedness of the Issuer or a Restricted Subsidiary so long as:

(1) the aggregate principal amount (or initial accreted value, if applicable) of such new Indebtedness as of the date of such proposed Refinancing does not exceed the aggregate principal amount (or accreted value as of such date, if applicable) of the Indebtedness being Refinanced (plus the amount of any premium required to be paid under the terms of the instrument governing such Indebtedness and the amount of reasonable expenses incurred by the Issuer in connection with such Refinancing);

(2) such new Indebtedness has:

  (a) a Weighted Average Life to Maturity that is equal to or greater than the Weighted Average Life to Maturity of the Indebtedness being Refinanced, and

  (b) a final maturity that is equal to or later than the final maturity of the Indebtedness being Refinanced or, in the case of Indebtedness without a stated maturity, December 14, 2017; and

(3) if the Indebtedness being Refinanced is:

  (a) Indebtedness of the Issuer, then such Refinancing Indebtedness will be Indebtedness of the Issuer and/or any Note Guarantor,

  (b) Indebtedness of a Note Guarantor, then such Refinancing Indebtedness will be Indebtedness of the Issuer and/or any Note Guarantor,

  (c) Indebtedness of any of the Restricted Subsidiaries, then such Refinancing Indebtedness will be Indebtedness of such Restricted Subsidiary, the Issuer and/or any Note Guarantor, and

  (d) Subordinated Indebtedness, then such Refinancing Indebtedness shall be subordinate to the Notes or the relevant Note Guarantee, if applicable, at least to the same extent and in the same manner as the Indebtedness being Refinanced.

Notwithstanding the foregoing, with respect to any hedging obligations or derivates outstanding on the Issue Date in respect of the Axtel Share Forward Transactions, "Refinancing Indebtedness" shall mean any replacements, amendments or renewals thereof that are entered into on then prevailing market terms with the underlying amounts not greater than the original underlying amounts.

"Registrar" has the meaning assigned to it in Section 2.3(a).

"Regulation S" means Regulation S under the Securities Act or any successor regulation.

"Regulation S Global Note" has the meaning assigned to it in Section 2.1(e).

"Resale Restriction Termination Date" means for any Restricted Note (or beneficial interest therein), that is (a) not a Regulation S Global Note, the date on which the Issuer instructs the Trustee in writing to remove the Private Placement Legend from the Restricted Notes in accordance with the procedures described in Section 2.9(h) (which instruction is expected to be given on or about the one year anniversary of the issuance of the Restricted Notes) or (b) a Regulation S Global Note (or Certificated Note issued in respect thereof pursuant to Section 2.7(c)), the date on which the Distribution Compliance Period therefor terminates.

"Restricted Note" means any Issue Date Note (or beneficial interest therein) or any Additional Note (or beneficial interest therein) not originally issued and sold pursuant to an effective registration statement under the Securities Act until such time as:

(i) the Resale Restriction Termination Date therefor has passed; or

(ii) the Private Placement Legend therefor has otherwise been removed pursuant to Section 2.9 or, in the case of a beneficial interest in a Global Note, such beneficial interest has been exchanged for an interest in a Global Note not bearing a Private Placement Legend.

"Restricted Obligations" has the meaning assigned to it in Section 10.6(b).

"Restricted Payment" has the meaning set forth in Section 3.11(a).

"Restricted Subsidiary" means any Subsidiary of the Issuer, which at the time of determination is not an Unrestricted Subsidiary.

"Reversion Date" has the meaning assigned to in Section 3.22(e).

"Revocation" has the meaning set forth in Section 3.14(c).

"Rule 144" means Rule 144 under the Securities Act (or any successor rule).

"Rule 144A" means Rule 144A under the Securities Act (or any successor rule).

"Rule 144A Global Note" has the meaning assigned to it in Section 2.1(d).

"S&P" means Standard & Poor's Ratings Group and any successor to its rating agency business.

"Sale and Leaseback Transaction" means any direct or indirect arrangement with any Person or to which any such Person is a party providing for the leasing to the Issuer or a Restricted Subsidiary of any property, whether owned by the Issuer or any Restricted Subsidiary at the Issue Date or later acquired, which has been or is to be sold or transferred by the Issuer or such Restricted Subsidiary to such Person or to any other Person by whom funds have been or are to be advanced on the security of such Property.

"Securities Act" means the Securities Act of 1933, as amended.

"Security Agent" means Wilmington Trust (London) Limited, as security agent under the Intercreditor Agreement.

"Security Documents" has the meaning assigned to it in Section 7.13.

"Senior Indebtedness" means (i) the Notes and any other Indebtedness of the Issuer or any Note Guarantor that ranks equal in right of payment with the Notes or the relevant Note Guarantee, as the case may be or (ii) Indebtedness for borrowed money or constituting Capitalized Lease Obligations of any Restricted Subsidiary other than a Note Guarantor.

"Significant Subsidiary" means a Subsidiary of the Issuer constituting a "Significant Subsidiary" of the Issuer in accordance with Rule 1-02(w) of Regulation S-X under the Securities Act in effect on the date hereof.

"Similar Business" means (1) any business engaged in by the Issuer or any Restricted Subsidiary on the Issue Date, and (2) any business or other activities, including non-profit or charitable activities, that are reasonably similar, ancillary, complementary or related to, or a reasonable extension, development or expansion of, the businesses and activities in which the Issuer or any Restricted Subsidiary is engaged on the Issue Date, including, but not limited to, infrastructure projects, public works programs and consumer or supplier financing.

"Special Record Date" has the meaning assigned to it in Section 2.13(a).

"SPV Perpetuals" means the perpetual debentures issued by special purpose vehicles in December 2006, February 2007 and March 2007, as amended or supplemented from time to time.

"Standard Undertakings" means representations, warranties, covenants, indemnities and similar obligations, including servicing obligations, entered into by the Issuer or any Subsidiary of the Issuer in connection with a Qualified Receivables Transaction, which are customary in similar non-recourse receivables securitization, purchase or financing transactions.

"Subordinated Indebtedness" means, with respect to the Issuer or any Note Guarantor, any Indebtedness of the Issuer or such Note Guarantor, as the case may be, which is expressly subordinated in right of payment to the Notes or the relevant Note Guarantee, as the case may be.

"Subsidiary" means with respect to any Person, any corporation, partnership, joint venture, limited liability company, trust, estate or other entity of which (or in which) more than

fifty percent (50%) of (a) in the case of a corporation, the issued and outstanding Capital Stock having ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether at the time Capital Stock of any other class or classes of such corporation shall or might have voting power upon the occurrence of any contingency that has not occurred and is not in the control of such Person), (b) in the case of a limited liability company, partnership or joint venture, the voting or other power to control the actions of such limited liability company, partnership or joint venture or (c) in the case of a trust or estate, the voting or other power to control the actions of such trust or estate, is at the time directly or indirectly owned or controlled by (X) such Person, (Y) such Person and one or more of its other Subsidiaries or (Z) one or more of such Person's other Subsidiaries. Unless the context otherwise requires, all references herein to a "Subsidiary" shall refer to a Subsidiary of the Issuer.

"Successor Issuer" has the meaning assigned to it in Section 4.1(a).

"Successor Note Guarantor" has the meaning assigned to it in Section 4.1(b).

"Suspended Covenants" has the meaning assigned to it in Section 3.22(b).

"Suspension Date" has the meaning assigned to it in Section 3.22(c).

"Suspension Period" has the meaning assigned to it in Section 3.22(e).

"Swiss Note Guarantor" has the meaning assigned to it in Section 10.6(a).

"Taxes" has the meaning assigned to it in Section 3.21(a).

"Taxing Jurisdiction" has the meaning assigned to it in Section 3.21(a).

"Transfer Agent" has the meaning assigned to it in Section 2.3(a).

"Transportation Agreements" means, in respect of any Person, any agreement or arrangement designed to protect such Person from fluctuations in prices related to transportation.

"Trust Officer" means, when used with respect to the Trustee, any officer within the corporate trust department of the Trustee, having direct responsibility for the administration of this Indenture, or any other officer of the Trustee to whom any corporate trust matter is referred because of such person's knowledge of and familiarity with the particular subject.

"Trustee" means the party named as such in the introductory paragraph to this Indenture until a successor replaces it in accordance with the terms of this Indenture and, thereafter, means the successor.

"Undervalued Asset" has the meaning assigned to it in Section 10.6(g).

"USA PATRIOT Act" has the meaning assigned to it in Section 12.16.

"U.S. Government Obligations" means direct obligations (or certificates representing an ownership interest in such obligations) of, or guaranteed by, the United States of

America (including any agency or instrumentality thereof) for the payment of which the full faith and credit of the United States of America is pledged and which are not callable or redeemable at the issuer's option.

"U.S. Legal Tender" means such coin or currency of the United States of America, as at the time of payment shall be legal tender for the payment of public and private debts.

"U.S. Person" means a "U.S. person" as defined in Regulation S.

"Uniform Commercial Code" means the Uniform Commercial Code as in effect from time to time in the State of New York.

"Unrestricted Subsidiary" means any Subsidiary of the Issuer designated as such pursuant to Section 3.14. Any such Designation may be revoked by the Issuer, subject to the provisions of such covenant.

"Voting Stock" with respect to any Person, means securities of any class of Capital Stock of such Person entitling the holders thereof (whether at all times or only so long as no senior class of stock has voting power by reason of any contingency) to vote in the election of members of the Board of Directors (or equivalent governing body) of such Person.

"Weighted Average Life to Maturity" means, when applied to any Indebtedness at any date, the number of years (calculated to the nearest one-twelfth) obtained by dividing:

(1) the sum of the products obtained by multiplying:

(a) the amount of each then remaining installment, sinking fund, serial maturity or other required payment of principal or liquidation preference, as the case may be, including payment at final maturity, in respect thereof, by

(b) the number of years (calculated to the nearest one-twelfth) which will elapse between such date and the making of such payment; by

(2) the then outstanding aggregate principal amount or liquidation preference, as the case may be, of such Indebtedness.

"Wholly Owned Subsidiary" means, for any Person, any Subsidiary (Restricted Subsidiary in the case of the Issuer) of which at least 99.5% of the outstanding Capital Stock (other than, in the case of a Subsidiary not organized in the United States, directors' qualifying shares or an immaterial amount of shares required to be owned by other Persons pursuant to applicable law) is owned by such Person or any other Person that satisfies this definition in respect of such Person.

Section 1.2 [Reserved].

Section 1.3 Rules of Construction. Unless the context otherwise requires:

(1) a term has the meaning assigned to it;

(2) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;

(3) "or" is not exclusive;

(4) "including" means including without limitation;

(5) words in the singular include the plural and words in the plural include the singular; and

(6) references to the payment of principal of the Notes shall include applicable premium, if any.

## ARTICLE II

## THE NOTES

Section 2.1 Form and Dating.

(a) The Notes will initially be issued as one or more Global Notes in fully registered form without interest coupons, and only in denominations of U.S.$200,000 and in integral multiples of U.S.$1,000 in excess thereof. Each such Global Note shall constitute a single Note for all purposes under this Indenture. Certificated Notes, if issued pursuant to the terms hereof, will be issued in fully registered certificated form without coupons. The Notes may only be issued in definitive fully registered form without coupons and only in denominations of U.S.$200,000 and in integral multiples of U.S.$1,000 in excess thereof. The Notes and the Trustee's certificate of authentication shall be substantially in the form of Exhibit A hereto.

(b) The terms and provisions of the Notes, the form of which is in Exhibit A hereto, shall constitute, and are hereby expressly made, a part of this Indenture, and, to the extent applicable, the Issuer, the Note Guarantors and the Trustee, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and to be bound thereby. Except as otherwise expressly permitted in this Indenture, all Notes (including Additional Notes) shall be identical in all respects. Notwithstanding any differences among them, all Notes issued under this Indenture shall vote and consent together on all matters as one class and are otherwise treated as a single issue of securities.

(c) The Notes may have notations, legends or endorsements as specified in Section 2.8 or as otherwise required by law, stock exchange rule or DTC, Euroclear or Clearstream rule or usage. The Issuer and the Trustee shall approve any changes to the form of the Notes attached to this Indenture and any additional notation, legend or endorsement required to be inserted on them. Each Note shall be dated the date of its authentication.

(d) Notes originally offered and sold to QIBs in reliance on Rule 144A will be issued in the form of one or more permanent Global Notes (each, a "Rule 144A Global Note").

Each Rule 144A Global Notes shall be deposited on behalf of the purchasers of the Notes represented thereby with the Note Custodian and registered in the name of DTC or its nominee, for credit to the accounts maintained at DTC. In no event shall any Person hold an interest in a Rule 144A Global Note other than in or through accounts maintained at DTC.

(e) Notes originally offered and sold outside the United States in reliance on Regulation S will be issued in the form of one or more permanent Global Notes (each, a "Regulation S Global Note"). Each Regulation S Global Note shall be deposited on behalf of the purchasers of the Notes represented thereby with the Note Custodian and registered in the name of DTC or its nominee, for credit to the accounts maintained at DTC by or on behalf of Euroclear or Clearstream. In no event shall any Person hold an interest in a Regulation S Global Note other than in or through accounts maintained at DTC by or on behalf of Euroclear or Clearstream.

Section 2.2 Execution and Authentication.

(a) Any Officer of the Issuer may sign the Notes for the Issuer by manual or facsimile signature. If an Officer whose signature is on a Note no longer holds that office at the time the Trustee authenticates the Note, the Note shall be valid nevertheless.

(b) A Note shall not be valid until manually authenticated by an authorized signatory of the Trustee or an agent appointed by the Trustee (and reasonably acceptable to the Issuer) for such purpose (an " Authenticating Agent"). The signature of an authorized signatory of the Trustee or an Authenticating Agent on a Note shall be conclusive evidence that such Note has been duly and validly authenticated and issued under this Indenture. Unless limited by the terms of its appointment, an Authenticating Agent may authenticate Notes whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by an Authenticating Agent.

(c) At any time and from time to time after the execution and delivery of this Indenture, the Trustee shall authenticate and make available for delivery Notes upon a written order of the Issuer signed by an Officer of the Issuer (the " Issuer Order") directing the Trustee to authenticate and deliver such Notes; and the Trustee, in accordance with such Issuer Order shall authenticate and deliver the Notes as provided in this Indenture. An Issuer Order shall specify the amount of the Notes to be authenticated and the date on which the original issue of Notes is to be authenticated.

(d) In case a Successor Issuer has executed an indenture supplemental hereto with the Trustee pursuant to Article IV, any of the Notes authenticated or delivered prior to such transaction may, from time to time, at the request of the Successor Issuer be exchanged for other Notes executed in the name of the Successor Issuer with such changes in phraseology and form as may be appropriate, but otherwise identical to the Notes surrendered for such exchange and of like principal amount; and the Trustee, upon Issuer Order of the Successor Issuer, shall authenticate and deliver Notes as specified in such order for the purpose of such exchange. If Notes shall at any time be authenticated and delivered in any new name of a Successor Issuer pursuant to this Section 2.2 in exchange or substitution for or upon registration of transfer of any Notes, such Successor Issuer, at the option of the Holders but without expense to them, shall provide for the exchange of all Notes at the time Outstanding for Notes authenticated and delivered in such new name.

(e) Notwithstanding anything to the contrary contained in this Section 2.2, the Trustee is hereby authorized and directed, as of the date hereof, to: (1) authenticate the following certificates delivered to the Trustee (the "Issue Date Global Notes") representing the Issue Date Notes: (a) Rule 144A Global Note in the amount of U.S.$322,529,000, CUSIP No. 151290BF9, Certificate No. A-1, in the name of DTC or Cede & Co., its nominee, and (b) Regulation S Global Note in the amount U.S.$177,471,000, CUSIP No. P2253TJA8, Certificate No. S-1, in the name of DTC or Cede & Co., its nominee; (2) deliver such Issue Date Global Notes so authenticated to the Note Custodian as custodian for DTC and (3) approve a DWAC deposit of the Issue Date Notes in the amount of U.S.$500 million to the DTC account designated by Citibank International Plc (DTC participant account number 2426).

Section 2.3 Registrar, Paying Agent and Transfer Agent.

(a) The Issuer shall maintain an office or agency that shall keep a register of the Notes (the "Note Register") and of their transfer and exchange (the "Registrar"), where Notes may be presented or surrendered for registration of transfer or for exchange (the "Transfer Agent"), where Notes may be presented for payment (the "Paying Agent") and for the service of notices and demands to or upon the Issuer in respect of the Notes and this Indenture. The Issuer may have one or more co-Registrars and one or more additional paying agents. The term "Paying Agent" includes any additional paying agent. In addition, the Issuer undertakes to the extent possible, to use reasonable efforts to maintain a Paying Agent in a member state of the European Union that is not obliged to withhold or deduct tax pursuant to European Council Directive 2003/48/EC regarding taxation of savings income.

(b) The Issuer shall enter into an appropriate agency agreement with any Registrar, Paying Agent or co-Registrar not a party to this Indenture. The agreement shall implement the provisions of this Indenture that relate to such agent. The Issuer shall notify the Trustee of the name and address of each such agent. If the Issuer fails to maintain a Registrar or Paying Agent, the Trustee shall act as such and shall be entitled to appropriate compensation therefor pursuant to Section 7.7. The Issuer or any Affiliate of the Issuer may act as Paying Agent, Registrar or co-Registrar, or transfer agent.

(c) The Issuer initially designates the Corporate Trust Office of the Trustee as such office or agency of the Issuer as required by Section 2.3(a) and appoints the Trustee as Registrar, Paying Agent, Transfer Agent and agent for service of demands and notices in connection with the Notes and this Indenture, until such time as another Person is appointed as such.

Section 2.4 Paying Agent to Hold Money in Trust. The Issuer shall require each Paying Agent (other than the Trustee) to agree in writing that such Paying Agent shall hold in trust for the benefit of Holders or the Trustee all money held by such Paying Agent for the payment of principal of or interest on the Notes and shall notify the Trustee in writing of any Default by the Issuer or any Note Guarantor in making any such payment. If the Issuer or an Affiliate of the Issuer acts as Paying Agent, it shall segregate the money held by it as Paying

Agent and hold it as a separate trust fund. The Issuer at any time may require a Paying Agent (other than the Trustee) to pay all money held by it to the Trustee and to account for any funds disbursed by such Paying Agent. Upon complying with this Section 2.4, the Paying Agent (if other than the Issuer or any Affiliate of the Issuer) shall have no further liability for the money delivered to the Trustee. Upon any proceeding under any Bankruptcy Law with respect to the Issuer or any Affiliate of the Issuer, if the Issuer or such Affiliate is then acting as Paying Agent, the Trustee shall replace the Issuer or such Affiliate as Paying Agent.

Section 2.5 Holder Lists. The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Holders. At any time that the Trustee is not the Registrar the Issuer shall furnish to the Trustee, in writing at least seven Business Days before each Interest Payment Date and at such other times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of Holders.

Section 2.6 CUSIP Numbers. The Issuer in issuing Notes may use "CUSIP" numbers, as applicable (if then generally in use), and, if so, the Trustee shall use for the Securities "CUSIP" number in notices to the Holders as a convenience to such Holders; *provided* that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Notes or as contained in any notice and that reliance may be placed only on the other identification numbers printed on the Notes, and any such notice shall not be affected by any defect in or omission of such numbers. The Issuer will promptly notify the Trustee in writing of any changes in the "CUSIP" numbers.

Section 2.7 Global Note Provisions.

(a) Each Global Note initially shall: (i) be registered in the name of DTC or the nominee of DTC, (ii) be delivered to the Note Custodian and (iii) bear the appropriate legends as set forth in Section 2.8 and Exhibit A hereto. Any Global Note may be represented by one or more certificates. The aggregate principal amount of each Global Note may from time to time be increased or decreased by adjustments made on the records of the Note Custodian, as provided in this Indenture.

(b) Except as provided in clause (iii) of Section 2.7(c), members of, or participants in, DTC ("Agent Members") shall have no rights under this Indenture with respect to any Global Note held on their behalf by DTC or by the Note Custodian, and DTC may be treated by the Issuer, any Note Guarantor, the Trustee, the Paying Agent, the Transfer Agent, the Note Custodian, the Registrar and any of their respective agents as the absolute owner of such Global Note for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall (i) prevent the Issuer, the Trustee, the Paying Agent, the Transfer Agent, the Note Custodian, the Registrar or any of their respective agents from giving effect to any written certification, proxy or other authorization furnished by DTC or (ii) impair, as between DTC and its Agent Members, the operation of customary practices of DTC governing the exercise of the rights of an owner of a beneficial interest in any Global Note. The registered Holder of a Global Note may grant proxies and otherwise authorize any person, including DTC, or its nominee, Agent Members and persons that may hold interests through Agent Members, to take any action that a Holder is entitled to take under this Indenture or the Notes.

(c) Except as provided in this Section 2.7(c), owners of beneficial interests in Global Notes will not be entitled to receive Certificated Notes in exchange for such beneficial interests.

(i) Certificated Notes shall be issued to all owners of beneficial interests in a Global Note in exchange for such beneficial interests if (A) DTC notifies the Issuer that it is unwilling or unable to continue as depositary for such Global Note or (B) DTC ceases to be a clearing agency registered under the Exchange Act, at a time when DTC is required to be so registered in order to act as depositary, and in each case a successor depositary is not appointed by the Issuer within 90 days of such notice. In connection with the exchange of an entire Global Note for Certificated Notes pursuant to this clause (i) of this Section 2.7(c), such Global Note shall be deemed to be surrendered to the Trustee for cancellation, and the Issuer shall execute, and upon Issuer Order, the Trustee shall authenticate and deliver to each beneficial owner identified by DTC in exchange for its beneficial interest in such Global Note, an equal aggregate principal amount of Certificated Notes of authorized denominations, and the Registrar shall register such exchanges in the Note Register.

(ii) The owner of a beneficial interest in a Global Note will be entitled to receive Certificated Notes in exchange for such interest if an Event of Default has occurred and is continuing. If an Event of Default has occurred and is continuing, upon receipt by the Registrar of instructions from Agent Members through DTC on behalf of the owner of a beneficial interest in a Global Note directing the Registrar to exchange such beneficial owner's beneficial interest in such Global Note for Certificated Notes, subject to and in accordance with the Applicable Procedures, the Issuer shall promptly execute, and upon Issuer Order, the Trustee shall authenticate and make available for delivery to such beneficial owner, Certificated Notes in a principal amount equal to such beneficial interest in such Global Note.

(iii) If (A) an event described in clause (i) of Section 2.7(c) occurs and Certificated Notes are not issued promptly to all beneficial owners or (B) the Registrar receives from a beneficial owner the instructions described in clause (ii) of Section 2.7(c) and Certificated Notes are not issued promptly to any such beneficial owner, the Issuer expressly acknowledges, with respect to the right of any Holder to pursue a remedy pursuant to Section 6.6 hereof, the right of any beneficial owner of Notes to pursue such remedy with respect to the portion of the Global Note that represents such beneficial owner's Notes as if such Certificated Notes had been issued.

Section 2.8 Legends.

(a) Each Global Note shall bear the legend specified therefor in Exhibit A hereto on the face thereof.

(b) Each Restricted Note shall bear the private placement legend specified therefor in Exhibit A hereto on the face thereof (the "Private Placement Legend").

(c) Each Note shall bear the Mexican law legend specified therefor in Exhibit A hereto on the face thereof.

Section 2.9 Transfer and Exchange.

(a) Transfers of Beneficial Interests in a Rule 144A Global Note. If the owner of a beneficial interest in a Rule 144A Global Note that is a Restricted Note wishes to transfer such interest (or portion thereof) pursuant to Rule 144 (if available) or to a Non-U.S. Person pursuant to Regulation S:

(i) upon receipt by the Registrar of:

(A) instructions from an Agent Member given to DTC in accordance with the Applicable Procedures directing DTC to credit or cause to be credited a beneficial interest in the Regulation S Global Note in a principal amount equal to the principal amount of the beneficial interest to be transferred,

(B) instructions given in accordance with the Applicable Procedures containing information regarding the account to be credited with such increase, and

(C) a certificate in the form of Exhibit B or Exhibit C hereto, as applicable, duly executed by the transferor;

(ii) the Note Custodian shall increase the Regulation S Global Note and decrease the Rule 144A Global Note in accordance with the foregoing, and the Registrar shall register the transfer in the Note Register.

(b) Transfers of Beneficial Interests in a Regulation S Global Note. If the owner of a beneficial interest in a Regulation S Global Note that is a Restricted Note wishes to transfer such interest (or a portion thereof) to a QIB pursuant to Rule 144A:

(i) upon receipt by the Registrar of:

(A) instructions from an Agent Member given to DTC in accordance with the Applicable Procedures directing DTC to credit or cause to be credited a beneficial interest in the Rule 144A Global Note in a principal amount equal to the principal amount of the beneficial interest to be transferred,

(B) instructions given in accordance with the Applicable Procedures containing information regarding the account to be credited with such increase, and

(C) a certificate in the form of Exhibit D hereto, duly executed by the transferor;

(ii) the Note Custodian shall increase the Rule 144A Global Note and decrease the Regulation S Global Note in accordance with the foregoing, and the Registrar shall register the transfer in the Note Register.

(c) Other Transfers. Any registration of transfer of Restricted Notes (including Certificated Notes) not described above (other than a transfer of a beneficial interest in a Global Note that does not involve an exchange of such interest for a Certificated Note or a beneficial interest in another Global Note, which must be effected in accordance with applicable law and the Applicable Procedures, but is not subject to any procedure required by this Indenture) shall be made only upon receipt by the Registrar of such Opinions of Counsel, certificates and such other evidence reasonably required by and satisfactory to it in order to ensure compliance with the Securities Act or in accordance with Section 2.9(d).

(d) Use and Removal of Private Placement Legends . Upon the registration of transfer, exchange or replacement of Notes (or beneficial interests in a Global Note) not bearing (or not required to bear upon such transfer, exchange or replacement) a Private Placement Legend, the Note Custodian and Registrar shall exchange such Notes (or beneficial interests) for beneficial interests in a Global Note or Certificated Notes if they have been issued pursuant to Section 2.7(c) that does not bear a Private Placement Legend. Upon the registration of transfer, exchange or replacement of Notes (or beneficial interests in a Global Note) bearing a Private Placement Legend, the Note Custodian and Registrar shall deliver only Notes (or beneficial interests in a Global Note) that bear a Private Placement Legend unless:

(i) such Notes (or beneficial interests) are transferred pursuant to Rule 144 upon delivery to the Registrar of a certificate of the transferor in the form of Exhibit C hereto, and an Opinion of Counsel reasonably satisfactory to the Registrar;

(ii) such Notes (or beneficial interests) are transferred, replaced or exchanged after the Resale Restriction Termination Date therefor and, in the case of any such Restricted Notes, the Issuer has complied with the applicable procedures for delegending in accordance with Section 2.9(h); or

(iii) in connection with such registration of transfer, exchange or replacement the Registrar shall have received an Opinion of Counsel, certificates and such other evidence reasonably satisfactory to the Issuer and the Registrar to the effect that neither such Private Placement Legend nor the related restrictions on transfer are required in order to maintain compliance with the provisions of the Securities Act.

The Holder of a Global Note bearing a Private Placement Legend may exchange an interest therein for an equivalent interest in a Global Note not bearing a Private Placement Legend upon transfer of such interest pursuant to this Section 2.9(d).

(e) Consolidation of Global Notes and Exchange of Certificated Notes for Beneficial Interests in Global Notes . If a Global Note not bearing a Private Placement Legend is Outstanding at the time of a removal of legends pursuant to Section 2.9(h), any interests in a Global Note delegended pursuant to Section 2.9(h) shall be exchanged for interests in such Outstanding Global Note, subject to the proviso at the end of Section 2.14(a).

(f) Retention of Documents. The Registrar and the Trustee shall retain copies of all letters, notices and other written communications received pursuant to this Article II and in accordance with the Trustee's, or if different, the Registrar's, record retention procedures. The Issuer shall have the right to inspect and make copies of all such letters, notices or other written communications at any reasonable time upon the giving of reasonable written notice to the Registrar or the Trustee, as the case may be.

(g) General Provisions Relating to Transfers and Exchanges.

(i) Subject to the other provisions of this Section 2.9, when Notes are presented to the Registrar or a co-Registrar with a request to register the transfer of such Notes or to exchange such Notes for an equal principal amount of Notes of other authorized denominations, the Registrar or co-Registrar shall register the transfer or make the exchange as requested if its requirements for such transaction are met; *provided* that any Notes presented or surrendered for registration of transfer or exchange shall be duly endorsed or accompanied by a written instrument of transfer in form satisfactory to the Registrar or co-Registrar, duly executed by the Holder thereof or his attorney duly authorized in writing.

(ii) To permit registrations of transfers and exchanges and subject to the other terms and conditions of this Article II, the Issuer will execute, and upon Issuer Order, the Trustee will authenticate and make available for delivery, Certificated Notes and Global Notes, as applicable, at the Registrar's or co-Registrar's request.

(iii) No service charge shall be made to a Holder for any registration of transfer or exchange, but the Issuer and the Trustee may require payment of a sum sufficient to cover any transfer tax, assessments, or similar governmental charge payable in connection therewith (other than any such transfer taxes, assessments or similar governmental charges payable upon exchange or transfer pursuant to Section 3.8, Section 3.9, Section 5.1 or Section 9.5). Neither the Trustee nor any

Agent shall have any duty or obligation under any Section of this Indenture which requires the payment of taxes or charges unless and until it is satisfied that all such taxes and/or charges have been paid.

(iv) The Registrar or co-Registrar shall not be required to register the transfer of or exchange of (x) any Note for a period beginning (1) 15 days before the mailing of a notice of an offer to repurchase or redeem Notes and ending at the close of business on the day of such mailing or (2) 15 days before an Interest Payment Date and ending on such Interest Payment Date and (y) any Note selected for repurchase or redemption, except the unrepurchased or unredeemed portion thereof, if any.

(v) Prior to the due presentation for registration of transfer of any Note, the Issuer, the Trustee, the Paying Agent, the Transfer Agent, the Registrar or any co-Registrar may deem and treat the Person in whose name a Note is registered as the absolute owner of such Note for the purpose of receiving payment of principal of and interest on such Note and for all other purposes whatsoever, whether or not such Note is overdue, and none of the Issuer, the Trustee, the Paying Agent, the Transfer Agent, the Registrar or any co-Registrar or the Note Custodian shall be affected by notice to the contrary.

(vi) All Notes issued upon any transfer or exchange pursuant to the terms of this Indenture shall evidence the same debt and shall be entitled to the same benefits under this Indenture as the Notes surrendered upon such transfer or exchange.

(vii) Subject to Section 2.6 and this Section 2.9, in connection with the exchange of a portion of a Certificated Note for a beneficial interest in a Global Note, the Trustee shall cancel such Certificated Note, and the Issuer shall execute, and upon Issuer Order, the Trustee shall authenticate and make available for delivery to the exchanging Holder, a new Certificated Note representing the principal amount not so exchanged.

(h) Applicable Procedures for Delegending .

(i) Promptly after one year has elapsed following (A) the Issue Date or (B) if the Issuer has issued Additional Notes with the same terms and the same CUSIP number as the Issue Date Notes pursuant to this Indenture within one year following the Issue Date, the date of original issuances of such Additional Notes, if the relevant Notes are freely tradable pursuant to Rule 144 under the Securities Act by Holders who are not Affiliates of the Issuer where no conditions of Rule 144 are then applicable (other than the holding period requirement in paragraph (d)(1)(ii) of Rule 144 so long as such holding period requirement is satisfied), the Issuer shall:

(1) instruct the Trustee in writing to remove the Private Placement Legend from such Notes (including setting forth the basis for such removal), and upon receipt of such instruction, the Private Placement Legend shall be deemed removed from any Global Notes representing such Notes without further action on the part of Holders;

(2) notify Holders of such Notes that the Private Placement Legend has been removed or deemed removed; and

(3) instruct DTC to change the CUSIP number for such Notes to the unrestricted CUSIP number for the Notes.

In no event will the failure of the Issuer to provide any notice set forth in this paragraph or of the Trustee to remove the Private Placement Legend constitute a failure by the Issuer to comply with any of its covenants or agreements set forth in Section 6.1 or otherwise. Any Restricted Note (or security issued in exchange or substitution therefor) as to which such restrictions on transfer shall have expired in accordance with their terms may, upon surrender of such Restricted Note for exchange to the Registrar in accordance with the provisions of Article II of this Indenture, be exchanged for a new Note or Notes, of like tenor and aggregate principal amount, which shall not bear the Private Placement Legend. The Issuer shall notify the Trustee in writing upon occurrence of the Resale Restriction Termination Date for any Note.

(ii) In the case of a Regulation S Global Note, after the Resale Restriction Termination Date of any such Regulation S Global Note, the Issuer may, at its sole option:

(1) instruct the Trustee in writing to remove the Private Placement Legend from such Regulation S Global Note (including setting forth the basis for such removal), and upon receipt of such instruction, the Private Placement Legend shall be deemed removed from such Regulation S Global Note without further action on the part of Holders; and

(2) instruct DTC to change the CUSIP number for such Notes to the unrestricted CUSIP number for the Notes.

(iii) Notwithstanding any provision herein to the contrary, in the event that Rule 144 as promulgated under the Securities Act (or any successor rule) is amended to change the one-year holding period thereunder (or the corresponding period under any successor rule), (A) each reference

in this Section 2.9(h) to "one year" and in the Private Placement Legend described in Section 2.8(b) and Exhibit A hereto to "ONE YEAR" shall be deemed for all purposes hereof to be references to such changed period, and (B) all corresponding references in this Indenture (including the definition of Resale Restriction Termination Date), the Notes and the Private Placement Legends thereon shall be deemed for all purposes hereof to be references to such changed period; *provided* that such changes shall not become effective if they are otherwise prohibited by, or would otherwise cause a violation of, the then-applicable federal securities laws; *provided further* that if such change does not apply to existing Notes, all references to "one year" in this Indenture shall not be deemed for all purposes hereof to be references to such changed period. This Section 2.9(h) shall apply to successive amendments to Rule 144 (or any successor rule) changing the holding period thereunder.

(i) No Obligation of the Trustee.

(i) The Trustee shall have no responsibility or obligation to any beneficial owner of an interest in a Global Note, Agent Members or any other Persons with respect to the accuracy of the records of DTC or its nominee or of Agent Members, with respect to any ownership interest in the Notes or with respect to the delivery to any Agent Member, beneficial owner or other Person (other than DTC) of any notice (including any notice of redemption) or the payment of any amount or delivery of any Notes (or other security or property) under or with respect to such Notes. All notices and communications to be given to the Holders and all payments to be made to Holders in respect of the Notes shall be given or made only to or upon the order of the registered Holders (which shall be DTC or its nominee in the case of a Global Note). The rights of beneficial owners in any Global Note shall be exercised only through DTC, subject to the applicable rules and procedures of DTC. The Trustee may rely and shall be fully protected in relying upon information furnished by DTC with respect to its Agent Members and any beneficial owners.

(ii) The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Note (including any transfers between or among Agent Members or beneficial owners in any Global Note) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by, the terms of this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

Section 2.10 Mutilated, Destroyed, Lost or Stolen Notes.

(a) If a mutilated Note is surrendered to the Registrar or if the Holder of a Note claims that the Note has been lost, destroyed or wrongfully taken, the Issuer shall execute, and upon Issuer Order, the Trustee shall authenticate and make available for delivery, a replacement Note for such mutilated, lost or stolen Note, of like tenor and principal amount, bearing a number not contemporaneously Outstanding if:

(i) the requirements of Section 8-405 of the Uniform Commercial Code are met,

(ii) the Holder satisfies any other reasonable requirements of the Trustee, and

(iii) neither the Issuer nor the Trustee has received notice that such Note has been acquired by a protected purchaser (as defined in Section 8-303 of the Uniform Commercial Code).

If required by the Trustee or the Issuer, such Holder shall furnish an affidavit of loss and indemnity bond sufficient in the judgment of the Issuer and the Trustee to protect the Issuer, the Trustee, the Paying Agent, the Transfer Agent, the Registrar or any co-Registrar and the Note Custodian from any loss that any of them may suffer if a Note is replaced.

(b) Upon the issuance of any new Note under this Section 2.10, the Issuer may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) in connection therewith.

(c) Every new Note issued pursuant to this Section 2.10 in exchange for any mutilated Note, or in lieu of any destroyed, lost or stolen Note, shall constitute an original additional contractual obligation of the Issuer, any Note Guarantor and any other obligor upon the Notes, whether or not the mutilated, destroyed, lost or stolen Note shall be at any time enforceable by anyone, and shall be entitled to all benefits of this Indenture equally and proportionately with any and all other Notes duly issued hereunder.

Section 2.11 Temporary Notes. Until definitive Notes are ready for delivery, the Issuer may execute, and upon Issuer Order, the Trustee will authenticate and make available for delivery, temporary Notes. Temporary Notes will be substantially in the form of definitive Notes but may have variations that the Issuer considers appropriate for temporary Notes and as shall be reasonably acceptable to the Trustee. Without unreasonable delay, the Issuer will prepare and execute, and upon Issuer Order, the Trustee will authenticate and make available for delivery, definitive Notes. After the preparation of definitive Notes, the temporary Notes will be exchangeable for definitive Notes upon surrender of the temporary Notes at the office or agency maintained by the Issuer pursuant to Section 2.3 for that purpose and such exchange shall be without charge to the Holder. Upon surrender for cancellation of any one or more temporary Notes, the Issuer will execute, and upon Issuer Order, the Trustee will authenticate and make available for delivery in exchange therefor, one or more definitive Notes representing an equal principal amount of Notes. Until so exchanged, the Holder of temporary Notes shall in all respects be entitled to the same benefits under this Indenture as a Holder of definitive Notes.

Section 2.12 Cancellation. The Issuer at any time may deliver Notes to the Trustee for cancellation. The Registrar, the Paying Agent and the Transfer Agent shall forward to the Trustee any Notes surrendered to them for registration of transfer, exchange or payment. The Trustee and no one else shall cancel and dispose of cancelled Notes in accordance with its policy of disposal. The Issuer may not issue new Notes to replace Notes it has paid or delivered to the Trustee for cancellation for any reason other than in connection with a registration of transfer or exchange upon Issuer Order.

Section 2.13 Defaulted Interest. When any installment of interest becomes overdue (a "Defaulted Interest"), such installment shall forthwith cease to be payable to the Holders in whose names the Notes were registered on the Record Date applicable to such installment of interest. Defaulted Interest (including any interest on such Defaulted Interest) shall be paid by the Issuer, at its election, as provided in clause (a) or clause (b) below.

(a) The Issuer may elect to make payment of any Defaulted Interest (including any interest payable on such Defaulted Interest) to the Holders in whose names the Notes are registered at the close of business on a special record date for the payment of such Defaulted Interest (a " Special Record Date"), which shall be fixed in the following manner. The Issuer shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid and the date of the proposed payment, and at the same time the Issuer shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Holders entitled to such Defaulted Interest as provided in this Section 2.13(a). Thereupon the Trustee shall fix a Special Record Date for the payment of such Defaulted Interest, which shall be not more than fifteen (15) calendar days and not less than ten (10) calendar days prior to the date of the proposed payment and not less than ten (10) calendar days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the Issuer of such Special Record Date and, in the name and at the expense of the Issuer, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be sent, first-class mail, postage prepaid, to each Holder at such Holder's address as it appears in the Note Register, not less than ten (10) calendar days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been mailed as aforesaid, such Defaulted Interest shall be paid to the Holders in whose names the Notes are registered at the close of business on such Special Record Date and shall no longer be payable pursuant to clause (b) below; or

(b) The Issuer may make payment of any Defaulted Interest (including any interest on such Defaulted Interest) in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Notes may be listed, and upon such notice as may be required by such exchange, if, after notice given by the Issuer to the Trustee of the proposed payment pursuant to this Section 2.13(b), such manner of payment shall be deemed practicable by the Trustee. The Trustee shall in the name and at the expense of the Issuer cause prompt notice of the proposed payment and the date thereof to be sent, first-class mail, postage prepaid, to each Holder at such Holder's address as it appears in the Note Register.

Section 2.14 Additional Notes.

(a) The Issuer may, from time to time, subject to compliance with any other applicable provisions of this Indenture, without the consent of the Holders, create and issue pursuant to this Indenture additional notes (" Additional Notes") that shall have terms and conditions identical to those of the other Outstanding Notes, except with respect to:

(i) the Issue Date;

(ii) the amount of interest payable on the first Interest Payment Date therefor;

(iii) the issue price; and

(iv) any adjustments necessary in order to conform to and ensure compliance with the Securities Act (or other applicable securities laws) and any agreement applicable to such Additional Notes, which are not adverse in any material respect to the Holder of any Outstanding Notes (other than such Additional Notes).

The Notes issued on the Issue Date and any Additional Notes shall be treated as a single series for all purposes under this Indenture; *provided* that the Issuer may use different CUSIP or other similar numbers among Issue Date Notes, and among Additional Notes to the extent required to comply with securities or tax law requirements, including to permit delegending pursuant to Section 2.9(h).

(b) With respect to any Additional Notes, the Issuer will set forth in an Officer's Certificate of the Issuer (the " Additional Note Certificate"), copies of which will be delivered to the Trustee, the following information:

(i) the aggregate principal amount of such Additional Notes to be authenticated and delivered pursuant to this Indenture;

(ii) the Issue Date and the issue price of such Additional Notes; *provided* that no Additional Notes may be issued at a price that would cause such Additional Notes to have "original issue discount" within the meaning of Section 1273 of the Code, unless such Additional Notes have a separate CUSIP or other similar number from other Notes; and

(iii) whether such Additional Notes will be subject to transfer restrictions under the Securities Act (or other applicable securities laws).

ARTICLE III

COVENANTS

Section 3.1 Payment of Notes. (a) The Issuer shall pay the principal of and interest (including Defaulted Interest) on the Notes in U.S. Legal Tender on the dates and in the manner provided in the Notes and in this Indenture. Prior to 10:00 a.m. New York City time, on the Business Day prior to each Interest Payment Date and the Maturity Date, the Issuer shall deposit with the Paying Agent in immediately available funds U.S. Legal Tender sufficient to make cash payments due on such Interest Payment Date or Maturity Date, as the case may be. If the Issuer or an Affiliate of the Issuer is acting as Paying Agent, the Issuer or such Affiliate shall, prior to 10:00 a.m. New York City time on the Business Day prior to each Interest Payment Date and the Maturity Date, segregate and hold in trust U.S. Legal Tender, sufficient to make cash payments due on such Interest Payment Date or Maturity Date, as the case may be. Principal and interest shall be considered paid on the date due if on such date the Trustee or the Paying Agent (other than the Issuer or an Affiliate of the Issuer) holds in accordance with this Indenture U.S. Legal Tender designated for and sufficient to pay all principal and interest then due and the Trustee or the Paying Agent, as the case may be, is not prohibited from paying such money to the Holders on that date pursuant to the terms of this Indenture.

(b) The Issuer hereby instructs the Trustee to establish an "Issue Date Note Account" for reception of the interest and principal payments for the Issue Date Notes.

Section 3.2 Maintenance of Office or Agency.

(a) The Issuer shall maintain each office or agency required under Section 2.3. The Issuer will give prompt written notice to the Trustee of any change in the location of any such office or agency. If at any time the Issuer shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee, and the Issuer hereby appoints the Trustee as its agent to receive all such presentations, surrenders, notices and demands.

(b) The Issuer may also from time to time designate one or more other offices or agencies (in or outside of the City of New York) where the Notes may be presented or surrendered for registration of transfer or for exchange and may from time to time rescind any such designation. The Issuer will give prompt written notice to the Trustee of any such designation or rescission and any change in the location of any such other office or agency.

Section 3.3 Corporate Existence. Subject to Article IV, the Issuer will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence.

Section 3.4 Payment of Taxes and Other Claims. The Issuer will pay or discharge or cause to be paid or discharged, before the same shall become delinquent, (i) all taxes, assessments and governmental charges levied or imposed upon the Issuer or any Restricted Subsidiary or for which it or any of them are otherwise liable, or upon the income, profits or property of the Issuer or any Restricted Subsidiary and (ii) all lawful claims for labor, materials

and supplies, which, if unpaid, might by law become a liability or Lien upon the property of the Issuer or any Restricted Subsidiary; *provided, however,* that the Issuer shall not be required to pay or discharge or cause to be paid or discharged any such tax, assessment, charge or claim whose amount, applicability or validity is being contested in good faith by appropriate proceedings and for which appropriate reserves, if necessary (in the good faith judgment of the Issuer) are being maintained in accordance with GAAP or where the failure to effect such payment will not be disadvantageous to the Holders.

Section 3.5 Compliance Certificate. The Issuer and each Note Guarantor shall deliver to the Trustee within 105 days after the end of each fiscal year of the Issuer (which fiscal year ends on December 31 of each year, subject to any change in fiscal year following the Issue Date) an Officer's Certificate stating that in the course of the performance by the signers of their duties as Officers of the Issuer or such Note Guarantor, as the case may be, they would normally have knowledge of any Default or Event of Default and whether or not the signers know of any Default or Event of Default that occurred during the previous fiscal year. If they do, the certificate shall describe the Default or Event of Default, its status and what action the Issuer or such Note Guarantor is taking or proposes to take with respect thereto.

Section 3.6 Further Instruments and Acts.

(a) The Issuer and each Note Guarantor will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper or as the Trustee may reasonably request to carry out more effectively the purpose of this Indenture.

(b) The Issuer and the Note Guarantors shall take, and shall cause their Subsidiaries party thereto to take, any and all actions required under the Intercreditor Agreement and the Security Documents to cause the Intercreditor Agreement and the Security Documents to create and maintain, as security for the Obligations of the Issuer and the Note Guarantors hereunder, a valid and enforceable perfected security interest on all the Collateral, in favor of the Security Agent for the equal and ratable benefit of the Holders of the Notes, and the other Permitted Secured Obligations, first in priority to any and all security interests at any time granted upon the Collateral, subject in all respects to Liens imposed by law and Liens for judgments, taxes, assessments or governmental charges.

Section 3.7 Waiver of Stay, Extension or Usury Laws. The Issuer and each Note Guarantor covenant (to the fullest extent permitted by applicable law) that they will not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law or any usury law or other law that would prohibit or forgive the Issuer or such Note Guarantor from paying all or any portion of the principal of or interest on the Notes as contemplated herein, wherever enacted, now or at any time hereafter in force, or which may affect the covenants or the performance of this Indenture. The Issuer and each Note Guarantor hereby expressly waives (to the fullest extent permitted by applicable law) all benefit or advantage of any such law, and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

Section 3.8 Change of Control.

(a) Upon the occurrence of a Change of Control, each Holder will have the right to require that the Issuer purchase all or a portion (in integral multiples of U.S.$1,000) of the Holder's Notes at a purchase price equal to 101% of the principal amount thereof, plus accrued and unpaid interest thereon through the date of purchase (the "Change of Control Payment").

(b) Within 30 days following the date upon which the Change of Control occurred, the Issuer must send, by first-class mail, a notice to each Holder, with a copy to the Trustee, offering to purchase the Notes as described above (a " Change of Control Offer"). The Change of Control Offer shall state, among other things, the purchase date, which must be no earlier than 30 days nor later than 60 days from the date the notice is mailed, other than as may be required by law (the "Change of Control Payment Date").

(c) On the Change of Control Payment Date, the Issuer will, to the extent lawful:

(i) accept for payment all Notes or portions thereof properly tendered and not withdrawn pursuant to the Change of Control Offer;

(ii) deposit with the Paying Agent funds in an amount equal to the Change of Control Payment in respect of all Notes or portions thereof so tendered; and

(iii) deliver or cause to be delivered to the Trustee the Notes so accepted together with an Officer's Certificate stating the aggregate principal amount of Notes or portions thereof being purchased by the Issuer.

(d) If only a portion of a Note is purchased pursuant to a Change of Control Offer, a new Note in a principal amount equal to the portion thereof not purchased will be issued in the name of the Holder thereof upon cancellation of the original Note (or appropriate adjustments to the amount and beneficial interests in a Global Note will be made, as appropriate); *provided* that each new Note shall be in a minimum principal amount of U.S.$200,000 and in integral multiples of U.S.$1,000 in excess thereof. Notes (or portions thereof) purchased pursuant to a Change of Control Offer will be cancelled and cannot be reissued.

(e) The Issuer will not be required to make a Change of Control Offer upon a Change of Control if:

(i) a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in this Indenture applicable to a Change of Control Offer made by the Issuer and purchases all Notes properly tendered and not withdrawn under the Change of Control Offer, or

(ii) notice of redemption has been given pursuant to this Indenture as described under Section 5.4 unless and until there is a default in payment of the applicable redemption price.

(f) The Issuer will comply with the requirements of Rule 14e-1 under the Exchange Act and any other applicable securities laws and regulations in connection with the purchase of Notes in connection with a Change of Control Offer. To the extent that the provisions of any securities laws or regulations conflict with the "Change of Control" provisions of this Indenture, the Issuer will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under this Indenture by doing so.

Section 3.9 Limitation on Incurrence of Additional Indebtedness .

(a) The Issuer will not, and will not cause or permit any of its Restricted Subsidiaries to, directly or indirectly, Incur any Indebtedness, including Acquired Indebtedness, except that the Issuer and/or any of the Note Guarantors may Incur Indebtedness, including Acquired Indebtedness, if, at the time of and immediately after giving *pro forma* effect to the Incurrence thereof and the application of the proceeds therefrom, the Consolidated Fixed Charge Coverage Ratio of the Issuer is greater than or equal to 2.0 to 1.0.

(b) Notwithstanding clause (a) above, the Issuer and/or any of its Restricted Subsidiaries, as applicable, may Incur the following Indebtedness ( "Permitted Indebtedness"):

(i) Indebtedness not to exceed U.S.$500 million in respect of the Notes, excluding Additional Notes;

(ii) Guarantees by (A) any Note Guarantor of Indebtedness of the Issuer or another Note Guarantor permitted under this Indenture and (B) the Issuer of Indebtedness of any Note Guarantor; *provided* that, if any such Guarantee is of Subordinated Indebtedness, then the obligations of the Issuer under the Notes and this Indenture or the Note Guarantee of such Note Guarantor, as applicable, will be senior to the Guarantee of such Subordinated Indebtedness;

(iii) Indebtedness of the Issuer and/or any of its Restricted Subsidiaries outstanding on the Issue Date (excluding Indebtedness permitted under clauses (v), (vi), (vii) or (x) of this definition of Permitted Indebtedness);

(iv) Hedging Obligations, Compensation Related Hedging Obligations and any Guarantees thereof and any reimbursement obligations with respect to letters of credit related thereto, in each case entered into by the Issuer and/or any of its Restricted Subsidiaries; *provided* that, upon the drawing of such letters of credit, such obligations are reimbursed within 30 days following such drawing;

(v) intercompany Indebtedness between the Issuer and any Restricted Subsidiary or between any Restricted Subsidiaries; *provided* that, in

the event that at any time any such Indebtedness ceases to be held by the Issuer or a Restricted Subsidiary, such Indebtedness shall be deemed to be Incurred and not permitted by this clause (v) at the time such event occurs;

(vi) Indebtedness of the Issuer and/or any of its Restricted Subsidiaries arising from (A) the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently drawn against insufficient funds in the ordinary course of business; *provided* that, such Indebtedness is extinguished within five Business Days of Incurrence; or (B) any cash pooling or other cash management agreements in place with a bank or financial institution but only to the extent of offsetting credit balances of the Issuer and/or its Restricted Subsidiaries pursuant to such cash pooling or other cash management agreement;

(vii) Indebtedness of the Issuer and/or any of its Restricted Subsidiaries represented by (A) endorsements of negotiable instruments in the ordinary course of business (excluding an *aval*), (B) documentary credits (including all forms of letter of credit), performance bonds or guarantees, advance payments, bank guarantees, bankers' acceptances, surety or appeal bonds or similar instruments for the account of, or guaranteeing performance by, the Issuer and/or any Restricted Subsidiary in the ordinary course of business, (C) reimbursement obligations with respect to letters of credit in the ordinary course of business (D) reimbursement obligations with respect to letters of credit and performance Guarantees in the ordinary course of business to the extent required pursuant to the terms of any Investment made pursuant to clause (12) of the definition of "Permitted Investment" and (E) other Guarantees by the Issuer and/or any Restricted Subsidiary in favor of a bank or financial institution in respect of obligations of that bank or financial institution to a third party in an amount not to exceed U.S.$500 million at any one time outstanding; *provided* that in the case of clauses (B), (C) and (D), upon the drawing of such letters of credit or the Incurrence of such Indebtedness, such obligations are reimbursed within 30 days following such drawing or Incurrence;

(viii) Refinancing Indebtedness in respect of:

(A) Indebtedness (other than Indebtedness owed to the Issuer or any Subsidiary of the Issuer) Incurred pursuant to clause (a) above (it being understood that no Indebtedness outstanding on the Issue Date is Incurred pursuant to such clause (a) above), or

(B) Indebtedness Incurred pursuant to clause (i), (ii) or (iii) above or this clause (viii);

(ix) Capitalized Lease Obligations, Sale and Leaseback Transactions, export credit facilities with a maturity of at least one year and Purchase Money Indebtedness of, including Guarantees of any of the foregoing by, the Issuer and/or any Restricted Subsidiary, in an aggregate principal amount at any one time outstanding not to exceed U.S.$1 billion;

(x) Indebtedness arising from agreements entered into by the Issuer and/or a Restricted Subsidiary providing for bona fide indemnification, adjustment of purchase price or similar obligations not for financing purposes, in each case, Incurred or assumed in connection with the acquisition or disposition of any business, assets or Capital Stock of a Restricted Subsidiary (including minority interests); *provided* that, in the case of a disposition, the maximum aggregate liability in respect of such Indebtedness shall at no time exceed the gross proceeds actually received by the Issuer and its Restricted Subsidiaries in connection with such disposition;

(xi) Indebtedness of the Issuer and/or any of its Restricted Subsidiaries in an aggregate amount not to exceed U.S.$1 billion at any one time outstanding; *provided* that, no more than U.S.$250 million of such Indebtedness at any one time outstanding (excluding any Indebtedness under a Permitted Liquidity Facility) may be Incurred by Restricted Subsidiaries that are not Note Guarantors, which amount shall be increased by the corresponding amount of other Indebtedness of Restricted Subsidiaries other than the Note Guarantors outstanding on the Issue Date and subsequently repaid from time to time but in any event not to exceed U.S.$500 million at any one time outstanding; *provided, further, however*, that (A) the Issuer and/or any of its Restricted Subsidiaries may Incur Indebtedness under a Permitted Liquidity Facility and (B) in the event that the Issuer and/or any of its Restricted Subsidiaries shall have Incurred Indebtedness under a Permitted Liquidity Facility that increases the amount outstanding at such time pursuant to this clause (xi) in excess of U.S.$1 billion, then up to U.S.$1.2 billion may be Incurred pursuant to this clause (xi) at any one time outstanding;

(xii) (A) Indebtedness of the Issuer and/or any of its Restricted Subsidiaries in respect of factoring arrangements or Inventory Financing arrangements or (B) other Indebtedness of the Issuer and/or any of its Restricted Subsidiaries with a maturity of 12 months or less for working capital purposes, not to exceed in the aggregate at any one time (calculated as of the end of the most recent fiscal quarter for which consolidated financial information of the Issuer is available) the greater of:

(1) The sum of:

(x) 20% of the net book value of the inventory of the Issuer and its Restricted Subsidiaries and

(y) 20% of the net book value of the accounts receivable of the Issuer and its Restricted Subsidiaries (excluding accounts receivable pledged to secure Indebtedness or subject to a Qualified Receivables Transaction),

less, in each case, the amount of any permanent repayments or reductions of commitments in respect of such Indebtedness made with the Net Cash Proceeds of an Asset Sale in order to comply with Section 3.12; or

(2) U.S.$350 million;

(xiii) [Reserved];

(xiv) Indebtedness of the Issuer and/or any of its Restricted Subsidiaries for taxes levied, assessments due and other governmental charges required to be paid as a matter of law or regulation in the ordinary course of business; *provided* that such Indebtedness shall be permitted to be Incurred only at such time that the Financing Agreement (or any refinancing thereof) shall contain an exception to allow the Incurrence of Indebtedness to pay taxes;

(xv) Indebtedness Incurred pursuant to the Banobras Facility;

(xvi) Indebtedness of the Issuer and/or any of its Restricted Subsidiaries Incurred and/or issued to refinance Qualified Receivables Transactions in existence on the Issue Date;

(xvii) Acquired Indebtedness in an aggregate amount at any one time outstanding under this clause (xvii) not to exceed U.S.$100 million; and

(xviii) (A) any Indebtedness that constitutes an Investment that the Issuer and/or any of its Restricted Subsidiaries is contractually committed to Incur as of the Issue Date in any Person (other than a Subsidiary) in which the Issuer or any of its Restricted Subsidiaries maintains an Investment in equity securities; and (B) Guarantees up to U.S.$100 million in any calendar year by the Issuer and/or any Restricted Subsidiary of Indebtedness of any Person in which the Issuer or any of its Restricted Subsidiaries maintains an equity Investment minus any Investment other than such guarantees in such Person during such calendar year pursuant to clause (17)(b) of the definition of "Permitted Investments."

(c) Notwithstanding anything to the contrary contained in this Section 3.9,

(i) The Issuer shall not, and shall not permit any Note Guarantor to, Incur any Permitted Indebtedness pursuant to Section 3.9(b) if the proceeds thereof are used, directly or indirectly, to Refinance any Subordinated Indebtedness unless such Indebtedness shall be subordinated to the Notes or the applicable Note Guarantee, as the case may be, to at least the same extent as such Subordinated Indebtedness.

(ii) For purposes of determining compliance with, and the outstanding principal amount of, any particular Indebtedness Incurred pursuant to and in compliance with this Section 3.9, the amount of Indebtedness issued at a price that is less than the principal amount thereof will be equal to the amount of the liability in respect thereof determined in accordance with GAAP. Accrual of interest, the accretion or amortization of original issue discount, the payment of regularly scheduled interest in the form of additional Indebtedness of the same instrument or the payment of regularly scheduled dividends on Disqualified Capital Stock in the form of additional Disqualified Capital Stock with the same terms will not be deemed to be an Incurrence of Indebtedness for purposes of this Section 3.9. For purposes of determining compliance with this Section 3.9, mark-to-market fluctuations of hedging obligations or derivatives outstanding on the Issue Date shall not constitute Incurrence of Indebtedness.

(iii) For purposes of determining compliance with this Section 3.9, the principal amount of Indebtedness denominated in foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was Incurred, in the case of term Indebtedness, or first committed, in the case of revolving credit Indebtedness; *provided* that if such Indebtedness is Incurred to refinance other Indebtedness denominated in foreign currency, and such refinancing would cause the applicable restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such restriction shall be deemed not to have been exceeded so long as the principal amount of such Refinancing Indebtedness does not exceed the principal amount of such Indebtedness being refinanced. Notwithstanding any other provision of this Section 3.9, the maximum amount of Indebtedness Incurred to refinance other Indebtedness, if Incurred in a different currency from the Indebtedness being refinanced, shall be calculated based on the currency exchange rate applicable to the currencies in which such Refinancing Indebtedness is denominated that is in effect on the date of such refinancing.

(iv) For purposes of determining compliance with this Section 3.9:

(A) in the event that an item of Indebtedness meets the criteria of more than one of the types of Indebtedness described above, including,

without limitation, in Section 3.9(a), the Issuer, in its sole discretion, will classify such item of Indebtedness at the time of Incurrence and only be required to include the amount and type of such Indebtedness in one of the above clauses and may later reclassify all or a portion of such item of Indebtedness as having been Incurred pursuant to any other clause to the extent such Indebtedness could be Incurred pursuant to such clause at the time of such reclassification; and

(B) the Issuer will be entitled to divide and classify an item of Indebtedness in more than one of the types of Indebtedness described above, including, without limitation, Section 3.9(a).

Section 3.10 [Reserved].

Section 3.11 Limitation on Restricted Payments.

(a) The Issuer will not, and will not cause or permit any of its Restricted Subsidiaries to, directly or indirectly, take any of the following actions (each, a "Restricted Payment"):

(i) declare or pay any dividend or return of capital or make any distribution on or in respect of shares of Capital Stock of the Issuer or any Restricted Subsidiary to holders of such Capital Stock, other than:

(A) dividends, distributions or returns on capital payable in Qualified Capital Stock of the Issuer,

(B) dividends, distributions or returns on capital payable to the Issuer and/or a Restricted Subsidiary,

(C) dividends, distributions or returns of capital made on a *pro rata* basis to the Issuer and its Restricted Subsidiaries, on the one hand, and minority holders of Capital Stock of a Restricted Subsidiary, on the other hand (or on less than a *pro rata* basis to any minority holder);

(ii) purchase, redeem or otherwise acquire or retire for value:

(A) any Capital Stock of the Issuer, or

(B) any Capital Stock of any Restricted Subsidiary held by an Affiliate of the Issuer or any Preferred Stock of a Restricted Subsidiary, except for:

(1) Capital Stock held by the Issuer or a Restricted Subsidiary, or

(2) purchases, redemptions, acquisitions or retirements for value of Capital Stock on a *pro rata* basis from the Issuer and/or any Restricted Subsidiaries, on the one hand, and minority holders of Capital Stock of a Restricted Subsidiary, on the other hand, according to their respective percentage ownership of the Capital Stock of such Restricted Subsidiary;

(iii) make any principal payment on, purchase, defease, redeem, prepay, decrease or otherwise acquire or retire for value, prior to any scheduled final maturity, scheduled repayment or scheduled sinking fund payment, as the case may be, any Subordinated Indebtedness; or

(iv) make any Investment (other than Permitted Investments);

if at the time of the Restricted Payment immediately after giving effect thereto:

(A) a Default or an Event of Default shall have occurred and be continuing;

(B) the Issuer is not able to Incur at least U.S.$1.00 of additional Indebtedness pursuant to Section 3.9(a); or

(C) the aggregate amount (the amount expended for these purposes, if other than in cash, being the Fair Market Value of the relevant property at the time of the making thereof) of the proposed Restricted Payment and all other Restricted Payments made subsequent to the Issue Date up to the date thereof, less any Investment Return calculated as of the date thereof, shall exceed the sum of:

(1) 50% of cumulative Consolidated Net Income of the Issuer or, if cumulative Consolidated Net Income of the Issuer is a loss, minus (i) 100% of the loss, accrued during the period, treated as one accounting period, beginning on the first full fiscal quarter after the Issue Date to the end of the most recent fiscal quarter for which consolidated financial information of the Issuer is available and (ii) the amount of cash benefits to the Issuer or a Restricted Subsidiary that is netted against Investments in Similar Businesses pursuant to clause (12) of the definition of "Permitted Investments"; plus

(2) 100% of the aggregate net cash proceeds received by the Issuer from any Person from any:

- contribution to the equity capital of the Issuer (not representing an interest in Disqualified Capital Stock) or issuance and sale of Qualified Capital Stock of the Issuer, in each case, subsequent to the Issue Date, or
- issuance and sale subsequent to the Issue Date (and, in the case of Indebtedness of a Restricted Subsidiary, at such time as it was a Restricted Subsidiary) of any Indebtedness for borrowed money of the Issuer or any Restricted Subsidiary that has been converted into or exchanged for Qualified Capital Stock of the Issuer,

excluding, in each case, any net cash proceeds:

- received from a Subsidiary of the Issuer;
- used to redeem Notes under Article V;
- used to acquire Capital Stock or other assets from an Affiliate of the Issuer; or
- applied in accordance with clause (ii)(B) or (iii)(A) of Section 3.11(b) below.

(b) Notwithstanding Section 3.11(a), this Section 3.11 does not prohibit:

(i) the payment of any dividend within 60 days after the date of declaration of such dividend if the dividend would have been permitted on the date of declaration pursuant to Section 3.11(a);

(ii) if no Default or Event of Default shall have occurred and be continuing, the acquisition of any shares of Capital Stock of the Issuer,

(A) in exchange for Qualified Capital Stock of the Issuer, or

(B) through the application of the net cash proceeds received by the Issuer from a substantially concurrent sale of Qualified Capital Stock of the Issuer or a contribution to the equity capital of the Issuer not representing an interest in Disqualified Capital Stock, in each case not received from a Subsidiary of the Issuer;

*provided*, that the value of any such Qualified Capital Stock issued in exchange for such acquired Capital Stock and any such net cash proceeds shall be excluded from Section 3.11(a)(iv)(C)(2) (and were not included therein at any time);

(iii) if no Default or Event of Default shall have occurred and be continuing, the voluntary prepayment, purchase, defeasance, redemption or other acquisition or retirement for value of any Subordinated Indebtedness:

(A) solely in exchange for, or through the application of net cash proceeds of a substantially concurrent sale, other than to a Subsidiary of the Issuer, of Qualified Capital Stock of the Issuer, or

(B) solely in exchange for Refinancing Indebtedness for such Subordinated Indebtedness,

*provided*, that the value of any Qualified Capital Stock issued in exchange for Subordinated Indebtedness and any net cash proceeds referred to above shall be excluded from Section 3.11(a)(iv)(C)(2) (and were not included therein at any time);

(iv) repurchases by the Issuer of Common Stock of the Issuer or options, warrants or other securities exercisable or convertible into Common Stock of the Issuer from employees or directors of the Issuer or any of its Subsidiaries or their authorized representatives upon the death, disability or termination of employment or directorship of the employees or directors, in an amount not to exceed U.S.$5 million in any calendar year and any repurchases other than in connection with compensation of Common Stock of the Issuer pursuant to binding written agreements in effect on the Issue Date;

(v) payments of dividends on Disqualified Capital Stock issued pursuant to the covenant described under Section 3.9; *provided, however*, that such dividends shall be excluded in the calculation of the amount of Restricted Payments;

(vi) non-cash repurchases of Capital Stock deemed to occur upon exercise of stock options, warrants or other similar rights if such Capital Stock represents a portion of the exercise price of such options, warrants or other similar rights;

(vii) cash payments in lieu of the issuance of fractional shares in connection with the exercise of warrants, options or other securities convertible into or exchangeable for Capital Stock of the Issuer;

(viii) purchases of any Subordinated Indebtedness of the Issuer (A) at a purchase price not greater than 101% of the principal amount thereof (together with accrued and unpaid interest) in the event of the occurrence of a Change of Control or (B) at a purchase price not greater than 100% of the principal amount thereof (together with accrued and unpaid interest) in the event of an Asset Sale in accordance with provisions similar to those set forth under Section 3.12; *provided, however*, that prior to such purchase of any such Subordinated Indebtedness, the Issuer has made the Change of Control Offer or Asset Sale Offer as provided under Section 3.8 or Section 3.12, respectively, and has purchased all Notes validly tendered and not properly withdrawn pursuant thereto;

(ix) recapitalization of earnings on or in respect of the Qualified Capital Stock of the Issuer pursuant to which additional Qualified Capital Stock of the Issuer or the right to subscribe for additional Capital Stock of the Issuer is issued to the existing shareholders of the Issuer on a *pro rata* basis (which, for the avoidance of doubt, shall not allow any payment in cash to be made in respect of Qualified Capital Stock of the Issuer pursuant to this clause (ix)); and

(x) so long as (A) no Default or Event of Default shall have occurred and be continuing (or result therefrom) and (B) the Issuer could Incur at least U.S.$1.00 of additional Debt pursuant to Section 3.9(a), payment of any dividends on Capital Stock (other than Disqualified Capital Stock) of the Issuer in an aggregate amount which, when taken together with all dividends paid pursuant to this clause (x), does not exceed U.S.$50 million in any calendar year; *provided* that such dividends shall be included in the calculation of the amount of Restricted Payments.

(xi) [Reserved]

In determining the aggregate amount of Restricted Payments made subsequent to the Issue Date, amounts expended pursuant to clauses (i) (without duplication for the declaration of the relevant dividend), (iv), (viii) and (x) above shall be included in such calculation and amounts expended pursuant to clauses (ii), (iii), (v), (vi), (vii) and (ix) above shall not be included in such calculation.

Section 3.12 Limitation on Asset Sales.

(a) The Issuer will not, and will not permit any of its Restricted Subsidiaries to, consummate an Asset Sale unless:

(i) the Issuer or the applicable Restricted Subsidiary, as the case may be, receives consideration at the time of the Asset Sale at least equal to the Fair Market Value (to be determined as of the date on which such sale is contracted) of the assets sold or otherwise disposed of, and

(ii) other than in respect of Permitted Asset Swap Transactions, at least 80% of the consideration received for the assets sold by the Issuer or the Restricted Subsidiary, as the case may be, in the Asset Sale shall be in the form of cash or Cash Equivalents received at the time of such Asset Sale; *provided, however*, for the purposes of this clause (ii), the following are also deemed to be cash or Cash Equivalents:

(A) the assumption of Indebtedness (other than Subordinated Indebtedness) of the Issuer or any Restricted Subsidiary and the release of the Issuer or such Restricted Subsidiary from all liability on such Indebtedness in connection with such Asset Sale;

(B) any securities, notes or obligation received by the Issuer or any Restricted Subsidiary from the transferee that are, within 180 days after the Asset Sale, converted by the Issuer or such Restricted Subsidiary into cash, to the extent of cash received in that conversion;

(C) Capital Stock of a Person who is or who, after giving effect to such Asset Sale, becomes, a Restricted Subsidiary; and

(D) any Designated Non-cash Consideration received by the Issuer or such Restricted Subsidiary in connection with such Asset Sale having an aggregate Fair Market Value which, when taken together with the Fair Market Value of all other Designated Non-cash Consideration received pursuant to this clause (D) since the Issue Date, does not exceed the sum of (1) 3.0% of Consolidated Tangible Assets of the Issuer calculated as of the end of the most recent fiscal quarter for which consolidated financial information is available (with the Fair Market Value of each item of Designated Non-cash Consideration being measured as of the date it was received and without giving effect to subsequent changes in value of any such item of Designated Non-cash Consideration) and (2) the amount of cash or Cash Equivalents received in connection with a subsequent sale of such Designated Non-cash Consideration.

(b) The Issuer or any Restricted Subsidiary may apply the Net Cash Proceeds of any such Asset Sale within 365 days thereof to:

(i) repay any Senior Indebtedness for borrowed money or constituting a Capitalized Lease Obligation and permanently reduce the commitments with respect thereto, or

(ii) purchase:

(A) assets (except for current assets as determined in accordance with GAAP or Capital Stock) to be used by the Issuer or any Restricted Subsidiary in a Permitted Business, or

(B) substantially all of the assets of a Permitted Business or Capital Stock of a Person engaged in a Permitted Business that will become, upon purchase, a Restricted Subsidiary from a Person other than the Issuer and its Restricted Subsidiaries.

(c) To the extent all or a portion of the Net Cash Proceeds of any Asset Sale are not applied within the 365 days of the Asset Sale as described in clause (i) or (ii) of Section 3.12(b), the Issuer will make an offer to purchase Notes (the "Asset Sale Offer"), at a purchase price equal to 100% of the principal amount of the Notes to be purchased, plus accrued and unpaid interest thereon, to the date of purchase (the " Asset Sale Offer Amount"). The Issuer will purchase pursuant to an Asset Sale Offer from all tendering Holders on a *pro rata* basis, and, at

the Issuer's option, on a *pro rata* basis with the holders of any other Senior Indebtedness with similar provisions requiring the Issuer to offer to purchase the other Senior Indebtedness with the proceeds of Asset Sales, that principal amount (or accreted value in the case of Indebtedness issued with original issue discount) of Notes and the other Senior Indebtedness to be purchased equal to such unapplied Net Cash Proceeds. The Issuer may satisfy its obligations under this Section 3.12 with respect to the Net Cash Proceeds of an Asset Sale by making an Asset Sale Offer prior to the expiration of the relevant 365-day period.

(d) Pending the final application of any Net Cash Proceeds pursuant to this Section 3.12, the holder of such Net Cash Proceeds may apply such Net Cash Proceeds temporarily to reduce Indebtedness outstanding under a revolving credit facility or otherwise invest such Net Cash Proceeds in any manner not prohibited by this Indenture.

(e) The purchase of Notes pursuant to an Asset Sale Offer shall occur not less than 20 Business Days following the date thereof, or any longer period as may be required by law, nor more than 45 days following the 365th day following the Asset Sale. The Issuer may, however, defer an Asset Sale Offer until there is an aggregate amount of unapplied Net Cash Proceeds from one or more Asset Sales equal to or in excess of U.S.$100 million. At that time, the entire amount of unapplied Net Cash Proceeds, and not just the amount in excess of U.S.$100 million, shall be applied as required pursuant to this Section 3.12.

(f) Each Asset Sale Offer Notice shall be mailed first class, postage prepaid, to the record Holders as shown on the Note Register within 20 days following such 365th day (or such earlier date as the Issuer shall have elected to make such Asset Sale Offer), with a copy to the Trustee offering to purchase the Notes as described above. Each notice of an Asset Sale Offer shall state, among other things, the purchase date, which must be no earlier than 30 days nor later than 60 days from the date the notice is mailed, other than as may be required by law (the " Asset Sale Offer Payment Date"). Upon receiving notice of an Asset Sale Offer, Holders may elect to tender their Notes in whole or in part, in minimum denominations of U.S.$200,000 and in any integral multiples of U.S.$1,000 in excess thereof in exchange for cash.

(g) On the Asset Sale Offer Payment Date, the Issuer shall, to the extent lawful:

(i) accept for payment all Notes or portions thereof properly tendered pursuant to the Asset Sale Offer;

(ii) deposit with the Paying Agent funds in an amount equal to the Asset Sale Offer Amount in respect of all Notes or portions thereof so tendered; and

(iii) deliver or cause to be delivered to the Trustee the Notes so accepted together with an Officer's Certificate stating the aggregate principal amount of Notes or portions thereof being purchased by the Issuer.

(h) To the extent Holders of Notes and holders of other Senior Indebtedness, if any, which are the subject of an Asset Sale Offer properly tender and do not withdraw Notes or the other Senior Indebtedness in an aggregate amount exceeding the amount of unapplied Net

Cash Proceeds, the Issuer shall purchase the Notes and the other Senior Indebtedness on a *pro rata* basis (based on amounts tendered). If only a portion of a Note is purchased pursuant to an Asset Sale Offer, a new Note in a principal amount equal to the portion thereof not purchased shall be issued in the name of the holder thereof upon cancellation of the original Note (or appropriate adjustments to the amount and beneficial interests in a global note shall be made, as appropriate). Notes (or portions thereof) purchased pursuant to an Asset Sale Offer shall be cancelled and cannot be reissued.

(i) The Issuer shall comply with the requirements of Rule 14e-1 under the Exchange Act and any other applicable securities laws in connection with the purchase of Notes pursuant to an Asset Sale Offer. To the extent that the provisions of any applicable securities laws or regulations conflict with this Section 3.12, the Issuer shall comply with these laws and regulations and shall not be deemed to have breached its obligations under the "Asset Sale" provisions of this Indenture by doing so.

(j) Upon completion of an Asset Sale Offer, the amount of Net Cash Proceeds shall be reset at zero. Accordingly, to the extent that the aggregate amount of Notes and other Indebtedness tendered pursuant to an Asset Sale Offer is less than the aggregate amount of unapplied Net Cash Proceeds, the Issuer may use any remaining Net Cash Proceeds for general corporate purposes of the Issuer and its Restricted Subsidiaries.

(k) In the event of the transfer of substantially all (but not all) of the property and assets of the Issuer and its Restricted Subsidiaries as an entirety to a Person in a transaction permitted under Article IV, the Successor Issuer shall be deemed to have sold the properties and assets of the Issuer and its Restricted Subsidiaries not so transferred for purposes of this Section 3.12, and shall comply with the provisions of this Section 3.12 with respect to the deemed sale as if it were an Asset Sale. In addition, the Fair Market Value of properties and assets of the Issuer or its Restricted Subsidiaries so deemed to be sold shall be deemed to be Net Cash Proceeds for purposes of this Section 3.12.

(l) If at any time any non-cash consideration received by the Issuer or any Restricted Subsidiary, as the case may be, in connection with any Asset Sale, is converted into or sold or otherwise disposed of for cash (other than interest received with respect to any non-cash consideration), the conversion or disposition shall be deemed to constitute an Asset Sale hereunder and the Net Cash Proceeds thereof shall be applied in accordance with this Section 3.12 within 365 days of conversion or disposition.

Section 3.13 Limitation on the Ownership of Capital Stock of Restricted Subsidiaries . The Issuer shall not permit any Person other than the Issuer or another Restricted Subsidiary to, directly or indirectly, own or control any Capital Stock of any Restricted Subsidiary, except for:

(i) Capital Stock owned by such Person on the Issue Date;

(ii) directors' qualifying shares;

(iii) the sale or Disposition of 100% of the shares of the Capital Stock of any Restricted Subsidiary held by the Issuer and its Restricted Subsidiaries to any Person other than the Issuer or another Restricted Subsidiary effected in accordance with, as applicable, Section 3.12 and Article IV;

(iv) in the case of a Restricted Subsidiary other than a Restricted Subsidiary that is a Wholly Owned Subsidiary,

(A) the issuance by that Restricted Subsidiary of Capital Stock on a *pro rata* basis to the Issuer and its Restricted Subsidiaries, on the one hand, and minority holders of Capital Stock of such Restricted Subsidiary, on the other hand (or on less than a *pro rata* basis to any minority holder); or

(B) sales, transfers and other dispositions of Capital Stock in a Restricted Subsidiary to the extent required by, or made pursuant to, buy/sell, put/call or similar shareholder arrangements set forth in binding agreements in effect on the Issue Date; and

(v) the sale of Capital Stock of a Restricted Subsidiary by the Issuer or another Restricted Subsidiary or the sale or issuance by a Restricted Subsidiary of its newly-issued Capital Stock if such sale or issuance is made in compliance with Section 3.12 and either:

(A) such Restricted Subsidiary is no longer a Subsidiary, and the continuing Investment of the Issuer and its Restricted Subsidiaries in such former Restricted Subsidiary is in compliance with Section 3.11, or

(B) such Restricted Subsidiary continues to be a Restricted Subsidiary.

Section 3.14 Limitation on Designation of Unrestricted Subsidiaries .

(a) The Issuer may designate after the Issue Date any Subsidiary of the Issuer other than a Note Guarantor as an Unrestricted Subsidiary under this Indenture (a "Designation") only if:

(i) no Default or Event of Default shall have occurred and be continuing at the time of or after giving effect to such Designation and any transactions between the Issuer or any of its Restricted Subsidiaries and such Unrestricted Subsidiary are in compliance with Section 3.18;

(ii) at the time of and after giving effect to such Designation, the Issuer could Incur U.S.$1.00 of additional Indebtedness pursuant to Section 3.9(a);

(iii) the Issuer would be permitted to make an Investment at the time of Designation (assuming the effectiveness of such Designation and treating such Designation as an Investment at the time of Designation) as a Restricted Payment pursuant to Section 3.11(a) in an amount (the "Designation Amount") equal to the amount of the Issuer's Investment in such Subsidiary on such date; and

(iv) the terms of any Affiliate Transaction existing on the date of such Designation between the Subsidiary being designated (and its Subsidiaries) and the Issuer or any Restricted Subsidiary would be permitted under Section 3.18 if entered into immediately following such Designation.

(b) Neither the Issuer nor any Restricted Subsidiary shall at any time:

(i) provide credit support for, subject any of its property or assets (other than the Capital Stock of any Unrestricted Subsidiary) to the satisfaction of, or Guarantee, any Indebtedness of any Unrestricted Subsidiary (including any undertaking, agreement or instrument evidencing such Indebtedness);

(ii) be directly or indirectly liable for any Indebtedness of any Unrestricted Subsidiary; or

(iii) be directly or indirectly liable for any Indebtedness which provides that the Holder thereof may (upon notice, lapse of time or both) declare a default thereon or cause the payment thereof to be accelerated or payable prior to its final scheduled maturity upon the occurrence of a default with respect to any Indebtedness of any Unrestricted Subsidiary.

(c) The Issuer may revoke any Designation of a Subsidiary as an Unrestricted Subsidiary (a " Revocation") only if:

(i) no Default or Event of Default shall have occurred and be continuing at the time of and after giving effect to such Revocation; and

(ii) all Liens and Indebtedness of such Unrestricted Subsidiary outstanding immediately following such Revocation, if Incurred at such time, would have been permitted to be Incurred for all purposes of this Indenture.

(d) The Designation of a Subsidiary of the Issuer as an Unrestricted Subsidiary shall be deemed to include the Designation of all of the Subsidiaries of such Subsidiary as Unrestricted Subsidiaries. All Designations and Revocations must be evidenced by an Officer's Certificate of the Issuer, delivered to the Trustee certifying compliance with the preceding provisions.

Section 3.15 Limitation on Dividends and Other Payment Restrictions Affecting Restricted Subsidiaries .

(a) Except as provided in clause (b) below, the Issuer shall not, and shall not cause or permit any of its Restricted Subsidiaries to, directly or indirectly, create or otherwise cause or permit to exist or become effective any consensual encumbrance or restriction on the ability of any Restricted Subsidiary to:

(i) pay dividends or make any other distributions on or in respect of its Capital Stock to the Issuer or any other Restricted Subsidiary or pay any Indebtedness owed to the Issuer or any other Restricted Subsidiary;

(ii) make loans or advances to, or make any Investment in, the Issuer or any other Restricted Subsidiary; or

(iii) transfer any of its property or assets to the Issuer or any other Restricted Subsidiary.

(b) Section 3.15(a) shall not apply to encumbrances or restrictions existing under or by reason of:

(i) applicable law, rule, regulation or order;

(ii) this Indenture;

(iii) any encumbrance or restriction pursuant to an agreement in effect at or entered into on the Issue Date, and any amendments, restatements, renewals, replacements or refinancings thereof; *provided* that any amendment, restatement, renewal, replacement or refinancing is not materially more restrictive with respect to such encumbrances or restrictions than those in existence on the Issue Date as determined in good faith by the Issuer's senior management;

(iv) customary non-assignment provisions of any contract and customary provisions restricting assignment or subletting in any lease governing a leasehold interest of any Restricted Subsidiary, or any customary restriction on the ability of a Restricted Subsidiary to dividend, distribute or otherwise transfer any asset which secures Indebtedness secured by a Lien, in each case permitted to be Incurred under this Indenture;

(v) any instrument governing Acquired Indebtedness not Incurred in connection with, or in anticipation or contemplation of, the relevant acquisition, merger or consolidation, which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person or the properties or assets of the Person so acquired;

(vi) restrictions with respect to a Restricted Subsidiary of the Issuer imposed pursuant to a binding agreement which has been entered into for the sale or disposition of Capital Stock or assets of such Restricted Subsidiary; *provided* that such restrictions apply solely to the Capital Stock or assets of such Restricted Subsidiary being sold (and in the case of Capital Stock, its Subsidiaries);

(vii) customary restrictions imposed on the transfer of copyrighted or patented materials;

(viii) an agreement governing Indebtedness Incurred to Refinance the Indebtedness issued, assumed or Incurred pursuant to an agreement referred to in clause (iii) or (v) of this Section 3.15(b); *provided* that such Refinancing agreement is not materially more restrictive with respect to such encumbrances or restrictions than those contained in the agreement referred to in such clause (iii) or (v) as determined in good faith by the Issuer's senior management;

(ix) Liens permitted to be Incurred pursuant to the provisions of the covenant described under Section 3.17 that limit the right of any person to transfer the assets subject to such Liens;

(x) Purchase Money Indebtedness for property acquired in the ordinary course of business and Capitalized Lease Obligations that impose restrictions of the nature discussed in clause (iii) of this Section 3.15(b) above on the property so acquired;

(xi) restrictions on cash or other deposits imposed by customers under contracts or other arrangements entered into or agreed to in the ordinary course of business not materially more restrictive than those existing on the Issue Date as determined in good faith by the Issuer's senior management;

(xii) customary provisions in joint venture agreements relating to dividends or other distributions in respect of such joint venture or the securities, assets or revenues of such joint venture;

(xiii) restrictions in Indebtedness Incurred by a Restricted Subsidiary in compliance with the covenant described under Section 3.9; *provided* that such restrictions (A) are not materially more restrictive with respect to such encumbrances and restrictions than those such Restricted Subsidiary was subject to in agreements related to obligations referenced in clause (iii) above as determined in good faith by the Issuer's senior management or (B) constitute financial covenants or similar restrictions that limit the ability to pay dividends or make distributions upon the occurrence or continuance of a default or event of default or that would result in a default or event of default under such Indebtedness upon the declaration or payment of dividends or other distributions; and

(xiv) net worth provisions in leases entered into by the Issuer or any Restricted Subsidiary in the ordinary course of business not materially more restrictive than those existing on the Issue Date as determined in good faith by the Issuer's senior management.

Section 3.16 Limitation on Layered Indebtedness. The Issuer shall not, and shall not permit any Note Guarantor to, directly or indirectly, Incur any Indebtedness that is subordinate in right of payment to any other Indebtedness, unless such Indebtedness is expressly subordinate in right of payment to the Notes or, in the case of a Note Guarantor, its Note Guarantee, to the same extent, on the same terms and for so long (except as a result of the provisions of the Intercreditor Agreement applicable to New Facilities Agreement Indebtedness and any refinancing thereof) as such Indebtedness is subordinate to such other Indebtedness.

Section 3.17 Limitation on Liens. The Issuer shall not, and shall not cause or permit any of its Restricted Subsidiaries to, directly or indirectly, incur, grant, assume or suffer to exist any Liens of any kind (except for Permitted Liens) (a) against or upon any of their respective properties or assets, whether owned on the Issue Date or acquired after the Issue Date, or any proceeds therefrom, to secure any Indebtedness or trade payables or (b) deemed to exist in respect of Capitalized Lease Obligations (including any Capitalized Lease Obligations in respect of Sale and Leaseback Transactions), in each case, unless contemporaneously therewith effective provision is made:

(i) in the case of the Issuer or any Restricted Subsidiary that is not a Note Guarantor, to secure the Notes and all other amounts due under this Indenture; and

(ii) in the case of a Note Guarantor, to secure such Note Guarantor's Note Guarantee of the Notes and all other amounts due under this Indenture,

in each case, equally and ratably with such Indebtedness or other obligation (or, in the event that such Indebtedness is subordinated in right of payment to the Notes or such Note Guarantee, as the case may be, prior to such Indebtedness or other obligation) with a Lien on the same properties and assets securing such Indebtedness or other obligation for so long as such Indebtedness or other obligation is secured by such Lien.

Section 3.18 Limitation on Transactions with Affiliates.

(a) The Issuer shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly, enter into any transaction or series of related transactions (including, without limitation, the purchase, sale, lease or exchange of any property or the rendering of any service) with, or for the benefit of, any Affiliate of the Issuer (each an "Affiliate Transaction"), unless the terms of such Affiliate Transaction are no less favorable than those that could reasonably be expected to be obtained in a comparable transaction at such time on an arm's-length basis from a Person that is not an Affiliate of the Issuer;

(b) The provisions of Section 3.18(a) above shall not apply to:

(i) Affiliate Transactions with or among the Issuer and any Restricted Subsidiary or between or among Restricted Subsidiaries;

(ii) reasonable fees and compensation paid to, and any indemnity provided on behalf of, officers, directors, employees, consultants or agents of the Issuer or any Restricted Subsidiary as determined in good faith by the Issuer's Board of Directors or, to the extent consistent with past practice, senior management;

(iii) Affiliate Transactions undertaken pursuant to any contractual obligations or rights in existence on the Issue Date (as in effect on the Issue Date with modifications, extensions and replacements thereof not materially adverse to the Issuer and its Restricted Subsidiaries) as determined in good faith by the Issuer's senior management;

(iv) any Restricted Payments in compliance with Section 3.11;

(v) payments and issuances of Qualified Capital Stock to any officers, directors and employees of the Issuer or any Restricted Subsidiary pursuant to any management equity plan or stock option plan or any other stock subscription or shareholder agreement, and any employment agreements, stock option plans or other compensatory arrangements (and any successor plans thereto) and any supplemental executive retirement benefit plans or arrangements with any such officers, directors or employees that are, in each case, approved in good faith by the Board of Directors or, to the extent consistent with past practice, senior management of the Issuer;

(vi) loans and advances to officers, directors and employees of the Issuer or any Restricted Subsidiary for travel, entertainment, moving and other relocation expenses, in each case made in the ordinary course of business in amounts consistent with the past practice of the Issuer or such Restricted Subsidiary; and

(vii) loans made by the Issuer or any Restricted Subsidiary to employees or directors in an aggregate amount not to exceed U.S.$15 million (or its equivalent in another currency) at any time outstanding.

Section 3.19 Conduct of Business. The Issuer and its Restricted Subsidiaries shall not engage in any business other than a Permitted Business.

Section 3.20 Reports to Holders.

(a) Notwithstanding that the Issuer may not be subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, so long as any Notes remain outstanding, the Issuer shall:

(i) provide the Trustee and the Holders with:

(A) annual reports on Form 20-F (or any successor form) containing the information required to be contained therein (or such successor form) within the time period required under the rules of the Commission for the filing of Form 20-F (or any successor form) by "foreign private issuers" (as defined in Rule 3b-4 of the Exchange Act (or any successor rule));

(B) reports on Form 6-K (or any successor form) including, whether or not required, unaudited quarterly financial statements (which shall include at least a balance sheet, income statement and cash flow statement) including a discussion of financial condition and results of operations of the Issuer in accordance with past practice, within 45 days after the end of each of the first three fiscal quarters of each fiscal year;

(C) such other reports on Form 6-K (or any successor form) promptly from time to time after the occurrence of an event that would be required to be reported on a Form 6-K (or any successor form); and

(ii) file with the Commission, to the extent permitted, the information, documents and reports referred to in clause (i) within the periods specified for such filings under the Exchange Act (whether or not applicable to the Issuer).

(b) In addition, at any time when the Issuer is not subject to or is not current in its reporting obligations under clause (ii) of Section 3.20(a), the Issuer shall make available, upon request, to any Holder and any prospective purchaser of Notes the information required pursuant to Rule 144A(d)(4) under the Securities Act.

(c) Notwithstanding anything in this Indenture to the contrary, the Issuer shall not be deemed to have failed to comply with any of its obligations hereunder for purposes of clause (iv) of Section 6.1(a) or for any other purpose hereunder until 75 days after the date any report hereunder is due.

(d) Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such reports shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Issuer's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officer's Certificates).

Section 3.21 Payment of Additional Amounts.

(a) All payments made by the Issuer or the Note Guarantors under, or with respect to, the Notes shall be made free and clear of, and without withholding or deduction for or on account of any present or future tax, duty, levy, impost, assessment or other governmental charge (including penalties, interest and other liabilities related thereto) (collectively, "Taxes")

imposed or levied by or on behalf of Mexico, Spain, the Netherlands, France, the United Kingdom, the United States, Switzerland or, in the event that the Issuer appoints additional paying agents, by the jurisdictions of such additional paying agents (a " Taxing Jurisdiction"), unless the Issuer or such Note Guarantor, as the case may be, is required to withhold or deduct Taxes by law or by the official interpretation or administration thereof.

(b) If the Issuer or any Note Guarantor is so required to withhold or deduct any amount for, or on account of, such Taxes from any payment made under or with respect to the Notes, the Issuer or such Note Guarantor, as the case may be, shall pay such additional amounts (" Additional Amounts") as may be necessary so that the net amount received by each Holder (including Additional Amounts) after such withholding or deduction shall not be less than the amount such Holder would have received if such Taxes had not been required to be withheld or deducted; *provided, however*, that the foregoing obligation to pay Additional Amounts does not apply to:

(i) any Taxes imposed solely because at any time there is or was a connection between the Holder and a Taxing Jurisdiction (other than the mere purchase of the Notes, or receipt of a payment or the ownership or holding of a Note),

(ii) any estate, inheritance, gift, sales, transfer, personal property or similar Tax imposed with respect to the Notes,

(iii) any Taxes imposed solely because the Holder or any other person fails to comply with any certification, identification or other reporting requirement concerning the nationality, residence, identity or connection with a Taxing Jurisdiction of the Holder or any beneficial owner of the Note if compliance is required by the applicable law of the Taxing Jurisdiction as a precondition to exemption from, or reduction in the rate of, the tax, assessment or other governmental charge, and the Issuer has given the Holders at least 30 days' notice that Holders shall be required to provide such information and identification; *provided*, *however*, this clause (iii) shall not apply if the provision of information, documentation or other evidence described in this clause (iii) would be materially more onerous, in form, in procedure or in the substance of information disclosed, to a Holder or beneficial owner of the Notes than comparable information or other reporting requirements imposed under U.S. tax law, regulation (including proposed regulations) and administrative practice,

(iv) any Taxes payable otherwise than by deduction or withholding from payments on the Notes,

(v) any Taxes imposed on a payment to or for the benefit of an individual pursuant to European Council Directive 2003/48/EC or any other directive implementing the conclusions of the ECOFIN Council meeting of November 26-27, 2000 or any law implementing or complying with, or introduced in order to conform to, such directives,

(vi) any Taxes that would have been avoided by presenting for payment (where presentation is required) the relevant Note to another Paying Agent,

(vii) any Taxes with respect to such Note presented for payment more than 30 days after the date on which the payment became due and payable or the date on which payment thereof is duly provided for and notice thereof given to Holders, whichever occurs later, except to the extent that the Holders of such Note would have been entitled to such Additional Amounts on presenting such Note for payment on any date during such 30 day period, and

(viii) any payment on the Note to a Holder that is a fiduciary or partnership or a person other than the sole beneficial owner of any such payment, to the extent that a beneficiary or settlor with respect to such fiduciary, a member of such a partnership or the beneficial owner of the payment would not have been entitled to the Additional Amounts had the beneficiary, settlor, member or beneficial owner been the Holder of the Note.

(c) The obligations in Section 3.21(a) and Section 3.21(b) shall survive any termination or discharge of this Indenture and shall apply mutatis mutandis to any Taxing Jurisdiction with respect to any successor to the Issuer or any Note Guarantor, as the case may be. The Issuer or such Note Guarantor, as applicable, shall (i) make such withholding or deduction and (ii) remit the full amount deducted or withheld to the relevant Taxing Jurisdiction in accordance with applicable law. The Issuer or such Note Guarantor, as applicable, shall use all reasonable efforts to obtain certified copies of tax receipts evidencing the payment of any Taxes so deducted or withheld from each Taxing Jurisdiction imposing such Taxes and shall furnish such certified copies to the Trustee within 30 days after the date the payment of any Taxes so deducted or so withheld is due pursuant to applicable law or, if such tax receipts are not reasonably available to the Issuer or such Note Guarantor, as applicable, furnish such other documentation that provides reasonable evidence of such payment by the Issuer or such Note Guarantor, as applicable.

(d) The exception to the Issuer's obligations to pay Additional Amounts pursuant to clause (iii) of Section 3.21(b) will not apply with respect to taxes imposed by Mexico or any political subdivision or taxing authority thereof if the Issuer can otherwise obtain the application of the lower withholding tax rate in effect, unless (i) the provision of the information, documentation or other evidence described in the applicable clause of Section 3.21(b) is expressly required by statute, regulation or published administrative practice of general applicability, (ii) the Issuer cannot obtain the information, documentation or other evidence necessary to comply with the applicable laws and regulations on its own through reasonable diligence and without requiring such information, documentation or other evidence necessary from holders of the Notes and (iii) the Issuer otherwise would meet the requirements set forth

under applicable law and regulations. In addition, clause (iii) of Section 3.21(b) does not and shall not be considered to require that any person, including any non-Mexican pension fund, retirement fund, financial institution or any other holder or beneficial owner of a Note, register with the Mexican Ministry of Finance and Public Credit (*Secretaría de Hacienda y Crédito Público*) or the Mexican Tax Revenue Service (*Servicio de Administración Tributaria*) to obtain eligibility for an exemption from, or a reduction of, Mexican withholding tax.

(e) Any reference in this Indenture, any supplemental indenture or the Notes to principal, premium, interest or any other amount payable in respect of the Notes by the Issuer shall be deemed also to refer to any Additional Amount that may be payable with respect to that amount under the obligations referred to in this subsection.

(f) In the event that Additional Amounts actually paid with respect to the Notes pursuant to this Section 3.21 are based on rates of deduction or withholding of withholding taxes in excess of the appropriate rate applicable to the Holder of such Notes, and as a result thereof such Holder is entitled to make a claim for a refund or credit of such excess from the authority imposing such withholding tax, then such Holder shall, by accepting such Notes, and without any further action, be deemed to have assigned and transferred all right, title and interest to any such claim for a refund or credit of such excess to us. However, by making such assignment, the Holder makes no representation or warranty that the Issuer shall be entitled to receive such claim for a refund or credit and incurs no other obligation with respect thereto.

Section 3.22 Suspension of Covenants.

(a) During any period of time that the Notes do not have Investment Grade Ratings from two of the Rating Agencies and (i) the Consolidated Leverage Ratio of the Issuer is less than 3.5:1 and (ii) no Default or Event of Default has occurred and is continuing (the occurrence of the events described in the foregoing clauses (i) and (ii) being collectively referred to as a "Partial Covenant Suspension Event"), the Issuer and its Restricted Subsidiaries shall not be subject to the provisions of this Indenture described under Sections 3.12, 3.13, 3.14(b), 3.15, 3.18, 3.19 and 4.1(a)(ii) (collectively, the "Partial Suspended Covenants").

(b) During any period of time that (i) the Notes have Investment Grade Ratings from two of the Rating Agencies and (ii) no Default or Event of Default has occurred and is continuing (the occurrence of the events described in the foregoing clauses (i) and (ii) being collectively referred to as a "Covenant Suspension Event"), the Issuer and its Restricted Subsidiaries shall not be subject to the provisions of this Indenture described under Sections 3.9, 3.11, 3.12, 3.13, 3.14(b), 3.15, 3.16, 3.18, 3.19 and 4.1(a)(ii) (collectively, the "Suspended Covenants").

(c) In addition, (x) no Subsidiary that is a Restricted Subsidiary on the date of the occurrence of a Partial Covenant Suspension Event (the "Partial Covenant Suspension Date") or a Covenant Suspension Event (the "Suspension Date") may be redesignated as an Unrestricted Subsidiary during the Partial Suspension Period or the Suspension Period, as applicable and (y) the Additional Note Guarantors shall be released from its obligation to guarantee the Notes on the date of a Partial Covenant Suspension Event or a Covenant Suspension Event, as the case may be.

(d) The Additional Note Guarantors shall be released from their obligation to guarantee the Notes upon the occurrence of a Partial Covenant Suspension Event or a Covenant Suspension Event; *provided* that upon the occurrence of a Partial Covenant Reversion Date or a Reversion Date, as applicable, the guarantee of the Notes by the Additional Note Guarantors shall be reinstated in accordance with and subject to the conditions in Section 3.22(e).

(e) In the event that the Issuer and its Restricted Subsidiaries are not subject to the Partial Suspended Covenants or the Suspended Covenants, as the case may be, for any period of time as a result of the foregoing, and on any subsequent date (in the case of Partial Suspended Covenants, such subsequent date being the "Partial Covenant Reversion Date" and, in the case of Suspended Covenants, such subsequent date being the " Reversion Date") (i) the Consolidated Leverage Ratio of the Issuer is not less than 3.5:1 during the applicable Partial Suspension Period or (ii) the Notes do not have Investment Grade Ratings from at least two of the Rating Agencies during the applicable Suspension Period, then in each case in clauses (i) and (ii), the Issuer and its Restricted Subsidiaries will thereafter again be subject to the Partial Suspended Covenants or the Suspended Covenants, as applicable, and the Notes will again be guaranteed by the Additional Note Guarantors (unless, solely with respect to any Additional Note Guarantor, the conditions for release as described under Section 10.2 are otherwise satisfied during the Partial Suspension Period or the Suspension Period, as applicable). The Issuer shall cause such Additional Note Guarantor to promptly execute and deliver to the Trustee a supplemental indenture hereto in form and substance reasonably satisfactory to the Trustee in accordance with the provisions of Article IX, evidencing that such Additional Note Guarantor's guarantee on substantially the terms set forth in Article X. The period of time between the Partial Covenant Suspension Date and the Partial Covenant Reversion Date is referred to as the " Partial Suspension Period" and the period of time between the Suspension Date and the Reversion Date is referred to as the " Suspension Period." Notwithstanding that the Partial Suspended Covenants, the Suspended Covenants and the guarantees by the Additional Note Guarantor may be reinstated, no Default or Event of Default will be deemed to have occurred as a result of a failure to comply with the Partial Suspended Covenants during the Partial Suspension Period or the Suspended Covenants during the Suspension Period, as the case may be (or upon termination of the applicable Partial Suspension Period or the Suspension Period or after that time based solely on events that occurred during the applicable Partial Suspension Period or the Suspension Period, as the case may be).

(f) On the Reversion Date, all Indebtedness Incurred during the Suspension Period shall be classified to have been Incurred pursuant to Section 3.9(a) or Section 3.9(b) (to the extent such Indebtedness would be permitted to be Incurred thereunder as of the Reversion Date and after giving effect to Indebtedness Incurred prior to the Suspension Period and outstanding on the Reversion Date). To the extent such Indebtedness would not be so permitted to be Incurred pursuant to Section 3.9(a) or 3.9(b), such Indebtedness shall be deemed to have been outstanding on the Issue Date, so that it is classified as permitted under clause (iii) of Section 3.9(b). Calculations made after the Reversion Date of the amount available to be made as Restricted Payments under Section 3.11 shall be made as though Section 3.11 had been in effect since the Issue Date and throughout the Suspension Period. The Issuer will give the Trustee written notice of any occurrence of a Reversion Date not later than five (5) Business Days after such Reversion Date. After any such notice of the occurrence of a Reversion Date, the Trustee shall assume the Suspended Covenants apply and are in full force and effect. Accordingly, Restricted Payments made during the Suspension Period will reduce the amount available to be made as Restricted Payments under Section 3.11(a).

(g) The Issuer will give the Trustee written notice of any Partial Covenant Suspension Event or Covenant Suspension Event and in any event not later than five (5) Business Days after such Partial Covenant Suspension Event or Covenant Suspension Event has occurred. In the absence of such notice, the Trustee shall assume that the Partial Suspended Covenants or the Suspended Covenants, as applicable, apply and are in full force and effect.

(h) For purposes of this Section 3.22 only, "Consolidated Leverage Ratio" and all associated definitions shall have the meaning set forth in Exhibit E hereto.

## ARTICLE IV

## SUCCESSOR ISSUER

Section 4.1 Merger, Consolidation and Sale of Assets.

(a) The Issuer shall not, in a single transaction or series of related transactions, consolidate or merge with or into any Person (whether or not the Issuer is the surviving or continuing Person), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of the Issuer's properties and assets (determined on a consolidated basis for the Issuer and its Restricted Subsidiaries), to any Person unless:

(i) either:

(A) the Issuer shall be the surviving or continuing corporation, or

(B) the Person (if other than the Issuer) formed by such consolidation or into which the Issuer is merged or the Person which acquires by sale, assignment, transfer, lease, conveyance or other disposition the properties and assets of the Issuer (determined on a consolidated basis for the Issuer and its Restricted Subsidiaries) substantially as an entirety (the " Successor Issuer"):

(1) shall be a Person organized and validly existing under the laws of Mexico, the United States of America, any State thereof or the District of Columbia, Canada, France, Belgium, Germany, Italy, Luxembourg, the Netherlands, Portugal, Spain, Switzerland or the United Kingdom, or any political subdivision thereof (the " Permitted Merger Jurisdictions"); and

(2) shall expressly assume, by supplemental indenture (in form and substance satisfactory to the Trustee), executed and delivered to the Trustee, the due and punctual payment of the principal of, and premium, if any, and interest on all of the Notes and the performance and observance of every covenant of the Notes and this Indenture on the part of the Issuer to be performed or

observed and provide the Trustee with an Officer's Certificate and Opinion of Counsel, and such transaction is otherwise in compliance with this Indenture;

(ii) immediately after giving effect to such transaction and the assumption contemplated by clause (i)(B)(2) of this Section 4.1(a) (including giving effect on a *pro forma* basis to any Indebtedness, including any Acquired Indebtedness, Incurred or anticipated to be Incurred or discharged in connection with or in respect of such transaction), the Issuer or such Successor Issuer, as the case may be:

(A) shall have a Consolidated Fixed Charge Coverage Ratio that shall be not less than the Consolidated Fixed Charge Coverage Ratio of the Issuer immediately prior to such transaction; or

(B) shall be able to Incur at least U.S.$1.00 of additional Indebtedness pursuant to Section 3.9(a);

(iii) immediately before and immediately after giving effect to such transaction and the assumption contemplated by clause (i)(B)(2) of this Section 4.1(a) (including, without limitation, giving effect on a *pro forma* basis to any Indebtedness, including any Acquired Indebtedness, Incurred or anticipated to be Incurred or discharged and any Lien granted in connection with or in respect of the transaction), no Default or Event of Default shall have occurred or be continuing;

(iv) in the case of a transaction resulting in a Successor Issuer, each Note Guarantor has confirmed by supplemental indenture that its Note Guarantee shall apply for Obligations of the Successor Issuer in respect of this Indenture and the Notes; and

(v) if the Issuer merges with a Person, or the Successor Issuer is, organized under the laws of any of the Permitted Merger Jurisdictions, the Issuer or the Successor Issuer shall have delivered to the Trustee an Opinion of Counsel stating that, as applicable:

(A) the Holders of the Notes shall not recognize income, gain or loss for the purposes of the income tax laws of the United States or the applicable Permitted Merger Jurisdiction as a result of the transaction and shall be taxed in the Holder's home jurisdiction in the same manner and on the same amounts (assuming solely for this purpose that no Additional Amounts are required to be paid on the Notes) and at the same times as would have been the case if the transaction had not occurred;

(B) any payment of interest or principal under or relating to the Notes or any Guarantees shall be paid in compliance with any requirements under Section 3.21; and

(C) no other taxes on income, including capital gains, shall be payable by Holders of the Notes under the laws of the United States or the applicable Permitted Merger Jurisdiction relating to the acquisition, ownership or disposition of the Notes, including the receipt of interest or principal thereon; *provided* that the Holder does not use or hold, and is not deemed to use or hold the Notes in carrying on a business in the United States or the applicable Permitted Merger Jurisdiction.

The provisions of clauses (ii) and (iii) of this Section 4.1(a) will not apply to:

(x) any transfer of the properties or assets of a Restricted Subsidiary to the Issuer;

(y) any merger of a Restricted Subsidiary into the Issuer; or

(z) any merger of the Issuer into a Note Guarantor or a Wholly Owned Subsidiary of the Issuer.

For purposes of this Section 4.1, the transfer (by lease, assignment, sale or otherwise, in a single transaction or series of transactions) of all or substantially all of the properties or assets of one or more Restricted Subsidiaries of the Issuer, the Capital Stock of which constitutes all or substantially all of the properties and assets of the Issuer (determined on a consolidated basis for the Issuer and its Restricted Subsidiaries), shall be deemed to be the transfer of all or substantially all of the properties and assets of the Issuer.

The Successor Issuer will succeed to, and be substituted for, such Issuer under this Indenture and the Notes, as applicable. For the avoidance of doubt, compliance with this Section 4.1 will not affect the obligations of the Issuer (including a Successor Issuer, if applicable) under Section 3.8 if applicable.

(b) Each Note Guarantor shall not, and the Issuer shall not cause or permit any such Note Guarantor to, consolidate with or merge into, or sell or dispose of all or substantially all of its assets to, any Person (other than the Issuer) that is not a Note Guarantor unless:

(i) such Person (if such Person is the surviving entity) (the "Successor Note Guarantor") assumes all of the obligations of such Note Guarantor in respect of its Note Guarantee by executing a supplemental indenture and providing the Trustee with an Officer's Certificate and Opinion of Counsel, and such transaction is otherwise in compliance with this Indenture;

(ii) such Note Guarantee is to be released as provided under Section 10.2(b); or

(iii) such sale or other disposition of substantially all of such Note Guarantor's assets is made in accordance with Section 3.12.

Subject to certain limitations described in this Indenture, the Successor Note Guarantor will succeed to, and be substituted for, such Note Guarantor under this Indenture and such Note Guarantor's Note Guarantee. The provisions of clauses (i), (ii) and (iii) of this Section 4.1(b) will not apply to:

(x) any transfer of the properties or assets of a Note Guarantor to the Issuer or another Note Guarantor;

(y) any merger of a Note Guarantor into the Issuer or another Note Guarantor; or

(z) any merger of a Note Guarantor into a Wholly Owned Subsidiary of the Issuer.

## ARTICLE V

## OPTIONAL REDEMPTION OF NOTES

Section 5.1 Optional Redemption. The Issuer may redeem the Notes, at its option, in whole at any time or in part from time to time, subject to the conditions and at the redemption prices specified in the Form of Note in Exhibit A hereto.

Section 5.2 [Reserved].

Section 5.3 Notices to Trustee. If the Issuer elects to redeem the Notes pursuant to the optional redemption provisions of Section 5.1 hereof, it shall furnish to the Trustee, at least 45 days but not more than 60 days before the Redemption Date, an Officer's Certificate setting forth: (a) the Redemption Date, (b) the principal amount of Notes to be redeemed, (c) the CUSIP numbers of the Notes, (d) the redemption price, and (e) the amount of interest to be paid with respect to each multiple of U.S.$1,000 principal amount of Notes to be redeemed.

Section 5.4 Notice of Redemption.

(a) The Issuer shall prepare and mail or cause to be mailed a notice of redemption, in the manner provided for in Section 12.1, not less than 30 nor more than 60 days prior to the Redemption Date, to each Holder of Notes to be redeemed.

(b) All notices of redemption shall state:

(i) the Redemption Date,

(ii) the redemption price and the amount of any accrued interest payable as provided in Section 5.7,

(iii) whether or not the Issuer is redeeming all Outstanding Notes,

(iv) if the Issuer is not redeeming all Outstanding Notes, the aggregate principal amount of Notes that the Issuer is redeeming and the

aggregate principal amount of Notes that will be Outstanding after the partial redemption, as well as the identification of the particular Notes, or portions of the particular Notes, that the Issuer is redeeming,

(v) if the Issuer is redeeming only part of a Note, the notice that relates to that Note shall state that on and after the Redemption Date, upon surrender of that Note, the Holder will receive, without charge, a new Note or Notes of authorized denominations for the principal amount of the Note remaining unredeemed,

(vi) that on the Redemption Date the redemption price and any accrued interest payable to the Redemption Date as provided in Section 5.7 will become due and payable in respect of each Note, or the portion of each Note, to be redeemed, and, unless the Issuer defaults in making the redemption payment, that interest on each Note, or the portion of each Note, to be redeemed, will cease to accrue on and after the Redemption Date,

(vii) the place or places where a Holder must surrender Notes for payment of the redemption price and any accrued interest payable on the Redemption Date, and

(viii) the CUSIP number, if any, listed in the notice or printed on the Notes, and that no representation is made as to the accuracy or correctness of such CUSIP number.

(c) At the Issuer's request, the Trustee shall give the notice of redemption in the Issuer's names and at its expense; *provided*, *however*, that the Issuer shall have delivered to the Trustee, at least 45 days prior to the Redemption Date, an Officer's Certificate requesting that the Trustee give such notice attaching a copy of the notice to be delivered to the Holders.

Section 5.5 Selection of Notes to Be Redeemed in Part.

(a) If the Issuer is not redeeming all Outstanding Notes, the Trustee shall select the Notes to be redeemed in compliance with the requirements of the principal national securities exchange, if any, on which the Notes are listed or, if the Notes are not then listed on a national securities exchange, on a pro rata basis, by lot or by any other method as the Trustee shall deem fair and appropriate; *provided*, *however*, that if a partial redemption is made with the proceeds of an Equity Offering, selection of the Notes, or portions of the Notes, for redemption shall be made by the Trustee only on a pro rata basis, or on as nearly a pro rata basis as is practicable (subject to the procedures of DTC), unless the method is otherwise prohibited. The Trustee shall make the selection from the then Outstanding Notes not previously called-for redemption. The Trustee shall promptly notify the Issuer in writing of the Notes selected for redemption and, in the case of any Notes selected for partial redemption, the principal amount of the Notes to be redeemed. In the event of a partial redemption by lot, the Trustee shall select the particular Notes to be redeemed not less than 30 nor more than 60 days prior to the relevant Redemption Date from the then Outstanding Notes not previously called-for redemption. No

Notes of U.S.$200,000 principal amount or less shall be redeemed in part. The Trustee may select for redemption portions with minimum denominations of U.S.$200,000 and in integral multiples of U.S.$1,000 in excess thereof.

(b) For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to redemption of Notes shall relate, in the case of any Note redeemed or to be redeemed only in part, to the portion of the principal amount of that Note which has been or is to be redeemed.

Section 5.6 Deposit of Redemption Price. On or prior to 10:00 a.m. New York City time on the Business Day prior to the Redemption Date, the Issuer shall deposit with the Trustee or with a Paying Agent (or, if the Issuer or a Note Guarantor is acting as the Paying Agent, segregate and hold in trust as provided in Section 2.4 an amount of money in immediately available funds sufficient to pay the redemption price of, and accrued interest on, all the Notes that the Issuer is redeeming on that date.

Section 5.7 Notes Payable on Redemption Date. If the Issuer, or the Trustee on behalf of the Issuer, gives notice of redemption in accordance with this Article V, the Notes, or the portions of Notes, called-for redemption, shall, on the Redemption Date, become due and payable at the redemption price specified in the notice (together with accrued interest, if any, to the Redemption Date), and from and after the Redemption Date (unless the Issuer shall default in the payment of the redemption price and accrued interest) the Notes or the portions of Notes shall cease to bear interest. Upon surrender of any Note for redemption in accordance with the notice, the Issuer shall pay the Notes at the redemption price, together with accrued interest, if any, to the Redemption Date (subject to the rights of Holders of record on the relevant record date to receive interest due on the relevant Interest Payment Date). If the Issuer shall fail to pay any Note called-for redemption upon its surrender for redemption, the principal shall, until paid, bear interest from the Redemption Date at the rate borne by the Notes.

Section 5.8 Unredeemed Portions of Partially Redeemed Note. Upon surrender of a Note that is to be redeemed in part, the Issuer shall execute, and the Trustee shall authenticate and make available for delivery to the Holder of the Note, at the expense of the Issuer, a new Note or Notes, of any authorized denomination as requested by the Holder, in an aggregate principal amount equal to, and in exchange for, the unredeemed portion of the principal of the Note surrendered, *provided* that, each new Note will be in a principal amount of U.S.$200,000 and in integral multiples of U.S.$1,000 in excess thereof.

## ARTICLE VI

## DEFAULTS AND REMEDIES

Section 6.1 Events of Default.

(a) Each of the following is an "Event of Default":

(i) default in the payment when due of the principal of or premium, if any, on any Notes, including the failure to make a required payment to purchase Notes tendered pursuant to an optional redemption, a Change of Control Offer or an Asset Sale Offer;

(ii) default for 30 days or more in the payment when due of interest or Additional Amounts on any Notes;

(iii) the failure to perform or comply with any of the provisions described under Article IV;

(iv) the failure by the Issuer or any Restricted Subsidiary to comply with, or in the case of non-guarantor Restricted Subsidiaries, to perform according to, any other covenant or agreement contained in this Indenture or in the Notes for 45 days or more after written notice to the Issuer from the Trustee or the Holders of at least 25% in aggregate principal amount of the then Outstanding Notes;

(v) default by the Issuer or any Restricted Subsidiary under any Indebtedness which:

(A) is caused by a failure to pay principal of or premium, if any, when due or interest on such Indebtedness prior to the later of the expiration of any applicable grace period provided in such Indebtedness on the date of such default or five (5) days past when due; or

(B) results in the acceleration of such Indebtedness prior to its stated maturity;

and the principal or accreted amount of Indebtedness covered by clauses (v)(A) or (v)(B) of this Section 6.1(a) at the relevant time, aggregates U.S.$50 million or more;

(vi) failure by the Issuer or any of its Restricted Subsidiaries to pay one or more final judgments against any of them, aggregating U.S.$100 million or more, which judgment(s) are not paid, discharged or stayed for a period of 60 days or more;

(vii) a Bankruptcy Event of Default; or

(viii) except as permitted herein, any Note Guarantee is held to be unenforceable or invalid in a judicial proceeding or ceases for any reason to be in full force and effect or any Note Guarantor, or any Person acting on behalf of any Note Guarantor, denies or disaffirms such Note Guarantor's obligations under its Note Guarantee.

The foregoing will constitute Events of Default whatever the reason for any such Event of Default and whether it is voluntary or involuntary or is effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body.

(b) The Issuer shall deliver within 30 days to the Trustee written notice of any event which would constitute a Default or Event of Default, their status and what action the Issuer is taking or proposes to take in respect thereof.

Section 6.2 Acceleration.

(a) If an Event of Default (other than an Event of Default specified in clause (vii) of Section 6.1(a) above with respect to the Issuer) shall occur and be continuing, the Trustee or the Holders of at least 25% in principal amount of then Outstanding Notes may declare the unpaid principal of (and premium, if any) and accrued and unpaid interest on all the Notes to be immediately due and payable by notice in writing to the Issuer and the Trustee specifying the Event of Default and that it is a "notice of acceleration." If an Event of Default specified in clause (vii) of Section 6.1(a) above occurs with respect to the Issuer, then the unpaid principal of (and premium, if any) and accrued and unpaid interest on all the Notes will become immediately due and payable without any declaration or other act on the part of the Trustee or any Holder.

(b) At any time after a declaration of acceleration with respect to the Notes as described in the preceding paragraph, the Holders of a majority in principal amount of the Notes may rescind and cancel such declaration and its consequences:

(i) if the rescission would not conflict with any judgment or decree;

(ii) if all existing Events of Default have been cured or waived, except nonpayment of principal or interest that has become due solely because of the acceleration;

(iii) to the extent the payment of such interest is lawful, interest on overdue installments of interest and overdue principal, which has become due otherwise than by such declaration of acceleration, has been paid; and

(iv) if the Issuer has paid the Trustee its reasonable compensation and reimbursed the Trustee for its reasonable expenses, disbursements and advances.

Section 6.3 Other Remedies.

(a) If an Event of Default occurs and is continuing, the Trustee may pursue any available remedy to collect the payment of principal of and interest on the Notes or to enforce the performance of any provision of the Notes or this Indenture.

(b) The Trustee may maintain a proceeding even if it does not possess any of the Notes or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Holder in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. No remedy is exclusive of any other remedy. All available remedies are cumulative to the extent permitted by law.

Section 6.4 Waiver of Past Defaults. Subject to Section 6.2, the Holders of a majority in principal amount of the then Outstanding Notes may waive any existing Default or Event of Default, and its consequences, except a default in the payment of the principal of, premium, if any, or interest on any Notes.

Section 6.5 Control by Majority. The Holders of a majority in principal amount of the then Outstanding Notes may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or of exercising any trust or power conferred on the Trustee. Subject to Section 7.1 and Section 7.2, however, the Trustee may refuse to follow any direction that conflicts with law or this Indenture, exposes the Trustee to personal liability, or that the Trustee determines in good faith to be unduly prejudicial to Holders not joining therein; *provided, however*, that the Trustee may take any other action deemed proper by the Trustee that is not inconsistent with such direction.

Section 6.6 Limitation on Suits.

(a) No Holder of any Notes shall have any right to institute any proceeding with respect hereto or for any remedy hereunder, unless:

(i) such Holder gives to the Trustee written notice of a continuing Event of Default;

(ii) Holders of at least 25% in principal amount of the then Outstanding Notes make a written request to pursue the remedy;

(iii) such Holders of the Notes provide to the Trustee indemnity satisfactory to it;

(iv) the Trustee does not comply within 60 days; and

(v) during such 60 day period the Holders of a majority in principal amount of the then Outstanding Notes do not give the Trustee a written direction which, in the opinion of the Trustee, is inconsistent with the request;

*provided* that a Holder of a Note may institute suit for enforcement of payment of the principal of and premium, if any, or interest on such Note on or after the respective due dates expressed in such Note.

Section 6.7 Rights of Holders to Receive Payment. Notwithstanding any other provision of this Indenture (including, without limitation, Section 6.6), the right of any Holder to receive payment of principal or interest on the Notes held by such Holder, on or after the respective due dates, Redemption Dates or repurchase date expressed in this Indenture or the Notes, or to bring suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such Holder.

Section 6.8 Collection Suit by Trustee. If an Event of Default specified in clause (i) and (ii) of Section 6.1(a) occurs and is continuing, the Trustee may recover judgment in its own name and as trustee of an express trust against the Issuer and each Note Guarantor for the whole amount then due and owing (together with applicable interest on any overdue principal and, to the extent lawful, interest on overdue interest) and the amounts provided for in Section 7.7.

Section 6.9 Trustee May File Proofs of Claim, etc.

(a) The Trustee may (irrespective of whether the principal of the Notes is then due):

(i) file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee and the Holders under this Indenture and the Notes allowed in any bankruptcy, insolvency, liquidation or other judicial proceedings relative to the Issuer, any Note Guarantor or any Subsidiary of the Issuer or their respective creditors or properties; and

(ii) collect and receive any monies or other property payable or deliverable in respect of any such claims and distribute them in accordance with this Indenture.

Any receiver, trustee, liquidator, sequestrator (or other similar official) in any such proceeding is hereby authorized by each Holder to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, taxes, disbursements and advances of the Trustee, its agent and counsel, and any other amounts due to the Trustee pursuant to Section 7.7.

(b) Nothing in this Indenture shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

Section 6.10 Priorities. If the Trustee collects any money or property pursuant to this Article VI, it shall pay out the money or property in the following order:

FIRST: to the Trustee for amounts due under Section 7.7;

SECOND: if the Holders proceed against the Issuer directly without the Trustee in accordance with this Indenture, to Holders for their collection costs;

THIRD: to Holders for amounts due and unpaid on the Notes for principal and interest, ratably, without preference or priority of any kind, according to the amounts due and payable on the Notes for principal and interest, respectively; and

FOURTH: to the Issuer or, to the extent the Trustee collects any amount pursuant to Article X hereof from any Note Guarantor, to such Note Guarantor, or to such party as a court of competent jurisdiction shall direct.

The Trustee may, upon notice to the Issuer, fix a record date and payment date for any payment to Holders pursuant to this Section 6.10.

Section 6.11 Undertaking for Costs. In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 6.11 does not apply to a suit by the Trustee, a suit by the Issuer, a suit by a Holder pursuant to Section 6.7 or a suit by Holders of more than 10% in principal amount of Outstanding Notes.

## ARTICLE VII

## TRUSTEE

Section 7.1 Duties of Trustee.

(a) If a Default or an Event of Default has occurred and is continuing, the Trustee shall exercise the rights and powers vested in it by this Indenture and use the same degree of care and skill in their exercise as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

(b) Except during the continuance of a Default or an Event of Default:

(i) the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture. However, in the case of any such certificates or opinions that by any provisions hereof are specifically required to be furnished to the Trustee, the Trustee shall examine such certificates and opinions to determine whether or not they conform to the requirements of this Indenture.

(c) The Trustee may not be relieved from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that:

(i) this clause (c) does not limit the effect of clause (b) of this Section 7.1;

(ii) the Trustee shall not be liable for any error of judgment made in good faith by a Trust Officer unless it is proved that the Trustee was negligent in ascertaining the pertinent facts; and

(iii) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 6.2, 6.4 or 6.5.

(d) The Trustee shall not be liable for interest on any money received by it except as the Trustee may agree in writing with the Issuer.

(e) Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

(f) No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers, if it shall have reasonable grounds to believe that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(g) Every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Article VII.

(h) Unless otherwise specifically provided in this Indenture, any demand, request, direction or notice from the Issuer shall be sufficient if signed by an Officer of the Issuer.

(i) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders unless such Holders shall have offered to the Trustee reasonable security or indemnity against the costs, expenses (including reasonable attorneys' fees and expenses) and liabilities that might be incurred by it in compliance with such request or direction.

Section 7.2 Rights of Trustee.

Subject to Section 7.1:

(a) The Trustee may rely on any document reasonably believed by it to be genuine and to have been signed or presented by the proper person. The Trustee need not investigate any fact or matter stated in the document.

(b) Before the Trustee acts or refrains from acting at the direction of the Issuer or any Note Guarantor, it may require an Officer's Certificate or an Opinion of Counsel. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on an Officer's Certificate or Opinion of Counsel.

(c) The Trustee may act through its attorneys and agents and shall not be responsible for the misconduct or negligence of any agent appointed with due care.

(d) The Trustee shall not be liable for any action it takes or omits to take in good faith which it believes to be authorized or within its rights or powers; *provided*, *however*, that the Trustee's conduct does not constitute willful misconduct or negligence.

(e) The Trustee may consult with counsel of its selection, and the advice or opinion of counsel with respect to legal matters relating to this Indenture and the Notes shall be full and complete authorization and protection from liability in respect to any action taken, omitted or suffered by it hereunder in good faith and in accordance with the advice or opinion of such counsel.

(f) If the Trustee shall determine, it shall be entitled to examine the books, records and premises of the Issuer, personally or by agent or attorney.

(g) The Trustee shall not be deemed to have notice of any Default or Event of Default unless a Trust Officer of the Trustee has received written notice at the Corporate Trust Office of any event which is in fact such a default, and such notice references the Notes and this Indenture.

(h) The rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and to each agent, custodian and other Person employed to act hereunder.

(i) The Trustee may request that the Issuer deliver an Officer's Certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture, which Officer's Certificate may be signed by any Person authorized to sign an Officer's Certificate, including any Person specified as so authorized in any such certificate previously delivered and not superseded.

(j) The permissive rights of the Trustee enumerated herein shall not be construed as duties.

(k) In no event shall the Trustee be liable, directly or indirectly, for any special, indirect, punitive, incidental or consequential damages of any kind whatsoever (including, but not limited to, lost profits), even if the Trustee has been advised of the possibility of such damages and regardless of the form of action.

(l) The Trustee shall not be responsible or liable for any failure or delay in the performance of its obligations under this Indenture arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control, including without limitation, acts of God; earthquakes; fires; floods; wars; civil or military disturbances; sabotage; epidemics; riots, interruptions, loss or malfunctions of utilities, computer (hardware or software) or communications service; accidents; labor disputes; acts of civil or military authority or governmental actions; it being understood that the Trustee shall use its best efforts to resume performance as soon as practicable under the circumstances.

(m) The Trustee shall at no time have any responsibility or liability for or in respect to the legality, validity or enforceability of any Collateral or any arrangement or

agreement between the Issuer and any other Person with respect thereto, or the perfection or priority of any security interest created in any of the Collateral or maintenance of any perfection and priority, or for or with respect to the sufficiency of the Collateral following an Event of Default.

(n) The Trustee shall not be required to give any bond or surety in respect of the performance of its powers and duties hereunder.

(o) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders pursuant to this Indenture, unless such Holders shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction.

(p) The Trustee shall always be entitled to assume that the Issuer acted in good faith and shall be fully protected and incur no liability in reliance thereon.

(q) The Trustee shall have no duty or obligation to make any calculation under or pursuant to any covenant hereunder or make any determination of compliance by the Issuer or Note Guarantor under any covenant hereunder.

Section 7.3 Individual Rights of Trustee. The Trustee in its individual or any other capacity may become the owner or pledgee of Notes and may otherwise deal with the Issuer, the Note Guarantors or any Affiliate of the Issuer with the same rights it would have if it were not Trustee. Any Paying Agent, Transfer Agent, Registrar or co-Registrar may do the same with like rights. However, the Trustee must comply with Section 7.10.

Section 7.4 Trustee's Disclaimer. The Trustee shall not be responsible for and makes no representation as to the validity or adequacy of this Indenture or the Notes, it shall not be accountable for the Issuer's use of the proceeds from the Notes, and it shall not be responsible for any statement of the Issuer in this Indenture or in any document issued in connection with the sale of the Notes or in the Notes other than the Trustee's certificate of authentication.

Section 7.5 Notice of Defaults. If a Default or Event of Default occurs and is continuing and if a Trust Officer has received written notice thereof, the Trustee shall mail to each Holder, as their names and addresses appear in the Register, notice of the Default or Event of Default within 90 days after the occurrence thereof unless such Default or Event of Default shall have been cured or waived. Except in the case of a Default or Event of Default in payment of principal or interest on any Note (including payments pursuant to the optional redemption or required repurchase provisions of such Note, if any), the Trustee may withhold the notice if and so long as a committee of its Trust Officers in good faith determines that withholding the notice is in the interests of the Holders.

Section 7.6 [Reserved].

Section 7.7 Compensation and Indemnity.

(a) The Issuer shall pay to the Trustee from time to time reasonable compensation for its acceptance of this Indenture and services hereunder as the Issuer and the Trustee shall from time to time agree in writing. The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust. The Issuer shall reimburse the Trustee upon request for all reasonable out-of-pocket expenses incurred or made by it, including costs of collection, costs of preparing and reviewing reports, certificates and other documents, costs of preparation and mailing of notices to Holders and reasonable costs of counsel retained by the Trustee in connection with the review, negotiation, execution, amendment and delivery of this Indenture or otherwise, in addition to the compensation for its services. Such expenses shall include the reasonable compensation and expenses, disbursements and advances of the Trustee's agents, counsel, accountants and experts.

(b) The Issuer and each Note Guarantor shall jointly and severally indemnify the Trustee against any and all loss, liability or expense (including reasonable attorneys' fees and expenses) incurred by it without negligence, willful misconduct or bad faith on its part in connection with the acceptance and administration of this trust and the performance of its duties hereunder, including the costs and expenses of enforcing this Indenture (including this Section 7.7) and of defending itself against any claims (whether asserted by any Holder, the Issuer, any Note Guarantor or otherwise). The Trustee shall notify the Issuer and each Note Guarantor promptly of any claim for which it may seek indemnity. Failure by the Trustee to so notify the Issuer or any Note Guarantor shall not relieve the Issuer or any Note Guarantor of its obligations hereunder. The Issuer shall defend the claim and the Trustee may have separate counsel and the Issuer shall pay the fees and expenses of such counsel; *provided* that the Issuer shall not be required to pay such fees and expenses if it assumes the Trustee's defense, and, in the reasonable judgment of outside counsel to the Trustee, there is no conflict of interest between the Issuer and the Trustee in connection with such defense. The Issuer need not reimburse any expense or indemnify against any loss, liability or expense incurred by the Trustee through the Trustee's own willful misconduct, negligence or bad faith.

(c) To secure the Issuer's payment obligations in this Section 7.7, the Trustee shall have a lien prior to the Notes on all money or property held or collected by the Trustee other than money or property held in trust to pay principal of and interest on particular Notes. The Trustee's right to receive payment of any amounts due under this Section 7.7 shall not be subordinate to any other liability or Indebtedness of the Issuer.

(d) The Issuer's obligations pursuant to this Section 7.7 shall survive the discharge of this Indenture and the resignation or removal of the Trustee. When the Trustee incurs expenses after the occurrence of a Bankruptcy Event of Default, the expenses are intended to constitute expenses of administration under any Bankruptcy Law; *provided, however*, that this shall not affect the Trustee's rights as set forth in this Section 7.7 or Section 6.10.

Section 7.8 Replacement of Trustee.

(a) The Trustee may resign at any time by so notifying the Issuer. The Holders of a majority in principal amount of the then Outstanding Notes may remove the Trustee by so notifying the Trustee and may appoint a successor Trustee reasonably acceptable to the Issuer. The Issuer shall remove the Trustee if:

(i) the Trustee fails to comply with Section 7.10;

(ii) the Trustee is adjudged bankrupt or insolvent;

(iii) a receiver or other public officer takes charge of the Trustee or its property; or

(iv) the Trustee otherwise becomes incapable of acting.

(b) If the Trustee resigns or is removed by the Issuer or by the Holders of a majority in principal amount of the then Outstanding Notes and such Holders do not reasonably promptly appoint a successor Trustee, or if a vacancy exists in the office of the Trustee for any reason (the Trustee in such event being referred to herein as the retiring Trustee), the Issuer shall promptly appoint a successor Trustee.

(c) A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Issuer. Thereupon the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee shall mail a notice of its succession to Holders. The retiring Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee, subject to the lien provided for in Section 7.7(c).

(d) If a successor Trustee does not take office within 30 days after the retiring Trustee resigns or is removed, the retiring Trustee or the Holders of 10% in principal amount of the then Outstanding Notes may petition, at the Issuer's expense, any court of competent jurisdiction for the appointment of a successor Trustee.

(e) If the Trustee fails to comply with Section 7.10, any Holder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(f) Notwithstanding the replacement of the Trustee pursuant to this Section 7.8, the Issuer's obligations under Section 7.7 shall continue for the benefit of the retiring Trustee.

Section 7.9 Successor Trustee by Merger.

(a) If the Trustee consolidates with, merges or converts into, or transfers all or substantially all its corporate trust business or assets to, another Person, the resulting, surviving or transferee Person without any further act shall be the successor Trustee.

(b) In case at the time such successor or successors to the Trustee shall succeed to the trusts created by this Indenture, any of the Notes shall have been authenticated but not delivered, any such successor to the Trustee may adopt the certificate of authentication of any predecessor trustee, and deliver such Notes so authenticated; and in case at that time any of

the Notes shall not have been authenticated, any successor to the Trustee may authenticate such Notes either in the name of any predecessor hereunder or in the name of the successor to the Trustee; and in all such cases such certificates of authentication and such delivery shall be valid for purposes of this Indenture.

Section 7.10 Eligibility; Disqualification. The Trustee shall at all times be a Trustee hereunder that is a Person organized and doing business under the laws of the United States or of any state thereof that is authorized under such laws to exercise corporate trustee power, that is subject to supervision or examination by federal or state authorities and that has, together with its parent (which, in the case of Computershare Trust Company, N.A. is Computershare, Inc.), a combined capital and surplus of at least U.S.$50,000,000 as set forth in its most recent published annual report of condition.

Section 7.11 [Reserved].

Section 7.12 [Reserved].

Section 7.13 Authorization and Instruction of the Trustee With Respect to the Collateral. Each Holder and the Issuer authorize and instruct the Trustee (a) to enter into (or cause an agent or grant such powers of attorney to enter into), on its own behalf and on behalf of the Holders of Notes, such documents (the "Security Documents") as are necessary or desirable (which shall be evidenced by a written instruction from the Issuer to the Trustee) in order to create and maintain the security interest of the Trustee and the Holders of Notes in the Collateral as may from time to time be provided to equally and ratably secure the Notes, (b) to grant such powers of attorney and to do or cause to be done all such acts and things, on its own behalf and in the name and on behalf of the Holders of Notes, as are necessary or desirable (which shall be evidenced by a written instruction from the Issuer to the Trustee) to create and maintain the security interest of the Trustee and the Holders of Notes in such Collateral, (c) to appoint the Security Agent to serve as direct representative of the Trustee and the Holders of Notes in connection with the creation and maintenance of the security interest of the Trustee and the Holders of Notes in such Collateral, (d) to accept the security interest in the Collateral on behalf of each Holder, and (e) to grant powers in favor of an attorney to execute an accession public deed before a Spanish notary public accepting the security interest in the Collateral on behalf of the Holders of Notes. It is understood and acknowledged that in certain circumstances, the Security Documents may be amended, modified or waived without the consent of the Trustee or the Holders of Notes. It is understood and acknowledged that the Security Agent, in addition to being appointed by and acting on behalf of the Trustee and the Holders of Notes, has also been appointed by and is acting on behalf of (and may in the future be appointed by and act on behalf of) other creditors of the Issuer and its Subsidiaries. The Trustee is not being granted the right and will not have the right to cause the Security Agent to foreclose on the Collateral upon the occurrence of an Event of Default in respect of the Notes. The Trustee shall at no time have any responsibility or liability for or in respect to the legality, validity or enforceability of any Collateral or any arrangement or agreement between the Issuer and any other Person with respect thereto, or the perfection or priority of any security interest created in any of the Collateral or maintenance of any perfection and priority, or for or with respect to the sufficiency of the Collateral following an Event of Default.

ARTICLE VIII

DEFEASANCE; DISCHARGE OF INDENTURE

Section 8.1 Legal Defeasance and Covenant Defeasance .

(a) The Issuer may, at its option, at any time, elect to have either Section 8.1(b) or (c) be applied to all Outstanding Notes upon compliance with the conditions set forth in Section 8.2.

(b) Upon the Issuer's exercise under Section 8.1(a) of the option applicable to this clause (b), the Issuer shall, subject to the satisfaction of the conditions set forth in Section 8.2, be deemed to have been discharged from its obligations with respect to all Outstanding Notes on the date all of the conditions set forth in Section 8.2 are satisfied (hereinafter, "Legal Defeasance"). For this purpose, Legal Defeasance means that the Issuer shall be deemed to have paid and discharged the entire Indebtedness represented by the then Outstanding Notes, which shall thereafter be deemed to be Outstanding only for the purposes of Section 8.3 hereof and the other sections of this Indenture referred to in subclause (i) or (ii) of this clause (b), and to have satisfied all its other obligations under such Notes and this Indenture (and the Trustee, on demand of and at the expense of the Issuer, shall execute proper instruments acknowledging the same), except for the following provisions, which shall survive until otherwise terminated or discharged hereunder:

(i) the rights of Holders of Outstanding Notes to receive solely from the trust fund described in Section 8.3, and as more fully set forth in Section 2.4 payments in respect of the principal of, premium, if any, and interest on such Notes when such payments are due,

(ii) the Issuer's obligations with respect to such Notes under Article II and Section 3.2 hereof,

(iii) the rights, powers, trusts, duties and immunities of the Trustee hereunder and the Issuer's obligations in connection therewith, and

(iv) this Article VIII.

Subject to compliance with this Article VIII, the Issuer may exercise its option under this clause (b) notwithstanding the prior exercise of its option under Section 8.1(c) hereof.

(c) Upon the Issuer's exercise under Section 8.1(a) hereof of the option applicable to this clause (c), the Issuer shall, subject to the satisfaction of the applicable conditions set forth in Section 8.2, be released from its obligations under Sections 3.4, 3.5, 3.8, 3.9, 3.11, 3.12, 3.13, 3.14, 3.15, 3.16, 3.17, 3.18, 3.19, 3.20, 3.21, 3.22, 4.1(a) and 4.1(b) hereof with respect to the then Outstanding Notes on and after the date the conditions set forth below are satisfied (hereinafter, "Covenant Defeasance"), and the Notes shall thereafter be deemed not Outstanding for the purposes of any direction, waiver, consent or declaration or act of Holders (and the consequences of any thereof) in connection with such covenants, but shall continue to be Outstanding for all other purposes hereunder (it being understood that such Notes shall not be

deemed Outstanding for accounting purposes). For this purpose, such Covenant Defeasance means that, with respect to the then Outstanding Notes, the Issuer may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such covenant, whether directly or indirectly, by reason of any reference elsewhere herein to any such covenant or by reason of any reference in any such covenant to any other provision herein or in any other document and such omission to comply shall not constitute a Default or an Event or Default under clause (iii) of Section 6.1(a) (solely with respect to any failure to perform under or comply with clause (ii) or (iii) of Section 4.1(a)), clause (iv) of Section 6.1(a) or clause (v) of Section 6.1(a) hereof, but, except as specified above, the remainder of this Indenture and such Notes shall be unaffected thereby.

Section 8.2 Conditions to Defeasance. The Issuer may exercise its Legal Defeasance option or its Covenant Defeasance option only if:

(a) the Issuer has irrevocably deposited with the Trustee, in trust, for the benefit of the Holders cash in U.S. Legal Tender or U.S. Government Obligations, in such amounts as will be sufficient without reinvestment, in the opinion of a nationally recognized firm of independent public accountants, to pay the principal of, premium, if any, and interest (including Additional Amounts) on the Notes on the stated date for payment thereof or on the applicable Redemption Date, as the case may be;

(b) in the case of Legal Defeasance, the Issuer has delivered to the Trustee an Opinion of Counsel reasonably acceptable to the Trustee (subject to customary exceptions and exclusions) and independent of the Issuer to the effect that:

(i) the Issuer has received from, or there has been published by, the Internal Revenue Service a ruling; or

(ii) since the Issue Date, there has been a change in the applicable U.S. federal income tax law,

in either case to the effect that, and based thereon such Opinion of Counsel shall state that, the Holders will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such Legal Defeasance and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Legal Defeasance had not occurred;

(c) in the case of Covenant Defeasance, the Issuer has delivered to the Trustee an Opinion of Counsel reasonably acceptable to the Trustee (subject to customary exceptions and exclusions) to the effect that the Holders will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such Covenant Defeasance and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Covenant Defeasance had not occurred;

(d) no Default or Event of Default shall have occurred and be continuing on the date of the deposit pursuant to Section 8.2(a) (except any Default or Event of Default resulting from the failure to comply with Section 3.9 as a result of the borrowing of the funds required to effect such deposit);

(e) the Trustee has received an Officer's Certificate stating that such Legal Defeasance or Covenant Defeasance shall not result in a breach or violation of, or constitute a default under this Indenture or any other material agreement or instrument to which the Issuer or any of its Subsidiaries is a party or by which the Issuer or any of its Subsidiaries is bound;

(f) the Issuer has delivered to the Trustee an Officer's Certificate stating that the deposit was not made by the Issuer with the intent of preferring the Holders over any other creditors of the Issuer or any Subsidiary of the Issuer or with the intent of defeating, hindering, delaying or defrauding any other creditors of the Issuer or others;

(g) the Issuer has delivered to the Trustee an Officer's Certificate and an Opinion of Counsel from counsel reasonably acceptable to the Trustee (subject to customary exceptions and exclusions) and independent of the Issuer, each stating that all conditions precedent provided for or relating to the Legal Defeasance or the Covenant Defeasance have been complied with; and

(h) the Issuer has delivered to the Trustee an Opinion of Counsel from counsel reasonably acceptable to the Trustee and independent of the Issuer to the effect that the trust resulting from the deposit does not constitute, or is qualified as, a regulated investment company under the Investment Company Act of 1940.

Section 8.3 Application of Trust Money. The Trustee shall hold in trust U.S. Legal Tender or U.S. Government Obligations deposited with it pursuant to this Article VIII. It shall apply the deposited U.S. Legal Tender or U.S. Government Obligations through the Paying Agent and in accordance with this Indenture to the payment of principal of and interest on the Notes.

Section 8.4 Repayment to Issuer.

(a) The Trustee and the Paying Agent shall promptly turn over to the Issuer upon request any excess money or securities held by them upon payment of all the obligations under this Indenture.

(b) Subject to any applicable abandoned property law, the Trustee and the Paying Agent shall pay to the Issuer upon request any money held by them for the payment of principal of, premium or interest on the Notes that remains unclaimed for two years, and, thereafter, Holders entitled to the money must look to the Issuer for payment as general creditors.

Section 8.5 Indemnity for U.S. Government Obligations. The Issuer shall pay and shall indemnify the Trustee against any tax, fee or other charge imposed on or assessed against deposited U.S. Government Obligations or the principal and interest received on such U.S. Government Obligations.

Section 8.6 Reinstatement. If the Trustee or Paying Agent is unable to apply any U.S. Legal Tender or U.S. Government Obligations in accordance with this Article VIII by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, then the obligations of the Issuer under this Indenture and the Notes shall be revived and reinstated as though no deposit

had occurred pursuant to this Article VIII until such time as the Trustee or Paying Agent is permitted to apply all such U.S. Legal Tender and U.S. Government Obligations in accordance with this Article VIII; *provided, however*, that, if the Issuer has made any payment of principal of, premium or interest on any Notes because of the reinstatement of its obligations, the Issuer shall be subrogated to the rights of the Holders of such Notes to receive such payment from U.S. Legal Tender or U.S. Government Obligations held by the Trustee or Paying Agent.

Section 8.7 Satisfaction and Discharge. This Indenture will be discharged and will cease to be of further effect (except as to surviving rights of registration of transfer or exchange of the Notes, as expressly provided for in this Indenture) as to all Outstanding Notes when:

(a) either:

(i) all the Notes theretofore authenticated and delivered (except lost, stolen or destroyed Notes which have been replaced or paid and Notes for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Issuer and thereafter repaid to the Issuer or discharged from such trust) have been delivered to the Trustee for cancellation; or

(ii) all Notes not theretofore delivered to the Trustee for cancellation have become due and payable, and the Issuer has irrevocably deposited or caused to be deposited with the Trustee U.S. Legal Tender or U.S. Government Obligations sufficient without reinvestment to pay and discharge the entire Indebtedness on the Notes not theretofore delivered to the Trustee for cancellation, for principal of, premium, if any, and interest on the Notes to the date of deposit, together with irrevocable instructions from the Issuer directing the Trustee to apply such funds to the payment;

(b) the Issuer has paid all other sums payable under this Indenture and the Notes by it; and

(c) the Issuer has delivered to the Trustee an Officer's Certificate and an Opinion of Counsel stating that all conditions precedent under this Indenture relating to the satisfaction and discharge of this Indenture have been complied with.

## ARTICLE IX

## AMENDMENTS

Section 9.1 Without Consent of Holders.

(a) The Issuer, the Note Guarantors and the Trustee may amend or supplement this Indenture, the Notes or the Note Guarantees without notice to or consent of any Holder:

(i) to cure any ambiguity, omission, defect or inconsistency;

(ii) to comply with Article IV in respect of the assumption by a Successor Issuer of the obligations of the Issuer under the Notes and this Indenture;

(iii) to provide for uncertificated Notes in addition to or in place of Certificated Notes; *provided*, *however*, that the uncertificated Notes are issued in registered form for purposes of Section 163(f) of the Code;

(iv) to add guarantees with respect to the Notes or to secure the Notes;

(v) to add to the covenants of the Issuer or the Note Guarantors for the benefit of the Holders or to surrender any right or power herein conferred upon the Issuer or the Note Guarantors;

(vi) to make any change that does not adversely affect the rights of any Holder in any material respect;

(vii) to conform the text of this Indenture, the Note Guarantees or the Notes to any provision of the section "Description of Notes" in the Offering Memorandum to the extent that such provision in such "Description of Notes" was intended to be a verbatim recitation of a provision of this Indenture or the Notes or Note Guarantees;

(viii) to comply with the requirements of any applicable securities depositary;

(ix) to provide for the issuance of Additional Notes as permitted by Section 2.2(c) and Section 2.14, which will have terms substantially identical to the other Outstanding Notes except as specified in Section 2.13, or Section 2.14, and which will be treated, together with any other Outstanding Notes, as a single issue of securities; or

(x) in order to effect and maintain the listing of the Notes on a stock exchange for which a trading market exists for the Notes, if any.

(b) After an amendment or supplement under this Section 9.1 becomes effective, the Issuer shall mail to Holders a notice briefly describing such amendment. The failure to give such notice to all Holders, or any defect therein, shall not impair or affect the validity of an amendment under this Section 9.1.

Section 9.2 With Consent of Holders.

(a) The Issuer, the Note Guarantors and the Trustee may amend or supplement this Indenture or the Notes without notice to any Holder but with the written consent of the Holders of at least a majority in principal amount of the then Outstanding Notes (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes). Subject to Section 6.4, the Holder or Holders of a majority in

aggregate principal amount of the then Outstanding Notes may waive compliance by the Issuer and the Note Guarantors with any provision of this Indenture or the Notes. However, without the consent of each Holder affected, an amendment, supplement or waiver may not:

(i) reduce the amount of Notes whose Holders must consent to an amendment, supplement or waiver;

(ii) reduce the rate of or change or have the effect of changing the time for payment of interest, including Defaulted Interest, on any Notes;

(iii) reduce the principal of or change or have the effect of changing the fixed maturity of any Notes, or change the date on which any Notes may be subject to redemption, or reduce the redemption price therefor;

(iv) make any Notes payable in money other than that stated in the Notes;

(v) make any change in the provisions of this Indenture entitling each Holder to receive payment of principal of, premium, if any, and interest on such Notes on or after the due date thereof or to bring suit to enforce such payment, or permitting Holders of a majority in principal amount of then Outstanding Notes to waive Defaults or Events of Default;

(vi) amend, change or modify in any material respect any obligations of the Issuer to make and consummate a Change of Control Offer in respect of a Change of Control that has occurred or make and consummate an Asset Sale Offer with respect to any Asset Sale that has been consummated;

(vii) make any change in the provisions of this Indenture described under Section 3.21 that adversely affects the rights of any Holder or amend the terms of the Notes in a way that would result in a loss of exemption from Taxes; or

(viii) make any change to the provisions of this Indenture or the Notes that adversely affect the ranking of the Notes.

(b) It shall not be necessary for the consent of the Holders under this Section 9.2 to approve the particular form of any proposed amendment, supplement or waiver but it shall be sufficient if such consent approves the substance thereof.

(c) After an amendment, supplement or waiver under this Section 9.2 becomes effective, the Issuer shall mail to Holders a notice briefly describing such amendment, supplement or waiver. The failure to give such notice to all Holders, or any defect therein, shall not impair or affect the validity of an amendment, supplement or waiver under this Section 9.2.

(d) The Notes issued on the Issue Date, and any Additional Notes part of the same series, will be treated as a single series for all purposes under this Indenture, including with

respect to waivers and amendments. For the purposes of calculating the aggregate principal amount of Notes that have consented to or voted in favor of any amendment, waiver, consent, modifications or other similar action, the Issuer (acting reasonably and in good faith) shall be entitled to select a record date as of which the principal amount of any Notes shall be calculated in such consent or voting process.

Section 9.3 [Reserved].

Section 9.4 Revocation and Effect of Consents and Waivers.

(a) A consent to an amendment, supplement or waiver by a Holder of a Note shall bind the Holder and every subsequent Holder of that Note or portion of the Note that evidences the same debt as the consenting Holder's Note, even if notation of the consent or waiver is not made on the Note. However, any such Holder or subsequent Holder may revoke the consent or waiver as to such Holder's Note or portion of the Note if the Trustee receives the notice of revocation before the date the amendment, supplement or waiver becomes effective. After an amendment, supplement or waiver becomes effective, it shall bind every Holder, except as otherwise provided in this Article IX. An amendment, supplement or waiver shall become effective upon receipt by the Trustee of the requisite number of written consents under Section 9.2.

(b) The Issuer may, but shall not be obligated to, fix a record date for the purpose of determining the Holders entitled to give their consent or take any other action described above or required or permitted to be taken pursuant to this Indenture. If a record date is fixed, then notwithstanding the immediately preceding paragraph, those Persons who were Holders at such record date (or their duly designated proxies), and only those Persons, shall be entitled to give such consent or to revoke any consent previously given or to take any such action, whether or not such Persons continue to be Holders after such record date. No such consent shall be valid or effective for more than 90 days after such record date.

Section 9.5 Notation on or Exchange of Notes. If an amendment or supplement changes the terms of a Note, the Trustee may require the Holder of the Note to deliver it to the Trustee. The Trustee may place an appropriate notation on the Note regarding the changed terms and return it to the Holder. Alternatively, if the Issuer or the Trustee so determines, the Issuer, in exchange for the Note, will execute, and upon Issuer Order, the Trustee will authenticate and make available for delivery, a new Note that reflects the changed terms. Failure to make the appropriate notation or to issue a new Note shall not affect the validity of such amendment or supplement.

Section 9.6 Trustee to Sign Amendments and Supplements. The Trustee shall sign any amendment, supplement or waiver authorized pursuant to this Article IX if the amendment or supplement does not adversely affect the rights, duties, liabilities or immunities of the Trustee. If it does, the Trustee may but need not sign it. In signing such amendment, supplement or waiver, the Trustee shall be entitled to receive indemnity reasonably satisfactory to it and to receive, and (subject to Section 7.1 and Section 7.2) shall be fully protected in relying upon, in addition to the documents required by Section 12.4, an Opinion of Counsel and an Officer's Certificate each stating that such amendment, supplement or waiver is authorized or permitted by this Indenture and that all conditions precedent to the execution of such amendment, supplement or waiver have been complied with.

ARTICLE X

NOTE GUARANTEES

Section 10.1 Note Guarantees.

(a) Each Note Guarantor hereby fully and unconditionally guarantees, as primary obligor and not merely as surety, jointly and severally with each other Note Guarantor, to each Holder and the Trustee, the full and punctual payment when due, whether at maturity, by acceleration, by redemption or otherwise, of the Obligations (such guaranteed Obligations, the "Guaranteed Obligations"). Each Note Guarantor further agrees that its Note Guarantee herein constitutes a guarantee of payment when due (and not a guarantee of collection) and agrees to pay, in addition to the amounts stated in Section 10.1(f), any and all expenses (including reasonable counsel fees and expenses) incurred by the Trustee or the Holders in enforcing or exercising any rights under any Note Guarantee.

(b) In no event shall the Trustee or the Holders be obligated to take any action, obtain any judgment or file any claim prior to enforcing or exercising any rights under any Note Guarantee.

(c) Each Note Guarantor further agrees that its Note Guarantee constitutes an absolute and unconditional and continuing guarantee. Each Note Guarantor hereby waives, to the extent permitted by law:

(i) any claim as to the legality, validity, regularity or enforceability of this Indenture, the Notes or any other agreement;

(ii) any claim as to the lack of authority of the Issuer to execute or deliver this Indenture, the Notes or any other agreement;

(iii) diligence, presentation to, demand of payment from and protest to the Issuer of any of the Obligations and notice of protest for nonpayment;

(iv) the occurrence of any Default or Event of Default under this Indenture, the Notes or any other agreement;

(v) notice of any Default or Event of Default under this Indenture, the Notes or any other agreement;

(vi) the failure of the Trustee or any Holder to assert any claim or demand or to enforce any right or remedy against the Issuer or any other Person under this Indenture, the Notes or any other agreement;

(vii) any extension or renewal of the Obligations, this Indenture, the Notes or any other agreement;

(viii) any rescission, waiver, amendment or modification of any of the terms or provisions of this Indenture, the Notes or any other agreement;

(ix) the existence of any bankruptcy, insolvency, reorganization or similar proceedings involving the Issuer;

(x) any setoff, counterclaim, recoupment, termination or defense of any kind or nature which may be available to or asserted by any Note Guarantor or the Issuer against the Holders or the Trustee;

(xi) any impairment, taking, furnishing, exchange or release of, or failure to perfect or obtain protection of any security interest in, any collateral securing this Indenture and the Notes and any right to require that any resort be had by the Trustee or any Holder to any such collateral;

(xii) the failure of the Trustee or any Holder to exercise any right or remedy against any other Note Guarantor;

(xiii) any change in the ownership of the Issuer;

(xiv) any change in the laws, rules or regulations of any jurisdiction;

(xv) any present or future action of any governmental authority or court amending, varying, reducing or otherwise affecting, or purporting to amend, vary, reduce or otherwise affect, any of the obligations of the Issuer under this Indenture or the Notes or of any Note Guarantor under its Note Guarantee; and

(xvi) any other act or thing or omission or delay to do any other act or thing which may or might in any manner or to any extent vary the risk of each Note Guarantor or would otherwise operate as a discharge of such Note Guarantor as a matter of law or equity.

(d) Each of the Note Guarantors further expressly waives irrevocably and unconditionally:

(i) Any right it may have to first require any Holder to proceed against, initiate any actions before a court of law or any other judge or authority, or enforce any other rights or security or claim payment from the Issuer or any other Person (including any Note Guarantor or any other guarantor of the Notes) before claiming from it under this Indenture;

(ii) Any right to which it may be entitled to have the assets of the Issuer or any other Person (including any Note Guarantor or any other guarantor of the Notes) first be used, applied or depleted as payment of the Issuer's or the Note Guarantors' obligations hereunder, prior to any amount being claimed from or paid by any of the Note Guarantors hereunder;

(iii) Any right to which it may be entitled to have claims hereunder divided between the Note Guarantors;

(iv) To the extent applicable, the benefits of *orden*, *excusión*, *división*, *quita* and *espera* and any right specified in articles 2814, 2815, 2817, 2818, 2819, 2820, 2821, 2822, 2823, 2826, 2837, 2838, 2839, 2840, 2845, 2846, 2847 and any other related or applicable articles that are not explicitly set forth herein because of Note Guarantor's knowledge thereof of the *Código Civil Federal* of Mexico, and the *Código Civil* of each State of the Mexican Republic and the Federal District of Mexico.

(e) The obligations assumed by each Note Guarantor hereunder shall not be affected by the absence of judicial request of payment by a Holder to the Issuer or by whether any such person takes timely action pursuant to articles 2848 and 2849 of the *Código Civil Federal* of Mexico and the *Código Civil* of each State of the Mexican Republic and the Federal District of Mexico and each Note Guarantor hereby expressly waives the provisions of such articles.

(f) The obligations of each Note Guarantor hereunder shall not be subject to any reduction, limitation, impairment or termination for any reason (other than payment of the Obligations in full), including any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to any defense of setoff, counterclaim, recoupment or termination whatsoever or by reason of the invalidity, illegality or unenforceability of the Obligations or otherwise. Without limiting the generality of the foregoing, the obligations of each Note Guarantor herein shall not be discharged or impaired or otherwise affected by the failure of any Holder to assert any claim or demand or to enforce any remedy under this Indenture, the Notes or any other agreement, by any waiver or modification of any thereof, by any default, failure or delay, willful or otherwise, in the performance of the Obligations, or by any other act or thing or omission or delay to do any other act or thing which may or might in any manner or to any extent vary the risk of such Note Guarantor or would otherwise operate as a discharge of such Note Guarantor as a matter of law or equity.

(g) Except as provided in Section 10.2, the obligations of each Note Guarantor hereunder shall not be subject to any reduction, limitation, impairment or termination for any reason other than payment of the Obligations in full.

(h) Each Note Guarantor further agrees that its Note Guarantee herein shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of principal of or interest on any of the Obligations is rescinded or must otherwise be restored by any Holder upon the bankruptcy or reorganization of the Issuer or otherwise.

(i) In furtherance of the foregoing and not in limitation of any other right which the Trustee or any Holder has at law or in equity against each Note Guarantor by virtue hereof, upon the failure of the Issuer to pay any of the Obligations when and as the same shall

become due, whether at maturity, by acceleration, by redemption or otherwise, each Note Guarantor hereby promises to and will, upon receipt of written demand by the Trustee, forthwith pay, or cause to be paid, in cash, to the Holders an amount equal to the sum of:

(i) the unpaid amount of such Obligations then due and owing; and

(ii) accrued and unpaid interest on such Obligations then due and owing (but only to the extent not prohibited by law);

*provided* that any delay by the Trustee in giving such written demand shall in no event affect any Note Guarantor's obligations under its Note Guarantee.

(j) Each Note Guarantor further agrees that, as between such Note Guarantor, on the one hand, and the Holders, on the other hand:

(i) the maturity of the Obligations guaranteed hereby may be accelerated as provided in this Indenture for the purposes of its Note Guarantee herein, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the Obligations guaranteed hereby; and

(ii) in the event of any such declaration of acceleration of such Obligations, such Obligations (whether or not due and payable) shall forthwith become due and payable by the Note Guarantor for the purposes of this Note Guarantee.

Section 10.2 Limitation on Liability; Termination, Release and Discharge.

(a) Subject to the limitations set out in Section 10.5 and 10.6, the obligations of each Note Guarantor hereunder will be limited to the maximum amount as will, after giving effect to all other contingent and fixed liabilities of such Note Guarantor and after giving effect to any collections from or payments made by or on behalf of any other Note Guarantor in respect of the obligations of such other Note Guarantor under its Note Guarantee or pursuant to its contribution obligations under this Indenture, result in the obligations of such Note Guarantor under its Note Guarantee not constituting a fraudulent conveyance or fraudulent transfer under federal or state law.

(b) A Note Guarantor will be released and relieved of its obligations under its Note Guarantee in the event that:

(i) there is a Legal Defeasance of the Notes pursuant to Article VIII;

(ii) there is a sale or other disposition of Capital Stock of such Note Guarantor following which such Note Guarantor is no longer a direct or indirect Subsidiary of the Issuer;

(iii) such Note Guarantor is designated as an Unrestricted Subsidiary in accordance with Section 3.14;

(iv) solely with respect to an Additional Note Guarantor, either (A) the New Facilities Agreement Indebtedness has been repaid in full and such Additional Note Guarantor is not a guarantor of the Indebtedness Incurred to refinance such New Facilities Agreement Indebtedness or (B) at least 85% of the outstanding Indebtedness of the Issuer and its Restricted Subsidiaries is not guaranteed by such Additional Note Guarantor; or

(v) solely with respect to an Additional Note Guarantor, upon the occurrence of a Partial Covenant Suspension Event or Covenant Suspension Event until the occurrence of a Partial Covenant Reversion Date or a Reversion Date, as applicable, at which time the guarantee of the Notes by such Additional Note Guarantor shall be reinstated unless such Additional Note Guarantor would have been released at any time during the Partial Suspension Period or the Suspension Period, as applicable, pursuant to clause (i), (ii), (iii) or (iv) of this Section 10.2(b).

Section 10.3 Right of Contribution. Each Note Guarantor that makes a payment or distribution under a Note Guarantee will be entitled to a contribution from each other Note Guarantor in a *pro rata* amount, based on the net assets of each Note Guarantor determined in accordance with GAAP. The provisions of this Section 10.3 shall in no respect limit the obligations and liabilities of each Note Guarantor to the Trustee and the Holders and each Note Guarantor shall remain liable to the Trustee and the Holders for the full amount guaranteed by such Note Guarantor hereunder.

Section 10.4 No Subrogation. Each Note Guarantor agrees that it shall not be entitled to any right of subrogation in respect of any Guaranteed Obligations until payment in full in cash or Cash Equivalents of all Obligations. If any amount shall be paid to any Note Guarantor on account of such subrogation rights at any time when all of the Obligations shall not have been paid in full in cash or Cash Equivalents, such amount shall be held by such Note Guarantor in trust for the Trustee and the Holders, segregated from other funds of such Note Guarantor, and shall, forthwith upon receipt by such Note Guarantor, be turned over to the Trustee in the exact form received by such Note Guarantor (duly endorsed by such Note Guarantor to the Trustee, if required), to be applied against the Obligations.

Section 10.5 French Guarantee Limitation.

(a) The obligations of any Note Guarantor incorporated in France (a "French Note Guarantor") are subject to the limitations set out in this Section 10.5.

(b) The obligations and liabilities of any French Note Guarantor under the Indenture and the Notes, and in particular under this Article X, shall not include any obligation or liability which, if incurred, would constitute the provision of financial assistance within the meaning of article L.225-216 of the French Commercial Code and/or would constitute a misuse of corporate assets within the meaning of article(s) L. 241-3 or L. 242-6 of the French Commercial Code or any other law or regulations having the same effect, as interpreted by French courts.

(c) The obligations and liabilities of any French Note Guarantor under this Article X for the Issuer's obligations under the Indenture and the Notes shall be limited, at any time, to an amount equal to the aggregate of all amounts made available under the Notes and the Indenture to the Issuer to the extent directly or indirectly on-lent to such French Note Guarantor and/or its direct and indirect Subsidiaries under intercompany loan agreements (excluding, for the avoidance of doubt, any cash-pooling arrangements or other cash management agreements, provided that the proceeds of the Notes shall not be used, in whole or in part, to finance, directly or indirectly, such cash pooling arrangements or other cash management agreements) and outstanding at the date a payment is to be made by such French Note Guarantor under this Article X, it being specified that any payment made by a French Note Guarantor under this Article X in respect of the obligations of the Issuer shall reduce *pro tanto* the outstanding amount of the intercompany loans due by such French Note Guarantor or its relevant direct or indirect Subsidiary under the intercompany loan agreements referred to above and that any repayment of the intercompany loans by the French Note Guarantor or its relevant direct or indirect Subsidiary shall reduce *pro tanto* the amount payable by the French Note Guarantor under this Article X.

(d) It is acknowledged that no French Note Guarantor is acting jointly and severally with the other Note Guarantors and no French Guarantor shall therefore be considered as "*co-débiteur solidaire*" as to its obligations pursuant to the guarantee given pursuant to this Article X.

Section 10.6 Swiss Guarantee Limitation.

(a) The obligations of any Note Guarantor incorporated in Switzerland (a "Swiss Note Guarantor") are subject to the limitations set out in this Section 10.6.

(b) The obligations and liabilities of a Swiss Note Guarantor under the Indenture, the Notes or any other agreement, and in particular under this Article X, in relation to the obligations, undertakings, indemnities or liabilities of a Note Guarantor other than that Swiss Note Guarantor or any of its fully owned and controlled subsidiaries (the "Restricted Obligations") shall not include any obligation or liability which, if incurred, would constitute the provision of financial assistance not permitted under the laws of Switzerland then in force and/or would constitute a misuse of corporate assets under Swiss law as interpreted by Swiss courts and shall be limited to the amount of that Swiss Note Guarantor's Free Reserves Available for Distribution at the time payment is requested, provided that such limitation is a requirement under applicable law (including any case law) at that point in time and that such limitation shall not free the Swiss Note Guarantor from its obligations in excess thereof, but merely postpone the performance date until such time as performance is permitted notwithstanding such limitation.

(c) For the purpose of this clause, "Free Reserves Available for Distribution" means an amount equal to the maximal amount in which the relevant Swiss Note Guarantor can make a dividend payment to its shareholder(s) (being the balance sheet profit and any freely disposable reserves available for this purpose, in each case in accordance with applicable Swiss law).

(d) As soon as possible after having been requested to discharge a Restricted Obligation, the Swiss Note Guarantor shall, if it cannot discharge the full amount of the Restricted Obligations, provide the Trustee with an interim statutory balance sheet audited by the statutory auditors of the Swiss Note Guarantor setting out the Free Reserves Available for Distribution and, immediately thereafter, pay the amount corresponding to the Free Reserves Available for Distribution to the Trustee (save to the extent provided below).

(e) In respect of the Restricted Obligations, the Swiss Note Guarantor shall:

(i) if and to the extent required by applicable law in force at the relevant time:

(A) subject to any applicable double taxation treaties, deduct Swiss withholding tax at the rate of 35 percent (or such other rate as is in force at that time) from any payment made by it;

(B) pay any such deduction to the Swiss Federal Tax Administration; and

(C) notify and provide evidence to the Trustee that the Swiss withholding tax has been paid to the Swiss Federal Tax Administration;

(ii) to the extent such deduction is made, not be required to make a gross-up, indemnify or otherwise hold harmless the Trustee or the Holders for the deduction of the Swiss withholding tax notwithstanding anything to the contrary contained in the Indenture, the Notes or any other agreement, unless grossing up is permitted under the laws of Switzerland then in force and provided that this should not in any way limit any obligations of any non-Swiss Note Guarantors under the Indenture, the Notes or any other agreement to indemnify the Trustee or the Holders in respect of the deduction of the Swiss withholding tax. The Swiss Note Guarantor shall use all reasonable efforts to procure that any person which is entitled to a full or partial refund of any Swiss withholding tax paid pursuant to paragraph (a) above will, as soon as possible after the deduction of the Swiss withholding tax: (y) request a refund of the Swiss withholding tax under any applicable law (including double taxation treaties) and (z) pay to the Trustee upon receipt any amount so refunded.

(f) The Swiss Note Guarantor will take, and cause to be taken, all and any other action, including, without limitation, the passing of any shareholders' resolutions to approve any payment or other performance under the Indenture and the Notes and the receipt of any confirmations from the Swiss Note Guarantor's auditors, whether following a request to discharge a Restricted Obligation or which may be required as a matter of mandatory Swiss law in force at the time it is required to make a payment or perform other obligations under the Indenture, the Notes or any other agreement in order to allow a prompt payment or performance of other obligations under the Indenture or the Notes.

(g) If the enforcement of the Restricted Obligations would be limited due to the effects referred to in this Section 10.6 and if any asset of the Swiss Note Guarantor has a book value that is less than its market value (an "Undervalued Asset"), the Swiss Note Guarantor shall, to the extent permitted by applicable law and its accounting standards (i) write up the book value of such Undervalued Asset such that its balance sheet reflects a book value that is equal to the market value of such Undervalued Asset, and (ii) make reasonable efforts to realize the Undervalued Asset for a sum which is at least equal to the market value of such asset. Without prejudice to the rights of the Trustee and the Holders under the Indenture, the Notes or any other agreement, the Swiss Note Guarantor will only be required to realize an Undervalued Asset if such asset is not necessary for the Swiss Note Guarantor's business ( *nicht betriebsnotwendig*).

## ARTICLE XI

## COLLATERAL

Section 11.1 The Collateral. Subject to Section 11.2, the Issuer and the Note Guarantors agree that the Notes will be at all times secured by a first-priority security interest in the Collateral on at least an equal and ratable basis with the Permitted Secured Obligations.

Section 11.2 Release of the Collateral.

(a) The Notes will cease to be secured by a security interest in the Collateral in accordance with the provisions of the Intercreditor Agreement.

(b) In addition to the Collateral release provisions set forth in the Intercreditor Agreement, the Notes will cease to be secured by a security interest on the Collateral upon:

(i) (A) payment in full of the principal of, any accrued and unpaid interest on, the Notes and all other amounts or Obligations that are due and payable at or prior to the time such principal, accrued and unpaid interest, if any, are paid, (B) a satisfaction and discharge of this Indenture or (C) a Legal Defeasance or Covenant Defeasance pursuant to Article VIII; or

(ii) a refinancing of the New Facilities Agreement Indebtedness in full as a result of which the Collateral does not secure Indebtedness Incurred to refinance such New Facilities Agreement Indebtedness.

ARTICLE XII

MISCELLANEOUS

Section 12.1 Notices.

(a) Any notice or communication shall be in writing and delivered in person or mailed by first-class mail, postage prepaid, addressed as follows:

if to the Issuer and the Note Guarantors:

c/o CEMEX, S.A.B. de C.V. Av.
Ricardo Margáin Zozaya #325
Colonia Valle del Campestre
Garza García, Nuevo León
México 66265
Attention: Chief Financial Officer
Fax: +1 52 81 8888 4417

if to the Trustee:

Computershare Trust Company, N.A.
350 Indiana St., Suite 750
Golden, Colorado 80401
Attention: John M. Wahl
Fax: (303) 262-0608

with a copy to:

Computershare Trust Company, N.A.
480 Washington Blvd.
Jersey City, New Jersey 07310
Attention: Legal Department Fax: (201) 680-4610

The Issuer or the Trustee by notice to the other may designate additional or different addresses for subsequent notices or communications.

(b) All notices to Holders of Notes will be validly given if mailed to them at their respective addresses in the register of the Holders of such Notes, if any, maintained by the Registrar. For so long as any Notes are represented by Global Notes, all notices to Holders of the Notes will be delivered to DTC, delivery of which shall be deemed to satisfy the requirements of this paragraph.

(c) Each such notice shall be deemed to have been given on the date of delivery or mailing. Any notice or communication mailed to a Holder shall be mailed to such Person by first-class mail or other equivalent means and shall be sufficiently given to them if so mailed within the time prescribed. Failure to mail a notice or communication to a Holder or any

defect in it shall not affect its sufficiency with respect to other Holders. If a notice or communication is mailed in the manner provided above, it is duly given, whether or not the addressee receives it.

(d) Subject to Section 7.1(c) and Section 7.2(a), the Trustee shall accept electronic transmissions; *provided* that (i) the Trustee shall not have any duty or obligation to verify or confirm that the Person sending instructions, directions, reports, notices or other communications or information by electronic transmission is, in fact, a Person authorized to give such instructions, directions, reports, notices or other communications or information on behalf of the party purporting to send such electronic transmission; and the Trustee shall not have any liability for any losses, liabilities, costs or expenses incurred or sustained by any party as a result of such reliance upon or compliance with such instructions, directions, reports, notices or other communications or information, (ii) each other party agrees to assume all risks arising out of the use of electronic methods to submit instructions, directions, reports, notices or other communications or information to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, notices, reports or other communications or information, and the risk of interception and misuse by third parties, and (iii) receipt of such electronic transmissions is confirmed by a Trust Officer.

(e) Any notice or communication mailed to a registered Holder shall be mailed to the Holder at the Holder's address as it appears on the Note Register and shall be sufficiently given if so mailed within the time prescribed. If the Issuer sends a notice or communication to Holders, it shall mail a copy to the Trustee and each Agent at the same time.

(f) Failure to mail a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders. If a notice or communication is mailed in the manner provided above, it is duly given, whether or not the addressee receives it.

(g) Any notice or communication delivered to the Issuer under the provisions herein shall constitute notice to the Note Guarantors.

Section 12.2 Communication by Holders with Other Holders. Holders may communicate with other Holders with respect to their rights under this Indenture (including the Note Guarantees) or the Notes.

Section 12.3 Certificate and Opinion as to Conditions Precedent. Upon any request or application by the Issuer to the Trustee to take or refrain from taking any action under this Indenture, the Issuer shall furnish to the Trustee:

(a) an Officer's Certificate in form and substance reasonably satisfactory to the Trustee stating that, in the opinion of the signers, all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with; and

(b) an Opinion of Counsel in form and substance reasonably satisfactory to the Trustee stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

Section 12.4 Statements Required in Certificate or Opinion. Each certificate or opinion, including an Opinion of Counsel or Officer's Certificate, with respect to compliance with a covenant or condition provided for in this Indenture shall include:

(a) a statement that the individual making such certificate or opinion has read such covenant or condition;

(b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(c) a statement that, in the opinion of such individual, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(d) a statement as to whether or not, in the opinion of such individual, such covenant or condition has been complied with.

In giving an Opinion of Counsel, counsel may rely as to factual matters on an Officer's Certificate or on certificates of public officials.

Section 12.5 Rules by Trustee, Paying Agent, Transfer Agent and Registrar. The Trustee may make reasonable rules for action by, or a meeting of, Holders. The Paying Agent, Transfer Agent and the Registrar may make reasonable rules for their functions.

Section 12.6 Legal Holidays. A "Legal Holiday" is a Saturday, a Sunday or other day on which commercial banking institutions are authorized or required to be closed in New York, New York, Golden, Colorado, Mexico, Madrid, Amsterdam, London, Paris or Zurich. If a payment date is a Legal Holiday, payment shall be made on the next succeeding day that is not a Legal Holiday, and no interest shall accrue for the intervening period. If a regular record date is a Legal Holiday, the record date shall not be affected.

Section 12.7 Governing Law, etc.

(a) THIS INDENTURE (INCLUDING EACH NOTE GUARANTEE) AND THE NOTES SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK. THE PARTIES HERETO EACH HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS INDENTURE, THE NOTES OR EACH NOTE GUARANTEE OR ANY TRANSACTION RELATED HERETO OR THERETO TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

(b) Each of the parties hereto hereby:

(i) agrees that any suit, action or proceeding against it arising out of or relating to this Indenture (including the Note Guarantees) or the Notes, as the case may be, may be instituted in any Federal or state court sitting in the City of New York and in the courts of its own corporate domicile, in respect of actions brought against it as a defendant,

(ii) waives to the fullest extent permitted by applicable law, any objection which it may now or hereafter have to the laying of venue of any such suit, action or proceeding, any claim that any suit, action or proceeding in such a court has been brought in an inconvenient forum, and any right to which it may be entitled, on account of place of residence or domicile,

(iii) irrevocably submits to the jurisdiction of such courts in any suit, action or proceeding,

(iv) agrees that final judgment in any such suit, action or proceeding brought in such a court shall be conclusive and binding may be enforced in the courts of the jurisdiction of which it is subject by a suit upon judgment, and

(v) agrees that service of process by mail to the addresses specified herein shall constitute personal service of such process on it in any such suit, action or proceeding.

(c) The Issuer and the Note Guarantors have appointed CEMEX NY Corporation, 590 Madison Avenue, 41st Floor, New York, NY 10022, as its authorized agent (the "Authorized Agent") upon whom all writs, process and summonses may be served in any suit, action or proceeding arising out of or based upon this Indenture or the Notes which may be instituted in any state or federal court in the City of New York, New York. The Issuer and the Note Guarantors hereby represent and warrant that the Authorized Agent has accepted such appointment and has agreed to act as said agent for service of process, and the Issuer and the Note Guarantors agree to take any and all action, including the filing of any and all documents, that may be necessary to continue each such appointment in full force and effect as aforesaid so long as the Notes remain outstanding. The Issuer and the Note Guarantors agree that the appointment of the Authorized Agent shall be irrevocable so long as any of the Notes remain outstanding or until the irrevocable appointment by the Issuer and the Note Guarantors of a successor agent in the City of New York, New York as each of their authorized agent for such purpose and the acceptance of such appointment by such successor. Service of process upon the Authorized Agent shall be deemed, in every respect, effective service of process upon the Issuer and the Note Guarantors.

(d) To the extent that any of the Issuer and the Note Guarantors have or hereafter may acquire any immunity (sovereign or otherwise) from any legal action, suit or proceeding, from jurisdiction of any court or from set-off or any legal process (whether service or notice, attachment in aid or otherwise) with respect to itself or any of its property, the Issuer and the Note Guarantors hereby irrevocably waive and agree not to plead or claim such immunity in respect of their obligations under this Indenture or the Notes.

(e) Nothing in this Section 12.7 shall affect the right of the Trustee or any Holder of the Notes to serve process in any other manner permitted by law.

Section 12.8 [Reserved].

Section 12.9 No Recourse Against Others. An incorporator, director, officer, employee, stockholder or controlling person, as such, of the Issuer or any Note Guarantor shall not have any liability for any obligations of the Issuer or any Note Guarantor under the Notes or this Indenture or for any claims based on, in respect of or by reason of such obligations or their creation. By accepting a Note, each Holder shall waive and release all such liability.

Section 12.10 Successors. All agreements of the Issuer and any Note Guarantor in this Indenture and the Notes shall bind their respective successors. All agreements of the Trustee in this Indenture shall bind its successors.

Section 12.11 Duplicate and Counterpart Originals. The parties may sign any number of copies of this Indenture. One signed copy is enough to prove this Indenture. This Indenture may be executed in any number of counterparts, each of which so executed shall be an original, but all of them together represent the same agreement. Signatures of the parties hereto transmitted by facsimile or pdf shall be deemed to be their original signatures for all purposes.

Section 12.12 Severability. In case any provision in this Indenture or in the Notes shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 12.13 [Reserved].

Section 12.14 Currency Indemnity.

(a) U.S. Legal Tender is the sole currency of account and payment for all sums payable by the Issuer and any Note Guarantor under or in connection with the Notes or this Indenture, including damages. Any amount received or recovered in currency other than U.S. Legal Tender in respect of the Notes (whether as a result of, or of the enforcement of, a judgment or order of a court of any jurisdiction, in the winding-up or dissolution of the Issuer, a Note Guarantor or any Subsidiary of the Issuer or otherwise) by any Holder of the Notes in respect of any sum expressed to be due to it from the Issuer or any Note Guarantor shall only constitute a discharge of them under the Notes and this Indenture only to the extent of the U.S. Legal Tender amount which the recipient is able to purchase with the amount so received or recovered in that other currency on the date of that receipt or recovery (or, if it is not practicable to make that purchase on that date, on the first date on which it is practicable to do so). If that U.S. Legal Tender amount is less than the U.S. Legal Tender amount expressed to be due to the recipient under the Notes or this Indenture, the Issuer and the Note Guarantors shall jointly and severally indemnify and hold harmless the recipient, to the greatest extent permitted by law, against any loss or cost sustained by it in making any such purchase. For the purposes of this Section 12.14, it will be sufficient for the Holder of a Note to certify that it would have suffered a loss had an actual purchase of U.S. Legal Tender been made with the amount so received in that other currency on the date of receipt or recovery (or, if a purchase of U.S. Legal Tender on such date had not been practicable, on the first date on which it would have been practicable).

(b) The indemnities of the Issuer and the Note Guarantors contained in this Section 12.14, to the extent permitted by law: (i) constitute a separate and independent obligation from the other obligations of the Issuer and the Note Guarantors under this Indenture and the Notes; (ii) shall give rise to a separate and independent cause of action against the Issuer and the Note Guarantors; (iii) shall apply irrespective of any waiver granted by any Holder of the Notes or the Trustee from time to time; and (iv) shall continue in full force and effect notwithstanding any other judgment, order, claim or proof of claim for a liquidated amount in respect of any sum due under the Notes or this Indenture or any other judgment or order.

Section 12.15 Table of Contents; Headings. The table of contents and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not intended to be considered a part hereof and shall not modify or restrict any of the terms or provisions hereof.

Section 12.16 USA PATRIOT Act. The parties hereto acknowledge that, in accordance with Section 326 of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law on October 26, 2001)) (as amended, modified or supplemented from time to time, the " USA PATRIOT Act"), the Trustee, like all financial institutions, is required to obtain, verify, and record information that identifies each person or legal entity that opens an account. The parties to this Agreement agree that they will provide the Trustee with such information as the Trustee may request in order for the Trustee to satisfy the requirements of the USA PATRIOT Act.

IN WITNESS WHEREOF, the parties have caused this Indenture to be duly executed as of the date first written above.

CEMEX, S.A.B. de C.V., as Issuer

By: /s/ José Antonio González Flores
Name: José Antonio González Flores
Title: Attorney-In-Fact

CEMEX México, S.A. de C.V., as Note Guarantor

By: /s/ José Antonio González Flores
Name: José Antonio González Flores
Title: Attorney-In-Fact

CEMEX Corp., as Note Guarantor

By: /s/ Héctor José Vela Dib
Name: Héctor José Vela Dib
Title: Attorney-In-Fact

CEMEX España, S.A., as Note Guarantor

By: /s/ Héctor José Vela Dib
Name: Héctor José Vela Dib
Title: Attorney-In-Fact

CEMEX Research Group AG, as Note Guarantor

By: /s/ Francisco Javier García Ruiz de Morales
Name: Francisco Javier García Ruiz de Morales
Title: Attorney-In-Fact

CEMEX Shipping B.V., as Note Guarantor

By: /s/ Francisco Javier García Ruiz de Morales
Name: Francisco Javier García Ruiz de Morales
Title: Attorney-In-Fact

CEMEX Asia B.V., as Note Guarantor

By: /s/ Francisco Javier García Ruiz de Morales
Name: Francisco Javier García Ruiz de Morales
Title: Attorney-In-Fact

CEMEX France Gestion (S.A.S.), as Note Guarantor

By: /s/ Francisco Javier García Ruiz de Morales
Name: Francisco Javier García Ruiz de Morales
Title: Attorney-In-Fact

CEMEX UK, as Note Guarantor

By: /s/ Francisco Javier García Ruiz de Morales
Name: Francisco Javier García Ruiz de Morales
Title: Attorney-In-Fact

CEMEX Egyptian Investments B.V., as Note Guarantor

By: /s/ Francisco Javier García Ruiz de Morales
Name: Francisco Javier García Ruiz de Morales
Title: Attorney-In-Fact

New Sunward Holding B.V., as Additional Note Guarantor

By: /s/ Héctor José Vela Dib
Name: Héctor José Vela Dib
Title: Attorney-In-Fact

CEMEX Concretos, S.A. de C.V., as Additional Note Guarantor

By: /s/ José Antonio González Flores
Name: José Antonio González Flores
Title: Attorney-In-Fact

Empresas Tolteca de México, S.A., as Additional Note Guarantor

By: /s/ José Antonio González Flores
Name: José Antonio González Flores
Title: Attorney-In-Fact

COMPUTERSHARE TRUST COMPANY, N.A., as Trustee

By: /s/ John M. Wahl

Name: John M. Wahl
Title: Corporate Trust Officer

**SCHEDULE I**

NOTE GUARANTORS

1. CEMEX México, S.A. de C.V.
2. CEMEX Corp.
3. CEMEX España, S.A.
4. CEMEX Research Group AG
5. CEMEX Shipping B.V.
6. CEMEX Asia B.V.
7. CEMEX France Gestion (S.A.S.)
8. CEMEX UK
9. CEMEX Egyptian Investments B.V.
10. New Sunward Holding B.V.
11. CEMEX Concretos, S.A. de C.V.
12. Empresas Tolteca de México, S.A.

**EXHIBIT A**

FORM OF NOTE

*[Include the following legend for Global Notes only:*

"THIS IS A GLOBAL NOTE WITHIN THE MEANING OF THE INDENTURE REFERRED TO HEREINAFTER.

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), NEW YORK, NEW YORK, TO THE ISSUER OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFERS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF DTC OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN THE INDENTURE REFERRED TO ON THE REVERSE HEREOF."]

[*Include the following legend on all Notes that are Restricted Notes:*

"THE NOTES EVIDENCED HEREBY HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND [*Include the following on all Regulation S Notes that are Restricted Notes:* , PRIOR TO THE EXPIRATION OF THE 40-DAY DISTRIBUTION COMPLIANCE PERIOD (AS DEFINED IN REGULATION S UNDER THE SECURITIES ACT),] MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT (A) (1) TO CEMEX, S.A.B. DE C.V., (2) TO A PERSON WHO THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A AND TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS MADE IN RELIANCE ON RULE 144A, (3) IN AN OFFSHORE TRANSACTION COMPLYING WITH RULE 903 OR RULE 904 OF REGULATION S UNDER THE SECURITIES ACT, (4) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT (IF AVAILABLE), OR (5) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT AND (B) IN ACCORDANCE WITH ALL APPLICABLE SECURITIES

LAWS OF THE STATES OF THE UNITED STATES. THIS LEGEND CAN ONLY BE REMOVED AT THE OPTION OF THE ISSUER."]

[*Include the following on all Regulation S Notes that are Restricted Notes:* PRIOR TO THE EXPIRATION OF THE 40-DAY DISTRIBUTION COMPLIANCE PERIOD (AS DEFINED IN REGULATION S UNDER THE SECURITIES ACT),] EACH PERSON ACQUIRING AN OWNERSHIP INTEREST IN THE NOTES (1) SHALL BE DEEMED TO REPRESENT AND WARRANT THAT IT EITHER (A) IS A "QUALIFIED INSTITUTIONAL BUYER" (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT), (B) IS NOT A U.S. PERSON (AS DEFINED IN REGULATION S) AND IS OUTSIDE THE UNITED STATES OR (C) IS ACQUIRING SUCH OWNERSHIP INTEREST PURSUANT TO A VALID REGISTRATION STATEMENT OR IN ANOTHER TRANSACTION EXEMPT FROM SUCH REGISTRATION; (2) AGREES THAT [*Include the following on all Regulation S Notes that are Restricted Notes:* PRIOR TO THE EXPIRATION OF THE 40-DAY DISTRIBUTION COMPLIANCE PERIOD (AS DEFINED IN REGULATION S UNDER THE SECURITIES ACT),] (X) IT WILL NOT RESELL OR OTHERWISE TRANSFER THIS NOTE EXCEPT IN ACCORDANCE WITH THE FOREGOING RESTRICTIONS, AND IN ANY CASE IN COMPLIANCE WITH ALL APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES AND ANY OTHER APPLICABLE JURISDICTION; (Y) PRIOR TO SUCH TRANSFER, IT WILL FURNISH TO COMPUTERSHARE TRUST COMPANY, N.A., AS TRUSTEE (OR A SUCCESSOR TRUSTEE, AS APPLICABLE), SUCH CERTIFICATIONS, LEGAL OPINIONS OR OTHER INFORMATION AS THE TRUSTEE MAY REASONABLY REQUIRE TO CONFIRM THAT SUCH TRANSFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND (Z) IT WILL DELIVER TO EACH PERSON TO WHOM THIS SECURITY IS TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND. AS USED HEREIN, THE TERMS "UNITED STATES", "U.S. PERSON" AND "OFFSHORE TRANSACTION" HAVE THE MEANINGS GIVEN TO THEM BY REGULATION S UNDER THE SECURITIES ACT."]

*[Include the following legend on all Notes as Mexican law legend:*

"THE NOTES EVIDENCED HEREBY HAVE NOT BEEN AND WILL NOT BE REGISTERED WITH THE NATIONAL SECURITIES REGISTRY (*REGISTRO NACIONAL DE VALORES*) MAINTAINED BY THE MEXICAN NATIONAL BANKING AND SECURITIES COMMISSION (*COMISIÓN NACIONAL BANCARIA Y DE VALORES*, OR CNBV), AND MAY NOT BE OFFERED OR SOLD PUBLICLY, OR OTHERWISE BE SUBJECT TO BROKERAGE ACTIVITIES, IN MEXICO, EXCEPT THAT THE NOTES MAY BE OFFERED IN MEXICO TO QUALIFIED OR INSTITUTIONAL INVESTORS PURSUANT TO THE PRIVATE PLACEMENT EXEMPTION SET FORTH UNDER ARTICLE 8 OF THE MEXICAN SECURITIES MARKET LAW (*LEY DEL MERCADO DE VALORES*). THE NOTES EVIDENCED HEREBY AND THE INVITATION MEMORANDUM RELATED THERETO ARE SOLELY OUR RESPONSIBILITY AND HAVE NOT BEEN REVIEWED OR AUTHORIZED BY THE CNBV."]

**FORM OF FACE OF NOTE**

**9.50% Senior Secured Notes Due 2018**

No. [ ] Principal Amount U.S.$[ ]

*[If the Note is a Global Note include the following two lines:*
as revised by the Schedule of Increases and
Decreases in Global Note attached hereto]

CUSIP NO. [1]

CEMEX, S.A.B. de C.V. (together with its successors and assigns, the "Issuer") promises to pay to Cede & Co., or registered assigns, the principal sum of [ ] U.S. Dollars [*If the Note is a Global Note, add the following* , as revised by the Schedule of Increases and Decreases in Global Note attached hereto], on June 15, 2018.

Interest Payment Dates: June 15 and December 15, commencing December 15, 2012
Record Dates: May 31 and November 30

[1] CUSIP No. for Rule 144A Note: 151290BF9
CUSIP No. for Regulation S Note: P2253TJA8

Additional provisions of this Note are set forth on the other side of this Note.

CEMEX, S.A.B. de C.V.

By: _____
Name:
Title:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

Computershare Trust Company, N.A.,
as Trustee, certifies
that this is one of
the Notes referred
to in the Indenture.

By: _____ Date: _____
Authorized Signatory

**FORM OF REVERSE SIDE OF NOTE**

**9.50% Senior Secured Notes Due 2018**

Capitalized terms used but not defined herein shall have the meanings assigned to them in the Indenture referred to below unless otherwise indicated.

1. Interest

CEMEX, S.A.B. de C.V. (together with its successors and assigns, the "Issuer") promises to pay interest on the principal amount of this Note at the rate per annum shown above.

The Issuer will pay interest semiannually in arrears on each Interest Payment Date of each year commencing December 15, 2012; *provided* that if any such Interest Payment Date is not a Business Day, then such payment shall be made on the next succeeding Business Day. Interest on the Notes will accrue from the most recent date to which interest has been paid on the Notes or, if no interest has been paid, from September 17, 2012; *provided* that if there is no existing Default or Event of Default on the payment of interest, and if this Note is authenticated between a Record Date referred to on the face hereof and the next succeeding Interest Payment Date (but after September 17, 2012), interest shall accrue from such next succeeding Interest Payment Date, except in the case of the original issuance of Notes, in which case interest shall accrue from September 17, 2012. The Issuer shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue principal at the then applicable interest rate on the Notes to the extent lawful; it shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue installments of interest (" Defaulted Interest"), without regard to any applicable grace period, at the same rate to the extent lawful. Interest will be computed on the basis of a 360-day year of twelve 30-day months. Each interest period shall end on (but not include) the relevant interest payment date.

All payments made by the Issuer in respect of the Notes will be made free and clear of and without deduction or withholding for or on account of any Taxes imposed or levied by or on behalf of any Taxing Authority, unless such withholding or deduction is required by law or by the interpretation or administration thereof. In that event, the Issuer will pay to each Holder of the Notes Additional Amounts as provided in the Indenture subject to the limitations set forth in the Indenture.

2. Method of Payment

By at least 10:00 a.m. (New York City time) on the Business Day prior to the date on which any principal of or interest on any Note is due and payable, the Issuer shall irrevocably deposit with the Trustee or the Paying Agent money sufficient to pay such principal and/or interest. The Issuer will pay interest (except Defaulted Interest) on the applicable Interest Payment Date to the Persons who are registered Holders of Notes at the close of business on the Record Date preceding the Interest Payment Date even if Notes are canceled, repurchased or redeemed after the Record Date and on or before the relevant Interest Payment Date, except as provided in Section 2.13 of the Indenture with respect to Defaulted Interest. Holders must surrender Notes to a Paying Agent to collect principal payments. The Issuer will pay principal and interest in U.S. Legal Tender.

Payments in respect of Notes represented by a Global Note (including principal and interest) will be made by the transfer of immediately available funds to the accounts specified by the DTC. The Issuer will make all payments in respect of a Certificated Note (including principal and interest) by mailing a check to the registered address of each registered Holder thereof as set forth in the Note Register; *provided*, *however*, that payments on the Notes may also be made, in the case of a Holder of at least U.S.$1,000,000 aggregate principal amount of Notes, by wire transfer to a U.S. dollar account maintained by the payee with a bank in the United States if such Holder elects payment by wire transfer by giving written notice to the Trustee or the Paying Agent to such effect designating such account no later than 15 days immediately preceding the relevant due date for payment (or such other date as the Trustee may accept in its discretion).

3. Paying Agent and Registrar

Initially, Computershare Trust Company, N.A., the Trustee under the Indenture, will act as Trustee, Paying Agent and Registrar. The Issuer may appoint and change any Paying Agent, Registrar or co-Registrar without notice to any Holder. The Issuer, any Note Guarantor or any of their respective Affiliates may act as Paying Agent, Registrar or co-Registrar.

4. Indenture

The Issuer issued the Notes under an Indenture, dated as of September 17, 2012 (as it may be amended or supplemented from time to time in accordance with the terms thereof, the "Indenture"), among the Issuer, the Note Guarantors and the Trustee. The terms of the Notes include those stated in the Indenture. The Notes are subject to all such terms, and Holders are referred to the Indenture for a statement of those terms. Each Holder, by accepting a Note, agrees to be bound by all of the terms and provisions of the Indenture, as amended or supplemented from time to time.

The Notes are general senior obligations, which are secured by a first priority security interest in the Collateral on an equal and ratable basis with the other Permitted Secured Obligations, subject to the Collateral release provisions set forth in the Intercreditor Agreement. U.S.$500 million in aggregate principal amount of Notes will be initially issued on the Issue Date. Subject to the conditions set forth in the Indenture and without the consent of the Holders, the Issuer may issue Additional Notes. All Notes will be treated as a single series of securities under the Indenture. The Indenture imposes certain limitations on, among other things, the ability of the Issuer and its Restricted Subsidiaries to: Incur Indebtedness, make Restricted Payments, incur Liens, designate Unrestricted Subsidiaries, make Asset Sales, enter into transactions with Affiliates, or consolidate or merge or transfer or convey all or substantially all of the Issuer's assets.

To guarantee the due and punctual payment of the principal of (and premium, if any) and interest on the Notes and all other amounts payable by the Issuer under the Indenture and the Notes when and as the same shall be due and payable, whether at maturity, by acceleration or otherwise, according to the terms of the Notes and the Indenture, the Note Guarantors have unconditionally guaranteed, jointly and severally, such obligations pursuant to the terms of the Indenture. Each Note Guarantee will be subject to release as provided in the Indenture.

The obligations of each Note Guarantor in respect of its Note Guarantee will be limited to the maximum amount as will, after giving effect to all other contingent and fixed liabilities of such Note Guarantor and after giving effect to any collections from or payments made by or on behalf of any other Note Guarantor in respect of the obligations of such other Note Guarantor under its Note Guarantee or pursuant to its contribution obligations under the Indenture, result in the obligations of such Note Guarantor under its Note Guarantee not constituting a fraudulent conveyance, fraudulent transfer, or similar illegal transfer under federal or state law or the law of the jurisdiction or formation and incorporation of such Note Guarantors.

5. Optional Redemption

Except as stated below, the Issuer may not redeem the Notes. The Issuer may redeem the Notes, at its option, in whole at any time or in part from time to time, on and after June 15, 2016, at the following redemption prices, expressed as percentages of the principal amount thereof, if redeemed during the twelve-month period commencing on June 15 of any year set forth below, plus any accrued and unpaid interest on the principal amount of the Notes to the date of redemption:

| | Percentage |
|---|---|
| 2016 | 104.750% |
| 2017 and thereafter | 102.375% |

*provided, however*, that the Issuer shall not have the right to exercise any such optional redemption at any time when the Issuer is prohibited from having such an option under the New Facilities Agreement.

Prior to June 15, 2016, the Issuer will have the right, at its option, to redeem any of the Notes, in whole or in part, at any time or from time to time prior to their maturity at a redemption price equal to the greater of (1) 100% of the principal amount of such Notes and (2) the sum of the present value of each remaining scheduled payment of principal and interest thereon (exclusive of interest accrued to the date of redemption) discounted to the Redemption Date on a semi-annual basis (assuming a 360-day year consisting of twelve 30-day months) at the Treasury Rate (as defined below) plus 50 basis points, plus any accrued and unpaid interest on the principal amount of the Notes to the date of redemption, *provided*, *however*, that the Issuer shall not have the right to exercise any such optional redemption at any time when the Issuer is prohibited from having such an option under the New Facilities Agreement.

“Treasury Rate” means, with respect to any Redemption Date, the rate per annum equal to the semi-annual equivalent yield to maturity or interpolated maturity (on a day count basis) of the Comparable Treasury Issue, assuming a price for the Comparable Treasury Issue (expressed as a percentage of its principal amount) equal to the Comparable Treasury Price for such Redemption Date.

"Comparable Treasury Issue" means the United States Treasury security or securities selected by an Independent Investment Banker as having an actual or interpolated maturity comparable to the remaining term of the Notes to be redeemed that would be utilized, at the time of selection and in accordance with customary financial practice, in pricing new issues of corporate debt securities of a comparable maturity to the remaining term of such Notes.

"Independent Investment Banker" means one of the Reference Treasury Dealers appointed by the Issuer.

"Comparable Treasury Price" means, with respect to any Redemption Date (1) the average of the Reference Treasury Dealer Quotations for such Redemption Date, after excluding the highest and lowest such Reference Treasury Dealer Quotation or (2) if the Independent Investment Banker or Issuer obtains fewer than four such Reference Treasury Dealer Quotations, the average of all such quotations.

"Reference Treasury Dealer" means any one of J.P. Morgan Securities LLC or Citigroup Global Markets Inc. or their respective affiliates which are primary United States government securities dealers and not less than two other leading primary United States government securities dealers in New York City reasonably designated by the Issuer; provided, however, that if any of the foregoing shall cease to be a primary United States government securities dealer in New York City (a "Primary Treasury Dealer"), the Issuer will substitute therefore another Primary Treasury Dealer.

"Reference Treasury Dealer Quotation" means, with respect to each Reference Treasury Dealer and any Redemption Date, the average, as determined by the Independent Investment Banker or Issuer, of the bid and asked price for the Comparable Treasury Issue (expressed in each case as a percentage of its principal amount) quoted in writing to the Independent Investment Banker or Issuer by such Reference Treasury Dealer at 3:30 p.m. New York time on the third business day preceding such Redemption Date.

*Optional Redemption upon Equity Offerings* . At any time, or from time to time, on or prior to June 15, 2016, the Issuer may, at its option, use the net cash proceeds of one or more Equity Offerings to redeem in the aggregate up to 35% of the aggregate principal amount of the Notes issued pursuant to the Indenture at a redemption price equal to 109.50% of the principal amount thereof plus any accrued and unpaid interest on the principal amount of the Notes to the date of redemption; *provided*, that:

- after giving effect to any such redemption at least 65% of the aggregate principal amount of the Notes issued under the Indenture remains outstanding; and
- the Issuer shall make such redemption not more than 90 days after the consummation of such Equity Offering;

*provided, however*, that the Issuer shall not have the right to exercise any such optional redemption at any time when the Issuer is prohibited from exercising such an option under the New Facilities Agreement.

"Equity Offering" means any public or private sale of Qualified Capital Stock after the Issue Date for cash other than issuances to any Subsidiary of the Issuer.

*Optional Redemption for Changes in Withholding Taxes*. If, as a result of any amendment to, or change in, the laws (or any rules or regulations thereunder) of a Taxing Jurisdiction affecting taxation, or any amendment to or change in an official interpretation or application of such laws, rules or regulations that has a general effect, which amendment to or change of such laws, rules or regulations becomes effective on or after the Issue Date (which, in the case of a merger, consolidation or other transaction permitted and described under Article IV shall be treated for this purpose as the date of such transaction) we would be obligated, after taking all reasonable measures to avoid this requirement, to pay Additional Amounts in excess of those attributable to a withholding tax rate of 10% with respect to the Notes (see "Additional Amounts"), then, at our option, all, but not less than all, of the Notes may be redeemed at any time on giving not less than 30 nor more than 60 days' notice, at a redemption price equal to 100% of the outstanding principal amount, plus any accrued and unpaid interest on the principal amount of the Notes to the date of redemption; *provided*, *however*, that (1) no notice of redemption for tax reasons may be given earlier than 90 days prior to the earliest date on which we would be obligated to pay these Additional Amounts if a payment on the Notes were then due, and (2) at the time such notice of redemption is given such obligation to pay such Additional Amounts remains in effect; *provided, further, however*, that the Issuer shall not have the right to exercise any such optional redemption at any time when the Issuer is prohibited from having such an option under the New Facilities Agreement.

Prior to the delivery of any notice of redemption pursuant to this provision, the Issuer will deliver to the Trustee:

- an Officer's Certificate stating that the Issuer is entitled to effect the redemption and setting forth a statement of facts showing that the conditions precedent to the Issuer's right to redeem have occurred, and
- an opinion of outside legal counsel of recognized standing in the affected Taxing Jurisdiction to the effect that the Issuer has or will become obligated to pay such Additional Amounts as a result of such change or amendment.

This notice, once delivered by the Issuer to the Trustee, will be irrevocable.

In the case of any partial redemption, selection of the Notes for redemption will be made in accordance with Article V of the Indenture. On and after the Redemption Date, interest will cease to accrue on Notes or portions thereof called-for redemption as long as the Issuer has deposited with the Paying Agent funds in satisfaction of the applicable redemption price pursuant to the Indenture.

6. Mandatory Repurchase Provisions

*Change Of Control Offer*. Upon the occurrence of a Change of Control, each Holder of Notes will have the right to require that the Issuer purchase all or a portion (in integral multiples of U.S.$1,000) of the Holder's Notes at a purchase price equal to 101% of the principal amount thereof, plus accrued and unpaid interest through the date of purchase. Within 30 days

following the date upon which the Change of Control occurred, the Issuer must make a Change of Control Offer pursuant to a Change of Control Notice. As more fully described in the Indenture, the Change of Control Notice shall state, among other things, the Change of Control Payment Date, which must be no earlier than 30 days nor later than 60 days from the date the notice is mailed, other than as may be required by applicable law.

*Asset Sale Offer*. The Indenture imposes certain limitations on the ability of the Issuer and its Restricted Subsidiaries to make Asset Sales. In the event the proceeds from a permitted Asset Sale exceed certain amounts and are not applied as specified in the Indenture, the Issuer will be required to make an Asset Sale Offer to purchase to the extent of such remaining proceeds each Holder's Notes together with holders of certain other Indebtedness at 100% of the principal amount thereof, plus accrued interest (if any) to the Asset Sale Offer Payment Date, as more fully set forth in the Indenture.

7. Denominations; Transfer; Exchange

The Notes are in fully registered form without coupons, and only in denominations of principal amount of U.S.$200,000 and in integral multiples of U.S.$1,000 in excess thereof. A Holder may transfer or exchange Notes in accordance with the Indenture. The Registrar may require a Holder, among other things, to furnish appropriate endorsements or transfer documents and to pay any taxes and fees required by law or permitted by the Indenture. The Registrar shall not be required to register the transfer or exchange of (x) any Note for a period beginning: (1) 15 days before the mailing of a notice of an offer to repurchase or redeem Notes and ending at the close of business on the day of such mailing or (2) 15 days before an Interest Payment Date and ending on such Interest Payment Date and (y) any Note selected for repurchase or redemption, except the unrepurchased or unredeemed portion thereof, if any.

8. Persons Deemed Owners

The registered holder of this Note may be treated as the owner of it for all purposes.

9. Unclaimed Money

If money for the payment of principal or interest remains unclaimed for two years, the Trustee or Paying Agent shall pay the money back to the Issuer at its request unless an abandoned property law designates another Person. After any such payment, Holders entitled to the money must look only to the Issuer and not to the Trustee for payment.

10. Discharge Prior to Redemption or Maturity

Subject to certain conditions set forth in the Indenture, the Issuer at any time may terminate some or all of its obligations under the Notes and the Indenture if the Issuer deposits with the Trustee U.S. Legal Tender or U.S. Government Obligations for the payment of principal of and interest on the Notes to redemption or maturity, as the case may be.

11. Amendment, Waiver

Subject to certain exceptions set forth in the Indenture, (i) the Indenture or the Notes may be amended or supplemented with the written consent of the Holders of at least a majority in principal amount of the then Outstanding Notes and (ii) any default (other than with respect to nonpayment or in respect of a provision that cannot be amended or supplemented without the written consent of each Holder affected) or noncompliance with any provision may be waived with the written consent of the Holders of a majority in aggregate principal amount of the then Outstanding Notes. Subject to certain exceptions set forth in the Indenture, without the consent of any Holder, the Issuer and the Trustee may amend or supplement the Indenture or the Notes to, among other things, cure any ambiguity, omission, defect or inconsistency, or to comply with Article IV of the Indenture, or to provide for uncertificated Notes in addition to or in place of certificated Notes, or to add guarantees with respect to the Notes or to secure the Notes, or to add additional covenants or surrender rights and powers conferred on the Issuer or the Note Guarantors, or to make any change that does not adversely affect the rights of any Holder, or to provide for the issuance of Additional Notes.

12. Defaults and Remedies

If an Event of Default occurs and is continuing, the Trustee or the Holders of at least 25% in principal amount of the Outstanding Notes may declare all the Notes to be due and payable immediately. A Bankruptcy Event of Default will result in the Notes being due and payable immediately upon the occurrence of such Bankruptcy Event of Default.

Holders may not enforce the Indenture or the Notes except as provided in the Indenture. The Trustee may refuse to enforce the Indenture or the Notes unless it receives indemnity or security. Subject to certain limitations, Holders of a majority in principal amount of the Outstanding Notes may direct the Trustee in its exercise of any trust or power. The Trustee may withhold from Holders notice of any continuing Default or Event of Default (except a Default or Event of Default in payment of principal or interest) if it determines that withholding notice is in their interest.

13. Trustee Dealings with the Issuer and the Note Guarantors

Subject to certain limitations set forth in the Indenture, the Trustee under the Indenture, in its individual or any other capacity, may become the owner or pledgee of Notes and may otherwise deal with and collect obligations owed to it by the Issuer, any Note Guarantor or its Affiliates and may otherwise deal with the Issuer, any Note Guarantor or its Affiliates with the same rights it would have if it were not Trustee.

14. No Recourse Against Others

An incorporator, director, officer, employee, stockholder or controlling person, as such, of the Issuer or any Note Guarantor shall not have any liability for any obligations of the Issuer or any Note Guarantor under the Notes or the Indenture or for any claims based on, in respect of or by reason of such obligations or their creation. By accepting a Note, each holder waives and releases all such liability.

15. Authentication

Any Officer of the Issuer may sign the Notes for the Issuer by manual or facsimile signature. This Note shall not be valid until an authorized signatory of the Trustee (or an Authenticating Agent) manually signs the certificate of authentication on the other side of this Note.

16. Abbreviations

Customary abbreviations may be used in the name of a Holder or an assignee, such as TEN COM (= tenants in common), TEN ENT (= tenants by the entirety), JT TEN (= joint tenants with rights of survivorship and not as tenants in common), CUST (=custodian) and U/G/M/A (= Uniform Gift to Minors Act).

17. CUSIP Numbers

Pursuant to a recommendation promulgated by the Committee on Uniform Security Identification Procedures the Issuer has caused CUSIP or other similar numbers to be printed on the Notes and has directed the Trustee to use CUSIP numbers in notices of redemption as a convenience to Holders. No representation is made as to the accuracy of such numbers either as printed on the Notes or as contained in any notice of redemption and reliance may be placed only on the other identification numbers placed thereon.

18. Governing Law

This Note shall be governed by, and construed in accordance with, the laws of the State of New York.

19. Currency of Account; Conversion of Currency .

U.S. Legal Tender is the sole currency of account and payment for all sums payable by the Issuer and the Note Guarantors under or in connection with the Notes or the Indenture, including damages. The Issuer and the Note Guarantors will indemnify the Holders as provided in respect of the conversion of currency relating to the Notes and the Indenture.

20. Agent for Service; Submission to Jurisdiction; Waiver of Immunities .

The Issuer and the Note Guarantors have agreed that any suit, action or proceeding against the Issuer or any Note Guarantor brought by any Holder or the Trustee arising out of or based upon the Indenture or the Notes may be instituted in any state or federal court in the City of New York, New York. The Issuer and the Note Guarantors have irrevocably submitted to the jurisdiction of such courts for such purpose and waived, to the fullest extent permitted by law, trial by jury and any objection it may now or hereafter have to the laying of venue of any such proceeding, and any claim it may now or hereafter have that any proceeding in any such court is brought in an inconvenient forum. The Issuer and the Note Guarantors have appointed CEMEX NY Corporation, 590 Madison Avenue, 41st Floor, New York, NY 10022, as each of their authorized agent upon whom all writs, process and summonses may be served in any suit, action or proceeding arising out of or based upon the Indenture or the Notes which may

be instituted in any state or federal court in the City of New York, New York. To the extent that any of the Issuer and the Note Guarantors have or hereafter may acquire any immunity (sovereign or otherwise) from any legal action, suit or proceeding, from jurisdiction of any court or from set-off or any legal process (whether service or notice, attachment in aid or otherwise) with respect to itself or any of its property, the Issuer and the Note Guarantors have irrevocably waived and agreed not to plead or claim such immunity in respect of its obligations under the Indenture or the Notes.

The Issuer will furnish to any Holder upon written request and without charge to the Holder a copy of the Indenture which has in it the text of this Note in larger type. Requests may be made to:

CEMEX, S.A.B. de C.V.
Av. Ricardo Margáin Zozaya # 325
Colonia Valle del Campestre
Garza García, Nuevo León, México 66265
Tel: +5281-8888-8888

**ASSIGNMENT FORM**

To assign this Note, fill in the form below:

I or we assign and transfer this Note to

_____

(Print or type assignee's name, address and zip code)

_____

(Insert assignee's soc. sec. or tax I.D. No.)

and irrevocably appoint _____ as agent to transfer this Note on the books of the Issuer. The agent may substitute another to act for him.

Date: _____ Your Signature: _____

Signature Guarantee: _____

(Signature must be guaranteed)

Sign exactly as your name appears on the other side of this Note.

The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program), pursuant to Exchange Act Rule 17Ad-15.

*To be attached to Global Notes only:*

SCHEDULE OF INCREASES OR DECREASES IN GLOBAL NOTE

The following increases or decreases in this Global Note have been made:

| Date of Exchange | Amount of decrease in Principal Amount of this Global Note | Amount of increase in Principal Amount of this Global Note | Principal Amount of this Global Note following such decrease or increase | Signature of authorized signatory of Trustee or Note Custodian |
|---|---|---|---|---|
| | | | | |
| | | | | |

OPTION OF HOLDER TO ELECT PURCHASE

If you want to elect to have this Note purchased by the Issuer pursuant to Section 3.12 or 3.8 of the Indenture, check either box:

☐ **Section 3.12** ☐ **Section 3.8**

If you want to elect to have only part of this Note purchased by the Issuer pursuant to Section 3.12 of the Indenture, state the principal amount (which must be in minimum denominations of U.S.$200,000 and in an integral multiple of U.S.$1,000):

U.S.$

Date: _____ Your Signature _____

(Sign exactly as your name appears on the other side of the Note)

Signature Guarantee: _____

(Signature must be guaranteed)

The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program), pursuant to Exchange Act Rule 17Ad-15.

**EXHIBIT B**

FORM OF CERTIFICATION FOR TRANSFER PURSUANT TO REGULATION S

[Date]

Computershare Trust Company, N.A.
350 Indiana St., Suite 750
Golden, Colorado 80401
Attention: John M. Wahl
Fax: (303) 262-0608

Re: 9.50% Senior Secured Notes due 2018 (the "Notes") of CEMEX, S.A.B. de C.V. (the "Issuer"), CUSIP No. 151290BF9

Ladies and Gentlemen:

Reference is hereby made to the Indenture, dated as of September 17, 2012 (as amended and supplemented from time to time, the " Indenture"), among the Issuer, the Note Guarantors named therein and Computershare Trust Company, N.A., as Trustee. Capitalized terms used but not defined herein shall have the meanings given them in the Indenture.

In connection with our proposed transfer of U.S.$ aggregate principal amount of the Notes, which represent an interest in a Rule 144A Global Note beneficially owned by the undersigned (" Transferor"), we confirm that such transfer has been effected pursuant to and in accordance with Regulation S and, accordingly, we represent that:

(a) the offer of the Notes was not made to a person in the United States;

(b) either (i) at the time the buy order was originated, the transferee was outside the United States or we and any person acting on our behalf reasonably believed that the transferee was outside the United States or (ii) the transaction was executed in, on or through the facilities of a designated off-shore securities market and neither we nor any person acting on our behalf knows that the transaction has been pre-arranged with a buyer in the United States;

(c) no directed selling efforts have been made in the United States in contravention of the requirements of Rule 903(b) or Rule 904(b) of Regulation S, as applicable;

(d) the transaction is not part of a plan or scheme to evade the registration requirements of the Securities Act; and

(e) we are the beneficial owner of the principal amount of Notes being transferred.

In addition, if the transfer is made during a Distribution Compliance Period and the provisions of Rule 904(b)(1) or Rule 904(b)(2) of Regulation S are applicable thereto, we confirm that such transfer has been made in accordance with the applicable provisions of Rule 904(b)(1) or Rule 904(b)(2), as the case may be.

You, the Issuer and the Note Guarantors are entitled to rely upon this letter and are irrevocably authorized to produce this letter or a copy hereof to any interested party in any administrative or legal proceedings or official inquiry with respect to the matters covered hereby.

Very truly yours,

[Name of Transferor]

By: _____

_____
Authorized Signature]

Signature Guarantee: _____
(Signature must be guaranteed)

The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program), pursuant to Exchange Act Rule 17Ad-15.

**EXHIBIT C**

FORM OF CERTIFICATION FOR TRANSFER PURSUANT TO RULE 144

[Date]

Computershare Trust Company, N.A.
350 Indiana St., Suite 750
Golden, Colorado 80401
Attention: John M. Wahl
Fax: (303) 262-0608

Re: 9.50% Senior Secured Notes due 2018 (the "Notes") of CEMEX, S.A.B. de C.V. (the "Issuer"), CUSIP No. 151290BF9

Ladies and Gentlemen:

Reference is hereby made to the Indenture, dated as of September 17, 2012 (as amended and supplemented from time to time, the " Indenture"), among the Issuer, the Note Guarantors named therein and Computershare Trust Company, N.A., as Trustee. Capitalized terms used but not defined herein shall have the meanings given them in the Indenture.

In connection with our proposed transfer of U.S.$ aggregate principal amount of the Notes, which represent an interest in a 144A Global Note beneficially owned by the undersigned ("Transferor"), we confirm that such transfer has been effected pursuant to and in accordance with Rule 144 under the Securities Act.

You, the Issuer and the Note Guarantors are entitled to rely upon this letter and are irrevocably authorized to produce this letter or a copy hereof to any interested party in any administrative or legal proceedings or official inquiry with respect to the matters covered hereby.

Very truly yours,

[Name of Transferor]

By: _____

_____
Authorized Signature

Signature Guarantee: _____
(Signature must be guaranteed)

The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program), pursuant to Exchange Act Rule 17Ad-15.

**EXHIBIT D**

FORM OF CERTIFICATION FOR TRANSFER PURSUANT TO RULE 144A

[Date]

Computershare Trust Company, N.A.
350 Indiana St., Suite 750
Golden, Colorado 80401
Attention: John M. Wahl
Fax: (303) 262-0608

Re: 9.50% Senior Secured Notes due 2018 (the "Notes") of CEMEX, S.A.B. de C.V. (the "Issuer"), CUSIP No. P2253TJA8

Ladies and Gentlemen:

Reference is hereby made to the Indenture, dated as of September 17, 2012 (as amended and supplemented from time to time, the " Indenture"), among the Issuer, the Note Guarantors named therein and Computershare Trust Company, N.A., as Trustee. Capitalized terms used but not defined herein shall have the meanings given them in the Indenture.

In connection with our proposed transfer of U.S.$ aggregate principal amount of the Notes, which represent an interest in a Regulation S Global Note beneficially owned by the undersigned (" Transferor"), we confirm that such transfer has been effected pursuant to and in accordance with Rule 144A under the Securities Act of 1933, as amended, and, accordingly, we represent that the beneficial interest will be transferred to a Person that we reasonably believe is purchasing the beneficial interest for its own account, or for one or more accounts with respect to which such Person exercises sole investment discretion, and such Person and each such account is a "qualified institutional buyer" within the meaning of Rule 144A in a transaction meeting the requirements of Rule 144A and such transfer is in compliance with any applicable blue sky securities laws of any state of the United States.

You, the Issuer and the Note Guarantors are entitled to rely upon this letter and are irrevocably authorized to produce this letter or a copy hereof to any interested party in any administrative or legal proceedings or official inquiry with respect to the matters covered hereby.

Very truly yours,

[Name of Transferor]

By: _____

_____
Authorized Signature

Signature Guarantee: _____
(Signature must be guaranteed)

The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program), pursuant to Exchange Act Rule 17Ad-15.

**EXHIBIT E**

"CONSOLIDATED LEVERAGE RATIO" AND RELATED DEFINITIONS

The definition of "Consolidated Leverage Ratio" comes from the Financing Agreement as in effect on August 1, 2012 and is to be used solely for purposes of calculating the Consolidated Leverage Ratio in the context of determining whether a Partial Covenant Suspension Event has occurred.

**"2012 CB Amount"** means an aggregate amount equal to the Relevant Existing Financial Indebtedness maturing on or prior to the 2012 CB Maturity Date.

**"2012 CB Maturity Date"** means the final maturity date of the Relevant Existing Financial Indebtedness maturing in September, 2012 (being 21 September, 2012).

"**Acceptable Bank**" means:

(a) a bank or financial institution which has a rating for its long-term unsecured and non-credit-enhanced debt obligations of A- or higher by S&P or A- or higher by Fitch or A3 or higher by Moody's or a comparable rating from an internationally recognised credit rating agency;

(b) any other bank or financial institution in a jurisdiction in which a member of the Group conducts commercial operations where such member of the Group, in the ordinary course of trading, subscribes for certificates of deposit issued by such bank or financial institution; or

(c) any other bank or financial institution approved by the Administrative Agent.

"**Accession Letter**" means a document substantially in the form set out in Schedule 4 ( *Form of Accession Letter*) of the Financing Agreement.

"**Additional Guarantor**" means a company that becomes an Additional Guarantor in accordance with Clause 28 ( *Changes to the Obligors*) of the Financing Agreement.

"**Additional Security Provider**" means a company that becomes an Additional Security Provider in accordance with Clause 28 ( *Changes to the Obligors*) of the Financing Agreement.

"**Administrative Agent**" means Citibank International PLC, as administrative agent of the Finance Parties (other than itself) under the Financing Agreement.

"**Affiliate**" means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company.

"**Applicable GAAP**" means:

(a) in the case of the Issuer, Mexican FRS or, if adopted by the Issuer in accordance with Clause 22.3 ( *Requirements as to financial statements*) of the Financing Agreement, IFRS;

(b) in the case of CEMEX España, Spanish GAAP or, if adopted by CEMEX España in accordance with Clause 22.3 ( *Requirements as to financial statements*) of the Financing Agreement, IFRS; and

(c) in the case of any other Obligor, the generally accepted accounting principles applying to it in the country of its incorporation or in a jurisdiction agreed to by the Administrative Agent or, if adopted by the relevant Obligor, IFRS.

"**Authorised Signatory**" means, in relation to any Obligor, any person who is duly authorised and in respect of whom the Administrative Agent has received a certificate signed by a director or another Authorised Signatory of such Obligor setting out the name and signature of such person and confirming such person's authority to act.

"**Banobras Facility**" means a revolving loan agreement ( *Contrato de Apertura de Crédito en Cuenta Corriente* ) between CEMEX CONCRETOS, S.A. de C.V., as borrower and Banco Nacional de Obras y Servicios Públicos, Sociedad Nacional de Crédito, Institución de Banca de Desarrollo, as lender ( "**Banobras**"), in an aggregate principal amount equal to Mex$5,000,000,000.00 (five billion pesos), dated April 22, 2009, which was formalized by means of public deeds number 116,380 and 116,381 dated April 22, 2009, granted before Mr. José Angel Villalobos Magaña, notary public number 9 for Mexico, Federal District, as such facility may be amended from time to time.

"**Base Currency**" means US dollars.

"**Base Currency Amount**" means on any date:

(a) in relation to an amount or Exposure denominated in the Base Currency, that amount or the amount of that Exposure; and

(b) in relation to an amount or Exposure denominated in a currency other than the Base Currency, that amount or the amount of that Exposure converted into the Base Currency at:

(i) for the purposes of determining the Majority Participating Creditors, the exchange rate displayed on the appropriate Reuters screen at or about 11:00 a.m. on the date on which such determination is made (or if the agreed page is replaced or services cease to be available, the Administrative Agent may specify another page or service displaying the appropriate rate after consultation with the Issuer and the Participating Creditors); and

(ii) for all other purposes, the exchange rate displayed on the appropriate Reuters screen at or about 11:00 a.m. on the date which is five Business Days before that date (or if the agreed page is replaced or services cease to be available, the Administrative Agent may specify another page or service displaying the appropriate rate after consultation with the Issuer and the Participating Creditors).

"**Bilateral Bank Facilities**" means the facilities described in Part IB of Part II of Schedule 1 ( *The Original Participating Creditors* ) of the Financing Agreement.

"**Borrower**" means an Original Borrower unless it has ceased to be a Borrower in accordance with Clause 28.2 ( *Resignation of a Borrower*) of the Financing Agreement.

"**Business Day**" means a day (other than a Saturday or Sunday) on which banks are open for general business in London, Madrid, New York, Amsterdam and Mexico City (in the case of Mexico City, if applicable, as specified by a governmental authority), and:

(a) (in relation to any date for payment or lending or purchase of, or the determination of an interest rate or rate of exchange in relation to, a currency other than euro) the principal financial centre of the country of that currency; or

(b) (in relation to any date for payment or lending or purchase of, or the determination of an interest rate or rate of exchange in relation to, euro) any TARGET Day.

"**Business Plan**" means the five year business plan of the Group delivered in conjunction with the Financing Agreement.

"**Capital Expenditure**" means any expenditure or obligation in respect of expenditure which, in accordance with Applicable GAAP of the Issuer, is treated as capital expenditure (and including the capital element of any expenditure or obligation incurred in connection with a Capital Lease) (and, solely for the purposes of paragraph (c) of Clause 23.2 ( *Financial condition*) of the Financing Agreement, the maximum amount of Capital Expenditure of the Group permitted in the Financial Year ending on or about 31 December 2009 will be increased by an amount not exceeding $50,000,000 in aggregate to the extent necessary to take into account currency fluctuations or additional costs and expenses contemplated by (or that have occurred since the date of) the Business Plan).

"**Capital Lease**" means, as to any person, the obligations of such person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of the Issuer under Applicable GAAP and the amount of such obligations at any time shall be the capitalized amount thereof at such time determined in accordance with Applicable GAAP of the Issuer.

"**Capital Stock**" means any and all shares, interests, participations or other equivalents (however designed) of capital stock of a corporation, any and all equivalent ownership interests in a person (other than a corporation) and any and all warrants, rights or options to purchase any of the foregoing.

"**Cash Equivalent Investments**" means at any time:

(a) certificates of deposit maturing within one year after the relevant date of calculation and issued by an Acceptable Bank;

(b) any investment in marketable debt obligations issued or expressly guaranteed by the government of Mexico, the United States of America (or any state thereof (including any political subdivision of such state)), the United Kingdom, any member state of the European Economic Area or any Participating Member State or any member state of NAFTA (or any other jurisdiction in which a member of the Group conducts commercial operations if that member of the Group makes investments in such debt obligations in the ordinary course of its trading) or by an instrumentality or agency of any of them having an equivalent credit rating, maturing within one year after the relevant date of calculation and not convertible or exchangeable to any other security;

(c) commercial paper not convertible into or exchangeable for any other security:

  (i) for which a recognised trading market exists;

  (ii) issued by an issuer incorporated in Mexico, the United States of America (or any state thereof (including any political subdivision of such state)), the United Kingdom, any member state of the European Economic Area or any Participating Member State or any member state of NAFTA (or any other jurisdiction in which a member of the Group makes investments in such debt obligations in the ordinary course of trading);

  (iii) which matures within one year after the relevant date of calculation; and

  (iv) which has a credit rating of either A-1 or higher by S&P or F1 or higher by Fitch or P-1 or higher by Moody's, or, if no rating is available in respect of the commercial paper, the issuer of which has, in respect of its long-term unsecured and non-credit enhanced debt obligations, an equivalent rating;

(d) sterling bills of exchange eligible for rediscount at the Bank of England and accepted by an Acceptable Bank (or their dematerialised equivalent);

(e) any investment in money market funds which (i) have a credit rating of either A-1 or higher by S&P or F1 or higher by Fitch or P-1 or higher by Moody's, (ii) which invest substantially all their assets in securities of the types described in paragraphs (a) to (d) above and (f) and (g) below and (iii) can be turned into cash on not more than 30 days' notice; or

(f) any deposit issued by any of Nacional Financiera, S.N.C., Banco Nacional de Comercio Exterior, S.N.C., Banco National de Obras y Sevicios Publicos, S.N.C. or any other development bank controlled by the Mexican government;

(g) any other debt instrument rated "investment grade" (or the local equivalent thereof according to local criteria in a country in which any member of the Group conducts commercial operations and in which local pensions are permitted by law to invest) with maturities of 12 months or less from the date of acquiring such investment;

(h) investments in mutual funds, managed by banks or financial institutions, with a local currency credit rating of at least MxAA by S&P or equivalent by any other reputable local rating agency, that invest principally in marketable direct obligations issued by the Mexican government, or issued by any agency or instrumentality thereof; and

(i) any other debt security, certificate of deposit, commercial paper, bill of exchange, investment in money market funds or material funds approved by the Majority Participating Creditors,

in each case, to which any member of the Group is alone (or together with other members of the Group) beneficially entitled at that time and which is not issued or guaranteed by any member of the Group or subject to any Security (other than Security arising under the Transaction Security Documents).

"**CB Cash Replenishment Amount**" means, for a particular Relevant Prepayment Period, the amount of cash in hand of the Issuer on a consolidated basis to be applied by the Issuer to the CB Reserve pursuant to paragraph (b) of Clause 13.3 ( *Mandatory prepayments: Certificados Bursatiles Reserve* ) of the Financing Agreement at any time during that Relevant Prepayment Period **provided that** such amount, together with the CB Disposal Proceeds Replenishment Amount applicable to that Relevant Prepayment Period, may not exceed the CB Reserve Shortfall at that time.

"**CB Disposal Proceeds Replenishment Amount**" means for a particular Relevant Prepayment Period, the amount of any Disposal Proceeds received by any member of the Group during that Relevant Prepayment Period to be applied by the Issuer to the CB Reserve pursuant to paragraph (b) of Clause 13.3 (*Mandatory prepayments: Certificados Bursatiles Reserve* ) of the Financing Agreement **provided that** such amount, together with the CB Cash Replenishment Amount applicable to that Relevant Prepayment Period, may not exceed the CB Reserve Shortfall at that time.

"**CB Reserve**" means the reserve created by the Issuer or any of its Subsidiaries for the purposes of holding the proceeds of any Permitted Fundraising that, as set out in the relevant CB Reserve Certificate, are to be applied in accordance with Clause 13.3 ( *Mandatory prepayments: Certificados Bursatiles Reserve*) of the Financing Agreement.

"**CB Reserve Certificate**" means a certificate signed by a Responsible Officer of the Issuer setting out, with respect to a Permitted Fundraising the net cash proceeds of which are to be applied in accordance with Clause 13.3 ( *Mandatory prepayments: Certificados Bursatiles Reserve* ) of the Financing Agreement:

(i) the amount of proceeds from the relevant Permitted Fundraising that the Issuer wishes to be applied to the CB Reserve (such amount to not exceed the aggregate amount of the Relevant Existing Financial Indebtedness that is due to mature within the Relevant Prepayment Period to which it applies); and

(ii) specific details of the Relevant Existing Financial Indebtedness to which any amounts are designated by the Issuer to be applied including the total aggregate amount of such Relevant Existing Financial Indebtedness and the date on which such Relevant Existing Financial Indebtedness matures.

"**CB Reserve Shortfall**" means at any time, for a particular Relevant Prepayment Period, an amount equal to the lower of:

(i) the aggregate amount of (A) any voluntary prepayments made to Participating Creditors pursuant to Clause 12.2 ( *Voluntary prepayment of Exposures*) of the Financing Agreement from proceeds standing to the credit of the CB Reserve in that Relevant Prepayment Period and (B) the 2012 CB Amount; and

(ii) the principal amount of any Relevant Existing Financial Indebtedness then outstanding in that Relevant Prepayment Period.

"**Change of Control**" means that the beneficial ownership (within the meaning of Rule 13d-3 promulgated by the SEC under the Securities Exchange Act of 1934, as amended) of 20 per cent. or more in voting power of the outstanding voting stock of the Issuer is acquired by any person, **provided that** the acquisition of beneficial ownership of capital stock of the Issuer by Lorenzo H. Zambrano or any member of his immediate family shall not constitute a Change of Control.

"**Charged Property**" means all of the assets of the Security Providers which from time to time are, or are expressed to be, the subject of the Transaction Security.

"**Compliance Certificate**" means a certificate substantially in the form set out in Schedule 5 ( *Form of Compliance Certificate*) of the Financing Agreement.

"**Consolidated Coverage Ratio**" means, on any date of determination, the ratio of (a) EBITDA for the one (1) year period ending on such date to (b) Consolidated Interest Expense for the one (1) year period ending on such date.

"**Consolidated Debt**" means, at any date, the sum (without duplication) of (a) the aggregate amount of all Debt of the Issuer and its Subsidiaries at such date, which shall include the amount of any recourse in respect of Inventory Financing permitted under paragraph (e) of the definition of Permitted Financial Indebtedness, *plus* (b) to the extent not included in Debt, the aggregate net mark-to-market amount of all derivative financing in the form of equity swaps outstanding at such date (except to the extent such exposure is cash collateralized to the extent permitted under the Finance Documents).

"**Consolidated Funded Debt**" means, for any period, Consolidated Debt less the sum (without duplication) of (i) all obligations of such person to pay the deferred purchase price of property or services, (ii) all obligations of such person as lessee under Capital Leases, and (iii) all obligations of such person with respect to product invoices incurred in connection with export financing.

"**Consolidated Interest Expense**" means, for any period, the sum of the (1) total gross cash and non-cash interest expense of the Issuer and its consolidated Subsidiaries relating to Consolidated Funded Debt of such persons, (2) any amortization or accretion of debt discount or any interest paid on Consolidated Funded Debt of such person and its Subsidiaries in the form of additional Financial Indebtedness (but excluding any amortization of deferred financing and debt issuance costs), (3) the net costs under Treasury Transactions in respect of interest rates (but excluding amortization of fees), (4) any amounts paid in cash on preferred stock, and (5) any interest paid or accrued in respect of Consolidated Funded Debt without a maturity date, regardless of whether considered interest expense under Applicable GAAP of the Issuer. For purposes of calculating Consolidated Interest Expense for the Reference Period ending 30 June 2010, $131,406,696.17 shall be deducted, constituting the amount of interest paid in respect of perpetual debentures on 1 July 2009 for the period ending 30 June 2009.

"**Consolidated Leverage Ratio**" means, on any date of determination, the ratio of (a) Consolidated Funded Debt on such date to (b) EBITDA for the one (1) year period ending on such date.

"**Core Bank Facilities**" means the Syndicated Bank Facilities, the Bilateral Bank Facilities and the Promissory Notes.

"**Creditor's Representative**" means:

(a) with respect to each of the Syndicated Bank Facilities, the person appointed as the agent of the creditors in relation to such Facility under the Existing Finance Documents relating to such Facility;

(b) with respect to each other Core Bank Facility, the Participating Creditor with an Exposure under that Facility; and

(c) with respect to each USPP Note, the Participating Creditor with an Exposure under that USPP Note.

"**Debt**" of any person means, without duplication, (i) all obligations of such person for borrowed money, (ii) all obligations of such person evidenced by bonds, debentures, notes or other similar instruments, including the perpetual bonds, (iii) the aggregate net mark-to-market of Treasury Transactions (except to the extent such exposure is cash collateralized to the extent permitted under the Finance Documents) of such person but excluding Treasury Transactions relating to the rate or price of energy or any commodity, (iv) all obligations of such person to pay the deferred purchase price of property or services, except trade accounts payable arising in the ordinary course of trading, (v) all obligations of such person as lessee under Capital Leases, (vi) all Debt of others secured by Security on any asset of such person, up to the value of such asset, (vii) all obligations of such person with respect to product invoices incurred in connection with export financing, (viii) all obligations of such person under repurchase agreements for the stock issued by such person or another person, (ix) all obligations of such person in respect of Inventory Financing permitted under paragraph (e) of the definition of Permitted Financial Indebtedness and (x) all guarantees of such person in respect of any of the foregoing **provided, however**, that for the purposes of calculating the Consolidated Funded Debt element of the Consolidated Leverage Ratio, Relevant Convertible/Exchangeable Obligations shall be excluded from each of the foregoing paragraphs (i) to (x) inclusive (provided that, in the case of outstanding Financial Indebtedness under any Relevant Convertible/Exchangeable Obligations (1) only the principal amount thereof shall be excluded and (2) such exclusion shall apply only for so long as such amounts remain subordinated in accordance with the terms of that definition) and (b) amounts falling within paragraph (v) of the definition of Excluded Fundraising Proceeds, for the period in which they are held by the Issuer or any member of the Group pending application in accordance with the terms of the Financing Agreement, shall be deducted from the aggregate Debt calculation resulting from this definition. For the avoidance of doubt, all letters of credit, banker's acceptances or similar credit transactions, including reimbursement obligations in respect thereof are not Debt until they are required to be funded.

"**Debt Documents**" means the Finance Documents, the "Refinancing Documents" (as defined in the Intercreditor Agreement) and the "Noteholder Documents" (as defined in the Intercreditor Agreement).

"**Debt Reduction Satisfaction Date**" means the first date following 30 September 2010 on which:

(a) the Base Currency Amount of the Exposures of Participating Creditors under the Facilities (calculated as at the date that any reduction of Exposures occurs and in accordance with the Financing Agreement) has been reduced by an aggregate amount equal to at least US$1,000,000,000 compared to the Exposures of Participating Creditors under the Facilities as at 30 September 2010; and

(b) the amount of Consolidated Funded Debt is at least US$1,000,000,000 (or its equivalent in any other currency) lower than the level of Consolidated Funded Debt as at 30 September 2010 (for the avoidance of doubt, when used in this sub-paragraph, Consolidated Funded Debt shall not include any Relevant Convertible/Exchangeable Obligations),

with notification of the occurrence of such date being provided by the Parent delivering a certificate to the Administrative Agent signed by an Authorised Signatory confirming that (a) and (b) above have been met.

"**Delegate**" means any delegate, agent, attorney or co-trustee appointed by the Security Agent.

"**Discontinued EBITDA**" means, for any period, the sum for Discontinued Operations of (a) operating income ( *utilidad de operación*), and (b) depreciation and amortization expense, in each case determined in accordance with Applicable GAAP of the Issuer consistently applied for such period.

"**Discontinued Operations**" means operations that are accounted for as discontinued operations pursuant to Applicable GAAP of the Issuer for which the Disposal of such assets has not yet occurred.

"**Disposal**" means a sale, lease, license, transfer, loan or other disposal by a person of any asset (including shares in any Subsidiary or other company), undertaking or business (whether by a voluntary or involuntary single transaction or series of transactions).

"**Disposal Proceeds**" means:

(i) the cash consideration received by any member of Group (including any amount received from a person who is not a member of the Group in repayment of intercompany debt save to the extent that the creditor in respect of the intercompany debt is obliged to repay that amount to the purchaser at or about completion of the Disposal) for any Disposal;

(ii) any proceeds of any Disposal received in the form of Marketable Securities that are required to be disposed of for cash (after deducting reasonable expenses incurred by the party disposing of those Marketable Securities to persons other than members of the Group) pursuant to the criteria set out at paragraph (h) of the definition of Permitted Disposal; and

(iii) any proceeds of any Disposal received in any other form to the extent disposed of or otherwise converted into cash within 90 days of receipt; and

(iv) any consideration falling within paragraphs (i) to (iii) above that is received by any member of the Group from the Disposal of assets of the Group in Venezuela prior to the date of the Financing Agreement,

but excluding any Excluded Disposal Proceeds and, in every case, after deducting:

(1) any reasonable expenses which are incurred by the disposing party of such assets with respect to that Disposal to persons who are not members of the Group;

(2) any Tax incurred and required to be paid by the disposing party in connection with that Disposal (as reasonably determined by the disposing party on the basis of rates existing at the time of the disposal and taking account of any available credit, deduction or allowance);

"**EBITDA**" means, for any period, the sum for the Issuer and its Subsidiaries, determined on a consolidated basis of (a) operating income ( *utilidad de operacion*), and (b) depreciation and amortization expense, in each case determined in accordance with Applicable GAAP of the Issuer, subject to the adjustments herein, consistently applied for such period and adjusted for Discontinued EBITDA as follows: if the amount of Discontinued EBITDA is a positive amount, then EBITDA shall increase by such amount, and if the amount of Discontinued EBITDA is a negative amount, then EBITDA shall decrease by the absolute value of such amount. For the purposes of calculating EBITDA for any applicable period pursuant to any determination of the Consolidated Leverage Ratio (but not the Consolidated Coverage Ratio): (A) (i) if at any time during such applicable period the Borrower or any of its Subsidiaries shall have made any Material Disposal, the EBITDA for such applicable period shall be reduced by an amount equal to the EBITDA (if positive) attributable to the property that is the subject of such Material Disposal for such applicable period (but when the Material Disposal is by way of lease, income received by the Issuer or any of its Subsidiaries under such lease shall be included in EBITDA) and (ii) if at any time during such applicable period the Issuer or any of its Subsidiaries shall have made any Material Acquisition, EBITDA for such applicable period shall be calculated after giving *pro forma* effect thereto as if such Material Acquisition had occurred on the first day of such applicable period. Additionally, if since the beginning of such applicable period any person that subsequently shall have become a Subsidiary or was merged or consolidated with the Issuer or any of its Subsidiaries as a result of a Material Acquisition occurring during such applicable period shall have made any Material Disposal or Material Acquisition of property that would have required an adjustment pursuant to clause (i) or (ii) above if made by the Issuer or any of its Subsidiaries during such applicable period, EBITDA for such period shall be calculated after giving *pro forma* effect thereto as if such Material Disposal or Material Acquisition had occurred on the first day of such applicable period; and (B) EBITDA will be recalculated by multiplying each month's EBITDA by the Ending Exchange Rate and dividing the amount obtained thereto by the exchange rate used by the Issuer in preparation of its monthly financial statements in accordance with Applicable GAAP of the Issuer to convert $ into Mexican pesos (such recalculated EBITDA being the "**Recalculated EBITDA**").

"**Ending Exchange Rate**" means the exchange rate at the end of a Reference Period for converting $ into Mexican pesos as used by the Issuer and its auditors in preparation of the Issuer's financial statements in accordance with Applicable GAAP of the Issuer.

"**Excluded Disposal Proceeds**" means any CB Disposal Proceeds Replenishment Amount and the proceeds of any Disposal of:

(i) inventory or trade receivables in the ordinary course of trading of the disposing entity;

(ii) assets pursuant to a Permitted Securitisation programme existing as at the date of the Financing Agreement (or any rollover or extension of such a Permitted Securitisation);

(iii) any asset from any member of the Group to another member of the Group on arm's length terms and for fair market or book value;

(iv) any assets the consideration for which (when aggregated with the consideration for any related Disposals) is less than $5,000,000 (or its equivalent in any other currency);

(v) assets leased or licensed to any director, officer or employee of any member of the Group in connection with and as part of the ordinary course of the service or employment arrangements of the Group;

(vi) Marketable Securities (other than Marketable Securities received as consideration for a Disposal as envisaged in paragraphs (ii) and (iii) of the definition of Disposal Proceeds); and

(vii) any cash or other assets arising out of or in connection with any Permitted Put/Call Transaction, including, but not limited to any settlement, disposal, transfer, assignment, closeout or other termination of such Permitted Put/Call Transaction.

"**Excluded Fundraising Proceeds**" means the proceeds of:

(i) a Permitted Fundraising falling within paragraph (f)(i) of the definition of Permitted Financial Indebtedness entered into for the purpose of refinancing or extending the maturity of Existing Financial Indebtedness falling within paragraph (a) of the definition thereof (or paragraph (b) of the definition thereof, to the extent that it relates to Short Term Certificados Bursatiles) (and, in the case of a refinancing, where the proceeds that would, but for this paragraph (i), constitute "Permitted Fundraising Proceeds," are actually applied for such purpose as soon as reasonably practicable (and in any event within 90 days) following receipt of those proceeds by any member of the Group);

(ii) a Permitted Fundraising falling within paragraph (f)(ii) of the definition of Permitted Financial Indebtedness entered into for the purpose of refinancing or extending the maturity of Existing Financial Indebtedness falling within paragraphs (a) to (e) of the definition thereof (and, in the case of a refinancing, where the proceeds that would, but for this paragraph (ii), constitute "Permitted Fundraising Proceeds," are actually applied for such purpose as soon as reasonably practicable (and in any event within 90 days) following receipt of those proceeds by any member of the Group).

(iii) any transaction between members of the Group;

(iv) Permitted Securitisations;

(v) prior to the Debt Reduction Satisfaction Date, a Permitted Fundraising falling within paragraph (c) of that definition or, after the Debt Reduction Satisfaction Date, a Permitted Fundraising falling within paragraphs (a), (b) or (c) of that definition provided that any Relevant Existing Financial Indebtedness due to mature within the particular Relevant Prepayment Period and the proceeds of such Permitted Fundraising are to be applied in accordance with Clause 13.3 ( *Mandatory prepayments: Certificados Bursatiles Reserve*) of the Financing Agreement;

(vi) subject to Clause 13.4(ii) of the Financing Agreement, a Permitted Fundraising falling within paragraph (c) of that definition and applied or to be applied in accordance with Clause 13.4 ( *Mandatory prepayments: Relevant Convertible/Exchangeable Obligations*) of the Financing Agreement; and

(vii) a Permitted Fundraising arising out of or in connection with any Permitted Put/Call Transaction, including, but not limited to, any settlement, disposal, transfer, assignment, close-out or other termination of such Permitted Put/Call Transaction.

"**Executive Compensation Plan**" means any stock option plan, restricted stock plan or retirement plan which the Issuer or any other Obligor customarily provides to its employees, consultants and directors.

"**Existing Facility Agreements**" means the facility agreements and other documents described in Part II, Schedule 1 ( *The Original Participating Creditors*) of the Financing Agreement.

"**Existing Finance Documents**" means each Existing Facility Agreement, the USPP Note Guarantee, the "Finance Documents" as defined in any Existing Facility Agreement and the "Facility Transaction Documents" as defined in Exhibit H to the NY Law Amendment Agreement (but in each case excluding any document that is designated a "**Finance Document**" or "**Facility Transaction Document**" by an Obligor and the relevant Creditor's Representative under an Existing Facility Agreement after the date of the Financing Agreement).

"**Existing Financial Indebtedness**" means:

(a) the Financial Indebtedness described in Part I of Schedule 10 ( *Existing Financial Indebtedness*) of the Financing Agreement **provided that** the principal amount of such Financial Indebtedness does not increase above the principal amount outstanding as at the date of the Financing Agreement (except by the amount of any capitalised interest under any facility or instrument that provided for capitalisation of interest on those terms as at the date of the Financing Agreement) less the amount of any repayments and prepayments made in respect of such Financial Indebtedness;

(b) the Financial Indebtedness described in Part II of Schedule 10 ( *Existing Financial Indebtedness*) of the Financing Agreement and any Short-Term Certificados Bursatiles, working capital or other operating facilities that replace or refinance such Financial Indebtedness;

(c) the Financial Indebtedness described in Part III of Schedule 10 ( *Existing Financial Indebtedness*) of the Financing Agreement and any Capital Leases that replace (and relate to the same or similar assets as) such Financial Indebtedness;

(d) the Financial Indebtedness described in Part IV of Schedule 10 ( *Existing Financial Indebtedness*) of the Financing Agreement and any Inventory Financing or factoring arrangements that replace (and relate to the same or similar assets as) such Financial Indebtedness; and

(e) the Banobras Facility and any other facility that replaces or refinances such facility provided that any such replacement or refinancing facility is (i) with a development bank controlled by the Mexican Government or (ii) with any other financial institution to finance public works or infrastructure assets,

**provided that** (i) the aggregate principal amount of such Existing Financial Indebtedness falling under each of paragraphs (b) to (e) of this definition shall not be increased above the principal amount of Financial Indebtedness committed or capable of being drawn down under the Financial Indebtedness referred to in that paragraph of this definition as at the date of the Financing Agreement (except by the amount of any capitalised interest under any facility or instrument that provided for capitalisation of interest on those terms as at the date of the Financing Agreement) and (ii), for the avoidance of doubt, any refinancing or replacement of Existing Financial Indebtedness falling within paragraphs (b) to (d) above need not satisfy the requirements of paragraph (f) of the definition of Permitted Financial Indebtedness.

"**Exposure**" means, at any time:

(a) in relation to a Participating Creditor and a Syndicated Bank Facility or Bilateral Bank Facility, that Participating Creditor's participation in Loans made under the relevant Facility at that time;

(b) in relation to Participating Creditor and a Promissory Note, the principal amount owed to that Participating Creditor under that Promissory Note at that time; and

(c) in relation to a Participating Creditor and a USPP Note, the principal amount owed to that Participating Creditor under that USPP Note at that time.

"**Facility** " means a Core Bank Facility and each USPP Note.

"**Fee Letter**" means any letter or agreement between the Administrative Agent or Security Agent and the Issuer setting out (i) the upfront fee and (ii) the level of fees payable in respect of the services and obligations performed by those agents under the relevant New Finance Documents.

"**Finance Document**" means each New Finance Document and each Existing Finance Document.

"**Finance Party**" means the Administrative Agent, the Security Agent, each Creditor's Representative or a Participating Creditor.

"**Financial Indebtedness**" means any indebtedness for or in respect of:

(a) moneys borrowed and debit balances at banks or other financial institutions;

(b) any acceptance under any acceptance credit or bill discounting facility (or dematerialised equivalent);

(c) any amount raised pursuant to a note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument (including, without limitation, any perpetual bonds);

(d) the amount of any liability in respect of any lease or hire purchase contract which would (in accordance with Applicable GAAP of the Issuer) be treated as a finance or capital lease;

(e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis and meet any requirement for de-recognition under Applicable GAAP of the Issuer);

(f) any Treasury Transaction (and, when calculating the value of that Treasury Transaction, only the mark-to-market value (or, if any actual amount is due as a result of the termination or close-out of that Treasury Transaction, that amount) shall be taken into account);

(g) any counter-indemnity obligation in respect of a guarantee, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution;

(h) any amount raised by the issue of redeemable shares which are redeemable (other than at the option of the issuer) before the Termination Date or are otherwise classified as borrowings under Applicable GAAP of the Issuer;

(i) any amount of any liability under an advance or deferred purchase agreement if (i) one of the primary reasons behind entering into the agreement is to raise finance or to finance the acquisition or construction of the asset or service in question or (ii) the agreement is in respect of the supply of assets or services and payment is due more than 60 days after the date of supply;

(j) any arrangement pursuant to which an asset sold or otherwise disposed of by that person may be re-acquired by a member of the Group (whether following the exercise of an option or otherwise) and any Inventory Financing;

(k) any amount raised under any other transaction (including any forward sale or purchase, sale and sale back or sale and leaseback agreement) having the commercial effect of a borrowing or otherwise classified as borrowings under Applicable GAAP of the Issuer; and

(l) the amount of any liability in respect of any guarantee for any of the items referred to in paragraphs (a) to (k) above.

"**Financial Quarter**" means the period commencing on the day after one Quarter Date and ending on the next Quarter Date.

"**Financial Year**" means the annual accounting period of the Issuer ending on or about 31 December in each year.

"**Fitch**" means Fitch Ratings Limited or any successor thereto from time to time.

"**Group**" means the Issuer and each of its Subsidiaries for the time being.

"**Guarantors**" means the Original Guarantors and any Additional Guarantor other than any Original Guarantor or Additional Guarantor which has ceased to be a Guarantor pursuant to Clause 28.4 (*Resignation of Guarantor)* of the Financing Agreement and has not subsequently become an Additional Guarantor pursuant to Clause 28.3 (*Additional Guarantors and Additional Security Providers*) of the Financing Agreement and "**Guarantor**" means any of them.

"**Holding Company**" means, in relation to a company or corporation, any other company or corporation in respect of which it is a Subsidiary.

"**IFRS**" means international accounting standards within the meaning of IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements.

"**Intellectual Property**" means:

(a) any patents, trademarks, service marks, designs, business names, copyrights, design rights, data-base rights, inventions, know how and other intellectual property rights and interests, whether registered or unregistered; and

(b) the benefit of all applications and rights to use such assets of each member of the Group.

"**Intercreditor Agreement**" means the intercreditor agreement dated on or about the date of the Financing Agreement and made between, among others, the Issuer, Wilmington Trust (London) Limited as Security Agent, Citibank International PLC as Administrative Agent, the Participating Creditors and any other creditors of the Group that may accede to it from time to time in accordance with its terms, as such agreement may be amended from time to time.

"**Inventory Financing**" means a financing arrangement pursuant to which a member of the Group sells inventory to a bank or other institution (or a special purpose vehicle or partnership incorporated or established by or on behalf of such bank or other institution or an Affiliate of such bank or other institution) and has an obligation to repurchase such inventory to the extent that it is not sold to a third party within a specified period.

"**Joint Venture**" means any joint venture entity, whether a company, unincorporated firm, undertaking, association, joint venture or partnership or any other entity.

"**Joint Venture Investment**" has the meaning given to such term in sub-paragraph (b) (ii) of the definition of Permitted Joint Venture.

"**Loan**" means:

(a) in relation to a Syndicated Bank Facility or Bilateral Bank Facility, a loan made or to be made under such Facility or the principal amount outstanding for the time being of that loan; and

(b) in relation to a Promissory Note, the Exposure of the Participating Creditors for the time being under that Promissory Note.

"**Majority Participating Creditors**" means, at any time, a Participating Creditor or Participating Creditors the Base Currency Amount of whose Exposures under the Facilities at that time aggregate 66.67 per cent. or more of the Base Currency Amount of all the Exposures of the Participating Creditors under all of the Facilities at that time.

"**Marketable Securities**" means securities (whether equity, debt or other securities) which are listed on a stock exchange or for which a trading market exists (whether on market or over the counter) but excluding: (A) shares in any member of the Group, and (B) any shares in Axtel, S.A.B. de C.V.

"**Material Acquisition**" means any (a) acquisition of property or series of related acquisitions of property that constitutes assets comprising all or substantially all of an operating unit, division or line of business or (b) acquisition of or other investment in the Capital Stock of any Subsidiary or any person which becomes a Subsidiary or is merged or consolidated with the Borrower or any of its Subsidiaries, in each case, which involves the payment of consideration by the Borrower and its Subsidiaries in excess of $100,000,000 (or the equivalent in other currencies).

"**Material Disposal**" means any Disposal of property or series of related Disposals of property that yields gross proceeds to the Issuer or any of its Subsidiaries in excess of $100,000,000 (or the equivalent in other currencies).

"**Mexican FRS**" means Mexican Financial Reporting Standards ( *Normas de Información Financiera* ) as in effect from time to time and consistent with those used in the preparation of the most recent audited financial statements referred to in Clause 22.1 (Financial Statements).

"**Mexican pesos**," "**Mex$**," "**MXN**" and "**pesos**" means the lawful currency of Mexico.

"**Mexico**" means the United Mexican States.

"**Moody's** " means Moody's Investor Services Limited or any successor to its ratings business.

**"NAFTA"** means the North American Free Trade Agreement.

"**New Finance Document**" means the Financing Agreement, the NY Law Amendment Agreement, the Intercreditor Agreement, each Transaction Security Document, any Accession Letter, any Fee Letter, any Resignation Letter and any other document designated as a " **New Finance Document**" by the Administrative Agent and the Issuer.

"**New Equity Securities**" means

(i) The US$977.5 million aggregate principal amount of 3.25% convertible subordinated notes due 2016, including US$177.5 million notes issued pursuant to an over-allotment option in connection with those subordinated notes due 2016; and

(ii) US$690 million aggregate principal amount of 3.75% convertible subordinated notes due 2018, including US$90 million notes issued pursuant to an over-allotment option in connection with those subordinated notes due 2018.

in each case, issued on 15 March 2011 by the Issuer.

"**NY Law Amendment Agreement**" means the omnibus amendment agreement dated on or about the date of the Financing Agreement between, among others, the Issuer and the Participating Creditors with Exposures under those Existing Facility Agreements (other than the USPP Note Agreement) that are governed by the laws of the State of New York, as such agreement may be amended from time to time.

"**Obligors** " means the Borrowers, the Guarantors and the Security Providers and " **Obligor**" means any of them.

"**Original Borrowers**" means, together with the Issuer, the Subsidiaries of the Issuer listed in Part I of Schedule 1 ( *The Original Parties*) of the Financing Agreement as borrowers or issuers.

"**Original Financial Statements**" means (a) in relation to the Issuer, its audited unconsolidated and consolidated financial statements for its Financial Year ended 31 December 2008 accompanied by an audit opinion of KPMG Cardenas Dosal, S.C.; (b) in relation to CEMEX España, its audited consolidated financial statements for its financial year ended 31 December 2008; and (c) in relation to any other borrower or guarantor under the Financing Agreement, its most recent annual financial statements (audited, if available).

"**Original Guarantors**" means the Subsidiaries of the Issuer listed in Part I of Schedule 1 ( *The Original Parties*) of the Financing Agreement as guarantors, together with the Issuer.

"**Original Participating Creditors**" means the financial institutions and noteholders listed in Part II of Schedule 1 ( *The Original Participating Creditors*) of the Financing Agreement as creditors.

"**Original Security Providers**" means the Subsidiaries of the Issuer listed in Part I of Schedule 1 ( *The Original Parties*) of the Financing Agreement as security providers.

"**Participating Creditor**" means:

(a) any Original Participating Creditor; and

(b) any person which has become a Party in accordance with Clause 27 ( *Changes to the Participating Creditors*), of the Financing Agreement,

which in each case has not ceased to be a Party in accordance with the terms of the Financing Agreement.

"**Participating Member State**" means any member state of the European Union that adopts or has adopted the euro as its lawful currency in accordance with legislation of the European Union relating to Economic and Monetary Union.

"**Party**" means a party to the Financing Agreement.

"**Permitted Acquisition**" means:

(a) an acquisition by a member of the Group of an asset sold, leased, transferred or otherwise disposed of by another member of the Group in circumstances constituting a Permitted Disposal;

(b) an acquisition of shares or securities pursuant to a Permitted Share Issue;

(c) an acquisition of cash or securities which are Cash Equivalent Investments;

(d) an acquisition to which a member of the Group is contractually committed as at the date of the Financing Agreement, with the material terms of those acquisitions requiring consideration payable in excess of $10,000,000 described in the list delivered to the Administrative Agent under paragraph 4(f) of Part I (Initial Conditions Precedent) of Schedule 2 of the Financing Agreement (**provided that** there has been or is no material change to the terms of such acquisition subsequent to the date of the Financing Agreement);

(e) the incorporation of a company which on incorporation becomes a member of the Group or which is a special purpose vehicle, whether a member of the Group or not;

(f) an acquisition that constitutes a Permitted Joint Venture;

(g) an acquisition of assets and, if applicable, cash, in exchange for other assets and, if applicable, cash, of equal or higher value provided that: (i) the cash element of any such acquisition must not be more than 20 per cent. of the aggregate consideration for the acquisition; and (ii) the maximum aggregate market value of the assets acquired pursuant to all such transactions must not be more than $100,000,000 (or its equivalent in any other currency) in any Financial Year;

(h) any acquisition of shares of the Issuer pursuant to an obligation in respect of any Executive Compensation Plan;

(i) any other acquisition consented to by the Administrative Agent acting on the instructions of the Majority Participating Creditors;

(j) an acquisition of shares in the Issuer to the extent that a member of the Group has an obligation to deliver such shares to any holder(s) of convertible securities falling within paragraph (f)(i) of the definition of Permitted Financial Indebtedness pursuant to the terms of such convertible securities; and

(k) any other acquisition of a company, of shares, securities or a business or undertaking (or, in each case, any interest in any of them) **provided that** the aggregate amount of the consideration for such acquisitions (when aggregated with the aggregate amount of Joint Venture Investment falling within paragraph (b)(iii)(1) of the definition of Permitted Joint Venture in that Financial Year) does not exceed $100,000,000 (or its equivalent in any other currencies) in any Financial Year.

"**Permitted Disposal**" means any sale, lease, licence, transfer or other disposal which, except in the case of Disposals as between members of the Group, is on arm's length terms:

(a) of trading stock or cash made by any member of the Group in the ordinary course of trading of the disposing entity;

(b) of any asset by a member of the Group (the "**Disposing Company**") to another member of the Group (the "**Acquiring Company**"), but if:

(i) the Disposing Company is an Obligor, the Acquiring Company must also be an Obligor;

(ii) the Disposing Company had given Transaction Security over the asset, the Acquiring Company must give equivalent Transaction Security over that asset; and

(iii) the Disposing Company is a Guarantor, the Acquiring Company must be a Guarantor guaranteeing at all times an amount no less than that guaranteed by the Disposing Company,

**provided that** the conditions set out in paragraphs (i), (ii) and (iii) above shall only apply if the applicable assets are shares or if all or substantially all of the assets of the Disposing Company are being disposed of;

(c) of obsolete or redundant vehicles, machinery, parts and equipment in the ordinary course of trading;

(d) of cash or Cash Equivalent Investments for cash or in exchange for other Cash Equivalent Investments;

(e) constituted by a licence of Intellectual Property in the ordinary course of trading;

(f) to a Joint Venture, to the extent permitted by Clause 24.17 (*Joint ventures*) of the Financing Agreement;

(g) arising as a result of any Permitted Security;

(h) of any shares in a member of the Group (provided that all such shares in that entity owned by a member of the Group are the subject of the Disposal) or of any other asset, in each case on arm's length terms and for full market value where:

(i) no less than 85 per cent. of the consideration for the Disposal is payable to the Group in cash or Marketable Securities paid or received by a member of the Group at completion of the Disposal ( **provided that** where a portion of that 85 per cent. is comprised of Marketable Securities, those Marketable Securities must be disposed of for cash to a person that is not a member of the Group within 90 days of completion);

(ii) if the aggregate consideration for the Disposal (when aggregated with the consideration for any related Disposals) is equal to 5 per cent. or more of the value of consolidated assets of the Group, the Issuer has delivered to the Administrative Agent a certificate signed by an Authorised Signatory confirming that, on a *pro forma* basis, assuming that the Disposal had been completed and the proceeds had been applied in accordance with Clause 13 ( *Mandatory Prepayment*) of the Financing Agreement immediately prior to the first day of the most recent Reference Period for which a Compliance Certificate has been or is required to have been delivered under the Financing Agreement, the Issuer would have been in compliance with the financial covenants in paragraphs (a) and (b) of Clause 23.2 ( *Financial condition*) of the Financing Agreement as at the last day of the most recent Reference Period for which a Compliance Certificate has been or is required to have been delivered under the Financing Agreement; and

(iii) the Disposal Proceeds received by members of the Group are applied (to the extent required) in accordance with Clause 13 (*Mandatory prepayment*) of the Financing Agreement;

(i) of any asset compulsorily acquired by a governmental authority provided that the Disposal Proceeds received by members of the Group are applied (to the extent required) in accordance with Clause 13 ( *Mandatory prepayment*) of the Financing Agreement;

(j) of any receivables disposed of pursuant to a factoring or similar receivables financing arrangement that is otherwise permitted under the Financing Agreement (including, for the avoidance of doubt, the Banobras Facility);

(k) of any inventory disposed of pursuant to an Inventory Financing or similar arrangement that is otherwise permitted under the Financing Agreement;

(l) of any plant or equipment disposed of pursuant to a sale and lease-back arrangement that is otherwise permitted under the Financing Agreement;

(m) of any asset to which a member of the Group was contractually committed as at the date of the Financing Agreement, with all material terms of those disposals which relate to the disposal of assets with a value of at least $10,000,000 being described in Schedule 14 *(Disposals)* of the Financing Agreement ( **provided that** there has been or is no material change to the terms of such Disposal subsequent to the date of the Financing Agreement);

(n) of receivables disposed of pursuant to a Permitted Securitisation;

(o) of land or buildings arising as a result of lease or licence in the ordinary course of its trading;

(p) of any shares of the Issuer pursuant to an obligation in respect of any Executive Compensation Plan;

(q) of shares, common equity securities in the Issuer or reference property in connection with the same to the extent that a member of the Group has an obligation to deliver such shares, common equity securities or reference property to any holder(s) of convertible or exchangeable securities falling within paragraph (f)(i) of the definition of Permitted Financial Indebtedness pursuant to the terms of such convertible or exchangeable securities or to any counterparty pursuant to the terms of any Permitted Put/Call Transaction;

(r) of assets and, if applicable, cash in exchange for other assets and, if applicable, cash, of equal or higher value provided that: (i) the cash element of any such Disposal must not be more than 20 per cent. of the aggregate consideration for the Disposal; and (ii) the maximum aggregate market value of all assets disposed of in such transactions must not be more than $100,000,000 (or its equivalent in any other currencies) in any Financial Year; or

(s) otherwise approved by the Administrative Agent acting on the instructions of the Majority Participating Creditors.

"**Permitted Financial Indebtedness**" means Financial Indebtedness:

(a) incurred or arising under the Finance Documents;

(b) that is Existing Financial Indebtedness;

(c) owed to a member of the Group;

(d) that constitutes a Permitted Securitisation;

(e) arising under Capital Leases, factoring arrangements, Inventory Financing arrangements or export credit facilities for the purchase of equipment (**provided that** any Security granted in relation to any such facility relates solely to equipment, the purchase of which was financed under such Facility) or pursuant to sale and lease-back transactions **provided that** the maximum aggregate Financial Indebtedness of members of the Group under such transactions (excluding any Existing Financial Indebtedness) does not exceed $350,000,000 at any time;

(f) arising:

(i) pursuant to an issuance of bonds, notes or other debt securities, or of convertible or exchangeable securities by:

(A) in the case of bonds, notes or other debt securities or convertible or exchangeable securities issued to refinance or replace Existing Financial Indebtedness falling within Part I of Schedule 10 (Existing Financial Indebtedness) of the Financing Agreement, one or more Obligors (other than CEMEX Materials LLC and CEMEX, Inc.) or the same member of the Group (including, where applicable, CEMEX Materials LLC and CEMEX, Inc.) that issued the relevant Existing Financial Indebtedness that is being refinanced or replaced (whether acting as co-issuers or otherwise but, for the avoidance of doubt, with several liability only); or

(B) in the case of bonds, notes or other debt securities or convertible or exchangeable securities issued so as to be applied in repayment or prepayment of the Exposures of the Participating Creditors under the Facilities, one or more Obligors (other than CEMEX Materials LLC and CEMEX, Inc.) whether acting as co-issuers or otherwise, (and, for the avoidance of doubt, such securities may be issued with an original issue discount) on the capital markets in each case subscribed or paid for in full in cash on issue (unless such securities are exchanged on issue for other securities that constitute Existing Financial Indebtedness falling within paragraph (a) of the definition thereof on issue) provided that (other than any conversion into common equity securities of the Issuer) no principal repayments are scheduled (and no call options can be exercised) in respect thereof until after the Termination Date;

(ii) under a loan facility in respect of which the only borrowers are:

(A) in the case of loan facilities entered into to refinance or replace Existing Financial Indebtedness falling within Part I of Schedule 10 (*Existing Financial Indebtedness*) of the Financing Agreement one or more Obligors (other than CEMEX Materials LLC and CEMEX, Inc.) or the same member of the Group (including, where applicable, CEMEX Materials LLC and CEMEX, Inc.) that borrowed the relevant Existing Financial Indebtedness that is being refinanced or replaced, (whether acting as joint or multiple borrowers but for the avoidance of doubt, with several liability only); or

(B) in the case of loan facilities entered into so as to refinance or replace the Exposures of the Participating Creditors under the Facilities, one or more Obligors (other than CEMEX Materials LLC and CEMEX, Inc.) whether acting as joint or multiple borrowers, **provided that** no principal repayments are scheduled (and no mandatory prepayment obligations arise save as a result of unlawfulness affecting a creditor in respect of such loan facility) in respect thereof until after the Termination Date,

and further **provided that** (1) the terms applicable to such issuance under paragraph (f)(i) (excluding pricing, but including, without limitation, as to prepayments, representations, covenants, events of default, guarantees and security) taken as a whole are no more restrictive or onerous than the terms applicable to the Facilities, and the terms applicable to such incurrence under paragraph (f)(ii) (excluding pricing, but including, without limitation, as to prepayments, representations, covenants, events of default, guarantees and security) are no more restrictive or onerous than the terms applicable to the Facilities; (2) the proceeds of such issuance or incurrence are applied (to the extent required) in accordance with Clause 13 ( *Mandatory prepayment*) of the Financing Agreement; (3) ) if proceeds of such issuance or incurrence are, to the extent required under the Financing Agreement, being used to replace or refinance (x) Financial Indebtedness which shares in the Transaction Security or (y) the CEMEX España Euro Notes, such Financial Indebtedness issued or incurred shall be entitled to share in the Transaction Security in accordance with (and on the terms of) the Intercreditor Agreement, provided that in the case of Financial Indebtedness issued or incurred to replace or refinance the CEMEX España Euro Notes, such Financial Indebtedness shall only be entitled to share in the Transaction Security if, prior to the first replacement or refinancing of the CEMEX España Euro Notes, the Debt Reduction Satisfaction Date has occurred; and (4) for the avoidance of doubt, any refinancing or replacement of Existing Financial Indebtedness falling within paragraphs (b) to (d) of the definition of Existing Financial Indebtedness need not satisfy the requirements of this paragraph (f);

(g) that constitutes a Permitted Liquidity Facility;

(h) that becomes Financial Indebtedness solely as a result of any change in Applicable GAAP of the Issuer after the date of the Financing Agreement and that existed prior to the date of such change in Applicable GAAP of the Issuer (or that replaces, and is on substantially the same terms as, such Financial Indebtedness);

(i) of any person acquired by a member of the Group pursuant to an acquisition falling within paragraphs (d) or (f) of the definition of Permitted Acquisition **provided that**: (i) such Financial Indebtedness existed prior to the date of the acquisition and was not incurred, increased or extended in contemplation of, or since, the acquisition; and (ii) the aggregate amount of any such Financial Indebtedness of members of the Group does not exceed $100,000,000 at any time;

(j) under Treasury Transactions entered into in accordance with Clause 24.26 ( *Treasury Transactions*) of the Financing Agreement;

(k) incurred pursuant to or in connection with any cash pooling or other cash management agreements in place with a bank or financial institution, but only to the extent of offsetting credit balances of the Issuer or its Subsidiaries pursuant to such cash pooling or other cash management arrangement;

(l) constituting Financial Indebtedness for taxes levied, assessments due and other governmental charges required to be paid as a matter of law or regulation in the ordinary course of trading;

(m) that constitutes a Permitted Joint Venture;

(n) approved by the Administrative Agent acting on the instructions of the Majority Participating Creditors; and

(o) that, when aggregated with the principal amount of any other Financial Indebtedness not falling within paragraphs (a) to (n) above, does not exceed $200,000,000 (or its equivalent in other currencies) in aggregate at any time.

"**Permitted Fundraising**" means:

(a) any issuance of equity securities by the Issuer paid for in full in cash on issue (and, for the avoidance of doubt, such securities may be issued with an original issue discount) and not redeemable on or prior to the Termination Date and where such issue does not lead to a Change of Control;

(b) any issuance of equity-linked securities issued by any member of the Group that are linked solely to, and result only in the issuance of, equity securities of the Issuer otherwise entitled to be issued under this definition (and that do not, for the avoidance of doubt, result in the issuance of any equity securities by such member of the Group) and that are paid for in full in cash on issue (and, for the avoidance of doubt, such securities may be issued with an original issue discount) and where such issue does not lead to a Change of Control (**provided that** such securities do not provide for the payment of interest in cash and are not redeemable on or prior to the Termination Date); and

(c) any incurrence of Financial Indebtedness falling within paragraph (f) of the definition of Permitted Financial Indebtedness.

"**Permitted Fundraising Proceeds**" means the cash proceeds received by any member of the Group from a Permitted Fundraising other than Excluded Fundraising Proceeds after deducting:

(i) any reasonable expenses which are incurred by the relevant member(s) of the Group with respect to that Permitted Fundraising owing to persons who are not members of the Group; and

(ii) any Tax incurred and required to be paid by the relevant member(s) of the Group with respect to that Permitted Fundraising (as reasonably determined by the relevant member(s) of the Group on the basis of rates existing at the time and taking account of any available credit, deduction or allowance).

"**Permitted Joint Venture**" means any investment in any Joint Venture where:

(a) such investment exists or a member of the Group is contractually committed to such investment at the date of the Financing Agreement and, if the value of the Group's investment in such Joint Venture is $50,000,000 or greater (as shown in the Original Financial Statements of the Issuer) is detailed in Schedule 12 (Permitted Joint Ventures) of the Financing Agreement; or

(b) such investment is made after the date of the Financing Agreement and:

(i) either the investment has been consented to by the Administrative Agent acting on the instructions of the Majority Participating Creditors or the Joint Venture is engaged in a business substantially the same as that carried on by the Group; and

(ii) in any Financial Year of the Issuer, the aggregate of:

(1) all amounts subscribed for shares in, lent to, or invested in all such Joint Ventures by any member of the Group;

(2) the contingent liabilities of any member of the Group under any guarantee given in respect of the liabilities of any such Joint Venture; and

(3) the market value of any assets transferred by any member of the Group to any such Joint Venture, minus

(4) from and including 1 January 2010, an amount up to, but not exceeding, $100,000,000 (or its equivalent in other currencies) in any Financial Year that represents all cash amounts received by any member of the Group (i) relating to dividends, repayment of loans or distributions of any other nature in respect of any such Joint Ventures in that Financial Year and (ii) as a result of or in relation to any disposals of shares, interests or participations, divestments, capital reductions or any similar decreases of interest in any such Joint Ventures in that Financial Year,

does not exceed $100,000,000 (or its equivalent in other currencies) or such greater amount as the Administrative Agent (acting on the instructions of the Majority Participating Creditors) may agree (such amount being the "Joint Venture Investment"); and

(iii) the Issuer has (by written notice to the Administrative Agent prior to the end of the Financial Year in which the investment is made) designated the Joint Venture Investment as counting against:

(1) paragraph (k) of the definition of Permitted Acquisition; or

(2) the maximum amount of Capital Expenditure permitted in that Financial Year under paragraph (c) of Clause 23.2 (*Financial condition*) of the Financing Agreement.

"**Permitted Liquidity Facilities**" means a loan facility or facilities made available to one or more members of the Group by one or more Participating Creditors (or their respective Affiliates) **provided that** the aggregate principal amount of utilised and unutilised commitments under such facilities must not exceed $1,000,000,000 (or its equivalent in any other currency) at any time.

**"Permitted Put/Call Transaction"** means any call option, call spread, capped call transaction, put option, put spread, capped put transaction or any combination of the foregoing and/or any other Treasury Transaction or transactions having a similar effect to any of the foregoing, in each case entered into, sold or purchased not for speculative purposes but for the purposes of managing specific risks or exposures associated with any issuance of Relevant Convertible Securities/Exchangeable Obligations.

"**Permitted Securitisations**" means a transaction or series of related transactions providing for the securitisation of receivables and related assets by the Issuer or its Subsidiaries, including a sale at a discount, **provided that** (i) such receivables have been transferred, directly or indirectly, by the originator thereof to a person that is not a member of the Group in a manner that satisfies the requirements for an absolute conveyance (or, where the originator is organised in Mexico, a true sale), and not merely a pledge, under the laws and regulations of the jurisdiction in which such originator is organised; and (ii) except for customary representations, warranties, covenants and indemnities, such sale, transfer or other securitisation is carried out on a non-recourse basis or on a basis where recovery is limited solely to the collection of the relevant receivables.

"**Permitted Security**" means:

(A) Security for taxes, assessments and other governmental charges the payment of which is being contested in good faith by appropriate proceedings promptly initiated and diligently conducted and for which such reserves or other appropriate provision, if any, as shall be required by Applicable GAAP of the Issuer shall have been made;

(B) Security granted pursuant to or in connection with any netting or set-off arrangements entered into in the ordinary course of trading (including, for the avoidance of doubt, any cash pooling or cash management arrangements in place with a bank or financial institution falling within paragraph (k) of the definition of Permitted Financial Indebtedness);

(C) statutory liens of landlords and liens of carriers, warehousemen, mechanics and materialment incurred in the ordinary course of business for sums not yet due or the payment of which is being contested in good faith by appropriate proceedings promptly initiated and diligently conducted and for which such reserves or other appropriate provision, if any, as shall be required by Applicable GAAP of the Issuer shall have been made;

(D) liens incurred or deposits made in the ordinary course of business in connection with (1) workers' compensation, unemployment insurance and other types of social security, or (2) other insurance maintained by the Group in accordance with Clause 24.9 (*Insurance*) of the Financing Agreement;

(E) any attachment or judgment lien, unless the judgment it secures shall not, within 60 days after the entry thereof, have been discharged or execution thereof stayed pending appeal, or shall not have been discharged within 60 days after the expiration of any such stay;

(F) Security and Quasi-Security existing on the date of the Financing Agreement as described in Schedule 6 ( *Existing Security and Quasi-Security*) of the Financing Agreement (or any replacement of Security or Quasi-Security in accordance with paragraph 3 of Schedule 15 (*Hedging Parameters*) of the Financing Agreement or any equivalent Security or Quasi-Security for Existing Financial Indebtedness that is a refinancing or replacement of Existing Financial Indebtedness) **provided that** the principal amount secured thereby is not increased (save that principal amounts secured by Security or Quasi-Security in respect of:

(1) Treasury Transactions where there are fluctuations in the mark-to-market exposures of those Treasury Transactions;

(2) Existing Financial Indebtedness under paragraph (a) of the definition where principal may increase by virtue of capitalisation of interest; and,

(3) the Banobras Facility, where further drawings may be made **provided that** the maximum amount outstanding under such facility does not exceed Mex$5,000,000,000 at any time,

may be increased by the amount of such fluctuations or capitalisations, as the case may be);

(G) any Security or Quasi-Security permitted by the Administrative Agent, acting on the instructions of the Majority Participating Creditors;

(H) any Security created or deemed created pursuant to a Permitted Securitisation;

(I) any Security granted by any member of the Group to secure Financial Indebtedness under a Permitted Liquidity Facility **provided that**: (1) such Security is not granted in respect of assets that are the subject of the Transaction Security; and (2) the maximum aggregate amount of the Financial Indebtedness secured by such Security does not exceed $500,000,000 at any time;

(J) any Security granted by the Issuer or any member of the Group incorporated in Mexico in favour of a Mexican development bank (sociedad *nacional de crédito*) controlled by the government of Mexico (including Banco Nacional de Comercio Exterior, S.N.C., and Banco Nacional de Obras y Sevicios Publicos, S.N.C.) securing indebtedness of the members of the Group in an aggregate additional amount of such indebtedness not exceeding $250,000,000 (or its equivalent in any other currency);

(K) any Security or Quasi-Security granted in connection with any Treasury Transaction, excluding any Treasury Transaction described in Schedule 6 (*Existing Security and Quasi-Security*) of the Financing Agreement, that constitutes Permitted Financial Indebtedness **provided that** the aggregate value of the assets that are the subject of such Security or Quasi-Security does not exceed $200,000,000 (or its equivalent in other currencies) at any time;

(L) Security or Quasi-Security granted or arising over receivables, inventory, plant or equipment that are the subject of an arrangement falling within paragraph (e) of the definition of Permitted Financial Indebtedness;

(M) the Transaction Security including, for the avoidance of doubt, any sharing in the Transaction Security referred to in paragraph (f) of the definition of Permitted Financial Indebtedness;

(N) any Quasi-Security that is created or deemed created on shares of the Issuer under paragraph (q) of the definition of Permitted Disposals by virtue of such shares being held on trust for the holders of the convertible securities pending exercise of any conversion option, where such Quasi-Security is customary for such transaction;

(O) in addition to the Security and Quasi-Security permitted by the foregoing paragraphs (A) to (N), Security or Quasi-Security securing indebtedness of the Issuer and its Subsidiaries (taken as a whole) not in excess of $500,000,000.

"**Permitted Share Issue**" means:

(a) a Permitted Fundraising falling within paragraphs (a) or (b) of the definition thereof;

(b) an issue of shares by a member of the Group which is a Subsidiary of the Issuer to another member of the Group or the Issuer (and, where the member of the Group has a minority shareholder, to that minority shareholder on a pro rata basis) where (if the existing shares of the Subsidiary are the subject of the Transaction Security) the newly-issued shares also become subject to the Transaction Security on the same terms;

(c) an issue of shares by the Issuer to comply with an obligation in respect of any Executive Compensation Plan; or

(d) an issue of common equity securities of the Issuer either (i) by the Issuer or (ii) to any member of the Group where the Issuer or that member of the Group has an obligation to deliver such shares to a counterparty pursuant to the terms of a Permitted Put/Call Transaction or an obligation to deliver such shares to the holder(s) of convertible or exchangeable securities falling within paragraph (f)(i) of the definition of Permitted Financial Indebtedness pursuant to the terms of such convertible or exchangeable securities.

"**Promissory Notes**" means the promissory notes described in Part II of Schedule 1 ( *The Original Participating Creditors*) of the Financing Agreement.

"**Quarter Date**" means each of 31 March, 30 June, 30 September and 31 December.

"**Quasi Security**" means an arrangement or transaction in which the Issuer or any Subsidiary:

(i) sells, transfers or otherwise disposes of any of its assets on terms whereby they are or may be leased to or re-acquired by an Obligor or any other member of the Group;

(ii) sells, transfers or otherwise disposes of any of its receivables on recourse terms;

(iii) enters into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or

(iv) enters into any other preferential arrangement having a similar effect,

in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.

"**Receiver**" means a receiver or receiver and manager or administrative receiver of the whole or any part of the Charged Properties.

"**Reference Period**" means a period of four consecutive Financial Quarters.

"**Relevant Convertible/Exchangeable Obligations**" means: (a) any Financial Indebtedness incurred by any person the terms of which provide that satisfaction of the principal amount owing under such Financial Indebtedness (whether on or prior to its maturity and whether as a result of bankruptcy, liquidation or other default by such person or otherwise) shall occur solely by delivery of shares or common equity securities in the Issuer; and (b) any Financial Indebtedness under any Subordinated Optional Convertible Securities.

"**Relevant Existing Financial Indebtedness**" means any Existing Financial Indebtedness set out in:

(i) paragraph (a) of the definition of Existing Financial Indebtedness to the extent that it relates to Part I.C ( *Mexican Public Debt Instruments*) of Schedule 10 (*Existing Financial Indebtedness*) of the Financing Agreement; and/or

(ii) paragraph (b) of the definition of Existing Financial Indebtedness to the extent it relates to Part II.A ( *Short Term Certificados Bursatiles*) of Schedule 10 (*Existing Financial Indebtedness*) of the Financing Agreement and any Short-Term Certificados Bursatiles that replace or refinance such Existing Financial Indebtedness.

"**Relevant Prepayment Period**" means the period commencing on the date of receipt of the proceeds of a Permitted Fundraising by a member of the Group and ending on the later of:

(a) the date falling 364 days thereafter; and

(b) the 2012 CB Maturity Date.

"**Resignation Letter**" means a document substantially in the form set out in Part I of Schedule 11 ( *Form of Resignation Letter*) of the Financing Agreement.

"**Responsible Officer**" means the Chief Financial Officer and/or Chief Controlling Officer of the Issuer or a person holding equivalent status (or higher).

"**S&P**" means Standard & Poor's Rating Services, a division of The McGraw-Hill Companies, Inc., or any successor thereto from time to time.

"**SEC**" means the U.S. Securities Exchange Commission and any successor thereto.

"**Secured Parties**" means each Finance Party from time to time to the Financing Agreement and any Receiver or Delegate.

"**Security** " means a mortgage, charge, pledge, lien, security trust or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

"**Security Agent**" means Wilmington Trust (London) Limited as security agent of the Secured Parties.

"**Security Providers**" means the Original Security Providers and any Additional Security Provider other than any Original Security Provider or Additional Security Provider which has ceased to be a Security Provider pursuant to Clause 28.6 ( *Resignation of a Security Provider*) of the Financing Agreement and has not subsequently become an Additional Security Provider pursuant to Clause 28.3 ( *Additional Guarantors and Additional Security Providers*) of the Financing Agreement, and "**Security Provider**" means any of them.

"**Short-Term Certificados Bursatiles**" means any securities with a term of not more than 12 months issued by the Issuer in the Mexican capital markets with the approval of the Mexican National Banking and Securities Banking and Securities Commission and listed on the Mexican Stock Exchange.

"**Spanish GAAP**" means the Spanish General Accounting Plan ( *Plan general Contable*) approved by Royal Decree 1514/2007 as in effect from time to time and consistent with those used in the preparation of the most recent audited financial statements referred to in Clause 22.1 ( *Financial Statements*) of the Financing Agreement.

"**Subordinated Optional Convertible Securities**" means any Financial Indebtedness incurred by any member of the Group meeting the requirements of paragraph (f)(i) of the definition of Permitted Financial Indebtedness (including that no principal repayments are scheduled (and no call options can be exercised) until after the Termination Date) (which may, for the avoidance of doubt, include a fundraising the proceeds of which are applied in accordance with Clause 13.4 (*Mandatory prepayments: Relevant Convertible/Exchangeable Obligations* ) of the Financing Agreement)) the terms of which provide that such indebtedness is capable of optional conversion into equity securities of the Issuer and that repayment of principal and accrued but unpaid interest thereon is subordinated (under terms customary for an issuance of such Financial Indebtedness) to all senior Financial Indebtedness of the Issuer (including, but not limited to, all Exposures of Participating Creditors) except for: (i) indebtedness that states, or is issued under a deed, indenture, agreement or other instrument that states, that it is subordinated to or ranks equally with any Subordinated Optional Convertible Securities and (ii) indebtedness between or among members of the Group.

"**Subsidiary**" means in relation to any company or corporation, a company or corporation:

(a) which is controlled, directly or indirectly, by the first mentioned company or corporation;

(b) more than half the issued share capital of which is beneficially owned, directly or indirectly by the first mentioned company or corporation; or

(c) which is a Subsidiary of another Subsidiary of the first mentioned company or corporation,

and for this purpose, a company or corporation shall be treated as being controlled by another if that other company or corporation is able to direct its affairs and/or to control the composition of its board of directors or equivalent body.

"**Syndicated Bank Facilities**" means the facilities described in Part IA of Part II of Schedule 1 ( *The Original Participating Creditors*) of the Financing Agreement.

"**TARGET2**" means the Trans-European Automated Real-time Gross Settlement Express Transfer payment system, which utilizes a single shared platform and which was launched on 19 November 2007.

"**TARGET Day**" means any day on which TARGET2 is open for the settlement of payments in euro.

"**Tax**" means any tax, levy, impost, duty or other charge, deduction or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

"**Termination Date**" means 14 February 2014.

"**Transaction Security**" means the Security created or expressed to be created in favour of the Security Agent pursuant to the Transaction Security Documents.

"**Transaction Security Documents**" means each of the documents listed as being a Transaction Security Document in paragraph 2(e) of Part I of Schedule 2 (*Conditions Precedent*) of the Financing Agreement and any document required to be delivered to the Administrative Agent under paragraph 3(d) of Part II of Schedule 2 (*Conditions Precedent*) of the Financing Agreement together with any other document entered into by any Obligor creating or expressed to create any Security over all or any part of its assets in respect of the obligations of any of the Obligors under any of the Finance Documents (and any other Debt Documents).

"**Treasury Transactions**" means any derivatives transaction (i) that is a rate swap transaction, swap option, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, credit protection transaction, credit swap, credit default swap, credit default option, total return swap, credit spread transaction, repurchase transaction, reverse repurchase transaction, buy/sell-back transaction, securities lending transaction, weather index transaction or forward purchase or sale of a security, commodity or other financial instrument or interest (including any option with respect to any of these transactions), (ii) that is a type of transaction that is similar to any transaction referred to in clause (i) above that is currently, or in the future becomes, recurrently entered into in the financial markets and that is a forward, swap, future, option or other derivative (including one or more spot transactions that are equivalent to any of the foregoing) on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, economic indices or measures of economic risk or value, or other benchmarks against which payments or deliveries are to be made or (iii) that is a combination of these transactions, it being understood that any Executive Compensation Plan permitted by the Financing Agreement is not a Treasury Transaction.

"**USPP Note**" means a note issued under the USPP Note Agreement.

"**USPP Note Agreement**" means the consolidated, amended and restated note purchase agreement described in Part II of Schedule 1 ( *Original Participating Creditors)* of the Financing Agreement.

"**USPP Note Guarantee**" means the consolidated, amended and restated note guarantee granted in favour of the USPP Noteholders.

"**USPP Noteholders**" means the holders from time to time of the notes issued pursuant to the USPP Note Agreement.

**Exhibit 4.42**

**CEMEX Finance LLC**

**U.S.$1,500,000,000**
**9.375% SENIOR SECURED NOTES DUE 2022**

**PURCHASE AGREEMENT**

October 4, 2012

J.P. MORGAN SECURITIES LLC
BARCLAYS CAPITAL INC.
RBS SECURITIES INC.
CREDIT AGRICOLE SECURITIES (USA) INC.
HSBC SECURITIES (USA) INC.
ING FINANCIAL MARKETS LLC

c/o J.P. MORGAN SECURITIES LLC
383 Madison Avenue
New York, NY, 10179

As Representatives of the Initial Purchasers

Ladies and Gentlemen:

CEMEX Finance LLC, a Delaware limited liability company (the "Company"), an indirect subsidiary of CEMEX, S.A.B. de C.V., a publicly traded stock corporation with variable capital (*sociedad anónima bursátil de capital variable*) organized under the laws of Mexico ("CEMEX"), proposes to issue and sell to the several parties named in Schedule I hereto (the "Initial Purchasers"), for whom you (the "Representatives") are acting as representatives, U.S.$1,500,000,000 principal amount of its 9.375% Senior Secured Notes due 2022 (the "Securities"). The Securities will be unconditionally guaranteed (the "Guarantees") by each of (i) CEMEX, (ii) CEMEX México, S.A. de C.V. ("CEMEX México"), (iii) CEMEX España, S.A. ("CEMEX España"), (iv) Cemex Research Group AG ("CEMEX Research"), (v) New Sunward Holding B.V. ("New Sunward"), (vi) Cemex Shipping B.V. ("CEMEX Shipping"), (vii) Cemex Asia B.V. ("CEMEX Asia"), (viii) Cemex Egyptian Investments B.V. ("CEMEX Egypt," and together with the companies in (v) to (viii) above, the "Dutch Note Guarantors"), (ix) CEMEX UK, (x) CEMEX France Gestion (S.A.S.) ("CEMEX France"), (xi) CEMEX Corp., (xii) CEMEX Concretos, S.A. de C.V. ("CEMEX Concretos"), and (xiii) Empresas Tolteca de México, S.A. de C.V. ("Tolteca" and together with the companies named in (i) to (xiii) above, the "Note Guarantors"), and are to be issued under an indenture to be dated as of the Closing Date (as defined below) (the "Indenture"), among the Company, the Note Guarantors and The Bank of New York Mellon, a New York banking corporation, as trustee (the "Trustee"). To the extent there are no additional parties listed on Schedule I other than you, the term Representatives as used herein shall mean you as the Initial Purchasers, and the terms Representative and Initial Purchaser shall mean either the singular or plural as the context requires. The use of the neuter in this Agreement shall include the feminine and masculine wherever appropriate. Certain terms used herein are defined in Section 25 hereof.

The Securities will be secured in accordance with the terms of the New Intercreditor Agreement, by a first-priority security interest in the Collateral, but holding a Security will not grant its holders the right to direct the foreclosure or the right to foreclose on the Collateral.

Under the New Facilities Agreement and within 60 (sixty) days of the execution date thereof, CEMEX agreed to cause all of the outstanding shares of CEMEX España (except for 0.2444% and 0.1164% of the issued share capital, comprised of shares owned by CEMEX España and persons that are not subsidiaries or affiliates of CEMEX, respectively) (the "CEMEX España Shares") to be pledged as part of the Collateral on an equal and ratable basis with such indebtedness and securities as are described in the Disclosure Package and the Final Memorandum as being secured by a first-priority security interest in the Collateral.

The sale of the Securities to the Initial Purchasers will be made without registration of the Securities under the Act in reliance upon exemptions from the registration requirements of the Act.

In connection with the sale of the Securities, the Company has prepared a preliminary offering memorandum, dated October 4, 2012 (as amended or supplemented at the date hereof, including any and all exhibits thereto and any information incorporated by reference therein, collectively, the "Preliminary Memorandum"), and a final offering memorandum, dated October 4, 2012 (as amended or supplemented at the Execution Time, including any and all exhibits thereto and any information incorporated by reference therein, collectively, the "Final Memorandum"). Each of the Preliminary Memorandum and the Final Memorandum sets forth certain information concerning CEMEX and its subsidiaries and the Securities. The Company and CEMEX hereby confirm that they have authorized the use of the Disclosure Package, the Preliminary Memorandum and the Final Memorandum, and any amendment or supplement thereto, in connection with the offer and sale of the Securities by the Initial Purchasers. Unless stated to the contrary, any references herein to the terms "amend," "amendment" or "supplement" with respect to the Disclosure Package, the Preliminary Memorandum and the Final Memorandum shall be deemed to refer to and include any information filed under the Exchange Act subsequent to the Execution Time that is incorporated by reference therein.

1. Representations and Warranties. The Company and each of the Note Guarantors, jointly and severally, represent and warrant to each Initial Purchaser as set forth below in this Section 1:

(a) The Preliminary Memorandum, at the date thereof, did not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading. As of the date of the Final Memorandum, the Final Memorandum did not, and on the Closing Date, will not (and together with any amendment or supplement thereto, at the date thereof and at the Closing Date, will not) contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under

which they were made, not misleading; provided, however, that the Company makes no representation or warranty as to the information contained in or omitted from the Preliminary Memorandum or the Final Memorandum, or any amendment or supplement thereto, in reliance upon and in conformity with information furnished in writing to the Company by or on behalf of the Initial Purchasers through the Representatives specifically for inclusion therein, it being understood and agreed that the only such information furnished by or on behalf of any Initial Purchaser consists of the information described as such in Section 8(b) hereof.

(b) The Disclosure Package, as of the Execution Time, does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The preceding sentence does not apply to statements in or omissions from the Disclosure Package based upon and in conformity with written information furnished to the Company by any Initial Purchaser through the Representatives specifically for use therein, it being understood and agreed that the only such information furnished by or on behalf of any Initial Purchaser consists of the information described as such in Section 8(b) hereof.

(c) None of the Company, any of the Note Guarantors or any person acting on its or their behalf has, directly or indirectly, (i) made offers or sales of any security, or solicited offers to buy, any security under circumstances that would require the registration of the Securities under the Act; or (ii) gave to any prospective purchaser of the Securities any written information concerning the offering of the Securities other than materials contained in the Disclosure Package, the Final Memorandum or any other offering materials prepared by or with the prior written consent of the Representatives.

(d) None of the Company, any of the Note Guarantors or any person acting on its or their behalf has: (i) engaged in any form of general solicitation or general advertising (within the meaning of Regulation D) in connection with any offer or sale of the Securities or (ii) engaged in any directed selling efforts (within the meaning of Regulation S) with respect to the Securities; and each of the Company, the Note Guarantors and each person acting on its or their behalf has complied with the offering restrictions requirement of Regulation S.

(e) The Securities satisfy the eligibility requirements of Rule 144A(d)(3) under the Act.

(f) No registration of the Securities under the Act is required for the offer and sale of the Securities to or by the Initial Purchasers in the manner contemplated herein, in the Disclosure Package and the Final Memorandum.

(g) Neither the Company nor any of the Note Guarantors is, and after giving effect to the offering and sale of the Securities and the application of the proceeds thereof as described in the Disclosure Package and the Final Memorandum, will not be, an “investment company” as defined in the Investment Company Act.

(h) Neither the Company nor any of the Note Guarantors has paid or agreed to pay to any person any compensation for soliciting another to purchase any securities of the Company or such Note Guarantor (except as contemplated in this Agreement).

(i) Neither the Company nor any of the Note Guarantors has taken, directly or indirectly, any action designed to or that has constituted or that might reasonably be expected to cause or result, under the Exchange Act or otherwise, in stabilization or manipulation of the price of any security of the Company or such Note Guarantor to facilitate the sale or resale of the Securities.

(j) The Company and each of the Note Guarantors have been duly organized and are validly existing and, if applicable, in good standing under the laws of the jurisdiction in which they are chartered or organized with power and authority to own or lease, as the case may be, and to operate their properties and conduct their businesses as described in the Disclosure Package and the Final Memorandum, and, if applicable, are duly qualified to do business as foreign corporations and are in good standing under the laws of each jurisdiction that requires such qualification or such person is subject to no material liability or disability by reason of the failure to be so qualified.

(k) All the outstanding shares of capital stock or other equity interests of CEMEX have been duly authorized and validly issued and are fully paid and nonassessable, and, except as otherwise set forth in the Disclosure Package and the Final Memorandum, all outstanding shares of capital stock or other equity interests of CEMEX's significant subsidiaries are owned by CEMEX either directly or through wholly-owned and majority-owned subsidiaries, free and clear of any security interest, claim, lien or encumbrance, except for the security interest created under the Transaction Security Documents.

(l) (i) The statements in the Disclosure Package and the Final Memorandum under the headings "Important Federal Tax Considerations" and "Description of Notes;" and (ii) the statements in the Disclosure Package and the Final Memorandum under the heading "Summary—Recent Developments Relating to Regulatory Matters and Legal Proceedings", "Recent Developments—Recent Developments Relating to Regulatory Matters and Legal Proceedings", taken together with the statements in CEMEX's annual report on Form 20-F for the year ended December 31, 2011 under "Item 4—Information on the Company—Regulatory Matters and Legal Proceedings", incorporated by reference therein; insofar as they purport to describe the provisions of the laws and documents referred to therein, fairly summarize the matters therein described in all material respects.

(m) This Agreement has been duly authorized, executed and delivered by the Company and each of the Note Guarantors; the Indenture, including the Guarantees provided for therein by each Note Guarantor, has been duly authorized by the Company and each of the Note Guarantors and, assuming due authorization, execution and delivery thereof by the Trustee, when executed and delivered by the Company and each of the Note Guarantors, will constitute a legal, valid, binding instrument enforceable against the Company and each of the Note Guarantors in accordance with its terms (subject, as to the enforcement of remedies, to applicable bankruptcy, reorganization, insolvency, moratorium or other laws affecting creditors' rights generally from time to time in effect and to general principles of equity); and the Securities have been duly authorized by the Company, and, when executed, authenticated and issued in accordance with the provisions of the Indenture and delivered to and paid for by the Initial Purchasers, will have been duly executed and delivered by the Company and will constitute the legal, valid and binding obligations of the Company entitled to the benefits of the Indenture (subject, as to the

enforcement of remedies, to applicable bankruptcy, reorganization, insolvency, moratorium or other laws affecting creditors' rights generally from time to time in effect and to general principles of equity).

(n) As of the Closing Date, the Securities are duly secured by a first-priority security interest in the Collateral on an equal and ratable basis with such indebtedness and securities as are described in the Disclosure Package and the Final Memorandum as being secured by a first-priority security interest in the Collateral; but holding a Security will not grant its holders the right to direct the foreclosure or the right to foreclose on the Collateral. Pursuant to the New Facilities Agreement and within 60 (sixty) days of the execution date thereof, the Securities shall be secured by a first-priority security interest over the CEMEX España Shares on an equal and ratable basis with such indebtedness and securities as are described in the Disclosure Package and the Final Memorandum as being secured by a first-priority security interest in the Collateral.

(o) The shares that constitute the Collateral and the CEMEX España Shares are fully paid and non assessable and not subject to any option to purchase or similar rights and are free and clear of any lien, pledge, security interest or encumbrance, except for the security interest created or to be created under the Transaction Security Documents or as provided in the New Facilities Agreement. The constitutional documents of the companies whose shares are subject to the Collateral and of CEMEX España do not and could not restrict or inhibit any transfer of those shares on creation or enforcement of the Collateral or on creation or enforcement of the CEMEX España Shares once they are part of the Collateral. There are no agreements in force which provide for the issue or allotment of, any share or loan capital of CEMEX or any of its subsidiaries (including any option or right of pre-emption or conversion) other than (i) pre-emptive rights arising under applicable law in favor of shareholders generally; and (ii) similar rights arising under any obligation in respect of any stock option plan, restricted stock plan or retirement plan which CEMEX or any of its subsidiaries customarily provides to its employees, consultants and directors.

(p) Under the Transaction Security Documents, the Collateral is granted over all the issued share capital in each of CEMEX and its subsidiaries whose shares are subject to the Collateral except:

(i) in the case of CEMEX Trademarks Holding Ltd., 0.4326% of the issued share capital, comprised of shares owned by CEMEX, Inc.;

(ii) in the case of each Mexican company whose shares are subject to the Collateral (except in the case of CEMEX México), the single share held by a minority shareholder that is either CEMEX or any of its subsidiaries; and

(iii) in the case of CEMEX México, 0.1245% of the issued share capital, comprised of shares owned by CEMEX, Inc.

(q) No consent, approval, authorization, filing with or order of any court or governmental agency or body is required in connection with the transactions contemplated herein or in the Indenture, except (i) such as may be required under the blue sky laws or any other state or foreign securities laws of any jurisdiction in which the Securities are offered and sold; and (ii) for the approval of the Securities for listing on the Irish Stock Exchange.

(r) None of the execution and delivery of this Agreement, the Indenture, the issuance and sale of the Securities and the Transaction Security Documents or the consummation of any other of the transactions herein or therein contemplated, or the fulfillment of the terms hereof or thereof will conflict with, or result in a breach or violation or imposition of any lien, charge or encumbrance upon any property or assets of CEMEX or any of its subsidiaries (other than the Collateral), pursuant to (i) the charter or by-laws or comparable constituting documents of CEMEX or any of its subsidiaries; (ii) the terms of any indenture, contract, lease, mortgage, deed of trust, note agreement, loan agreement or other agreement, obligation, condition, covenant or instrument to which CEMEX or any of its subsidiaries is a party or bound or to which its or their property is subject (including the New Facilities Agreement, the Transaction Security Documents and the New Intercreditor Agreement); or (iii) any statute, law, rule, regulation, judgment, order or decree of any court, regulatory body, administrative agency, governmental body, arbitrator or other authority having jurisdiction over CEMEX or any of its subsidiaries or any of its or their properties, which conflict, breach, violation or imposition would, in the case of clauses (ii) and (iii) above, either individually or in the aggregate with all other conflicts, breaches, violations and impositions referred to in this paragraph (r) (if any), have (x) a Material Adverse Effect (as defined below) or (y) a material adverse effect upon the transactions contemplated herein.

(s) The consolidated historical financial statements and schedules of CEMEX and its consolidated subsidiaries included or incorporated by reference in the Disclosure Package and the Final Memorandum present fairly in all material respects the financial condition, results of operations and cash flows of CEMEX and its consolidated subsidiaries as of the dates and for the periods indicated and have been prepared in conformity with IFRS applied on a consistent basis throughout the periods involved (except as otherwise noted therein); the selected financial data set forth under the caption “Selected Consolidated Financial Information” in the Disclosure Package and the Final Memorandum fairly present, on the basis stated in the Disclosure Package and the Final Memorandum, the information included therein.

(t) No action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving CEMEX or any of its subsidiaries or their respective property is pending or, to the best knowledge of the Company, threatened that (i) could reasonably be expected to have a material adverse effect on the performance of this Agreement, the Indenture and the Transaction Security Documents, or the consummation of any of the transactions contemplated hereby or thereby or (ii) could reasonably be expected to have a material adverse effect on the condition (financial or otherwise), prospects, earnings, business or properties of CEMEX and its subsidiaries, taken as a whole, whether or not arising from transactions in the ordinary course of business (collectively the events described in (i) and (ii) above, a “Material Adverse Effect”), except as set forth in or contemplated in the Disclosure Package and the Final Memorandum (exclusive of any amendment or supplement thereto after the Execution Time).

(u) Each of CEMEX and its subsidiaries owns or leases all such properties as are necessary to the conduct of its operations as presently conducted except (i) for such properties

the loss of which would not reasonably be expected to result in a Material Adverse Effect and (ii) as set forth in or contemplated in the Disclosure Package and the Final Memorandum (exclusive of any amendment or supplement after the Execution Time).

(v) Neither CEMEX nor any of its subsidiaries is in violation or default of (i) any provision of its charter or by-laws or comparable constituting documents; (ii) the terms of any indenture, contract, lease, mortgage, deed of trust, note agreement, loan agreement or other agreement, obligation, condition, covenant or instrument to which it is a party or bound or to which its property is subject (including the New Facilities Agreement, the Transaction Security Documents and the New Intercreditor Agreement); or (iii) any statute, law, rule, regulation, judgment, order or decree applicable to CEMEX or any of its subsidiaries of any court, regulatory body, administrative agency, governmental body, arbitrator or other authority having jurisdiction over CEMEX or any of its subsidiaries or any of their respective properties, as applicable, except for such violations or defaults which, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect, and except as set forth in or contemplated in the Disclosure Package and the Final Memorandum (exclusive of any amendment or supplement thereto after the Execution Time).

(w) KPMG Cárdenas Dosal, S.C., which has audited certain financial statements of CEMEX and its consolidated subsidiaries and delivered its report with respect to the audited consolidated financial statements incorporated by reference in the Disclosure Package and the Final Memorandum, are independent auditors with respect to CEMEX in accordance with local auditing standards, which are substantially the same as those contemplated by Rule 10A of the Code of Professional Conduct of the American Institute of Certified Public Accountants.

(x) There are no stamp or other issuance or transfer taxes or duties or other similar fees or charges required to be paid in connection with the execution and delivery of this Agreement or the issuance or sale by the Company of the Securities.

(y) CEMEX and each of its subsidiaries have filed all applicable tax returns that are required to be filed by them or have requested extensions of the period applicable for the filing of such returns (except in any case in which the failure so to file would not have a Material Adverse Effect and except as set forth in or contemplated in the Disclosure Package and the Final Memorandum (exclusive of any amendment or supplement thereto after the Execution Time)) and have paid all taxes required to be paid by them and any other assessment, fine or penalty levied against them, to the extent that any of the foregoing is due and payable, except for any such tax, assessment, fine or penalty that is currently being contested in good faith or as would not have a Material Adverse Effect and except as set forth in or contemplated in the Disclosure Package and the Final Memorandum (exclusive of any amendment or supplement thereto after the Execution Time).

(z) No labor problem or dispute with the employees of CEMEX or any of its subsidiaries exists or is threatened or imminent, and the Company is not aware of any existing or imminent labor disturbance by the employees of any of its subsidiaries' principal suppliers, contractors or customers, except as would not have a Material Adverse Effect and except as set forth in or contemplated in the Disclosure Package and the Final Memorandum (exclusive of any amendment or supplement thereto after the Execution Time).

(aa) No subsidiary of CEMEX is currently prohibited, directly or indirectly, from paying any dividends to CEMEX, from making any other distribution on such subsidiary's capital stock or ownership interest, from repaying to CEMEX any loans or advances to such subsidiary from CEMEX or from transferring any of such subsidiary's property or assets to CEMEX or any other subsidiary of CEMEX, except for contractual prohibitions provided in joint venture or shareholders' agreements to which CEMEX is a party (none of which prohibitions are material individually or in the aggregate), and except as described in or contemplated in the Disclosure Package or the Final Memorandum (in each case, exclusive of any amendment or supplement thereto after the Execution Time).

(bb) CEMEX and each of its subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are prudent and customary in the businesses in which they are engaged; all policies of insurance and fidelity or surety bonds insuring CEMEX or any of its subsidiaries or any of their respective businesses, assets, employees, officers and directors are in full force and effect; CEMEX and its subsidiaries are in compliance in all material respects with the terms of such policies and instruments; there are no material claims by CEMEX or any of its subsidiaries under any such policy or instrument as to which any insurance company is denying liability or defending under a reservation of rights clause; neither CEMEX nor any of its subsidiaries has been refused any material insurance coverage sought or applied for; and neither CEMEX nor any of its subsidiaries has reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that would not have a Material Adverse Effect except as set forth in or contemplated in the Disclosure Package and the Final Memorandum (exclusive of any amendment or supplement thereto after the Execution Time).

(cc) CEMEX and each of its subsidiaries possess all licenses, certificates, permits and other authorizations issued by all applicable authorities necessary to conduct their respective businesses, except to the extent that the failure to have such license, certificate, permit or authorization would not reasonably be expected to have a Material Adverse Effect and except, as described in or contemplated in the Disclosure Package or the Final Memorandum (exclusive of any amendment or supplement thereto after the Execution Time), and neither CEMEX nor any of its subsidiaries have received any notice of proceedings relating to the revocation or modification of any such certificate, authorization or permit which, singly or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would have a Material Adverse Effect, except as set forth in or contemplated in the Disclosure Package and the Final Memorandum (exclusive of any amendment or supplement thereto after the Execution Time).

(dd) CEMEX and each of its subsidiaries maintain a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorizations; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with IFRS and to maintain asset accountability; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. CEMEX's and each of its subsidiaries' internal controls over financial reporting are effective, and neither CEMEX nor any of its subsidiaries is aware of any material

weakness in its internal control over financial reporting. CEMEX and each of its subsidiaries maintains "disclosure controls and procedures" (as such term is defined in Rule 13a-15(e) under the Exchange Act) and such disclosure controls and procedures are effective.

(ee) Each of CEMEX and its subsidiaries (i) is in compliance with any and all applicable laws and regulations relating to the protection of human health and safety, the environment or hazardous or toxic substances or wastes, pollutants or contaminants ("Environmental Laws"); (ii) has received and is in compliance with all permits, licenses or other approvals required under applicable Environmental Laws to conduct its businesses; and (iii) has not received notice of any actual or potential liability under any Environmental Law, except where such non-compliance with Environmental Laws, failure to receive required permits, licenses or other approvals, or liability would not, individually or in the aggregate, have a Material Adverse Effect, except as set forth in or contemplated in the Disclosure Package and the Final Memorandum (exclusive of any amendment or supplement thereto after the Execution Time). Except as set forth in the Disclosure Package and the Final Memorandum, neither CEMEX nor any of its subsidiaries has been named as a "potentially responsible party" under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

(ff) In the ordinary course of its business, CEMEX periodically reviews the effect of Environmental Laws on the business, operations and properties of CEMEX and its subsidiaries, in the course of which it identifies and evaluates associated costs and liabilities (including, without limitation, any capital or operating expenditures required for clean-up, closure of properties or compliance with Environmental Laws, or any permit, license or approval, any related constraints on operating activities and any potential liabilities to third parties); on the basis of such review, CEMEX has reasonably concluded that such associated costs and liabilities would not, singly or in the aggregate, have a Material Adverse Effect, except as set forth in or contemplated in the Disclosure Package and the Final Memorandum (exclusive of any amendment or supplement thereto after the Execution Time).

(gg) The operations of CEMEX and each of its subsidiaries are and have been conducted at all times in compliance with applicable financial recordkeeping and reporting requirements and the money laundering statutes and the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the "Money Laundering Laws") and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving CEMEX or any of its subsidiaries with respect to the Money Laundering Laws is pending or, to the best knowledge of CEMEX, threatened.

(hh) None of CEMEX, any of its subsidiaries or, to the knowledge of CEMEX, any director, officer, agent, employee or Affiliate of CEMEX or any of its subsidiaries is currently the subject of any sanctions administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury ("OFAC"); and CEMEX will not directly or indirectly use the proceeds of the offering of the Securities hereunder, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person or entity, for the purpose of financing the activities of any person currently the subject of any U.S. sanctions administered by OFAC. There is and has been no failure on the part of CEMEX and or of CEMEX's directors or officers, in their capacities as such, to comply with any provision of the

Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated in connection therewith (the "Sarbanes-Oxley Act"), including Section 402 relating to loans and Sections 302 and 906 relating to certifications.

(ii) None of CEMEX, any of its subsidiaries nor, to the knowledge of CEMEX, any director, officer, agent, employee or Affiliate of CEMEX is aware of or has taken any action, directly or indirectly, that would result in a violation by such persons of the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (the "FCPA"), including, without limitation, making use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay or authorization of the payment of any money, or other property, gift, promise to give, or authorization of the giving of anything of value to any "foreign official" (as such term is defined in the FCPA) or any foreign political party or official thereof or any candidate for foreign political office, in contravention of the FCPA; and CEMEX, its subsidiaries and, to the knowledge of CEMEX, its Affiliates have conducted their respective businesses in compliance with the FCPA and have instituted and maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith.

(jj) On the Closing Date, after giving effect to the offering of the Securities, CEMEX and its subsidiaries, on a consolidated basis, will be Solvent.

(kk) Any certificate signed by any officer of the Company or the Note Guarantors and delivered to the Representatives or counsel for the Initial Purchasers in connection with the offering of the Securities shall be deemed a representation and warranty by the Company and each of the Note Guarantors, as to matters covered thereby, to each Initial Purchaser.

2. Purchase and Sale. Subject to the terms and conditions and in reliance upon the representations and warranties herein set forth, the Company agrees to sell to each Initial Purchaser, and each Initial Purchaser agrees, severally and not jointly, to purchase from the Company, at a purchase price of 99.325% of the principal amount thereof, plus accrued interest, if any, from October 12, 2012 to the Closing Date, the principal amount of Securities set forth opposite such Initial Purchaser's name in Schedule I hereto. The Initial Purchasers may acquire the Securities through any of their Affiliates.

3. Delivery and Payment. Delivery of and payment for the Securities shall be made at 10:00 A.M., New York City time, on October 12, 2012, or at such time on such later date not more than three Business Days after the foregoing date as the Representatives shall designate, which date and time may be postponed by agreement between the Representatives and the Company or as provided in Section 9 hereof (such date and time of delivery and payment for the Securities being herein called the "Closing Date"). Delivery of the Securities shall be made to the Representatives for the respective accounts of the several Initial Purchasers against payment by the several Initial Purchasers through the Representatives of the purchase price thereof to or upon the order of the Company by wire transfer payable in same-day funds to the account specified by the Company. Delivery of the Securities shall be made through the facilities of The Depository Trust Company ("DTC") and any other relevant clearing system unless the Representatives shall otherwise instruct.

4. Offering by Initial Purchasers. (a) Each Initial Purchaser acknowledges that the Securities have not been and will not be registered under the Act and may not be offered or sold within the United States or to, or for the account or benefit of, U.S. persons, except pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Act.

(b) Each Initial Purchaser, severally and not jointly, represents and warrants to and agrees with the Company that:

(i) it has not offered or sold, and will not offer or sell, any Securities within the United States or to, or for the account or benefit of, U.S. persons (x) as part of their distribution at any time or (y) otherwise until 40 days after the later of the commencement of the offering and the date of the closing of the offering except:

(A) to those it reasonably believes to be "qualified institutional buyers" (as defined in Rule 144A under the Act) or

(B) in accordance with Rule 903 of Regulation S;

(ii) neither it nor any person acting on its behalf has made or will make offers or sales of the Securities in the United States by means of any form of general solicitation or general advertising (within the meaning of Regulation D);

(iii) in connection with each sale pursuant to Section 4(b)(i)(A), it has taken or will take reasonable steps to ensure that the purchaser of such Securities is aware that such sale may be made in reliance on Rule 144A;

(iv) neither it, nor any of its Affiliates nor any person acting on its or their behalf has engaged or will engage in any directed selling efforts (within the meaning of Regulation S) with respect to the Securities;

(v) it is an "accredited investor" (as defined in Rule 501(a) of Regulation D);

(vi) it has not entered and will not enter into any contractual arrangement with any distributor (within the meaning of Regulation S) with respect to the distribution of the Securities, except with its Affiliates or with the prior written consent of CEMEX;

(vii) it has complied and will comply with the offering restrictions requirement of Regulation S;

(viii) at or prior to the confirmation of sale of Securities (other than a sale of Securities pursuant to Section 4(b)(i)(A) of this Agreement), it shall have sent to each distributor, dealer or person receiving a selling concession, fee or other remuneration that purchases Securities from it during the distribution compliance period (within the meaning of Regulation S) a confirmation or notice to substantially the following effect:

"The Securities covered hereby have not been registered under the U.S. Securities Act of 1933 (the "Act") and may not be offered or sold within the United States or to, or for the account or benefit of, U.S. persons (i) as part of their distribution at any time or (ii) otherwise until 40 days after the later of the commencement of the offering and the date of closing of the offering, except in either case in accordance with Regulation S or Rule 144A under the Act. Terms used in this paragraph have the meanings given to them by Regulation S.";

(ix) it has only communicated or caused to be communicated and will only communicate or cause to be communicated any invitation or inducement to engage in investment activity (within the meaning of Section 21 of the Financial Services and Markets Act 2000 (the "FSMA")) received by it in connection with the issue or sale of any Securities, in circumstances in which Section 21(1) of the FSMA does not apply to the Company or the Note Guarantors;

(x) it has complied and will comply with all applicable provisions of the FSMA with respect to anything done by it in relation to the Securities in, from or otherwise involving the United Kingdom; and

(xi) in relation to each Member State of the European Economic Area which has implemented the Prospectus Directive (each, a "Relevant Member State"), with effect from and including the date on which the Prospectus Directive is implemented in that Relevant Member State it has not made and will not make an offer to the public of any Securities which are the subject of the offering contemplated by this Agreement in that Relevant Member State, except that it may make an offer to the public in that Relevant Member State of any Securities at any time under the following exemptions under the Prospectus Directive, if they have been implemented in that Relevant Member State:

(A) to any legal entity which is a qualified investor as defined in the Prospectus Directive;

(B) to fewer than 100 or, if the Relevant Member State has implemented the relevant provision of the 2010 PD Amending Directive, 150 natural or legal persons (other than qualified investors as defined in the Prospectus Directive), as permitted under the Prospectus Directive, subject to obtaining the prior consent of the Representatives for any such offer; or

(C) in any other circumstances falling within Article 3(2) of the Prospectus Directive;

provided that no such offer of Securities shall result in a requirement for the publication by the Company or any Initial Purchaser of a prospectus pursuant to Article 3 of the Prospectus Directive.

For the purposes of this provision, the expression "an offer to the public" in relation to any Securities in any Relevant Member State means the communication in any form and by any means of sufficient information on the terms of the offer and the Securities to be offered so as to enable an investor to decide to purchase or subscribe for any Securities, as the same may be varied in that Relevant Member State by any measure implementing the Prospectus Directive in that Relevant Member State; and the expression "Prospectus Directive" means Directive 2003/71/EC (and amendments thereto, including the 2010 PD Amending Directive, to the extent implemented in the Relevant Member State) and includes any relevant implementing measure in each Relevant Member State; and the expression "2010 PD Amending Directive" means Directive 2010/73/EU.

5. Agreements. The Company and the Note Guarantors agree, jointly and severally, in each case with each Initial Purchaser that:

(a) CEMEX will furnish to each Initial Purchaser and to counsel for the Initial Purchasers, without charge, during the Distribution Period (as defined in Section 5(c) below), as many copies of the materials contained in the Disclosure Package and the Final Memorandum and any amendments and supplements thereto as they may reasonably request.

(b) CEMEX will prepare a final term sheet, containing solely a description of final terms of the Securities and the offering thereof, in the form approved by you attached as Schedule II hereto (the "Final Term Sheet").

(c) CEMEX will not amend or supplement the Disclosure Package or the Final Memorandum other than by filing documents under the Exchange Act that are incorporated by reference therein, without the prior written consent of the Representatives, which consent, following the Closing Date, may not be unreasonably withheld; provided, however, that prior to the earlier of (i) the completion of the distribution of the Securities by the Initial Purchasers (as determined by the Representatives and communicated to the Company) and (ii) twelve (12) months after the date of the Final Memorandum (the "Distribution Period"), CEMEX will not file any document under the Exchange Act that is incorporated by reference in the Disclosure Package or the Final Memorandum unless, prior to such proposed filing, CEMEX has furnished the Representatives with a copy of such document for their review and the Representatives have not reasonably objected to the filing of such document. CEMEX will promptly advise the Representatives when any document filed under the Exchange Act that is incorporated by reference in the Disclosure Package or the Final Memorandum shall have been filed with the Commission.

(d) If at any time during the Distribution Period, any event occurs as a result of which the Disclosure Package or the Final Memorandum, as then amended or supplemented, would include any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made or the circumstances then prevailing, not misleading, or if it should be necessary to amend or supplement the Disclosure Package or the Final Memorandum to comply with applicable law, CEMEX will promptly (i) notify the Representatives of any such event; (ii) subject to the

requirements of Section 5(c), prepare an amendment or supplement that will correct such statement or omission or effect such compliance; and (iii) supply any supplemented or amended Disclosure Package or Final Memorandum to the several Initial Purchasers and counsel for the Initial Purchasers without charge in such quantities as they may reasonably request.

(e) Without the prior written consent of the Representatives, the Company and each of the Note Guarantors will not give to any prospective purchaser of the Securities any written information concerning the offering of the Securities other than materials contained in the Disclosure Package, the Final Memorandum or any other offering materials prepared by or with the prior written consent of the Representatives.

(f) CEMEX will arrange, if necessary, for the qualification of the Securities for sale by the Initial Purchasers under the laws of such jurisdictions as the Representatives may designate (including Japan and certain provinces of Canada) and will maintain such qualifications in effect so long as required for the sale of the Securities; provided that in no event shall CEMEX be obligated to qualify to do business in any jurisdiction where it is not now so qualified or to take any action that would subject it to service of process in suits, other than those arising out of the offering or sale of the Securities, in any jurisdiction where it is not now so subject. The Company and each of the Note Guarantors will promptly advise the Representatives of the receipt by any of them of any notification with respect to the suspension of the qualification of the Securities for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose.

(g) CEMEX will not, and will not permit any of its Affiliates to, resell any Securities that have been acquired by any of them, except (i) in a transaction registered under the Act or (ii) in a transaction exempt from the registration requirements under the Act if such transaction does not cause the holding periods under Rule 144 under the Act to be extended for other holders of Securities.

(h) None of the Company, its Affiliates, or any person acting on its or their behalf will, directly or indirectly, make offers or sales of any security, or solicit offers to buy any security, under circumstances that would require the registration of the Securities under the Act.

(i) None of the Company, its Affiliates, or any person acting on its or their behalf will engage in any directed selling efforts (within the meaning of Regulation S) with respect to the Securities; and each of them will comply with the offering restrictions requirement of Regulation S.

(j) None of the Company, its Affiliates, or any person acting on its or their behalf will engage in any form of general solicitation or general advertising (within the meaning of Regulation D) in connection with any offer or sale of the Securities in the United States.

(k) For so long as any of the Securities are outstanding and are “restricted securities” within the meaning of Rule 144(a)(3) under the Act, CEMEX, during any period in which it is not subject to and in compliance with Section 13 or 15(d) of the Exchange Act or it is not exempt from such reporting requirements pursuant to and in compliance with Rule 12g3-2(b) under the Exchange Act, will provide to each holder of such restricted securities and to each

prospective purchaser (as designated by such holder) of such restricted securities, upon the request of such holder or prospective purchaser, any information required to be provided by Rule 144A(d)(4) under the Act. This covenant is intended to be for the benefit of the holders, and the prospective purchasers designated by such holders, from time to time of such restricted securities.

(l) The Company will cooperate with the Representatives and use its best efforts to permit the Securities to be eligible for clearance and settlement through DTC, Euroclear Bank S.A./N.V. ("Euroclear") and Clearstream Banking, S.A. ("Clearstream"), as applicable, and any other relevant clearing system.

(m) Each of the Securities will bear, to the extent applicable, the legend contained in "Transfer Restrictions" in the Disclosure Package and the Final Offering Memorandum for the time period and upon the other terms stated therein.

(n) Neither the Company nor any of the Note Guarantors will, until October 31, 2012, without the prior written consent of the Representatives, which consent shall not be unreasonably withheld, offer, sell, contract to sell, pledge or otherwise dispose of or enter into any transaction which is designed to, or might reasonably be expected to, result in the disposition (whether by actual disposition or effective economic disposition due to cash settlement or otherwise) by the Company or any of the Note Guarantors or any person in privity with the Company or any of the Note Guarantors, directly or indirectly, or announce the offering of, any debt securities in the international capital markets that are issued or guaranteed by the Company or any of the Note Guarantors (other than the Securities); provided, however, that the foregoing will not restrict the ability of the Company or any of the Note Guarantors to offer, sell, contract to sell, pledge or otherwise dispose of or announce an offering of securities, the proceeds of which are used to fund the repurchase or retirement of CEMEX perpetual debentures or the CEMEX España Euro Notes, an offer to exchange new securities for CEMEX's perpetual debentures or the CEMEX España Euro Notes, an offering of *certificados bursátiles* in the local Mexican market and to enter into securitization transactions.

(o) CEMEX will not take, directly or indirectly, any action designed to, or that has constituted or that might reasonably be expected to, cause or result, under the Exchange Act or otherwise, in stabilization or manipulation of the price of any security of the Company or CEMEX to facilitate the sale or resale of the Securities.

(p) CEMEX will, for a period of twelve months following the Execution Time, furnish to the Representatives (i) all reports or other communications (financial or other) generally made available to its shareholders, and deliver such reports and communications to the Representatives as soon as they are available, unless such documents are furnished to or filed with the Commission or any securities exchange on which any class of securities of CEMEX is listed and generally made available to the public and (ii) such additional information concerning the business and financial condition of CEMEX as the Representatives may from time to time reasonably request (such statements to be on a consolidated basis to the extent the accounts of CEMEX and its subsidiaries are consolidated in reports furnished to its shareholders).

(q) CEMEX will comply with all applicable securities and other laws, rules and regulations, including, without limitation, the Sarbanes-Oxley Act, and use its best efforts to cause CEMEX's directors and officers, in their capacities as such, to comply with such laws, rules and regulations, including, without limitation, the provisions of the Sarbanes-Oxley Act.

(r) The Company and the Note Guarantors agree, jointly and severally, to pay the costs and expenses relating to the following matters: (i) the preparation of the Indenture and the issuance of the Securities and the fees of the Trustee; (ii) the preparation, printing or reproduction of the materials contained in the Disclosure Package and the Final Memorandum and each amendment or supplement to either of them; (iii) the printing (or reproduction) and delivery (including postage, air freight charges and charges for counting and packaging) of such copies of the materials contained in the Disclosure Package and the Final Memorandum, and all amendments or supplements to either of them, as may, in each case, be reasonably requested for use in connection with the offering and sale of the Securities; (iv) the preparation, printing, authentication, issuance and delivery of the Securities; (v) any stamp or transfer taxes in connection with the original issuance and sale of the Securities; (vi) the printing (or reproduction) and delivery of this Agreement, any blue sky memorandum and all other agreements or documents printed (or reproduced) and delivered in connection with the offering of the Securities; (vii) any registration or qualification of the Securities for offer and sale under the securities or blue sky laws of the several states, Japan, the provinces of Canada and any other jurisdictions specified pursuant to Section 5(f) (including filing fees and the reasonable fees and expenses of counsel for the Initial Purchasers relating to such registration and qualification); (viii) the transportation and other expenses incurred by or on behalf of each of CEMEX's representatives in connection with presentations to prospective purchasers of the Securities; (ix) the fees and expenses of CEMEX's accountants and the fees and expenses of counsel (including local and special counsel) for the Company and the Note Guarantors; (x) fees and expenses incurred in connection with listing the Securities on the Irish Stock Exchange; (xi) the fees and expenses incurred in connection with the rating of the Securities by Standard & Poor's and Fitch Ratings; and (xii) all other costs and expenses incident to the performance by the Company and the Note Guarantors of their obligations hereunder.

(s) The Company and the Note Guarantors agree, jointly and severally, to reimburse the Representatives, on behalf of the Initial Purchasers, for all their reasonable expenses incurred in connection with the sale of the Securities provided for herein (including, without limitation, reasonable fees, disbursements and expenses of legal advisors as to U.S. and Mexican law for the Initial Purchasers). The reimbursement obligations of the Company and the Note Guarantors in respect of the legal advisors for the Initial Purchasers pursuant to this Section 5(s) and Section 7 hereof will be limited to U.S.$250,000 (excluding reimbursements in respect of disbursements and expenses of such legal advisors).

(t) The Company will apply the aggregate net proceeds from the offering of the Securities in the manner specified in the Disclosure Package and the Final Memorandum under the heading "Use of Proceeds".

6. Conditions to the Obligations of the Initial Purchasers. The obligations of the Initial Purchasers to purchase the Securities shall be subject to the accuracy of the representations and warranties of the Company and the Note Guarantors contained herein at the

Execution Time and the Closing Date, to the accuracy of the statements of the Company and the Note Guarantors made in any certificates pursuant to the provisions hereof, to the performance by the Company and the Note Guarantors to their respective obligations hereunder and to the following additional conditions:

(a) The Company shall have requested and caused Skadden, Arps, Slate, Meagher & Flom LLP, special U.S. counsel for CEMEX, the Company and CEMEX Corp., to furnish to the Representatives its opinion, tax opinion and negative assurance letter, each dated as of the Closing Date and addressed to the Representatives, substantially in the form of Schedule III attached hereto.

(b) The Company shall have requested and caused Mr. Ramiro G. Villarreal, General Counsel for CEMEX, to furnish to the Representatives his opinion, subject to certain applicable exceptions, qualifications and conditions acceptable to the Representatives, dated as of the Closing Date and addressed to the Representatives, substantially in the form of Schedule IV attached hereto.

(c) The Company shall have requested and caused Mr. Juan Pelegrí y Girón, General Counsel for CEMEX España, to furnish to the Representatives its opinion, subject to certain applicable exceptions, qualifications and conditions acceptable to the Representatives, dated as of the Closing Date and addressed to the Representatives, substantially in the form of Schedule V attached hereto

(d) The Company shall have requested and caused Warendorf, special Dutch counsel to CEMEX and the Dutch Note Guarantors, to furnish to the Representatives its opinion, subject to certain applicable exceptions, qualifications and conditions acceptable to the Representatives, dated as of the Closing Date and addressed to the Representatives, substantially in the form of Schedule VI attached hereto.

(e) The Company shall have requested and caused GHR Rechtsanwälte AG, special Swiss counsel to CEMEX and CEMEX Research, to furnish to the Representatives its opinion, subject to certain applicable exceptions, qualifications and conditions acceptable to the Representatives, dated as of the Closing Date and addressed to the Representatives, substantially in the form of Schedule VII attached hereto.

(f) The Company shall have requested and caused Skadden, Arps, Slate, Meagher & Flom, LLP, special French counsel to CEMEX and CEMEX France, to furnish to the Representatives its opinion, subject to certain applicable exceptions, qualifications and conditions acceptable to the Representatives, dated as of the Closing Date and addressed to the Representatives, substantially in the form of Schedule VIII attached hereto.

(g) The Company shall have requested and caused Skadden, Arps, Slate, Meagher & Flom, LLP, special English counsel to CEMEX and CEMEX UK, to furnish to the Representatives its opinion, subject to certain applicable exceptions, qualifications and conditions acceptable to the Representatives, dated as of the Closing Date and addressed to the Representatives, substantially in the form of Schedule IX attached hereto.

(h) The Company shall have requested and caused Arthur Cox, special Irish counsel for the Company, to furnish such opinion or opinions, dated the Closing Date, providing, among other related matters as the Representatives may reasonably require, that the issuance and sale of the Securities as provided in the Disclosure Package and the Final Memorandum, constitutes a public offering under the laws of the Republic of Ireland, and the Company shall have furnished to such counsel such documents as they request for the purpose of enabling them to pass upon such matters; provided, however, that prior to the delivery of such opinion on the Closing Date, the Representatives agree that one of them shall furnish a representation letter to Arthur Cox to the effect that it has offered the Securities to a number of investors in the Republic of Ireland.

(i) The Representatives shall have received from Cleary Gottlieb Steen & Hamilton LLP and Ritch Mueller, S.C., counsel for the Initial Purchasers, such opinion or opinions, dated the Closing Date and addressed to the Representatives, with respect to the issuance and sale of the Securities, the Indenture, the Disclosure Package, the Final Memorandum (as amended or supplemented as of the Closing Date) and other related matters as the Representatives may reasonably require, and the Company and the Note Guarantors shall have furnished to such counsel such documents as they request for the purpose of enabling them to pass upon such matters.

(j) The Company and each Note Guarantor shall have furnished to the Representatives a certificate, signed by an executive officer of each of the Company and the Note Guarantors, dated as of the Closing Date, substantially in the form of Schedule X attached hereto.

(k) At the Execution Time and at the Closing Date, the Representatives shall have received a written certificate, dated respectively as of the Execution Time and as of the Closing Date, executed by the Vice President of Corporate Finance or Chief Accounting Officer of CEMEX, substantially in the form of Schedule XI attached hereto.

(l) At the Execution Time and at the Closing Date, CEMEX shall have requested and caused KPMG Cárdenas Dosal, S.C. to furnish to the Representatives, letters, dated respectively as of the Execution Time and as of the Closing Date, substantially in the form of Schedule XII attached hereto.

(m) Any and all applicable amendments, supplements or modifications to the New Facilities Agreement, any of the Transaction Security Documents, the New Intercreditor Agreement and any other documents derived therefrom and in connection therewith, as applicable, shall have been made and shall constitute legal, valid and binding obligations to each party thereof.

(n) The Trustee shall be entitled to all rights and benefits provided in the New Intercreditor Agreement as an Additional Notes Trustee (as such term is defined in the New Intercreditor Agreement) and the Initial Purchasers, and/or each of the subsequent holders of the Securities, shall be entitled to all rights and benefits provided therein as Additional Notes Creditors (as such term is defined in the New Intercreditor Agreement).

(o) Subsequent to the Execution Time or, if earlier, the dates as of which information is given in the Disclosure Package (exclusive of any amendment or supplement thereto after the Execution Time) and the Final Memorandum (exclusive of any amendment or supplement thereto after the Execution Time), there shall not have been (i) any change, increase or decrease specified in the letter or letters referred to in paragraphs (k) and (l) of this Section 6; or (ii) any change, or any development involving a prospective change, in or affecting the condition (financial or otherwise), prospects, earnings, business or properties of CEMEX and its subsidiaries taken as a whole, whether or not arising from transactions in the ordinary course of business, except as set forth in or contemplated in the Disclosure Package and the Final Memorandum (exclusive of any amendment or supplement thereto after the Execution Time), the effect of which, in any case referred to in clause (i) or (ii) above, is, in the sole judgment of the Representatives, so material and adverse as to make it impractical or inadvisable to proceed with the offering or delivery of the Securities as contemplated in the Disclosure Package and the Final Memorandum (exclusive of any amendment or supplement thereto after the Execution Time).

(p) The Securities shall be eligible for clearance and settlement through DTC, Euroclear and Clearstream, as applicable, and any other relevant clearing system.

(q) Subsequent to the Execution Time, there shall not have been any decrease in the rating of any of CEMEX's or any of its subsidiaries' debt securities by Standard & Poor's and Fitch Ratings or any notice given of any intended or potential decrease in any such rating. For the avoidance of doubt, any reiteration or reissuance of the outlook of a rating agency that was in place at the Execution Time shall not be considered a notice of an intended or potential decrease in a rating.

(r) Prior to the Closing Date, the Company and the Note Guarantors shall have furnished to the Representatives such further information, certificates and documents as the Representatives may reasonably request.

If any of the conditions specified in this Section 6 shall not have been fulfilled when and as provided in this Agreement, or if any of the opinions and certificates mentioned above or elsewhere in this Agreement shall not be reasonably satisfactory in form and substance to the Representatives and counsel for the Initial Purchasers, this Agreement and all obligations of the Initial Purchasers hereunder may be cancelled at, or at any time prior to, the Closing Date by the Representatives. Notice of such cancellation shall be given to the Company in writing or by telephone or facsimile confirmed in writing.

The documents required to be delivered under this Section 6 will be delivered at the office of counsel for the Initial Purchasers, at Cleary Gottlieb Steen & Hamilton LLP, One Liberty Plaza, New York, New York, 10006, Attention: Duane McLaughlin, Esq., on the Closing Date.

7. Reimbursement of Expenses. If the sale of the Securities provided for herein is not consummated because any condition to the obligations of the Initial Purchasers set forth in Section 6 hereof is not satisfied, because of any termination pursuant to Section 10 hereof or because of any refusal, inability or failure on the part of the Company or the Note Guarantors to perform any agreement herein or comply with any provision hereof other than by reason of a

default by any of the Initial Purchasers, the Company and the Note Guarantors, jointly and severally, agree to reimburse the Initial Purchasers through the Representatives on demand for all expenses (including reasonable fees and disbursements of counsel) that shall have been incurred by them in connection with the proposed purchase and sale of the Securities.

8. Indemnification and Contribution. (a) The Company and the Note Guarantors, jointly and severally, agree to indemnify and hold harmless each Initial Purchaser, the directors, officers, employees, Affiliates and agents of each Initial Purchaser and each person who controls any Initial Purchaser within the meaning of either the Act or the Exchange Act against any and all losses, claims, damages or liabilities, joint or several, to which they or any of them may become subject under the Act, the Exchange Act or other U.S. federal or state statutory law or regulation, at common law or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in the Preliminary Memorandum, the Final Term Sheet, the Final Memorandum, any Issuer Written Information, or any other written information, including any non-deal and deal road show presentations (electronic or otherwise) used by or on behalf of CEMEX in connection with the offer or sale of the Securities, or in any amendment or supplement thereto, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, and agrees to reimburse each such indemnified party, as incurred, for any legal or other expenses reasonably incurred by it in connection with investigating or defending any such loss, claim, damage, liability or action; provided, however, that neither the Company nor any of the Note Guarantors will be liable in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon any such untrue statement or alleged untrue statement or omission or alleged omission made in the Preliminary Memorandum, the Final Term Sheet or the Final Memorandum, or in any amendment thereof or supplement thereto, in reliance upon and in conformity with the written information provided in section 8(b) hereof furnished to the Company by or on behalf of any Initial Purchaser through the Representatives specifically for inclusion therein. This indemnity agreement will be in addition to any liability that the Company or any of the Note Guarantors may otherwise have.

(b) Each Initial Purchaser severally, and not jointly, agrees to indemnify and hold harmless the Company, each of its directors, each of its officers, and each person who controls the Company within the meaning of either the Act or the Exchange Act, to the same extent as the foregoing indemnity to each Initial Purchaser, but only with reference to written information relating to such Initial Purchaser furnished to the Company by or on behalf of such Initial Purchaser through the Representatives specifically for inclusion in the Preliminary Memorandum or the Final Memorandum (or in any amendment or supplement thereto). This indemnity agreement will be in addition to any liability that any Initial Purchaser may otherwise have. The Company acknowledges that (i) the statements set forth in the last paragraph of the cover page regarding delivery of the Securities and (ii) under the heading “Plan of Distribution,” (A) the table of Initial Purchasers, and (B) the eighth and ninth paragraphs in the Disclosure Package and the Final Memorandum constitute the only information furnished in writing by or on behalf of the Initial Purchasers for inclusion in the Disclosure Package or the Final Memorandum or in any amendment or supplement thereto.

(c) Promptly after receipt by an indemnified party under this Section 8 of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against the indemnifying party under this Section 8, notify the indemnifying party in writing of the commencement thereof; but the failure so to notify the indemnifying party (i) will not relieve it from liability under paragraph (a) or (b) above unless and to the extent it did not otherwise learn of such action and such failure results in the forfeiture by the indemnifying party of substantial rights and defenses and (ii) will not, in any event, relieve the indemnifying party from any obligations to any indemnified party other than the indemnification obligation provided in paragraph (a) or (b) above. The indemnifying party shall be entitled to appoint counsel (including local counsel) of the indemnifying party's choice at the indemnifying party's expense to represent the indemnified party in any action for which indemnification is sought (in which case the indemnifying party shall not thereafter be responsible for the fees and expenses of any separate counsel, other than local counsel if not appointed by the indemnifying party, retained by the indemnified party or parties except as set forth below); provided, however, that such counsel shall be satisfactory to the indemnified party. Notwithstanding the indemnifying party's election to appoint counsel (including local counsel) to represent the indemnified party in an action, the indemnified party shall have the right to employ separate counsel (including local counsel), and the indemnifying party shall bear the reasonable fees, costs and expenses of such separate counsel if (i) the use of counsel chosen by the indemnifying party to represent the indemnified party would present such counsel with a conflict of interest; (ii) the actual or potential defendants in, or targets of, any such action include both the indemnified party and the indemnifying party and the indemnified party shall have reasonably concluded that there may be legal defenses available to it that are different from or additional to those available to the indemnifying party and/or other indemnified parties; (iii) the indemnifying party shall not have employed counsel satisfactory to the indemnified party to represent the indemnified party within a reasonable time after notice of the institution of such action; or (iv) the indemnifying party shall authorize the indemnified party to employ separate counsel at the expense of the indemnifying party. If none of the conditions in clauses (i) through (iv) in the preceding sentence are satisfied as to any indemnified party, it is understood that the indemnifying party shall, in connection with any one such action be liable for the reasonable fees and expenses of only one separate firm of attorneys in each jurisdiction (and in addition to any local counsel) at any time (other than reasonable overlapping of engagements) for all such indemnified parties. An indemnifying party will not, without the prior written consent of the indemnified parties, settle or compromise or consent to the entry of any judgment with respect to any pending or threatened claim, action, suit or proceeding in respect of which indemnification or contribution may be sought hereunder (whether or not the indemnified parties are actual or potential parties to such claim or action) unless such settlement, compromise or consent includes an unconditional release of each indemnified party from all liability arising out of such claim, action, suit or proceeding and does not include any statement as to any admission of fault, culpability or a failure to act by or on behalf of any indemnified party.

(d) In the event that the indemnity provided in paragraph (a) or (b) of this Section 8 is unavailable to, or insufficient to hold harmless, an indemnified party for any reason, the Company and each Note Guarantor, severally and jointly, and the Initial Purchasers, severally, agree to contribute to the aggregate losses, claims, damages and liabilities (including legal or other expenses reasonably incurred in connection with investigating or defending any loss, claim, damage, liability or action) (collectively "Losses") to which the Company, the Note

Guarantors and one or more of the Initial Purchasers may be subject in such proportion as is appropriate to reflect the relative benefits received by the Company and the Note Guarantors on the one hand and by the Initial Purchasers on the other from the offering of the Securities; provided, however, that in no case under this paragraph (d) shall any Initial Purchaser be responsible for any amount in excess of the purchase discount or commission applicable to the Securities purchased by such Initial Purchaser hereunder. If the allocation provided by the immediately preceding sentence is unavailable for any reason, the Company and the Note Guarantors, jointly and severally, and the Initial Purchasers, severally, shall contribute in such proportion as is appropriate to reflect not only such relative benefits but also the relative fault of the Company and the Note Guarantors on the one hand and the Initial Purchasers on the other in connection with the statements or omissions that resulted in such Losses, as well as any other relevant equitable considerations. Benefits received by the Company and the Note Guarantors shall be deemed to be equal to the total net proceeds from the offering (before deducting expenses) received by it, and benefits received by the Initial Purchasers shall be deemed to be equal to the total purchase discounts and commissions. Relative fault shall be determined by reference to, among other things, whether any untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information provided by the Company and the Note Guarantors on the one hand or the Initial Purchasers on the other, the intent of the parties and their relative knowledge, access to information and opportunity to correct or prevent such untrue statement or omission. The Company, the Note Guarantors and the Initial Purchasers agree that it would not be just and equitable if contribution were determined by pro rata allocation or any other method of allocation that does not take account of the equitable considerations referred to above. Notwithstanding the provisions of this paragraph (d), no person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. For purposes of this Section 8, each person who controls an Initial Purchaser within the meaning of either the Act or the Exchange Act and each director, officer, employee, Affiliate and agent of an Initial Purchaser shall have the same rights to contribution as such Initial Purchaser, and each person who controls the Company and the Note Guarantors within the meaning of either the Act or the Exchange Act and each officer and director of the Company and the Note Guarantors shall have the same rights to contribution as the Company and the Note Guarantors, subject in each case to the applicable terms and conditions of this paragraph (d).

9. Default by an Initial Purchaser. If any one or more Initial Purchasers shall fail to purchase and pay for any of the Securities agreed to be purchased by such Initial Purchaser hereunder and such failure to purchase shall constitute a default in the performance of its or their obligations under this Agreement, the remaining Initial Purchasers shall be obligated severally to take up and pay for (in the respective proportions which the principal amount of Securities set forth opposite their names in Schedule I hereto bears to the aggregate principal amount of Securities set forth opposite the names of all the remaining Initial Purchasers) the Securities which the defaulting Initial Purchaser or Initial Purchasers agreed but failed to purchase; provided, however, that in the event that the aggregate principal amount of Securities which the defaulting Initial Purchaser or Initial Purchasers agreed but failed to purchase shall exceed 10% of the aggregate principal amount of Securities set forth in Schedule I hereto, the remaining Initial Purchasers shall have the right to purchase all, but shall not be under any obligation to purchase any, of the Securities, and if such non-defaulting Initial Purchasers do not purchase all

the Securities, this Agreement will terminate without liability to any non-defaulting Initial Purchaser or the Company. In the event of a default by any Initial Purchaser as set forth in this Section 9, the Closing Date shall be postponed for such period, not exceeding five Business Days, as the Representatives and the Company shall determine in order that the required changes in the Final Memorandum or in any other documents or arrangements may be effected. Nothing contained in this Agreement shall relieve any defaulting Initial Purchaser of its liability, if any, to the Company or any non-defaulting Initial Purchaser for damages occasioned by its default hereunder.

10. Termination. This Agreement shall be subject to termination in the absolute discretion of the Representatives, by notice given to the Company prior to the time of delivery of, and payment for, the Securities, if at any time prior to such time (i) trading in securities generally on the Mexican Stock Exchange (*Bolsa Mexicana de Valores, S.A.B. de C.V.*) or the New York Stock Exchange shall have been suspended or limited or minimum prices shall have been established on either such exchange; (ii) a banking moratorium shall have been declared either by Mexican, U.S. federal or New York State authorities; or (iii) there shall have occurred any outbreak or escalation of hostilities, declaration by Mexico or the United States of a national emergency or war or other calamity or crisis the effect of which on financial markets is such as to make it, in the sole judgment of the Representatives, impractical or inadvisable to proceed with the offering or delivery of the Securities as contemplated in the Disclosure Package and the Final Memorandum (exclusive of any amendment or supplement thereto after the Execution Time).

11. Representations and Indemnities to Survive. The respective agreements, representations, warranties, indemnities and other statements of the Company, the Note Guarantors or their respective officers and of the Initial Purchasers set forth in or made pursuant to this Agreement will remain in full force and effect, regardless of any investigation made by or on behalf of the Initial Purchasers or the Company or the Note Guarantors or any of the indemnified persons referred to in Section 8 hereof, and will survive delivery of and payment for the Securities. The provisions of Sections 7 and 8 hereof shall survive the termination or cancellation of this Agreement.

12. Notices. All communications hereunder shall be in writing and will be effective only upon receipt, and shall be mailed, hand delivered, couriered or facsimiled and confirmed to the parties hereto as follows:

If to the Representatives:

c/o J.P. Morgan Securities LLC
383 Madison Avenue,
New York, New York 10179
Facsimile: 212-834-6618
Attention: Latin American Debt Capital Markets

with a copy to:

Cleary Gottlieb Steen & Hamilton LLP
One Liberty Plaza
New York, New York 10006
Facsimile: 212-225-3999
Attention: Duane McLaughlin

If to the Company or the Note Guarantors:

CEMEX, S.A.B. de C.V.
Av. Ricardo Margáin, Zozaya #325
Colonia Valle del Campestre
Garza García, Nuevo León, México 66265
Facsimile: +5281-8888-4399
Attention: Legal Department

13. Successors. This Agreement will inure to the benefit of and be binding upon the parties hereto and their respective successors and the indemnified persons referred to in Section 8 hereof and their respective successors, and, except as expressly set forth in Section 5(k) hereof, no other person will have any right or obligation hereunder.

14. Jurisdiction. Each of the parties hereto agrees that any suit, action or proceeding arising out of or based upon this Agreement or the transactions contemplated hereby shall be instituted in any State or U.S. federal court in The City of New York and County of New York or in the courts of its own domicile in respect of actions brought against such party as a defendant, and waives any objection which it may now or hereafter have to the laying of venue of any such proceeding, and irrevocably submits to the jurisdiction of such courts in any suit, action or proceeding and waives the right to any other jurisdiction that it may be entitled to by reason of its present or future domicile or other reason. Each of the Note Guarantors (other than CEMEX Corp.) hereby appoints CEMEX NY Corporation, 590 Madison Avenue, 41st Floor, New York, NY 10022, as its authorized agent (the "Authorized Agent") upon whom process may be served in any suit, action or proceeding arising out of or based upon this Agreement or the transactions contemplated herein that may be instituted in any of such courts. Each of the parties appointing the Authorized Agent as provided herein hereby represents and warrants that the Authorized Agent has accepted such appointment and has agreed to act as said agent for service of process, and the Company agrees to take, and have each of the Note Guarantors (other than CEMEX Corp.) take, any and all action, including the execution and filing of any and all documents that may be necessary to continue such appointment in full force and effect as aforesaid. Service of process upon the Authorized Agent shall be deemed, in every respect, effective service of process upon each of the Note Guarantors (other than CEMEX Corp.).

15. Integration. This Agreement supersedes all prior agreements and understandings (whether written or oral) between CEMEX and the Initial Purchasers, or any of them, with respect to the subject matter hereof.

16. Applicable Law. This Agreement, and any claim, controversy or dispute relating to or arising out of this Agreement, will be governed by and construed in accordance with the laws of the State of New York applicable to contracts made and to be performed within the State of New York.

17. Waiver of Jury Trial. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.

18. No Fiduciary Duty. Each of the Company and the Note Guarantors hereby acknowledges that (a) the purchase and sale of the Securities pursuant to this Agreement is an arm's-length commercial transaction between the Company and the Note Guarantors, on the one hand, and the Initial Purchasers and any Affiliates through which they may be acting, on the other, (b) the Initial Purchasers are acting as principal and not as an agent or fiduciary of the Company or the Note Guarantors and (c) each of the Company's and the Note Guarantors' engagement of the Initial Purchasers in connection with the offering and the process leading up to the offering is as independent contractors and not in any other capacity. Furthermore, each of the Company and the Note Guarantors agrees that it is solely responsible for making its own judgments in connection with the offering (irrespective of whether any of the Initial Purchasers has advised or is currently advising the Company or the Note Guarantors on related or other matters). Each of the Company and the Note Guarantors agrees that it will not claim that the Initial Purchasers have rendered advisory services of any nature or respect, or owe an agency, fiduciary or similar duty to the Company or the Note Guarantors, in connection with such transaction or the process leading thereto.

19. Currency. Each reference in this Agreement to U.S. dollars (the "relevant currency"), including by use of the symbol "U.S.$", is of the essence. To the fullest extent permitted by law, the obligation of the parties in respect of any amount due under this Agreement will, notwithstanding any payment in any other currency (whether pursuant to a judgment or otherwise), be discharged only to the extent of the amount in the relevant currency that the party entitled to receive such payment may, in accordance with its normal procedures, purchase with the sum paid in such other currency (after any premium and costs of exchange) on the Business Day immediately following the day on which such party receives such payment. If the amount in the relevant currency that may be so purchased for any reason falls short of the amount originally due, the obligated party will pay such additional amounts, in the relevant currency, as may be necessary to compensate for the shortfall. Any obligation of the obligated party not discharged by such payment will, to the fullest extent permitted by applicable law, be due as a separate and independent obligation and, until discharged as provided herein, will continue in full force and effect.

20. Waiver of Immunity. To the extent that the Company or any of the Note Guarantors has or hereafter may acquire any immunity (sovereign or otherwise) from any legal action, suit or proceeding, from jurisdiction of any court or from set-off or any legal process (whether service or notice, attachment in aid or otherwise) with respect to itself or any of its property, the Company and each of the Note Guarantors hereby irrevocably waives and agrees not to plead or claim such immunity in respect of its obligations under this Agreement.

21. Waiver of Tax Confidentiality. Notwithstanding anything herein to the contrary, purchasers of the Securities (and each employee, representative or other agent of a purchaser) may disclose to any and all persons, without limitation of any kind, the U.S. tax treatment and U.S. tax structure of any transaction contemplated herein and all materials of any kind (including opinions or other tax analyses) that are provided to the purchasers of the Securities relating to such U.S. tax treatment and U.S tax structure, other than any information for which nondisclosure is reasonably necessary in order to comply with applicable securities laws.

22. Taxes. Each payment of fees or other amounts due to the Initial Purchasers under this Agreement shall, except as required by applicable law, be made without withholding or deduction for or on account of any taxes imposed by any jurisdiction. If any taxes are required to be withheld or deducted from any such payment, the Company and the Note Guarantors shall, jointly and severally, pay such additional amounts as may be necessary to ensure that the net amount actually received by the Initial Purchasers after such withholding or deduction is equal to the amount that the Initial Purchasers would have received had no such withholding or deduction been required. At the reasonable request of the Initial Purchasers, the Company shall provide evidence of payment of taxes when due.

23. Counterparts. This Agreement may be signed in one or more counterparts, each of which shall constitute an original and all of which together shall constitute one and the same agreement.

24. Headings. The section headings used herein are for convenience only and shall not affect the construction hereof.

25. Definitions. The terms that follow, when used in this Agreement, shall have the meanings indicated.

"Act" shall mean the U.S. Securities Act of 1933, as amended, and the rules and regulations of the Commission promulgated thereunder.

"Affiliate" shall have the meaning specified in Rule 501(b) of Regulation D.

"Business Day" shall mean any day other than a Saturday, a Sunday or a legal holiday or a day on which banking institutions or trust companies are authorized or obligated by law to close in The City of New York, Mexico City, Madrid or Amsterdam.

"CEMEX España Euro Notes" shall mean the 4.75% Eurobonds issued by CEMEX Finance Europe B.V.

"Code" shall mean the Internal Revenue Code of 1986, as amended.

"Collateral" shall mean the security created or expressed to be created in favor of the New Security Agent pursuant to the Transaction Security Documents that consists of (i) shares of the following entities: CEMEX México; Centro Distribuidor de Cemento, S.A. de C.V.; Mexcement Holdings, S.A. de C.V.; Corporación Gouda, S.A. de C.V.; New Sunward; and CEMEX Trademarks Holding Ltd; and (ii) all proceeds thereof.

"Commission" shall mean the Securities and Exchange Commission.

"Disclosure Package" shall mean (i) the Preliminary Memorandum, as amended or supplemented at the Execution Time, (ii) the Final Term Sheet, and (iii) any Issuer Written Information.

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended, and the rules and regulations of the Commission promulgated thereunder.

"Execution Time" shall mean 5:10 p.m. (New York time) on October 4, 2012.

"IFRS" shall mean International Financial Reporting Standards as issued by the International Accounting Standards Board.

"Investment Company Act" shall mean the U.S. Investment Company Act of 1940, as amended, and the rules and regulations of the Commission promulgated thereunder.

"Issuer Written Information" shall mean any writings in addition to the Preliminary Memorandum and the Final Term Sheet that the parties expressly agree in writing to treat as part of the Disclosure Package and which are identified on Schedule XIII hereto.

"New Facilities Agreement" means the facilities agreement, dated as of September 17, 2012, entered into among CEMEX and certain of its subsidiaries, the financial institutions and noteholders party thereto, Citibank International PLC, as new administrative agent, and the New Security Agent, as such agreement may be amended, modified or waived from time to time.

"New Intercreditor Agreement" shall mean the intercreditor agreement, dated as of September 17, 2012, entered into among CEMEX and certain of its subsidiaries, the financial institutions and noteholders party thereto, Citibank International PLC, as new administrative agent, and the New Security Agent, as such agreement may be amended, modified or waived from time to time.

"New Security Agent" shall mean Wilmington Trust (London) Limited, as security agent under the New Facilities Agreement.

"Regulation D" shall mean Regulation D under the Act.

"Regulation S" shall mean Regulation S under the Act.

"Solvent" shall mean, with respect to any person on any date of determination, that on such date, the value of the property of such person is greater than the total amount of liabilities, including contingent liabilities, of such person.

"Transaction Security Documents" shall mean any document, as amended from time to time, entered by any of CEMEX or its subsidiaries creating or expressed to create any security over all or any part of its assets in respect of their obligations under the New Facilities Agreement or any other document derived therefrom, or in connection therewith.

*[Signature pages follow]*

If the foregoing is in accordance with your understanding of our agreement, please sign and return to us the enclosed duplicate hereof, whereupon this letter and your acceptance shall represent a binding agreement between the Company, the Note Guarantors and the several Initial Purchasers.

Very truly yours,

**CEMEX Finance LLC**

By: /s/ José A. González
Name: José A. González
Title: Attorney-In-Fact

**EACH OF THE NOTE GUARANTORS LISTED BELOW**

**CEMEX, S.A.B. DE C.V.**

By: /s/ José A. González
Name: José A. González
Title: Attorney-In-Fact

**CEMEX MÉXICO, S.A. DE C.V.**

By: /s/ José A. González
Name: José A. González
Title: Attorney-In-Fact

**NEW SUNWARD HOLDING B.V.**

By: /s/ José A. González
Name: José A. González
Title: Attorney-In-Fact

**CEMEX ESPAÑA, S.A.**

By: /s/ José A. González
Name: José A. González
Title: Attorney-In-Fact

**CEMEX RESEARCH GROUP AG.**

By: /s/ José A. González
Name: José A. González
Title: Attorney-In-Fact

**CEMEX SHIPPING B.V.**

By: /s/ José A. González
Name: José A. González
Title: Attorney-In-Fact

**CEMEX ASIA B.V.**

By: /s/ José A. González
Name: José A. González
Title: Attorney-In-Fact

**CEMEX FRANCE GESTION (S.A.S.)**

By: /s/ José A. González
Name: José A. González
Title: Attorney-In-Fact

**CEMEX UK**

By: /s/ José A. González
Name: José A. González
Title: Attorney-In-Fact

By: /s/ Héctor Vela
Name: Héctor Vela
Title: Attorney-In-Fact

**CEMEX EGYPTIAN INVESTMENTS B.V.**

By: /s/ José A. González
Name: José A. González
Title: Attorney-In-Fact

**CEMEX CORP.**

By: /s/ José A. González
Name: José A. González
Title: Attorney-In-Fact

**CEMEX CONCRETOS, S.A. DE C.V.**

By: /s/ José A. González
Name: José A. González
Title: Attorney-In-Fact

**EMPRESAS TOLTECA DE MÉXICO, S.A. DE C.V.**

By: /s/ José A. González
Name: José A. González
Title: Attorney-In-Fact

The foregoing Agreement is hereby confirmed and accepted as of the date first above written.

**J.P. MORGAN SECURITIES LLC**

By: /s/ Marco Prono
Name: Marco Prono
Title: Vice President

For itself and the other several Initial Purchasers named in Schedule I to the foregoing Agreement.

**BARCLAYS CAPITAL INC.**

By: /s/ Monica Hanson
Name: Monica Hanson
Title: Managing Director

For itself and the other several Initial Purchasers named in Schedule I to the foregoing Agreement.

**RBS SECURITIES INC.**

By: /s/ Jon A. Charette
Name: Jon A. Charette
Title: Director

For itself and the other several Initial Purchasers named in Schedule I to the foregoing Agreement.

**CREDIT AGRICOLE SECURITIES (USA) INC.**

By: /s/ David C. Travis
Name: David C. Travis
Title: Managing Director

For itself and the other several Initial Purchasers named in Schedule I to the foregoing Agreement.

**HSBC SECURITIES (USA) INC.**

By: /s/ Scott Dainton
Name: Scott Dainton
Title: Managing Director

For itself and the other several Initial Purchasers named in Schedule I to the foregoing Agreement.

**ING FINANCIAL MARKETS LLC**

By: /s/ Diane M. Kenna
Name: Diane M. Kenna
Title: Senior Vice President

For itself and the other several Initial Purchasers named in Schedule I to the foregoing Agreement.

**SCHEDULE I**

| Initial Purchasers | Principal Amount of Securities to be Purchased |
|---|---|
| J.P. Morgan Securities LLC | U.S.$ 277,777,778 |
| Barclays Capital Inc. | U.S.$ 277,777,778 |
| RBS Securities Inc. | U.S.$ 277,777,778 |
| Credit Agricole Securities (USA) Inc. | U.S.$ 222,222,222 |
| HSBC Securities (USA) Inc. | U.S.$ 222,222,222 |
| ING Financial Markets LLC | U.S.$ 222,222,222 |
| Total | U.S.$1,500,000,000 |

**SCHEDULE II**

**Form Pricing Term Sheet**

**Pricing Term Sheet**
**, 2012**

**CEMEX Finance LLC**
**U.S.$ % Senior Secured Notes due 20 (the "Notes")**

| | |
|---|---|
| **Issuer** | CEMEX Finance LLC |
| **Security description** | % Senior Secured Notes due 20 |
| **Note Guarantors** | CEMEX, S.A.B. de C.V.<br>CEMEX México, S.A. de C.V.<br>CEMEX España, S.A.<br>Cemex Research Group AG<br>New Sunward Holding B.V.<br>Cemex Shipping B.V.<br>Cemex Asia B.V.<br>Cemex Egyptian Investments B.V.<br>CEMEX UK<br>CEMEX France Gestion (S.A.S.)<br>CEMEX Corp.<br>CEMEX Concretos, S.A. de C.V.<br>Empresas Tolteca de México, S.A. de C.V. |
| **Security** | First-priority security interest over (i) substantially all the shares of CEMEX México, S.A. de C.V., Centro Distribuidor de Cemento, S.A. de C.V., Mexcement Holdings, S.A. de C.V., Corporación Gouda, S.A. de C.V., CEMEX Trademarks Holding Ltd., and New Sunward Holding B.V., or together, the Collateral, and (ii) all proceeds of such Collateral. Within 60 (sixty) days of September 17, 2012, the closing date of the Refinancing Transaction, the Notes are expected to be secured by a first-priority security interest over substantially all the shares of CEMEX España, S.A., which will become part of the Collateral at that time. Holders will not be entitled to direct the foreclosure on, or foreclose on, the Collateral. The Notes will cease to be secured in accordance with the provisions of the New Intercreditor Agreement. |
| **Format** | 144A Notes / Regulation S Notes. |
| **Joint Bookrunner** | J.P. Morgan Securities LLC<br>Barclays Capital Inc.<br>RBS Securities Inc.<br>Credit Agricole Securities (USA) Inc.<br>HSBC Securities (USA) Inc.<br>ING Financial Markets LLC |

| | |
|---|---|
| **Identifiers (144 A Notes)** | CUSIP:<br>ISIN: |
| **Identifiers (Reg S Notes)** | CUSIP:<br>ISIN: |
| **Issue amount** | U.S.$ |
| **Settlement date** | , 2012 |
| **Final maturity** | , 20 |
| **Interest payment** | and , beginning on , 2013 |
| **Day count convention** | 360-day year consisting of twelve 30-day months. |
| **Coupon** | % |
| **Issue price** | % |
| **Issue yield to maturity** | % |
| **Optional Redemption** | • Make-whole call prior to , 20 , at greater of (1) 100% of principal amount of the Notes, and (2) the sum of the present value of each remaining scheduled payment of principal and interest thereon (exclusive of interest accrued to the date of redemption) discounted to the redemption date on a semi-annual basis (assuming a 360-day year consisting of twelve 30-day months) at the Treasury Rate plus basis points, plus, in each case, any accrued and unpaid interest to the date of redemption.<br>• On or after , 20 , in whole at any time or in part from time to time, at the redemption prices listed below, expressed as percentages of the principal amount thereof, if redeemed during the twelve-month period commencing on of any year set forth below, plus any accrued and unpaid interest to the date of redemption.<br>20 %<br>20 %<br>20 and thereafter 100.00%<br>• On or prior to , 20 , redemption of up to 35% of the aggregate principal amount of the Notes at % of principal amount of the Notes plus any accrued and unpaid interest to the date of redemption, with proceeds from equity offerings.<br>• In the event of certain changes in the withholding tax treatment relating to payments on the Notes, at 100% of their principal amount, plus any accrued and unpaid interest to the date of redemption. |

| | |
|---|---|
| | The Issuer shall not have the right to exercise any optional redemption at any time when CEMEX, S.A.B. de C.V. is prohibited from exercising such an option under the New Facilities Agreement. |
| **Use of Proceeds** | The estimated net proceeds from the offering of the Notes, after deducting the Initial Purchasers' fees and commissions and the estimated expenses, will be approximately U.S.$ million. The Issuer intends to use the proceeds from the offering to repay indebtedness under the Facilities Agreement. |
| **Denominations** | The Notes will initially be issued only in denominations of U.S.$200,000 and integral multiples of U.S.$1,000 in excess thereof. |
| **Governing law** | New York |
| **Intended Listing** | Global Exchange Market of the Irish Stock Exchange |
| **Clearing** | The Depositary Trust Company, Euroclear and Clearstream |

* * *

This communication is intended for the sole use of the person to whom it is provided by the sender.

This notice shall not constitute an offer to sell or a solicitation of an offer to buy, nor shall there be any sale of the Notes in any state or jurisdiction in which such offer, solicitation or sale would be unlawful. The Notes will be offered to qualified institutional buyers in reliance on Rule 144A under the Securities Act of 1933, as amended, and to non-U.S. persons in offshore transactions outside the United States in accordance with Regulation S thereunder. The Notes have not been registered under the Securities Act or any state securities laws, and may not be offered or sold in the United States or to U.S. persons absent registration or an applicable exemption from the registration requirements.

The information in this term sheet supplements the Issuer's preliminary offering memorandum, dated October 4, 2012 (the "Preliminary Memorandum") and supersedes the information in the Preliminary Memorandum to the extent inconsistent with the information in the Preliminary Memorandum. This term sheet is qualified in its entirety by reference to the Preliminary Memorandum, except for information in the Preliminary Memorandum superseded by information included herein. Terms used herein but not defined herein shall have the respective meanings as set forth in the Preliminary Memorandum.

**SCHEDULE III**

**Form of Legal Opinion**
**Skadden, Arps, Slate, Meagher & Flom LLP**

**SCHEDULE IV**

**Form of Legal Opinion**
**Mr. Ramiro G. Villarreal**

**SCHEDULE V**

**Form of Legal Opinion**
**Mr. Juan Pelegrí y Girón**

**SCHEDULE VI**

**Form of Legal Opinion**
**Warendorf**

**SCHEDULE VII**

**Form of Legal Opinion**
**GHR Rechtsanwälte AG**

**SCHEDULE VIII**

**Form of Legal Opinion**
**Skadden, Arps, Slate, Meagher & Flom, LLP (French Counsel)**

**SCHEDULE IX**

**Form of Legal Opinion**
**Skadden, Arps, Slate, Meagher & Flom, LLP (UK Counsel)**

**SCHEDULE X**

**Form of Officer's Certificate**

**OFFICER'S CERTIFICATE**

**, 2012**

I, , solely in my capacity as of , a organized under the laws of (the "Company"), and not in an individual capacity, hereby certify as follows on behalf of the Company pursuant to Section 6(j) of the Purchase Agreement, dated as of , 2012, executed in connection with the offering by [the Company][CEMEX Finance LLC] of U.S.$ aggregate principal amount of its % Senior Secured Notes due 20 (the "Purchase Agreement"). Capitalized terms used but not defined herein have the meaning assigned to them in the Purchase Agreement:

1. I have carefully examined the Disclosure Package, the Final Memorandum and any supplements or amendments thereto, and the Purchase Agreement;

2. To the best of my knowledge, the representations and warranties of the Company in the Purchase Agreement are true and correct on and as of the Closing Date with the same effect as if made on the Closing Date, and the Company has complied with all the agreements and satisfied all the conditions on its part to be performed or satisfied hereunder at or prior to the Closing Date; and

3. [*To be included only in CEMEX, S.A.B. de C.V.'s officer's certificate:* To the best of my knowledge, since the date of the most recent financial statements included or incorporated by reference in the Disclosure Package and the Final Memorandum (exclusive of any amendment or supplement thereto), there has been no material adverse change in the condition (financial or otherwise), prospects, earnings, business or properties of the Company and its subsidiaries, taken as a whole, whether or not arising from transactions in the ordinary course of business, except as set forth in or contemplated in the Disclosure Package and the Final Memorandum (exclusive of any amendment or supplement thereto).]

**SCHEDULE XI**

**Form of Officer's Certificate**

**CEMEX, S.A.B. DE C.V.**

**OFFICER'S CERTIFICATE**

**, 2012**

I, , solely in my capacity as of CEMEX, S.A.B. de C.V., a publicly traded stock corporation with variable capital (*sociedad anónima bursátil de capital variable*) organized under the laws of Mexico (the "Company"), and not in an individual capacity, hereby certify as follows pursuant to Section 6(k) of the Purchase Agreement, dated as of , 2012, executed in connection with the offering by CEMEX Finance LLC of U.S.$ aggregate principal amount of its % Senior Secured Notes due 20 (the "Purchase Agreement"). Capitalized terms used but not defined herein have the meaning assigned to them in the Purchase Agreement:

1. I have carefully reviewed the Disclosure Package and the Final Memorandum.

2. I have compared the amounts identified in Exhibit A hereto to the corresponding amounts included in or derived from the preliminary consolidated financial information of the Company as of and for the three-month period ending September 30, 2012 and found them to be in agreement.

**SCHEDULE XII**

**Form of Comfort Letter by KPMG Cárdenas Dosal, S.C.**

**SCHEDULE XIII**

1. Issuer Written Information (included in the Disclosure Package)

   None.

2. Other Information Included in the Disclosure Package

   (a) The following information is also included in the Disclosure Package:

   None.

**Exhibit 4.43**

CEMEX FINANCE LLC,

THE NOTE GUARANTORS PARTY HERETO

AND

THE BANK OF NEW YORK MELLON,

AS TRUSTEE

9.375% SENIOR SECURED NOTES DUE 2022

INDENTURE

Dated as of October 12, 2012

**TABLE OF CONTENTS**

**TABLE OF CONTENTS**
(continued)

**TABLE OF CONTENTS**
(continued)

INDENTURE, dated as of October 12, 2012, among CEMEX Finance LLC, a limited liability company organized and existing pursuant to the laws of the State of Delaware (the "Issuer"), CEMEX, S.A.B. de C.V. (the "Company") and the other note guarantors listed on Schedule I hereto, as guarantors of the Issuer's obligations under this Indenture and the Notes, and The Bank of New York Mellon, as trustee (the "Trustee").

Each party agrees as follows for the benefit of the other parties and for the equal and ratable benefit of the Holders of the Issuer's 9.375% Senior Secured Notes due 2022 issued hereunder.

## ARTICLE I

## DEFINITIONS AND INCORPORATION BY REFERENCE

Section 1.1 Definitions.

"2009 Financing Agreement" means the financing agreement, dated as of August 14, 2009, entered into among the Issuer and certain of its Subsidiaries, the financial institutions and noteholders party thereto, Citibank International PLC, as administrative agent, and Wilmington Trust (London) Limited, as security agent, as such agreement may be amended, modified or waived from time to time.

"Acquired Indebtedness" means Indebtedness of a Person or any of its Subsidiaries existing at the time such Person becomes a Restricted Subsidiary or at the time it merges or consolidates with the Company or any of its Restricted Subsidiaries or is assumed in connection with the acquisition of assets from such Person. Such Indebtedness will be deemed to have been Incurred at the time such Person becomes a Restricted Subsidiary or at the time it merges or consolidates with the Company or a Restricted Subsidiary or at the time such Indebtedness is assumed in connection with the acquisition of assets from such Person.

"Acquired Subsidiary" means any Subsidiary acquired by the Company or any other Subsidiary after the Issue Date in an Acquisition, and any Subsidiaries of such Acquired Subsidiary on the date of such Acquisition.

"Acquiring Subsidiary" means any Subsidiary formed by the Company or one of its Subsidiaries solely for the purpose of participating as the acquiring party in any Acquisition, and any Subsidiaries of such Acquiring Subsidiary acquired in such Acquisition.

"Acquisition" means any merger, consolidation, acquisition or lease of assets, acquisition of securities or business combination or acquisition, or any two or more of such transactions, if, upon the completion of such transaction or transactions, the Company or any Restricted Subsidiary thereof has acquired an interest in any Person who would be deemed to be a Restricted Subsidiary under this Indenture and was not a Restricted Subsidiary prior thereto.

"Additional Amounts" has the meaning assigned to it in Section 3.21(b).

"Additional Note Certificate" has the meaning assigned to it in Section 2.14(b).

"Additional Note Guarantors" means New Sunward Holding B.V., CEMEX Concretos, S.A. de C.V. and Empresas Tolteca de México, S.A. de C.V.

"Additional Note Supplemental Indenture" means a supplement to this Indenture duly executed and delivered by the Issuer, each Note Guarantor and the Trustee pursuant to Article IX providing for the issuance of Additional Notes.

"Additional Notes" has the meaning assigned to it in Section 2.14(a).

"Affiliate" means, with respect to any specified Person, any other Person who directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, such specified Person. The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise. For purposes of this definition, the terms "controlling," "controlled by" and "under common control with" have correlative meanings.

"Affiliate Transaction" has the meaning assigned to it in Section 3.18(a).

"Agent Members" has the meaning assigned to it in Section 2.7(b).

"Agents" means, collectively, the Registrar, any co-Registrar, the Paying Agents, the Transfer Agent and any other agent appointed by the Issuer hereunder.

"Applicable Procedures" means, with respect to any transfer or exchange of or for beneficial interests in a Global Note, the rules and procedures of DTC, Euroclear and Clearstream, as the case may be, that apply to such transfer or exchange, including the "Operating Procedures of the Euroclear System" and "Terms and Conditions Governing Use of Euroclear" of Euroclear and the "General Terms and Conditions of Clearstream Banking" and "Customer Handbook" of Clearstream.

"Asset Sale" means any direct or indirect sale, disposition, issuance, conveyance, transfer, lease (other than an operating lease entered into in the ordinary course of business), assignment or other transfer, including a Sale and Leaseback Transaction (each, a "disposition") by the Company or any Restricted Subsidiary of:

(a) any Capital Stock other than Capital Stock of the Company; or

(b) any property or assets (other than cash, Cash Equivalents or Capital Stock) of the Company or any Restricted Subsidiary;

Notwithstanding the preceding, the following will not be deemed to be Asset Sales:

(1) the disposition of all or substantially all of the assets of the Company and its Restricted Subsidiaries as permitted under Section 3.12;

(2) any disposition of equipment that is not usable or is obsolete or worn out equipment in the ordinary course of business or any disposition of inventory or goods (or other assets) held for sale or no longer used in the ordinary course of business;

(3) dispositions of assets in any fiscal year with a Fair Market Value not to exceed U.S.$25 million in the aggregate;

(4) for purposes of Section 3.12 only, the making or disposition of a Permitted Investment or Restricted Payment permitted under Section 3.11;

(5) a disposition to the Company or a Restricted Subsidiary, including a Person that is or will become a Restricted Subsidiary immediately after the disposition;

(6) the creation of a Lien permitted under this Indenture (other than a deemed Lien in connection with a Sale and Leaseback Transaction);

(7) (i) the disposition of Receivables Assets pursuant to a Qualified Receivables Transaction and (ii) the disposition of other accounts receivable in the ordinary course of business;

(8) the disposition of any asset constituted by a license of intellectual property in the ordinary course of business;

(9) the disposition of inventory pursuant to an Inventory Financing or similar arrangement that is otherwise permitted under this Indenture;

(10) the disposition of any asset compulsorily acquired by a governmental authority; and

(11) sales, transfers and other dispositions of Investments in joint ventures to the extent required by, or made pursuant to, customary buy/sell arrangements between the joint venture parties set forth in joint venture arrangements and similar binding arrangements.

"Asset Sale Offer" has the meaning assigned to it in Section 3.12(c).

"Asset Sale Offer Amount" has the meaning assigned to it in Section 3.12(c).

"Asset Sale Offer Notice" means notice of an Asset Sale Offer made pursuant to Section 3.12, which shall be mailed first class, postage prepaid, to each record Holder as shown on the Note Register within 20 days following the 365th day after the receipt of Net Cash Proceeds of any Asset Sale, with a copy to the Trustee, which notice shall govern the terms of the Asset Sale Offer, and shall state:

(1) the circumstances of the Asset Sale or Sales, the Net Cash Proceeds of which are included in the Asset Sale Offer, that an Asset Sale Offer is being made pursuant to Section 3.12(c), and that all Notes that are timely tendered will be accepted for payment;

(2) the Asset Sale Offer Amount and the Asset Sale Offer Payment Date, which date shall be a Business Day no earlier than 30 days nor later than 60 days from the date the Asset Sale Offer Notice is mailed (other than as may be required by law);

(3) that any Notes or portions thereof not tendered or accepted for payment will continue to accrue interest;

(4) that, unless the Company defaults in the payment of the Asset Sale Offer Amount with respect thereto, all Notes or portions thereof accepted for payment pursuant to the Asset Sale Offer shall cease to accrue interest from and after the Asset Sale Offer Payment Date;

(5) that any Holder electing to have any Notes or portions thereof purchased pursuant to the Asset Sale Offer will be required to surrender such Notes, with the form entitled "Option of Holder to Elect Purchase" on the reverse of such Notes completed, to the Paying Agent at the address specified in the notice prior to the close of business on the third Business Day preceding the Asset Sale Offer Payment Date;

(6) that any Holder shall be entitled to withdraw such election if the Paying Agent receives, not later than the close of business on the second Business Day preceding the Asset Sale Offer Payment Date, a facsimile transmission or letter, setting forth the name of the Holder, the principal amount of Notes delivered for purchase, and a statement that such Holder is withdrawing such Holder's election to have such Notes or portions thereof purchased pursuant to the Asset Sale Offer;

(7) that any Holder electing to have Notes purchased pursuant to the Asset Sale Offer must specify the principal amount that is being tendered for purchase, which principal amount must be U.S.$200,000 and in integral multiples of U.S.$1,000 in excess thereof;

(8) that any Holder of Certificated Notes whose Certificated Notes are being purchased only in part will be issued new Certificated Notes equal in principal amount to the unpurchased portion of the Certificated Note or Notes surrendered, which unpurchased portion will be equal in principal amount to U.S.$200,000 and in integral multiples of U.S.$1,000 in excess thereof;

(9) that the Trustee will return to the Holder of a Global Note that is being purchased in part, such Global Note with a notation on the schedule of increases or decreases thereof adjusting the principal amount thereof to be equal to the unpurchased portion of such Global Note; and

(10) any other information necessary to enable any Holder to tender Notes and to have such Notes purchased pursuant to Section 3.12.

"Asset Sale Offer Payment Date" has the meaning assigned to it in Section 3.12(f).

"Authenticating Agent" has the meaning assigned to it in Section 2.2(b).

"Authorized Agent" has the meaning assigned to it in Section 12.7(c).

"Axtel Share Forward Transactions" means (a) the Axtel share forward transaction that is governed by a long form confirmation originally dated January 22, 2009, as replaced by a long form confirmation dated September 28, 2010, as further replaced by a long form confirmation dated March 19, 2012, between Credit Suisse International and Centro Distribuidor de Cemento, S.A. de C.V. (References: External ID: 16059563R4-Risk ID: 10008383); and (b) the Axtel share forward transaction that is governed by a long form confirmation dated March 13, 2009, as replaced by a long form confirmation dated September 22, 2009, as replaced by a long form confirmation dated September 28, 2011, between BBVA Bancomer, S.A., Institución de Banca Múltiple, Grupo Financiero BBVA Bancomer and Centro Distribuidor de Cemento, S.A. de C.V. (Reference: EQS-1428-MX5371953); and, in each case, any replacements, amendments or renewals thereof that are entered into on then prevailing market terms with the underlying amounts not greater than the original underlying amounts.

"Bancomext Facility" means the U.S.$250,000,000 credit agreement ( *Crédito Simple*), dated October 14, 2008, as amended from time to time (*provided*, that the principal amount thereof does not increase above the principal amount outstanding as of August 14, 2009 (except by the amount of any capitalized interest if so provided by such facility and on those terms as of August 14, 2009) less the amount of any repayments and prepayments made in respect of such facility), among the Company, as borrower, Banco Nacional de Comercio Exterior, S.N.C., as lender, and CEMEX México, as guarantor, and secured by a mortgage of cement plants in Mérida, Yucatán, Mexico and Ensenada, Baja California, Mexico.

"Bankruptcy Event of Default" means:

(1) the entry by a court of competent jurisdiction of: (i) a decree or order for relief in respect of any Bankruptcy Party in an involuntary case or proceeding under any Bankruptcy Law or (ii) a decree or order (A) adjudging any Bankruptcy Party a bankrupt or insolvent, in *concurso mercantil* or *quiebra*, (B) approving as properly filed a petition seeking reorganization, *concurso mercantil*, arrangement, adjustment or composition of, or in respect of, any Bankruptcy Party under any Bankruptcy Law, (C) appointing a Custodian of any Bankruptcy Party or of any substantial part of the property of any Bankruptcy Party, or (D) ordering the winding-up or liquidation of the affairs of any Bankruptcy Party, and in each case, the continuance of any such decree or order for relief or any such other decree or order unstayed and in effect for a period of 60 consecutive calendar days; or

(2) (i) the commencement by any Bankruptcy Party of a voluntary case or proceeding under any Bankruptcy Law or of any other case or proceeding to be adjudicated a bankrupt or insolvent, in *concurso mercantil* or *quiebra*, (ii) the consent by any Bankruptcy Party to the entry of a decree or order for relief in respect of such Bankruptcy Party in an involuntary case or proceeding under any Bankruptcy Law or to the commencement of any bankruptcy or insolvency case or proceeding against any Bankruptcy Party, (iii) the filing by any Bankruptcy Party of a petition or answer or consent seeking reorganization, *concurso mercantil*, or relief under any Bankruptcy Law, (iv) the consent by any Bankruptcy Party to the filing of such petition or to the appointment of or taking possession by a Custodian of any Bankruptcy Party or of any substantial part of the property of any Bankruptcy Party, (v) the making by any Bankruptcy Party of an assignment for the benefit of creditors, (vi) the admission by any Bankruptcy Party in writing of its inability to pay its debts generally as they become due, or (vii) the approval by stockholders of any Bankruptcy Party of any plan or proposal for the liquidation or dissolution of such Bankruptcy Party, or (viii) the taking of corporate action by any Bankruptcy Party in furtherance of any action referred to in clauses (i) – (vii) above.

"Bankruptcy Law" means Title 11, U.S. Code or any similar Federal, state or non-U.S. law for the relief of debtors, including the Mexican *Ley de Concursos Mercantiles and* Spanish Law 22/2003 of 9 July (*Ley 22/2003 de 9 de julio, Concursal*), as amended.

"Bankruptcy Party" means the Company, the Issuer and any Significant Subsidiary of the Company or group of Subsidiaries that, taken together would constitute a Significant Subsidiary of the Company.

"Banobras Facility" means a revolving loan agreement (*Contrato de Apertura de Crédito en Cuenta Corriente*), dated April 22, 2009, among CEMEX Concretos, S.A. de C.V., as borrower and Banco Nacional de Obras y Servicios Públicos, S.N.C., as lender, as in effect on the Issue Date and as amended from time to time, and secured by a mortgage of Planta Yaqui in Hermosillo, Sonora, Mexico.

"Board of Directors" means, as to any Person, the board of directors, management committee or similar governing body of such Person or any duly authorized committee thereof.

"Business Day" means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City, Mexico City, Madrid, Amsterdam, London, Paris or Zurich are authorized or required by law, regulation or other governmental action to remain closed.

"Capital Stock" means:

(1) with respect to any Person that is a corporation, any and all shares, interests, participations or other equivalents (however designated and whether or not voting) of corporate stock, including each class of Common Stock and Preferred Stock of such Person;

(2) with respect to any Person that is not a corporation, any and all partnership or other equity or ownership interests of such Person; and

(3) any warrants, rights or options to purchase any of the instruments or interests referred to in clause (1) or (2) above, but excluding any Indebtedness exchangeable into such equity interest in existence on the Issue Date or Incurred pursuant to Section 3.9.

"Capitalized Lease Obligations" means, as to any Person, the obligations of such Person under a lease that are required to be classified and accounted for as capital lease obligations under GAAP. For purposes of the definition, the amount of such obligations at any date will be the capitalized amount of such obligations at such date, determined in accordance with GAAP.

"Cash Equivalents" means:

(1) marketable direct obligations issued by, or unconditionally guaranteed by, the United States government, the United Kingdom or any member nation of the European Union or issued by any agency thereof and backed by the full faith and credit of the United States, the United Kingdom, such member nation of the European Union or any European Union central bank, in each case maturing within one year from the date of acquisition thereof;

(2) marketable direct obligations issued by the Mexican government, or issued by any agency thereof, including but not limited to, *Certificados de la Tesorería de la Federación* (Cetes) or *Bonos de Desarrollo del Gobierno Federal* (Bondes), in each case, issued by the government of Mexico and maturing not later than one year after the acquisition thereof;

(3) marketable direct obligations issued by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof maturing within one year from the date of acquisition thereof and, at the time of acquisition, having one of the two highest ratings obtainable from either S&P or Fitch or any successor thereto;

(4) commercial paper or corporate debt obligations maturing no more than one year from the date of creation thereof and, at the time of acquisition, having a rating of at least A-1 or AAA from S&P, at least F-1 or AAA from Fitch or P-1 or Aaa from Moody's;

(5) demand deposits, certificates of deposit, time deposits or bankers' acceptances or other short-term unsecured debt obligations (and any cash or deposits in transit in any of the foregoing) maturing within one year

from the date of acquisition thereof issued by (a) any bank organized under the laws of the United States of America or any state thereof or the District of Columbia, the United Kingdom or any country of the European Union, (b) any U.S. branch of a non-U.S. bank having at the date of acquisition thereof combined capital and surplus of not less than U.S.$500 million, or (c) in the case of Mexican peso deposits, any financial institution in good standing with Banco de México organized under the laws of Mexico;

(6) repurchase obligations with a term of not more than seven days for underlying securities of the types described in clause (1) and (2) above entered into with any bank meeting the qualifications specified in clause (5) above;

(7) investments in money market funds which invest substantially all of their assets in securities of the types described in clauses (1) through (6), (8) and (9);

(8) certificates of deposit issued by any of Nacional Financiera, S.N.C., Banco Nacional de Comercio Exterior, S.N.C., Banco Nacional de Obras y Servicios Públicos, S.N.C. or any other development bank controlled by the Mexican government;

(9) any other debt instrument rated "investment grade" (or the local equivalent thereof according to local criteria in a country in which the Company or a Restricted Subsidiary operates and in which local pensions are permitted by law to invest) with maturities of 12 months or less from the date of acquisition; and

(10) Investments in mutual funds, managed by banks, with a local currency credit rating of at least MxAA by S&P or other equally reputable local rating agency, that invest principally in marketable direct obligations issued by the Mexican Government, or issued by any agency or instrumentality thereof.

In the case of Investments by any Restricted Subsidiary, Cash Equivalents will also include (a) investments of the type and maturity described in clauses (1) through (10) of any Restricted Subsidiary outside of Mexico in the country in which such Restricted Subsidiary operates, which Investments or obligors (or the parents of such obligors) have ratings described in such clauses or equivalents ratings from comparable foreign rating agencies, (b) local currencies and other short-term investments utilized by Restricted Subsidiaries in accordance with normal investment practices for cash management in investments analogous to the foregoing investments in clauses (1) through (10) and in this paragraph and (c) investments of the type described in clauses (1) through (9) maturing within one year of the Issue Date.

"Certificados Bursátiles" means debt securities issued by the Company guaranteed (por aval) by CEMEX México, S.A. de C.V. and Empresas Tolteca de México, S.A.

de C.V., in the Mexican capital markets with the approval of the Mexican National Banking and Securities Commission ( *Comisión Nacional Bancaria y de Valores*) and listed on the Mexican Stock Exchange ( *Bolsa Mexicana de Valores, S.A.B. de C.V.*).

"Certificated Note" means any Note issued in fully registered form, other than a Global Note, which shall be substantially in the form of Exhibit A hereto, with appropriate legends as specified in Section 2.8 and Exhibit A.

"Change of Control" means the beneficial ownership (within the meaning of Rule 13d-3 promulgated by the Commission under the Exchange Act) of twenty percent (20%) or more in voting power of the outstanding Voting Stock of the Company is acquired by any Person; *provided*, that the acquisition of beneficial ownership of Capital Stock of the Company by Lorenzo H. Zambrano or any member of his immediate family shall not constitute a Change of Control.

"Change of Control Notice" means notice of a Change of Control Offer made pursuant to Section 3.8, which shall be mailed first-class, postage prepaid, to each record Holder as shown on the Note Register within 30 days following the date upon which a Change of Control occurred, with a copy to the Trustee, which notice shall govern the terms of the Change of Control Offer and shall state:

(1) that a Change of Control has occurred, the circumstances or events causing such Change of Control and that a Change of Control Offer is being made pursuant to Section 3.8, and that all Notes that are timely tendered will be accepted for payment;

(2) the Change of Control Payment, and the Change of Control Payment Date, which date shall be a Business Day no earlier than 30 calendar days nor later than 60 calendar days subsequent to the date such notice is mailed (other than as may be required by law);

(3) that any Notes or portions thereof not tendered or accepted for payment will continue to accrue interest;

(4) that, unless the Issuer defaults in the payment of the Change of Control Payment with respect thereto, all Notes or portions thereof accepted for payment pursuant to the Change of Control Offer shall cease to accrue interest from and after the Change of Control Payment Date;

(5) that any Holder electing to have any Notes or portions thereof purchased pursuant to a Change of Control Offer will be required to tender such Notes, with the form entitled "Option of Holder to Elect Purchase" on the reverse of such Notes completed, to the Paying Agent at the address specified in the notice prior to the close of business on the third Business Day preceding the Change of Control Payment Date;

(6) that any Holder shall be entitled to withdraw such election if the Paying Agent receives, not later than the close of business on the second Business

Day preceding the Change of Control Payment Date, a facsimile transmission or letter, setting forth the name of the Holder, the principal amount of Notes delivered for purchase, and a statement that such Holder is withdrawing such Holder's election to have such Notes or portions thereof purchased pursuant to the Change of Control Offer;

(7) that any Holder electing to have Notes purchased pursuant to the Change of Control Offer must specify the principal amount that is being tendered for purchase, which principal amount must be U.S.$200,000 and in integral multiples of U.S.$1,000 in excess thereof;

(8) that any Holder of Certificated Notes whose Certificated Notes are being purchased only in part will be issued new Certificated Notes equal in principal amount to the unpurchased portion of the Certificated Note or Notes surrendered, which unpurchased portion will be equal in principal amount to U.S.$200,000 and in integral multiples of U.S.$1,000 in excess thereof;

(9) that the Trustee will return to the Holder of a Global Note that is being purchased in part, such Global Note with a notation on Schedule A thereof adjusting the principal amount thereof to be equal to the unpurchased portion of such Global Note; and

(10) any other information necessary to enable any Holder to tender Notes and to have such Notes purchased pursuant to Section 3.8(b).

"Change of Control Offer" has the meaning assigned to it in Section 3.8(b).

"Change of Control Payment" has the meaning assigned to it in Section 3.8(a).

"Change of Control Payment Date" has the meaning assigned to it in Section 3.8(b).

"Clearstream" means Clearstream Banking, *société anonyme*, or the successor to its securities clearance and settlement operations.

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

"Collateral" means "Transaction Security" as defined in the Intercreditor Agreement from time to time.

"Commission" means the U.S. Securities and Exchange Commission.

"Commodity Price Purchase Agreement" means, in respect of any Person, any forward contract, commodity swap agreement, commodity option agreement or other similar agreement or arrangement designed to protect such Person from fluctuations in commodity prices.

"Common Stock" of any Person means any and all shares, interests or other participations in, and other equivalents (however designated and whether voting or non-voting) of such Person's common equity interests, whether outstanding on the Issue Date or issued after the Issue Date, and includes, without limitation, all series and classes of such common equity interests.

"Company" means the party named as such in the introductory paragraph to this Indenture and its successors and assigns, including any Successor Company which becomes such in accordance with Article IV.

"Compensation Related Hedging Obligations" means (i) the obligations of any Person pursuant to any equity option contract, equity forward contract, equity swap, warrant, rights or other similar agreement designed to hedge risks or obligations relating to employee, director or consultant compensation, pension, benefits or similar activities of the Company and/or any of its Subsidiaries and (ii) the obligations of any Person pursuant to any agreement that requires another Person to make payments or deliveries that are otherwise required to be made by the first Person relating to employee, director or consultant compensation, pension, benefits or similar activities of the Company and/or any of its Subsidiaries, in each case in the ordinary course of business.

"Consolidated EBITDA" means, for any Person for any period, Consolidated Net Income for such Person for such period, plus the following, without duplication, to the extent deducted or added in calculating such Consolidated Net Income:

(1) Consolidated Income Tax Expense for such Person for such period;

(2) Consolidated Interest Expense for such Person for such period net of consolidated interest income for such period;

(3) Consolidated Non-cash Charges for such Person for such period;

(4) the amount of any nonrecurring restructuring charge or reserve deducted in such period in computing Consolidated Net Income;

(5) the net effect on income or loss in respect of Hedging Obligations or other derivative instruments, which shall include, for the avoidance of doubt, all amounts not excluded from Consolidated Net Income pursuant to the proviso in clause (9) thereof; and

(6) net income of such Person attributable to minority interests in Subsidiaries of such Person.

*less* (x) all non-cash credits and gains increasing Consolidated Net Income for such Person for such period and (y) all cash payments made by such Person and its Restricted Subsidiaries during such period relating to Consolidated Non-cash Charges that were added back in determining Consolidated EBITDA in any prior period.

"Consolidated Fixed Charge Coverage Ratio" means, for any Person as of any date of determination (the "Fixed Charge Calculation Date"), the ratio of the aggregate amount of Consolidated EBITDA of such Person for the four most recent full fiscal quarters for which financial statements are available ending prior to the date of such determination (the "Four Quarter Period") to Consolidated Fixed Charges for such Person for such Four Quarter Period. For purposes of making the computation referred to above, Material Acquisitions and Material Dispositions (as determined in accordance with GAAP) that have been made by the Company or any of its Restricted Subsidiaries during the Four Quarter Period or subsequent to such Four Quarter Period and on or prior to or simultaneously with the Fixed Charge Calculation Date shall be calculated on a *pro forma* basis assuming that all such Material Acquisitions and Material Dispositions (and the change in any associated fixed charge obligations and the change in Consolidated EBITDA resulting therefrom) had occurred on the first day of the Four Quarter Period. If since the beginning of such period any Person that subsequently became a Restricted Subsidiary or was merged with or into the Company or any of its Restricted Subsidiaries since the beginning of such period shall have made any Material Acquisition or Material Disposition that would have required adjustment pursuant to this definition, then the Consolidated Fixed Charge Coverage Ratio shall be calculated giving *pro forma* effect thereto.

For purposes of this definition, whenever *pro forma* effect is to be given to a Material Acquisition or Material Disposition and the amount of income or earnings relating thereto or with respect to other *pro forma* calculations under this definition, such *pro forma* calculations shall be made in good faith by a responsible financial or accounting officer of the Company. If any Indebtedness bears a floating rate of interest and is being given *pro forma* effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the Fixed Charge Calculation Date had been the applicable rate for the entire period (taking into account any Hedging Obligations applicable to such Indebtedness). Interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by a responsible financial or accounting officer of the Company to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP. For purposes of making the computation referred to above, interest on any Indebtedness under a revolving credit facility computed on a *pro forma* basis shall be computed based upon the average daily balance of such Indebtedness during the applicable period except as set forth in the first paragraph of this definition. Interest on Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a eurocurrency interbank offered rate, or other rate, shall be deemed to have been based upon the rate actually chosen, or, if none, then based upon such optional rate chosen as the Company may designate.

Furthermore, in calculating "Consolidated Fixed Charges" for purposes of determining the denominator (but not the numerator) of this "Consolidated Fixed Charge Coverage Ratio,"

(a) interest on outstanding Indebtedness determined on a fluctuating basis as of the date of determination and which will continue to be so determined thereafter will be deemed to have accrued at a fixed rate per annum equal to the rate of interest on such Indebtedness in effect on such date of determination;

(b) if interest on any Indebtedness actually Incurred on such date of determination may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a eurocurrency interbank offered rate, or other rates, then the interest rate in effect on such date of determination will be deemed to have been in effect during the Four Quarter Period; and

(c) notwithstanding clause (a) above, interest on Indebtedness determined on a fluctuating basis, to the extent such interest is covered by Hedging Obligations, will be deemed to accrue at the rate per annum resulting after giving effect to the operation of such agreements.

"Consolidated Fixed Charges" means, for any Person for any period, the sum, without duplication, of:

(1) Consolidated Interest Expense for such Person for such period, plus

(2) to the extent not included in (1) above, payments during such period in respect of the financing costs of financial derivatives in the form of equity swaps, plus

(3) the product of:

(a) the amount of all cash and non-cash dividend payments on any series of Preferred Stock or Disqualified Capital Stock of such Person (other than dividends paid in Qualified Capital Stock) or any Subsidiary of such Person (Restricted Subsidiary in the case of the Company) paid, accrued or scheduled to be paid or accrued during such period, excluding dividend payments on Preferred Stock or Disqualified Capital Stock paid, accrued or scheduled to be paid to such Person or another Subsidiary (Restricted Subsidiary in the case of the Company), times

(b) a fraction, the numerator of which is one and the denominator of which is one minus the then current effective tax rate of such Person in its principal taxpaying jurisdiction (Mexico, in the case of the Company), expressed as a decimal.

"Consolidated Income Tax Expense" means, with respect to any Person for any period, the provision for federal, state and local income and asset taxes payable, including current and deferred taxes, by such Person and its Subsidiaries (Restricted Subsidiaries in the case of the Company) for such period as determined on a consolidated basis in accordance with GAAP.

"Consolidated Interest Expense" means, for any Person for any period, the sum of, without duplication determined on a consolidated basis in accordance with GAAP:

(1) the aggregate of cash and non-cash interest expense of such Person and its Subsidiaries (Restricted Subsidiaries in the case of the Company) for such

period determined on a consolidated basis in accordance with GAAP, including, without limitation the following for such Person and its Subsidiaries (Restricted Subsidiaries in the case of the Company) whether or not interest expense in accordance with GAAP:

(a) any amortization or accretion of debt discount or any interest paid on Indebtedness of such Person and its Subsidiaries (Restricted Subsidiaries in the case of the Company) in the form of additional Indebtedness,

(b) any amortization of deferred financing costs; *provided*, that any such amortization resulting from costs incurred prior to the Issue Date shall be excluded for the calculation of Consolidated Interest Expense,

(c) the net costs under Hedging Obligations relating to Indebtedness (including amortization of fees but excluding foreign exchange adjustments on the notional amounts of the Hedging Obligations),

(d) all capitalized interest,

(e) the interest portion of any deferred payment obligation,

(f) commissions, discounts and other fees and charges Incurred in respect of letters of credit or bankers' acceptances or in connection with sales or other dispositions of accounts receivable and related assets,

(g) any interest expense on Indebtedness of another Person that is Guaranteed by such Person or one of its Subsidiaries (Restricted Subsidiary in the case of the Company) or secured by a Lien on the assets of such Person or one of its Subsidiaries (Restricted Subsidiaries in the case of the Company), whether or not such Guarantee or Lien is called upon, and

(h) any interest accrued in respect of Indebtedness without a maturity date; and

(2) the interest component of Capitalized Lease Obligations paid, accrued and/or scheduled to be paid or accrued by such Person and its Subsidiaries (Restricted Subsidiaries in the case of the Company) during such period.

"Consolidated Net Income" means, with respect to any Person for any period, the aggregate net income (or loss) of such Person and its Subsidiaries for such period on a consolidated basis (after deducting (i) the portion of such net income attributable to minority interests in Subsidiaries of such Person and (ii) any interest paid or accrued in respect of Indebtedness without a maturity date), determined in accordance with GAAP; *provided*, that there shall be excluded therefrom:

(1) net after-tax gains and losses from Asset Sale transactions or abandonments or reserves relating thereto;

(2) net after-tax items classified as extraordinary gains or losses;

(3) the net income (but not loss) of any Subsidiary of such Person (non-Note Guarantor Subsidiary in the case of the Company) to the extent that a corresponding amount could not be distributed to such Person at the date of determination as a result of any restriction pursuant to the constituent documents of such Subsidiary (non-Note Guarantor Subsidiary in the case of the Company) or any law, regulation, agreement or judgment applicable to any such distribution;

(4) any net income (loss) of any Person (other than the Company) if such Person is not a Restricted Subsidiary, except that the Company's equity in the net income of any such Person for such period shall be included in such Consolidated Net Income up to the aggregate amount of cash distributed by such Person during such period to the Company or a Restricted Subsidiary as a dividend or other distribution (subject, in the case of a dividend or other distribution to a Restricted Subsidiary, to the limitations contained in this clause);

(5) [Reserved];

(6) any restoration to income of any contingency reserve, except to the extent that provision for such reserve was made out of Consolidated Net Income accrued at any time following the Issue Date;

(7) any gain (or loss) from foreign exchange translation or change in net monetary position;

(8) any gain (or loss) from the cumulative effect of changes in accounting principles; and

(9) any net gain or loss (after any offset) resulting in such period from Hedging Obligations or other derivative instruments; *provided*, that the net effect on income or loss (including in any prior periods) shall be included upon any termination or early extinguishment of such Hedging Obligations or other derivative instrument, other than any Hedging Obligations with respect to Indebtedness (that is not itself a Hedging Obligation) and that are extinguished concurrently with the termination or other prepayment of such Indebtedness.

"Consolidated Non-cash Charges" means, for any Person for any period, the aggregate depreciation, amortization (including amortization of goodwill and other Intangible Assets) and other non-cash expenses or losses of such Person and its Subsidiaries (Restricted Subsidiaries in the case of the Company) for such period, determined on a consolidated basis in accordance with GAAP (excluding any such charge which constitutes an accrual of or a reserve for cash charges for any future period or the amortization of a prepaid cash expense paid in a prior period).

"Consolidated Tangible Assets" means, for any Person at any time, the total consolidated assets of such Person and its Subsidiaries (Restricted Subsidiaries in the case of the Company) as set forth on the balance sheet as of the most recent fiscal quarter of such Person, prepared in accordance with GAAP, less Intangible Assets.

"Corporate Trust Office" means the principal office of the Trustee at which at any time its corporate trust business shall be administered, which office at the date hereof is located at 101 Barclay Street, 4E, New York, New York 10286, Attention: International Corporate Trust, or such other address as the Trustee may designate from time to time by notice to the Holders, the Issuer and the Company.

"Covenant Defeasance" has the meaning assigned to it in Section 8.1(c).

"Covenant Suspension Event" has the meaning assigned to it in Section 3.22(b).

"Currency Agreement" means, in respect of any Person, any foreign exchange contract, currency swap agreement or other similar agreement as to which such Person is a party designed to hedge foreign currency risk of such Person.

"Custodian" means any receiver, trustee, *conciliador*, assignee, liquidator, sequestrator or similar official under any Bankruptcy Law.

"Default" means an event or condition the occurrence of which is, or with the lapse of time or the giving of notice or both would be, an Event of Default.

"Defaulted Interest" has the meaning assigned to it in Section 2.13 and Section 1, paragraph 2 of the Form of Reverse Side of Note contained in Exhibit A hereto.

"Designated Non-cash Consideration" means the Fair Market Value of non-cash consideration received by the Company or a Restricted Subsidiary in connection with an Asset Sale that is so designated as Designated Non-cash Consideration pursuant to an Officer's Certificate setting forth the basis of such valuation.

"Designation" has the meaning assigned to it in Section 3.14(a).

"Designation Amount" has the meaning assigned to it in clause (iii) of Section 3.14(a).

"Disposition" means, with respect to any property, any sale, lease, Sale and Leaseback Transaction, assignment, conveyance, transfer or other disposition thereof.

"Disqualified Capital Stock" means that portion of any Capital Stock which, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable at the option of the Holder thereof), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is

redeemable at the sole option of the Holder thereof, in any case, on or prior to the 91st day after the final maturity date of the Notes, but excluding with respect to Mexican companies, any shares of such Mexican company that are part of the variable portion of its Capital Stock and that are redeemable under the Mexican General Law of Business Corporations (*Ley General de Sociedades Mercantiles*).

"Distribution Compliance Period" means, in respect of any Regulation S Global Note (or Certificated Note issued in respect thereof pursuant to Section 2.7(c)), the 40 consecutive days beginning on and including the later of (a) the day on which any Notes represented thereby are offered to persons other than distributors (as defined in Regulation S) pursuant to Regulation S or (b) the issue date for such Notes.

"DTC" means The Depository Trust Company, its nominees and their respective successors and assigns, or such other depositary institution hereinafter appointed by the Company that is a clearing agency registered under the Exchange Act.

"Equity Offering" has the meaning assigned to it in Section 5 of the Form of Reverse Side of Note contained in Exhibit A hereto.

"Euroclear" means Euroclear Bank S.A./N.V., as operator of the Euroclear System, N.V., or its successor in such capacity.

"Event of Default" has the meaning assigned to it in Section 6.1.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, or any successor statute or statutes thereto.

"Existing Senior Notes" means the U.S. Dollar-denominated 9.50% Senior Secured Notes due 2016 guaranteed by the Company, the Euro-denominated 9.625% Senior Secured Notes due 2017 guaranteed by the Company, the U.S. Dollar-denominated 9.25% Senior Secured Notes due 2020 guaranteed by the Company, the Euro-denominated 8.875% Senior Secured Notes due 2017 guaranteed by the Company, the U.S. Dollar-denominated 9.000% Senior Secured Notes due 2018 issued by the Company, the U.S. Dollar-denominated Floating Rate Senior Secured Notes due 2015 issued by the Company, the U.S. Dollar-denominated 9.875% Senior Secured Notes due 2019 guaranteed by the Company, the Euro-denominated 9.875% Senior Secured Notes due 2019 guaranteed by the Company and the U.S. Dollar-denominated 9.50% Senior Secured Notes due 2018 issued by the Company.

"Facilities Agreement" means the facilities agreement, dated as of September 17, 2012, entered into among the Company and certain of its Subsidiaries, the financial institutions and noteholders party thereto, Citibank International PLC, as new administrative agent, and the Security Agent, as such agreement may be amended, modified or waived from time to time.

"Facilities Agreement Indebtedness" means the Indebtedness that is subject to and outstanding under the Facilities Agreement.

"Fair Market Value" means, with respect to any asset, the price (after taking into account any liabilities relating to such assets) which could be negotiated in an arm's-length free market transaction, for cash, between a willing seller and a willing and able buyer, neither of which is under any compulsion to complete the transaction. Fair Market Value shall be determined, except as otherwise provided, by the Company in good faith.

"Fitch" means Fitch Ratings and any successor to its rating agency business.

"Four Quarter Period" has the meaning assigned to it in the definition of "Consolidated Fixed Charge Coverage Ratio" above.

"Free Reserves Available for Distribution" has the meaning assigned to it in Section 10.6(c).

"French Note Guarantor" has the meaning assigned to it in Section 10.5(a).

"GAAP" means IFRS as in effect on September 17, 2012. At any time, and from time to time, after the Issue Date, the Company may elect to apply IFRS as in effect at such time in lieu of GAAP and, upon any such election, references herein to GAAP shall thereafter be construed to mean IFRS as in effect on the date of such election; *provided*, that any such election, once made, shall be irrevocable. The Company shall give notice of any such election to the Trustee.

"Global Note" means any Note issued in fully registered form to DTC (or its nominee), as depositary for the beneficial owners thereof, which shall be substantially in the form of Exhibit A, with appropriate legends as specified in Section 2.8 and Exhibit A hereto.

"Guarantee" means any obligation, contingent or otherwise, of any Person directly or indirectly guaranteeing any Indebtedness of any other Person:

(1) to purchase or pay, or advance or supply funds for the purchase or payment of, such Indebtedness of such other Person, whether arising by virtue of partnership arrangements, or by agreement to keep-well, to purchase assets, goods, securities or services, to take-or-pay, or to maintain financial statement conditions or otherwise, or

(2) entered into for purposes of assuring in any other manner the obligee of such Indebtedness of the payment thereof or to protect such obligee against loss in respect thereof, in whole or in part,

*provided*, that "Guarantee" will not include endorsements for collection or deposit in the ordinary course of business. "Guarantee" used as a verb has a corresponding meaning.

"Guaranteed Obligations" has the meaning assigned to it in Section 10.1(a).

"Hedging Obligations" means the obligations of any Person pursuant to any Interest Rate Agreement, Currency Agreement, Commodity Price Purchase Agreement or any Transportation Agreement, in each case, not entered into for speculative purposes.

"Holder" means the Person in whose name a Note is registered in the Note Register.

"IFRS" means the International Financial Reporting Standards as issued by the International Accounting Standards Board.

"Incur" means, with respect to any Indebtedness or other obligation of any Person, to create, issue, incur (including by conversion, exchange or otherwise), assume, Guarantee or otherwise become liable in respect of such Indebtedness or other obligation on the balance sheet of such Person (and "Incurrence," "Incurred" and "Incurring" will have meanings correlative to the preceding).

"Indebtedness" means with respect to any Person, without duplication:

(1) the principal amount (or, if less, the accreted value) of all obligations of such Person for borrowed money;

(2) the principal amount (or, if less, the accreted value) of all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, including any perpetual bonds, debenture notes or similar instruments without regard to maturity date;

(3) all Capitalized Lease Obligations of such Person;

(4) all obligations of such Person issued or assumed as the deferred purchase price of property, all conditional sale obligations and all payment obligations under any title retention agreement (but excluding trade accounts payable and other accrued liabilities accounted for as current liabilities (in accordance with GAAP) arising in the ordinary course of business) to the extent of any reimbursement obligations in respect thereof;

(5) reimbursement obligations with respect to letters of credit, banker's acceptances or similar credit transactions;

(6) Guarantees and other contingent obligations of such Person in respect of Indebtedness referred to in clauses (1) through (5) above and clauses (8) through (10) below;

(7) all Indebtedness of any other Person of the type referred to in clauses (1) through (6) which is secured by any Lien on any property or asset of the first Person, the amount of such Indebtedness being deemed to be the lesser of the Fair Market Value of such property or asset or the amount of the Indebtedness so secured;

(8) all obligations under Hedging Obligations or other derivatives of such Person;

(9) all liabilities (contingent or otherwise) of such Person in connection with a sale or other disposition of accounts receivable and related assets (not including Qualified Receivables Transactions), irrespective of their treatment under GAAP or IFRS; and

(10) all Disqualified Capital Stock issued by such Person with the amount of Indebtedness represented by such Disqualified Capital Stock being equal to the greater of its voluntary or involuntary liquidation preference and its maximum fixed repurchase price, but excluding accrued dividends, if any; *provided*, that:

(a) if the Disqualified Capital Stock does not have a fixed repurchase price, such maximum fixed repurchase price will be calculated in accordance with the terms of the Disqualified Capital Stock as if the Disqualified Capital Stock were purchased on any date on which Indebtedness will be required to be determined pursuant to this Indenture, and

(b) if the maximum fixed repurchase price is based upon, or measured by, the fair market value of the Disqualified Capital Stock, the fair market value will be the Fair Market Value thereof.

"Indenture" means this Indenture as amended or supplemented from time to time, including the Schedule and Exhibits hereto.

"Intangible Assets" means with respect to any Person all unamortized debt discount and expense, unamortized deferred charges, goodwill, patents, trademarks, service marks, trade names, copyrights and all other items which would be treated as intangibles on the consolidated balance sheet of such Person prepared in accordance with GAAP.

"Intercreditor Agreement" means the intercreditor agreement, dated as of September 17, 2012, entered into among the Company and certain of its Subsidiaries, the financial institutions and noteholders party thereto, Citibank International PLC, as facility agent, and the Security Agent, as such agreement may be amended from time to time.

"Interest Payment Date" means the stated due date of an installment of interest on the Notes as specified in the Form of Face of Note contained in Exhibit A hereto.

"Interest Rate Agreement" of any Person means any interest rate protection agreement (including, without limitation, interest rate swaps, caps, floors, collars, derivative instruments and similar agreements) and/or other types of hedging agreements designed to hedge interest rate risk of such Person.

"Inventory Financing" means a financing arrangement pursuant to which the Company or any of its Restricted Subsidiaries sells inventory to a bank or other institution (or a special purpose vehicle or partnership incorporated or established by or on behalf of such bank or other institution or an Affiliate of such bank or other institution) and has an obligation to repurchase such inventory to the extent that it is not sold to a third party within a specified period.

"Investment" means, with respect to any Person, any (1) direct or indirect loan, advance or other extension of credit (including, without limitation, a Guarantee) to any other Person, (2) capital contribution (by means of any transfer of cash or other property to others or any payment for property or services for the account or use of others) to any other Person, or (3) purchase or acquisition by such Person of any Capital Stock, bonds, notes, debentures or other securities or evidences of Indebtedness issued by any other Person. "Investment" will exclude accounts receivable, extensions of credit in connection with supplier or customer financings consistent with industry or past practice, advance payment of capital expenditures arising in the ordinary course of business, deposits arising in the ordinary course of business and transactions (other than (i) any sale, lease, license, transfer or other disposal and (ii) the granting or creation of a Lien or the Incurring or permitting to subsist of Indebtedness) conducted in the ordinary course of business on arm's-length terms.

For purposes of Section 3.11, the Company will be deemed to have made an "Investment" in an Unrestricted Subsidiary at the time of its Designation, which will be valued at the Fair Market Value of the sum of the net assets of such Unrestricted Subsidiary multiplied by the percentage equity ownership of the Company and its Restricted Subsidiaries in such designated Unrestricted Subsidiary at the time of its Designation and the amount of any Indebtedness of such Unrestricted Subsidiary or owed to the Company or any Restricted Subsidiary immediately following such Designation. Any property transferred to or from an Unrestricted Subsidiary will be valued at its Fair Market Value at the time of such transfer. If the Company or any Restricted Subsidiary sells or otherwise disposes of any Capital Stock of a Restricted Subsidiary (including any issuance and sale of Capital Stock by a Restricted Subsidiary) such that, after giving effect to any such sale or disposition, such Restricted Subsidiary would cease to be a Subsidiary of the Company, the Company will be deemed to have made an Investment on the date of any such sale or disposition equal to sum of the Fair Market Value of the Capital Stock of such former Restricted Subsidiary held by the Company or any Restricted Subsidiary immediately following such sale or other disposition and the amount of any Indebtedness of such former Restricted Subsidiary Guaranteed by the Company or any Restricted Subsidiary or owed to the Company or any other Restricted Subsidiary immediately following such sale or other disposition. The acquisition by the Company or any Restricted Subsidiary of the Company of a Person that holds an Investment in a third Person will be deemed to be an Investment by the Company or such Restricted Subsidiary in such third Person in an amount equal to the Fair Market Value of the Investments held by the acquired Person in such third Person. Except as otherwise provided in this Indenture, the amount of an Investment will be determined at the time the Investment is made without giving effect to subsequent changes in value.

"Investment Grade Rating" means a rating equal to or higher than BBB- (or the equivalent) by Fitch, Baa3 (or the equivalent) by Moody's and BBB- (or the equivalent) by S&P.

"Investment Return" means, in respect of any Investment (other than a Permitted Investment) made after the Issue Date by the Company or any Restricted Subsidiary:

(1) the cash proceeds received by the Company upon the sale, liquidation or repayment of such Investment or, in the case of a Guarantee, the amount of the Guarantee upon the unconditional release of the Company and its Restricted Subsidiaries in full, less any payments previously made by the Company or any Restricted subsidiary in respect of such Guarantee;

(2) in the case of the Revocation of the Designation of an Unrestricted Subsidiary, an amount equal to the lesser of:

(a) the Company's Investment in such Unrestricted Subsidiary at the time of such Revocation;

(b) that portion of the Fair Market Value of the net assets of such Unrestricted Subsidiary at the time of Revocation that is proportionate to the Company's equity interest in such Unrestricted Subsidiary at the time of Revocation; and

(c) the Designation Amount with respect to such Unrestricted Subsidiary upon its Designation which was treated as a Restricted Payment;

(3) in the event the Company or any Restricted Subsidiary makes any Investment in a Person that, as a result of or in connection with such Investment, becomes a Restricted Subsidiary, the existing Investment of the Company and its Restricted Subsidiaries in such Person,

in the case of each of (1), (2) and (3), up to the amount of such Investment that was treated as a Restricted Payment under Section 3.11 less the amount of any previous Investment Return in respect of such Investment.

"Issue Date" means the first date of issuance of the Notes under this Indenture and following a Partial Covenant Suspension Event or a Covenant Suspension Event, except under "*Optional Redemption for Changes in Withholding Taxes*" under clause (5) in Exhibit A hereto, Section 3.22 and the definition of "Permitted Liens," the most recent Partial Covenant Reversion Date or Reversion Date, as applicable.

"Issue Date Notes" means the U.S.$1,500,000,000 aggregate principal amount of Notes originally issued on the Issue Date, and any replacement Notes issued therefor in accordance with this Indenture.

"Issuer" means the party named as such in the introductory paragraph to this Indenture and its successors and assigns.

"Issuer Order" has the meaning assigned to it in Section 2.2(c).

"Legal Defeasance" has the meaning assigned to it in Section 8.1(b).

"Legal Holiday" has the meaning assigned to it in Section 12.6.

"Lien" means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such asset. The Company or any

Restricted Subsidiary shall be deemed to own, subject to a Lien, any asset that it has acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement, Capitalized Lease Obligations or other title retention lease relating to such asset, or any account receivable transferred by it with recourse (including any such transfer subject to a holdback or similar arrangement that effectively imposes the risk of collectability on the transferor).

"Material Acquisition" means:

(1) an Investment by the Company or any Restricted Subsidiary in any other Person pursuant to which such Person will become a Restricted Subsidiary, or will be merged with or into the Company or any Restricted Subsidiary;

(2) the acquisition by the Company or any Restricted Subsidiary of the assets of any Person (other than a Subsidiary of the Company) which constitute all or substantially all of the assets of such Person or comprises any division or line of business of such Person or any other properties or assets of such Person other than in the ordinary course of business; or

(3) any Revocation with respect to an Unrestricted Subsidiary;

in each case which involves an Investment, Designation or payment of consideration in excess of U.S.$25,000,000 (or the equivalent in other currencies).

"Material Disposition" means any Asset Sale and, whether or not constituting an Asset Sale, (1) any sale or other disposition of Capital Stock, (2) any Designation with respect to an Unrestricted Subsidiary and (3) any sale or other disposition of property or assets excluded from the definition of Asset Sale by clause (4) of that definition, in each case which involves an Investment, Designation or payment of consideration in excess of U.S.$25,000,000 (or the equivalent in other currencies).

"Maturity Date" means October 12, 2022.

"Moody's" means Moody's Investors Service, Inc. and any successor to its rating agency business.

"Net Cash Proceeds" means, with respect to any Asset Sale, the proceeds in the form of cash or Cash Equivalents, including payments in respect of deferred payment obligations when received in the form of cash or Cash Equivalents received by the Company or any of its Restricted Subsidiaries from such Asset Sale, net of:

(1) reasonable out-of-pocket expenses and fees relating to such Asset Sale (including, without limitation, legal, accounting and investment banking fees and sales commissions);

(2) taxes paid or payable in respect of such Asset Sale after taking into account any reduction in consolidated tax liability due to available tax credits or deductions and any tax sharing arrangements;

(3) repayment of Indebtedness secured by a Lien permitted under this Indenture that is required to be repaid in connection with such Asset Sale; and

(4) appropriate amounts to be provided by the Company or any Restricted Subsidiary, as the case may be, as a reserve, in accordance with GAAP, against any liabilities associated with such Asset Sale and retained by the Company or any Restricted Subsidiary, as the case may be, after such Asset Sale, including, without limitation, pension and other post-employment benefit liabilities, liabilities related to environmental matters and liabilities under any indemnification obligations associated with such Asset Sale, but excluding any reserves with respect to Indebtedness.

"Non-U.S. Person" means a person who is not a U.S. person, as defined in Regulation S.

"Note Custodian" means the custodian with respect to any Global Note appointed by DTC, or any successor Person thereto, and shall initially be the Trustee.

"Note Guarantee" means any guarantee of the Issuer's Obligations under this Indenture and the Notes by any Note Guarantor pursuant to Article X.

"Note Guarantors" means (i) each of the Company and its Restricted Subsidiaries that executes this Indenture as a Note Guarantor or an Additional Note Guarantor and (ii) each of the Company's Restricted Subsidiaries that in the future executes a supplemental indenture in which such Restricted Subsidiary agrees to be bound by the terms of this Indenture as a Note Guarantor, and their respective successors and assigns; provided, that any Person constituting a Note Guarantor as described above shall cease to constitute a Note Guarantor when its respective Note Guarantee is released in accordance with the terms of this Indenture.

"Note Register" has the meaning assigned to it in Section 2.3(a).

"Notes" means any of the Issuer's 9.375% Senior Secured Notes due 2022 issued and authenticated pursuant to this Indenture.

"Obligations" means, with respect to any Indebtedness, any principal, interest (including, without limitation, Post-Petition Interest), penalties, fees, indemnifications, reimbursements, damages, and other liabilities payable under the documentation governing such Indebtedness, including, in the case of the Notes and the Note Guarantees, this Indenture.

"Officer" means, when used in connection with any action to be taken by the Issuer or a Note Guarantor, as the case may be, the Chairman of the Board, the Chief Executive Officer, the President, the Chief Financial Officer, any Vice President, the Treasurer, the Controller, the Secretary or an attorney-in-fact of the Issuer or such Note Guarantor, as the case may be.

"Officer's Certificate" means a certificate signed on behalf of a Person by an Officer of such Person, who must be the principal executive officer, the principal financial officer, the treasurer, the Vice President – Corporate Finance, the principal accounting officer or an attorney-in-fact of such Person, that meets the requirements set forth in this Indenture.

"Opinion of Counsel" means a written opinion of counsel, who, unless otherwise indicated in this Indenture, may be an employee of or counsel for the Issuer or any Note Guarantor, and who shall be reasonably acceptable to the Trustee.

"Outstanding" means, as of the date of determination, all Notes theretofore authenticated and delivered under this Indenture, *except*:

(1) Notes theretofore canceled by the Trustee or delivered to the Trustee for cancellation;

(2) Notes, or portions thereof, for the payment, redemption or, in the case of an Asset Sale Offer or Change of Control Offer, purchase of which, money in the necessary amount has been theretofore deposited with the Trustee or any Paying Agent (other than the Issuer or an Affiliate of the Issuer) in trust or set aside and segregated in trust by the Issuer or an Affiliate of the Issuer (if the Issuer or such Affiliate is acting as the Paying Agent) for the Holders of such Notes; *provided*, that if Notes (or portions thereof) are to be redeemed or purchased, notice of such redemption or purchase has been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee has been made;

(3) Notes which have been surrendered pursuant to Section 2.9 or Notes in exchange for which or in lieu of which other Notes have been authenticated and delivered pursuant to this Indenture, other than any such Notes in respect of which there shall have been presented to the Trustee proof satisfactory to it that such Notes are held by a protected purchaser in whose hands such Notes are valid obligations of the Issuer; and

(4) solely to the extent provided in Article VIII, Notes which are subject to Legal Defeasance or Covenant Defeasance as provided in Article VIII;

*provided, however,* that in determining whether the Holders of the requisite aggregate principal amount of the Outstanding Notes have given any request, demand, authorization, direction, notice, consent or waiver hereunder, Notes owned by the Issuer, a Note Guarantor or any other obligor upon the Notes or any Affiliate of the Issuer or of such other obligor shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Notes which a Trust Officer of the Trustee actually knows to be so owned shall be so disregarded. Notes so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Notes and that the pledgee is not the Issuer or any other obligor upon the Notes or any Affiliate of the Issuer or of such other obligor.

"Partial Covenant Reversion Date" has the meaning set forth under Section 3.22(e).

"Partial Covenant Suspension Date" has the meaning set forth under Section 3.22(c).

"Partial Covenant Suspension Event" has the meaning set forth under Section 3.22(a).

"Partial Suspended Covenants" has the meaning set forth under Section 3.22(a).

"Partial Suspension Period" has the meaning set forth under Section 3.22(e).

"Paying Agent" has the meaning assigned to it in Section 2.3(a).

"Permitted Asset Swap Transaction" means a transaction consisting substantially of the concurrent (i) disposition by the Company or any of its Restricted Subsidiaries of any asset, property or cash consideration (other than a Restricted Subsidiary) in exchange for assets, property or cash consideration transferred to the Company or a Restricted Subsidiary, to be used in a Permitted Business or (ii) disposition by the Company or any of its Restricted Subsidiaries of Capital Stock of a Restricted Subsidiary in exchange for Capital Stock of another Restricted Subsidiary or of Capital Stock of any Person that becomes a Restricted Subsidiary after giving effect to such transaction; *provided*, that any cash or Cash Equivalents received in such a transaction shall constitute Net Cash Proceeds to be applied in accordance with Section 3.12.

"Permitted Business" means the business or businesses conducted by the Company and its Restricted Subsidiaries as of the Issue Date and any business ancillary, complementary or related thereto or any other business that would not constitute a substantial change to the general nature of its business from that carried on as of the Issue Date.

"Permitted Indebtedness" has the meaning set forth in Section 3.9(b).

"Permitted Investments" means:

(1) Investments by the Company or any Restricted Subsidiary in any Person that is, or that result in any Person becoming, immediately after such Investment, a Restricted Subsidiary or constituting a merger or consolidation of such Person into the Company or with or into a Restricted Subsidiary;

(2) any Investment in the Company;

(3) Investments in cash and Cash Equivalents;

(4) any extension, modification or renewal of any Investments existing as of the Issue Date (but not Investments involving additional advances, contributions or other investments of cash or property or other increases thereof, other than as a result of the accrual or accretion of interest or original issue discount or payment-in-kind pursuant to the terms of such Investment as of the Issue Date);

(5) Investments permitted pursuant to clause (ii), (vi) or (vii) of Section 3.18(b);

(6) Investments received as a result of the bankruptcy or reorganization of any Person or taken in settlement of or other resolution of claims or disputes, and, in each case, extensions, modifications and renewals thereof;

(7) Investments made by the Company or its Restricted Subsidiaries as a result of non-cash consideration permitted to be received in connection with an Asset Sale made in compliance with Section 3.12;

(8) Investments in the form of Hedging Obligations or Compensation Related Hedging Obligations permitted under clause (iv) of Section 3.9(b);

(9) Investments in existence on the Issue Date or made pursuant to binding commitments in effect on the Issue Date or any Investment consisting of any extension, modification or renewal of any Investment existing on the Issue Date; *provided*, that the amount of any such Investment may be increased (a) as required by the terms of such Investment as in existence on the Issue Date or (b) as otherwise permitted by this Indenture;

(10) Investments by the Company or any Restricted Subsidiary in a Receivables Entity in connection with a Qualified Receivables Transaction which does not constitute an Asset Sale by virtue of clause (7) of the definition thereof; *provided, however*, that any such Investments are made only in the form of Receivables Assets;

(11) Investments in marketable securities or instruments, to fund the Company's or a Restricted Subsidiary's pension and other employee-related obligations in the ordinary course of business pursuant to compensation arrangements approved by the Board of Directors or senior management of the Company;

(12) any Investment that:

(a) when taken together with all other Investments made pursuant to this clause (12) that are at the time outstanding (net of cash benefits to the Company or a Restricted Subsidiary from Investments pursuant to this clause (12)), does not exceed the greater of U.S.$250 million and 3% of Consolidated Tangible Assets; or

(b) when taken together with all other Investments made pursuant to this clause (12) in any fiscal year that are at the time outstanding, does not exceed U.S.$100 million in any fiscal year;

(13) Investments in the Capital Stock of any Person other than a Restricted Subsidiary that are required to be held pursuant to an involuntary governmental order of condemnation, nationalization, seizure or

expropriation or other similar order with respect to Capital Stock of such Person (prior to which order such Person was a Restricted Subsidiary); *provided*, that such Person contests such order in good faith in appropriate proceedings;

(14) repurchases of Existing Senior Notes or the Notes;

(15) Investments in the SPV Perpetuals or the notes related thereto; *provided*, that any payment or other contribution to one of the special purpose vehicles issuing the SPV Perpetuals in connection with such Investment is promptly paid or contributed to the Company or a Restricted Subsidiary following receipt thereof;

(16) any Investment that constitutes Indebtedness permitted under clause (vii)(E) of Section 3.9(b); and

(17) (a) Investments to which the Company or any of its Restricted Subsidiaries is contractually committed as of the Issue Date in any Person other than a Subsidiary in which the Company or any of its Restricted Subsidiaries maintains an Investment in equity securities and (b) Investments in any Person other than a Subsidiary in which the Company or any of its Restricted Subsidiaries maintains an Investment in equity securities up to U.S.$100 million in any calendar year minus the amount of any guarantees under clause (xviii) of Section 3.9(b).

"Permitted Liens" means any of the following:

(1) statutory Liens of landlords and Liens of carriers, warehousemen, mechanics and materialmen incurred in the ordinary course of business for sums not yet due or the payment of which is being contested in good faith by appropriate proceedings promptly initiated and diligently conducted and for which such reserves or other appropriate provision, if any, as shall be required by GAAP, shall have been made and any other Liens created by operation of law;

(2) Liens Incurred or deposits made in the ordinary course of business in connection with (i) workers' compensation, unemployment insurance and other types of social security or (ii) other insurance maintained by the Company and its Subsidiaries in compliance with the Facilities Agreement (or any refinancing thereof);

(3) Liens for taxes, assessments and other governmental charges the payment of which is being contested in good faith by appropriate proceedings promptly initiated and diligently conducted and for which such reserves or other appropriate provision, if any, as shall be required by GAAP shall have been made;

(4) any attachment or judgment Lien, unless the judgment it secures shall not, within 60 days after the entry thereof, have been discharged or execution thereof stayed pending appeal, or shall not have been discharged within 60 days after the expiration of any such stay;

(5) (i) Liens existing on the Issue Date other than in respect of the Collateral and (ii) Liens in respect of the Collateral (including the shares of CEMEX España, S.A. to be pledged as part of the Collateral in accordance with the Facilities Agreement) to the extent equally and ratably securing the Notes and the Permitted Secured Obligations;

(6) any Lien on property acquired by the Company or its Restricted Subsidiaries after the Issue Date that was existing on the date of acquisition of such property; *provided*, that such Lien was not incurred in anticipation of such acquisition, and any Lien created to secure all or any part of the purchase price, or to secure Indebtedness incurred or assumed to pay all or any part of the purchase price, of property acquired by the Company or any of its Restricted Subsidiaries after the Issue Date; *provided further*, that (A) any such Lien permitted pursuant to this clause (6) shall be confined solely to the item or items of property so acquired (including, in the case of any Acquisition of a corporation through the acquisition of 51% or more of the Voting Stock of such corporation, the stock and assets of any Acquired Subsidiary or Acquiring Subsidiary) and, if required by the terms of the instrument originally creating such Lien, other property which is an improvement to, or is acquired for specific use with, such acquired property; and (B) if applicable, any such Lien shall be created within nine months after, in the case of property, its acquisition, or, in the case of improvements, their completion;

(7) any Liens renewing, extending or refunding any Lien permitted by clause (5)(i) above; *provided*, that such Lien is not extended to other property (or, instead, is only extended to equivalent property) and the principal amount of Indebtedness secured by such Lien immediately prior thereto is not increased or the maturity thereof reduced, except that the principal amount secured by any such Lien in respect of:

(a) hedging obligations or other derivatives where there are fluctuations in mark-to-market exposures of those hedging obligations or other derivatives,

(b) Indebtedness consisting of any "*Certificados Bursátiles de Largo Plazo*" or the Bancomext Facility, or any Refinancing thereof, where principal may increase by virtue of capitalization of interest, and

(c) the Banobras Facility to the extent additional amounts are drawn thereunder,

may be increased by the amount of such fluctuations, capitalizations or drawings, as the case may be;

(8) Liens on Receivables Assets or Capital Stock of a Receivables Subsidiary, in each case granted in connection with a Qualified Receivables Transaction;

(9) Liens granted pursuant to or in connection with any netting or set-off arrangements entered into in the ordinary course of business;

(10) any Lien permitted by the Trustee, acting pursuant to the instructions of at least 50% of the Holders;

(11) any Lien granted by the Company or any of its Restricted Subsidiaries to secure Indebtedness under a Permitted Liquidity Facility; *provided*, that: (i) such Lien is not granted in respect of the Collateral, and (ii) the maximum amount of such Indebtedness secured by such Lien does not exceed U.S.$500 million at any time; or

(12) in addition to the Liens permitted by the foregoing clauses (1) through (11), Liens securing obligations of the Company and its Restricted Subsidiaries that in the aggregate secure obligations in an amount not in excess of the greater of (i) 5% of Consolidated Tangible Assets and (ii) U.S.$700 million.

"Permitted Liquidity Facility" means a loan facility or facilities made available to the Company or any Restricted Subsidiary; *provided*, that the aggregate principal amount of utilized and unutilized commitments under such facilities must not exceed U.S.$1 billion (or its equivalent in another currency) at any time.

"Permitted Merger Jurisdiction" has the meaning set forth in Section 4.1(a).

"Permitted Secured Obligations" means (i) the Facilities Agreement Indebtedness and any refinancing thereof made in accordance with the Facilities Agreement that is secured by the Collateral, (ii) notes (or similar instruments, including *Certificados Bursátiles*) outstanding on the date of the Facilities Agreement required to be secured by the Collateral pursuant to their terms, or any refinancing thereof permitted by the Facilities Agreement, (iii) future Indebtedness secured by the Collateral to the extent permitted by the Facilities Agreement and (iv) the Existing Senior Notes.

"Person" means an individual, partnership, limited partnership, corporation, company, limited liability company, unincorporated organization, trust or joint venture, or a governmental agency or political subdivision thereof.

"Post-Petition Interest" means all interest accrued or accruing after the commencement of any insolvency or liquidation proceeding (and interest that would accrue but for the commencement of any insolvency or liquidation proceeding) in accordance with and at the contract rate (including, without limitation, any rate applicable upon default) specified in the agreement or instrument creating, evidencing or governing any Indebtedness, whether or not, pursuant to applicable law or otherwise, the claim for such interest is allowed as a claim in such insolvency or liquidation proceeding.

"Preferred Stock" of any Person means any Capital Stock of such Person that has preferential rights over any other Capital Stock of such Person with respect to dividends, distributions or redemptions or upon liquidation.

"Private Placement Legend" has the meaning assigned to it in Section 2.8(b).

"Purchase Money Indebtedness" means Indebtedness Incurred for the purpose of financing all or any part of the purchase price or cost of construction of any property other than Capital Stock; *provided*, that the aggregate principal amount of such Indebtedness does not exceed the lesser of the Fair Market Value of such property or such purchase price or cost, including any Refinancing of such Indebtedness that does not increase the aggregate principal amount (or accreted amount, if less) thereof as of the date of Refinancing.

"QIB" means a "qualified institutional buyer" as defined in Rule 144A.

"Qualified Capital Stock" means any Capital Stock that is not Disqualified Capital Stock and any warrants, rights or options to purchase or acquire Capital Stock that is not Disqualified Capital Stock that are not convertible into or exchangeable into Disqualified Capital Stock.

"Qualified Receivables Transaction" means any transaction or series of transactions that may be entered into by the Company or any Restricted Subsidiary pursuant to which the Company or any Restricted Subsidiary may sell, convey, assign or otherwise transfer to a Receivables Entity any Receivables Assets to obtain funding for the operations of the Company and its Restricted Subsidiaries:

(1) for which no term of any portion of the Indebtedness or any other obligations (contingent or otherwise) or securities Incurred or issued by any Person in connection therewith:

(a) directly or indirectly provides for recourse to, or any obligation of, the Company or any Restricted Subsidiary in any way, whether pursuant to a Guarantee or otherwise, except for Standard Undertakings,

(b) directly or indirectly subjects any property or asset of the Company or any Restricted Subsidiary (other than Capital Stock of a Receivables Subsidiary) to the satisfaction thereof, except for Standard Undertakings, or

(c) results in such Indebtedness, other obligations or securities constituting Indebtedness of the Company or a Restricted Subsidiary, including following a default thereunder, and

(2) for which the terms of any Affiliate Transaction between the Company or any Restricted Subsidiary, on the one hand, and any Receivables Entity, on the other, other than Standard Undertakings and Permitted Investments, are no less favorable than those that could reasonably be expected to be obtained in a comparable transaction at such time on an arm's length basis from a Person that is not an Affiliate of the Company, and

(3) in connection with which, neither the Company nor any Restricted Subsidiary has any obligation to maintain or preserve a Receivable Entity's financial condition, cause a Receivables Entity to achieve certain levels of operating results, fund losses of a Receivables Entity, or except in connection with Standard Undertakings, purchase assets of a Receivables Entity.

"Rating Agencies" mean Fitch, Moody's and S&P. In the event that Fitch, Moody's or S&P is no longer in existence or issuing ratings, such organization may be replaced by a nationally recognized statistical rating organization (as defined in Rule 15c3-1(c)(2)(vi)(F) of the Exchange Act or any successor provision) designated by the Company with notice to the Trustee.

"Receivables Assets" means:

(1) accounts receivable, leases, conditional sale agreements, instruments, chattel paper, installment sale contracts, obligations, general intangibles, and other similar assets, in each case relating to goods, inventory or services of the Company and its Subsidiaries,

(2) equipment and equipment residuals relating to any of the foregoing,

(3) contractual rights, Guarantees, letters of credit, Liens, insurance proceeds, collections and other similar assets, in each case related to the foregoing, and

(4) proceeds of all of the foregoing.

"Receivables Entity" means a Receivables Subsidiary or any other Person not an Affiliate of the Company, in each case whose sole business activity is to engage in Qualified Receivables Transactions, including to issue securities or other interests in connection with a Qualified Receivables Transaction.

"Receivables Subsidiary" means an Unrestricted Subsidiary of the Company that engages in no activities other than Qualified Receivables Transactions and activities related thereto and that is designated by the Issuer as a Receivables Subsidiary. Any such designation by the Issuer will be evidenced to the Trustee by filing with the Trustee an Officer's Certificate of the Issuer.

"Record Date" has the meaning assigned to it in the Form of Face of Note contained in Exhibit A hereto.

"Redemption Date" means, with respect to any redemption of the Notes, the date fixed for such redemption pursuant to this Indenture and the Notes.

"Refinance" means, in respect of any Indebtedness, to issue any Indebtedness in exchange for or to refinance, repay, redeem, replace, defease or refund such Indebtedness in whole or in part. "Refinanced" and "Refinancing" will have correlative meanings.

"Refinancing Indebtedness" means Indebtedness of the Company or any Restricted Subsidiary issued to Refinance any other Indebtedness of the Company or a Restricted Subsidiary so long as:

(1) the aggregate principal amount (or initial accreted value, if applicable) of such new Indebtedness as of the date of such proposed Refinancing does not exceed the aggregate principal amount (or accreted value as of such date, if applicable) of the Indebtedness being Refinanced (plus the amount of any premium required to be paid under the terms of the instrument governing such Indebtedness and the amount of reasonable expenses incurred by the Company in connection with such Refinancing);

(2) such new Indebtedness has:

  (a) a Weighted Average Life to Maturity that is equal to or greater than the Weighted Average Life to Maturity of the Indebtedness being Refinanced, and

  (b) a final maturity that is equal to or later than the final maturity of the Indebtedness being Refinanced or, in the case of Indebtedness without a stated maturity, December 14, 2017; and

(3) if the Indebtedness being Refinanced is:

  (a) Indebtedness of the Issuer, then such Refinancing Indebtedness will be Indebtedness of the Issuer and/or any Note Guarantor,

  (b) Indebtedness of a Note Guarantor, then such Refinancing Indebtedness will be Indebtedness of the Issuer and/or any Note Guarantor,

  (c) Indebtedness of any of the Restricted Subsidiaries, then such Refinancing Indebtedness will be Indebtedness of such Restricted Subsidiary, the Issuer and/or any Note Guarantor, and

  (d) Subordinated Indebtedness, then such Refinancing Indebtedness shall be subordinate to the Notes or the relevant Note Guarantee, if applicable, at least to the same extent and in the same manner as the Indebtedness being Refinanced.

Notwithstanding the foregoing, with respect to any hedging obligations or derivates outstanding on the Issue Date in respect of the Axtel Share Forward Transactions, "Refinancing Indebtedness" shall mean any replacements, amendments or renewals thereof that are entered into on then prevailing market terms with the underlying amounts not greater than the original underlying amounts.

"Registrar" has the meaning assigned to it in Section 2.3(a).

"Regulation S" means Regulation S under the Securities Act or any successor regulation.

"Regulation S Global Note" means a Regulation S Temporary Global Note or Regulation S Permanent Global Note, as appropriate.

"Regulation S Permanent Global Note" has the meaning assigned to it in Section 2.1(f).

"Regulation S Temporary Global Note" has the meaning assigned to it in Section 2.1(e).

"Regulation S Temporary Global Note Legend" means the legend set forth in Section 2.8(c) and Exhibit A.

"Resale Restriction Termination Date" means for any Restricted Note (or beneficial interest therein), other than a Regulation S Temporary Global Note, which shall not have a Resale Restriction Termination Date and shall remain subject to the transfer restrictions specified therefor in this Indenture until such Global Note is cancelled by the Trustee, that is (a) not a Regulation S Global Note, the date on which the Issuer instructs the Trustee in writing to remove the Private Placement Legend from the Restricted Notes in accordance with the procedures described in Section 2.9(h) (which instruction is expected to be given on or about the one year anniversary of the issuance of the Restricted Notes) or (b) a Regulation S Global Note (or Certificated Note issued in respect thereof pursuant to Section 2.7(c)) (other than a Regulation S Temporary Global Note), the date on which the Distribution Compliance Period therefor terminates.

"Restricted Note" means (a) any Regulation S Temporary Global Note (or beneficial interest therein) or any Certificated Note issued in respect thereof pursuant to Section 2.7(c) at any time and (b) any Issue Date Note (or beneficial interest therein) or any Additional Note (or beneficial interest therein) not originally issued and sold pursuant to an effective registration statement under the Securities Act other than, in each case, a Regulation S Permanent Global Note, until, in the case of clause (b), such time as:

(i) the Resale Restriction Termination Date therefor has passed; or

(ii) the Private Placement Legend therefor has otherwise been removed pursuant to Section 2.9 or, in the case of a beneficial interest in a Global Note, such beneficial interest has been exchanged for an interest in a Global Note not bearing a Private Placement Legend.

"Restricted Obligations" has the meaning assigned to it in Section 10.6(b).

"Restricted Payment" has the meaning set forth in Section 3.11(a).

"Restricted Subsidiary" means any Subsidiary of the Company, which at the time of determination is not an Unrestricted Subsidiary.

"Reversion Date" has the meaning assigned to in Section 3.22(e).

"Revocation" has the meaning set forth in Section 3.14(c).

"Rule 144" means Rule 144 under the Securities Act (or any successor rule).

"Rule 144A" means Rule 144A under the Securities Act (or any successor rule).

"Rule 144A Global Note" has the meaning assigned to it in Section 2.1(d).

"S&P" means Standard & Poor's Ratings Group and any successor to its rating agency business.

"Sale and Leaseback Transaction" means any direct or indirect arrangement with any Person or to which any such Person is a party providing for the leasing to the Company or a Restricted Subsidiary of any property, whether owned by the Company or any Restricted Subsidiary at the Issue Date or later acquired, which has been or is to be sold or transferred by the Company or such Restricted Subsidiary to such Person or to any other Person by whom funds have been or are to be advanced on the security of such Property.

"Securities Act" means the Securities Act of 1933, as amended.

"Security Agent" means Wilmington Trust (London) Limited, as security agent under the Intercreditor Agreement.

"Security Documents" has the meaning assigned to it in Section 7.13.

"Senior Indebtedness" means (i) the Notes and any other Indebtedness of the Company or any Note Guarantor that ranks equal in right of payment with the Notes or the relevant Note Guarantee, as the case may be or (ii) Indebtedness for borrowed money or constituting Capitalized Lease Obligations of any Restricted Subsidiary other than a Note Guarantor.

"Significant Subsidiary" means a Subsidiary of the Company constituting a "Significant Subsidiary" of the Company in accordance with Rule 1-02(w) of Regulation S-X under the Securities Act in effect on the date hereof.

"Similar Business" means (1) any business engaged in by the Company or any Restricted Subsidiary on the Issue Date, and (2) any business or other activities, including non-profit or charitable activities, that are reasonably similar, ancillary, complementary or related to, or a reasonable extension, development or expansion of, the businesses and activities in which the Company or any Restricted Subsidiary is engaged on the Issue Date, including, but not limited to, infrastructure projects, public works programs and consumer or supplier financing.

"Special Record Date" has the meaning assigned to it in Section 2.13(a).

"SPV Perpetuals" means the perpetual debentures issued by special purpose vehicles in December 2006, February 2007 and March 2007, as amended or supplemented from time to time.

"Standard Undertakings" means representations, warranties, covenants, indemnities and similar obligations, including servicing obligations, entered into by the Company or any Subsidiary of the Company in connection with a Qualified Receivables Transaction, which are customary in similar non-recourse receivables securitization, purchase or financing transactions.

"Subordinated Indebtedness" means, with respect to the Company or any Note Guarantor, any Indebtedness of the Company or such Note Guarantor, as the case may be, which is expressly subordinated in right of payment to the Notes or the relevant Note Guarantee, as the case may be.

"Subsidiary" means with respect to any Person, any corporation, partnership, joint venture, limited liability company, trust, estate or other entity of which (or in which) more than fifty percent (50%) of (a) in the case of a corporation, the issued and outstanding Capital Stock having ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether at the time Capital Stock of any other class or classes of such corporation shall or might have voting power upon the occurrence of any contingency that has not occurred and is not in the control of such Person), (b) in the case of a limited liability company, partnership or joint venture, the voting or other power to control the actions of such limited liability company, partnership or joint venture or (c) in the case of a trust or estate, the voting or other power to control the actions of such trust or estate, is at the time directly or indirectly owned or controlled by (X) such Person, (Y) such Person and one or more of its other Subsidiaries or (Z) one or more of such Person's other Subsidiaries. Unless the context otherwise requires, all references herein to a "Subsidiary" shall refer to a Subsidiary of the Company.

"Successor Company" has the meaning assigned to it in Section 4.1(b).

"Successor Issuer" has the meaning assigned to it in Section 4.1(a).

"Successor Note Guarantor" has the meaning assigned to it in Section 4.1(c).

"Suspended Covenants" has the meaning assigned to it in Section 3.22(b).

"Suspension Date" has the meaning assigned to it in Section 3.22(c).

"Suspension Period" has the meaning assigned to it in Section 3.22(e).

"Swiss Note Guarantor" has the meaning assigned to it in Section 10.6(a).

"Taxes" has the meaning assigned to it in Section 3.21(a).

"Taxing Jurisdiction" has the meaning assigned to it in Section 3.21(a).

"Transfer Agent" has the meaning assigned to it in Section 2.3(a).

"Transportation Agreements" means, in respect of any Person, any agreement or arrangement designed to protect such Person from fluctuations in prices related to transportation.

"Trust Officer" means, when used with respect to the Trustee, any officer within the corporate trust department of the Trustee, having direct responsibility for the administration of this Indenture, or any other officer of the Trustee to whom any corporate trust matter is referred because of such person's knowledge of and familiarity with the particular subject.

"Trustee" means the party named as such in the introductory paragraph to this Indenture until a successor replaces it in accordance with the terms of this Indenture and, thereafter, means the successor.

"Undervalued Asset" has the meaning assigned to it in Section 10.6(g).

"USA PATRIOT Act" has the meaning assigned to it in Section 12.16.

"U.S. Government Obligations" means direct obligations (or certificates representing an ownership interest in such obligations) of, or guaranteed by, the United States of America (including any agency or instrumentality thereof) for the payment of which the full faith and credit of the United States of America is pledged and which are not callable or redeemable at the issuer's option.

"U.S. Legal Tender" means such coin or currency of the United States of America, as at the time of payment shall be legal tender for the payment of public and private debts.

"U.S. Person" means a "U.S. person" as defined in Regulation S.

"Uniform Commercial Code" means the Uniform Commercial Code as in effect from time to time in the State of New York.

"Unrestricted Subsidiary" means any Subsidiary of the Company designated as such pursuant to Section 3.14. Any such Designation may be revoked by the Issuer, subject to the provisions of such covenant.

"Voting Stock" with respect to any Person, means securities of any class of Capital Stock of such Person entitling the holders thereof (whether at all times or only so long as no senior class of stock has voting power by reason of any contingency) to vote in the election of members of the Board of Directors (or equivalent governing body) of such Person.

"Weighted Average Life to Maturity" means, when applied to any Indebtedness at any date, the number of years (calculated to the nearest one-twelfth) obtained by dividing:

(1) the sum of the products obtained by multiplying:

(a) the amount of each then remaining installment, sinking fund, serial maturity or other required payment of principal or liquidation preference, as the case may be, including payment at final maturity, in respect thereof, by

(b) the number of years (calculated to the nearest one-twelfth) which will elapse between such date and the making of such payment; by

(2) the then outstanding aggregate principal amount or liquidation preference, as the case may be, of such Indebtedness.

"Wholly Owned Subsidiary" means, for any Person, any Subsidiary (Restricted Subsidiary in the case of the Company) of which at least 99.5% of the outstanding Capital Stock (other than, in the case of a Subsidiary not organized in the United States, directors' qualifying shares or an immaterial amount of shares required to be owned by other Persons pursuant to applicable law) is owned by such Person or any other Person that satisfies this definition in respect of such Person.

Section 1.2 [Reserved].

Section 1.3 Rules of Construction. Unless the context otherwise requires:

(1) a term has the meaning assigned to it;

(2) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;

(3) "or" is not exclusive;

(4) "including" means including without limitation;

(5) words in the singular include the plural and words in the plural include the singular; and

(6) references to the payment of principal of the Notes shall include applicable premium, if any.

ARTICLE II

THE NOTES

Section 2.1 Form and Dating.

(a) The Issue Date Notes are being originally offered and sold by the Issuer pursuant to a Purchase Agreement, dated as of October 4, 2012, among the Issuer, the Note Guarantors party thereto, J.P. Morgan Securities LLC, Barclays Capital Inc., RBS Securities Inc., Credit Agricole Securities (USA) Inc., HSBC Securities (USA) Inc. and ING Financial Markets LLC, as Initial Purchasers with respect to the Notes. The Notes will initially be issued as one or more Global Notes in fully registered form without interest coupons, and only in denominations of U.S.$200,000 and in integral multiples of U.S.$1,000 in excess thereof. Each such Global Note shall constitute a single Note for all purposes under this Indenture. Certificated Notes, if issued pursuant to the terms hereof, will be issued in fully registered certificated form without coupons. The Notes may only be issued in definitive fully registered form without coupons and only in denominations of U.S.$200,000 and in integral multiples of U.S.$1,000 in excess thereof. The Notes and the Trustee's certificate of authentication shall be substantially in the form of Exhibit A hereto.

(b) The terms and provisions of the Notes, the form of which is in Exhibit A hereto, shall constitute, and are hereby expressly made, a part of this Indenture, and, to the extent applicable, the Issuer, the Note Guarantors and the Trustee, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and to be bound thereby. Except as otherwise expressly permitted in this Indenture, all Notes (including Additional Notes) shall be identical in all respects. Notwithstanding any differences among them, all Notes issued under this Indenture shall vote and consent together on all matters as one class and are otherwise treated as a single issue of securities.

(c) The Notes may have notations, legends or endorsements as specified in Section 2.8 or as otherwise required by law, stock exchange rule or DTC, Euroclear or Clearstream rule or usage. The Issuer and the Trustee shall approve any changes to the form of the Notes attached to this Indenture and any additional notation, legend or endorsement required to be inserted on them. Each Note shall be dated the date of its authentication.

(d) Notes originally offered and sold to QIBs in reliance on Rule 144A will be issued in the form of one or more permanent Global Notes (each, a "Rule 144A Global Note"). Each Rule 144A Global Note shall be deposited on behalf of the purchasers of the Notes represented thereby with the Note Custodian and registered in the name of DTC or its nominee, for credit to the accounts maintained at DTC. In no event shall any Person hold an interest in a Rule 144A Global Note other than in or through accounts maintained at DTC.

(e) Notes originally offered and sold outside the United States in reliance on Regulation S will be issued in the form of one or more temporary Global Notes (each, a "Regulation S Temporary Global Note"). Each Regulation S Temporary Global Note shall be deposited on behalf of the purchasers of the Notes represented thereby with the Note Custodian and registered in the name of DTC or its nominee, for credit to the accounts maintained at DTC

by or on behalf of Euroclear or Clearstream. In no event shall any Person hold an interest in a Regulation S Temporary Global Note other than in or through accounts maintained at DTC by or on behalf of Euroclear or Clearstream. An interest in a Regulation S Temporary Global Note will be transferred prior to the Distribution Compliance Period only if beneficial owners thereof have acquired an interest therein during the Distribution Compliance Period pursuant to an exemption from registration under the Securities Act and who will take delivery of a beneficial ownership interest in a 144A Global Note bearing a Private Placement Legend, all as contemplated by Section 2.8 hereof.

(f) Following the termination of the Distribution Compliance Period, beneficial interests in a Regulation S Temporary Global Note will be exchanged for beneficial interests in a permanent Global Note (a " Regulation S Permanent Global Note") pursuant to the Applicable Procedures. At such time, the Trustee shall authenticate the Regulation S Permanent Global Note and shall cancel the Regulation S Temporary Global Note. The aggregate principal amount of a Regulation S Temporary Global Note and a Regulation S Permanent Global Note may from time to time be increased or decreased by adjustments made on the records of the Trustee and DTC or its nominee, as the case may be, in connection with transfers of interest as hereinafter provided.

Section 2.2 Execution and Authentication .

(a) Any Officer of the Issuer may sign the Notes for the Issuer by manual or facsimile signature. If an Officer whose signature is on a Note no longer holds that office at the time the Trustee authenticates the Note, the Note shall be valid nevertheless.

(b) A Note shall not be valid until manually authenticated by an authorized signatory of the Trustee or an agent appointed by the Trustee (and reasonably acceptable to the Issuer) for such purpose (an " Authenticating Agent"). The signature of an authorized signatory of the Trustee or an Authenticating Agent on a Note shall be conclusive evidence that such Note has been duly and validly authenticated and issued under this Indenture. Unless limited by the terms of its appointment, an Authenticating Agent may authenticate Notes whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by an Authenticating Agent.

(c) At any time and from time to time after the execution and delivery of this Indenture, the Trustee shall authenticate and make available for delivery Notes upon a written order of the Issuer signed by an Officer of the Issuer (the " Issuer Order"). An Issuer Order shall specify the amount of the Notes to be authenticated and the date on which the original issue of Notes is to be authenticated.

(d) In case a Successor Issuer has executed an indenture supplemental hereto with the Trustee pursuant to Article IV, any of the Notes authenticated or delivered prior to such transaction may, from time to time, at the request of the Successor Issuer be exchanged for other Notes executed in the name of the Successor Issuer with such changes in phraseology and form as may be appropriate, but otherwise identical to the Notes surrendered for such exchange and of like principal amount; and the Trustee, upon Issuer Order of the Successor Issuer, shall

authenticate and deliver Notes as specified in such order for the purpose of such exchange. If Notes shall at any time be authenticated and delivered in any new name of a Successor Issuer pursuant to this Section 2.2 in exchange or substitution for or upon registration of transfer of any Notes, such Successor Issuer, at the option of the Holders but without expense to them, shall provide for the exchange of all Notes at the time Outstanding for Notes authenticated and delivered in such new name.

Section 2.3 Registrar, Paying Agent and Transfer Agent.

(a) The Issuer shall maintain an office or agency in the Borough of Manhattan, City of New York, that shall keep a register of the Notes (the "Note Register") and of their transfer and exchange (the "Registrar"), where Notes may be presented or surrendered for registration of transfer or for exchange (the "Transfer Agent"), where Notes may be presented for payment (the "Paying Agent") and for the service of notices and demands to or upon the Issuer in respect of the Notes and this Indenture. The Issuer may have one or more co-Registrars and one or more additional paying agents. The term "Paying Agent" includes any additional paying agent. In addition, the Issuer undertakes to the extent possible, to use reasonable efforts to maintain a Paying Agent in a member state of the European Union that is not obliged to withhold or deduct tax pursuant to European Council Directive 2003/48/EC regarding taxation of savings income.

(b) The Issuer shall enter into an appropriate agency agreement with any Registrar, Paying Agent or co-Registrar not a party to this Indenture. The agreement shall implement the provisions of this Indenture that relate to such agent. The Issuer shall notify the Trustee of the name and address of each such agent. If the Issuer fails to maintain a Registrar or Paying Agent, the Trustee shall act as such and shall be entitled to appropriate compensation therefor pursuant to Section 7.7. The Issuer or any Affiliate of the Issuer may act as Paying Agent, Registrar or co-Registrar, or transfer agent.

(c) The Issuer initially designates the Corporate Trust Office of the Trustee as such office or agency of the Issuer as required by Section 2.3(a) and appoints the Trustee as Registrar, Paying Agent, Transfer Agent and agent for service of demands and notices in connection with the Notes and this Indenture, until such time as another Person is appointed as such.

Section 2.4 Paying Agent to Hold Money in Trust. The Issuer shall require each Paying Agent (other than the Trustee) to agree in writing that such Paying Agent shall hold in trust for the benefit of Holders or the Trustee all money held by such Paying Agent for the payment of principal of or interest on the Notes and shall notify the Trustee in writing of any Default by the Issuer or any Note Guarantor in making any such payment. If the Issuer or an Affiliate of the Issuer acts as Paying Agent, it shall segregate the money held by it as Paying Agent and hold it as a separate trust fund. The Issuer at any time may require a Paying Agent (other than the Trustee) to pay all money held by it to the Trustee and to account for any funds disbursed by such Paying Agent. Upon complying with this Section 2.4, the Paying Agent (if other than the Issuer or any Affiliate of the Issuer) shall have no further liability for the money delivered to the Trustee. Upon any

proceeding under any Bankruptcy Law with respect to the Issuer or any Affiliate of the Issuer, if the Issuer or such Affiliate is then acting as Paying Agent, the Trustee shall replace the Issuer or such Affiliate as Paying Agent.

Section 2.5 Holder Lists. The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Holders. At any time that the Trustee is not the Registrar the Issuer shall furnish to the Trustee, in writing at least seven Business Days before each Interest Payment Date and at such other times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of Holders.

Section 2.6 CUSIP Numbers. The Issuer in issuing Notes may use "CUSIP" numbers, as applicable (if then generally in use), and, if so, the Trustee shall use for the Securities "CUSIP" number in notices to the Holders as a convenience to such Holders; *provided*, that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Notes or as contained in any notice and that reliance may be placed only on the other identification numbers printed on the Notes, and any such notice shall not be affected by any defect in or omission of such numbers. The Issuer will promptly notify the Trustee in writing of any changes in the "CUSIP" numbers.

Section 2.7 Global Note Provisions.

(a) Each Global Note initially shall: (i) be registered in the name of DTC or the nominee of DTC, (ii) be delivered to the Note Custodian and (iii) bear the appropriate legends as set forth in Section 2.8 and Exhibit A hereto. Any Global Note may be represented by one or more certificates. The aggregate principal amount of each Global Note may from time to time be increased or decreased by adjustments made on the records of the Note Custodian, as provided in this Indenture.

(b) Except as provided in clause (iii) of Section 2.7(c), members of, or participants in, DTC ("Agent Members") shall have no rights under this Indenture with respect to any Global Note held on their behalf by DTC or by the Note Custodian, and DTC may be treated by the Issuer, any Note Guarantor, the Trustee, the Paying Agent, the Transfer Agent, the Note Custodian, the Registrar and any of their respective agents as the absolute owner of such Global Note for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall (i) prevent the Issuer, the Trustee, the Paying Agent, the Transfer Agent, the Note Custodian, the Registrar or any of their respective agents from giving effect to any written certification, proxy or other authorization furnished by DTC or (ii) impair, as between DTC and its Agent Members, the operation of customary practices of DTC governing the exercise of the rights of an owner of a beneficial interest in any Global Note. The registered Holder of a Global Note may grant proxies and otherwise authorize any person, including DTC, or its nominee, Agent Members and persons that may hold interests through Agent Members, to take any action that a Holder is entitled to take under this Indenture or the Notes.

(c) Except as provided in this Section 2.7(c), owners of beneficial interests in Global Notes will not be entitled to receive Certificated Notes in exchange for such beneficial interests.

(i) Certificated Notes shall be issued to all owners of beneficial interests in a Global Note in exchange for such beneficial interests if (A) DTC notifies the Issuer that it is unwilling or unable to continue as depositary for such Global Note or (B) DTC ceases to be a clearing agency registered under the Exchange Act, at a time when DTC is required to be so registered in order to act as depositary, and in each case a successor depositary is not appointed by the Issuer within 90 days of such notice; *provided*, *however*, that in no event shall a holder of a beneficial interest in a Regulation S Temporary Global Note receive Certificated Notes in exchange for such beneficial interest prior to the expiration of the Distribution Compliance Period therefor and receipt by the Registrar of any certificates required pursuant to Rule 903 under the Securities Act. In connection with the exchange of an entire Global Note for Certificated Notes pursuant to this clause (i) of this Section 2.7(c), such Global Note shall be deemed to be surrendered to the Trustee for cancellation, and the Issuer shall execute, and upon Issuer Order the Trustee shall authenticate and deliver to each beneficial owner identified by DTC in exchange for its beneficial interest in such Global Note, an equal aggregate principal amount of Certificated Notes of authorized denominations, and the Registrar shall register such exchanges in the Note Register.

(ii) The owner of a beneficial interest in a Global Note will be entitled to receive Certificated Notes in exchange for such interest if an Event of Default has occurred and is continuing; *provided*, *however*, that in no event shall a holder of a beneficial interest in a Regulation S Temporary Global Note receive Certificated Notes in exchange for such beneficial interest prior to the expiration of the Distribution Compliance Period therefor and receipt by the Registrar of any certificates required pursuant to Rule 903 under the Securities Act. If an Event of Default has occurred and is continuing, upon receipt by the Registrar of instructions from Agent Members through DTC on behalf of the owner of a beneficial interest in a Global Note directing the Registrar to exchange such beneficial owner's beneficial interest in such Global Note for Certificated Notes, subject to and in accordance with the Applicable Procedures, the Issuer shall promptly execute, and upon Issuer Order, the Trustee shall authenticate and make available for delivery to such beneficial owner, Certificated Notes in a principal amount equal to such beneficial interest in such Global Note.

(iii) If (A) an event described in clause (i) of Section 2.7(c) occurs and Certificated Notes are not issued promptly to all beneficial owners or (B) the Registrar receives from a beneficial owner the instructions

described in clause (ii) of Section 2.7(c) and Certificated Notes are not issued promptly to any such beneficial owner, the Issuer expressly acknowledges, with respect to the right of any Holder to pursue a remedy pursuant to Section 6.6 hereof, the right of any beneficial owner of Notes to pursue such remedy with respect to the portion of the Global Note that represents such beneficial owner's Notes as if such Certificated Notes had been issued.

Section 2.8 Legends.

(a) Each Global Note shall bear the legend specified therefor in Exhibit A hereto on the face thereof.

(b) Each Restricted Note shall bear the private placement legend specified therefor in Exhibit A hereto on the face thereof (the "Private Placement Legend").

(c) Each Regulation S Temporary Global Note shall bear the legend specified therefor in Exhibit A hereto on the face thereof.

Section 2.9 Transfer and Exchange.

(a) Transfers of Beneficial Interests in a Rule 144A Global Note. If the owner of a beneficial interest in a Rule 144A Global Note that is a Restricted Note wishes to transfer such interest (or portion thereof) pursuant to Rule 144 (if available) or to a Non-U.S. Person pursuant to Regulation S:

(i) upon receipt by the Registrar of:

(A) instructions from an Agent Member given to DTC in accordance with the Applicable Procedures directing DTC to credit or cause to be credited a beneficial interest in the Regulation S Temporary Global Note, in the case of a transfer made prior to the expiration of the Distribution Compliance Period, or the Regulation S Permanent Global Note in the case of a transfer made after the expiration of the Distribution Compliance Period, in either case, in a principal amount equal to the principal amount of the beneficial interest to be transferred,

(B) instructions given in accordance with the Applicable Procedures containing information regarding the account to be credited with such increase, and

(C) a certificate in the form of Exhibit B or Exhibit C hereto, as applicable, duly executed by the transferor;

(ii) the Note Custodian shall increase the Regulation S Temporary Global Note or the Regulation S Permanent Global Note, as the case may be,

and decrease the Rule 144A Global Note in accordance with the foregoing, and the Registrar shall register the transfer in the Note Register.

(b) Transfers of Beneficial Interests in a Regulation S Global Note . Subject to the Applicable Procedures, the following provisions shall apply with respect to any proposed transfer of an interest in a Regulation S Global Note that is a Restricted Note:

(i) If the owner of a beneficial interest in a Regulation S Global Note that is a Restricted Note wishes to transfer such interest (or a portion thereof) to a QIB pursuant to Rule 144A:

(A) upon receipt by the Registrar of:

(1) instructions from an Agent Member given to DTC in accordance with the Applicable Procedures directing DTC to credit or cause to be credited a beneficial interest in the Rule 144A Global Note in a principal amount equal to the principal amount of the beneficial interest to be transferred,

(2) instructions given in accordance with the Applicable Procedures containing information regarding the account to be credited with such increase, and

(3) a certificate in the form of Exhibit D hereto, duly executed by the transferor;

(B) the Note Custodian shall increase the Rule 144A Global Note and decrease the Regulation S Global Note in accordance with the foregoing, and the Registrar shall register the transfer in the Note Register.

(ii) No interest in a Regulation S Temporary Global Note will be exchanged for an interest in the Regulation S Permanent Global Note except pursuant to Section 2.1(f).

(c) Other Transfers. Any registration of transfer of Restricted Notes (including Certificated Notes) not described above (other than a transfer of a beneficial interest in a Global Note that does not involve an exchange of such interest for a Certificated Note or a beneficial interest in another Global Note, which must be effected in accordance with applicable law and the Applicable Procedures, but is not subject to any procedure required by this Indenture) shall be made only upon receipt by the Registrar of Opinions of Counsel, certificates and such other evidence reasonably required by and satisfactory to it in order to ensure compliance with the Securities Act or in accordance with Section 2.9(d).

(d) Use and Removal of Private Placement Legends . Upon the registration of transfer, exchange or replacement of Notes (or beneficial interests in a Global Note) not bearing (or not required to bear upon such transfer, exchange or replacement) a Private Placement

Legend, the Note Custodian and Registrar shall exchange such Notes (or beneficial interests) for beneficial interests in a Global Note or Certificated Notes if they have been issued pursuant to Section 2.7(c) that does not bear a Private Placement Legend. Upon the registration of transfer, exchange or replacement of Notes (or beneficial interests in a Global Note) bearing a Private Placement Legend, the Note Custodian and Registrar shall deliver only Notes (or beneficial interests in a Global Note) that bear a Private Placement Legend unless:

(i) such Notes (or beneficial interests) are transferred pursuant to Rule 144 upon delivery to the Registrar of a certificate of the transferor in the form of Exhibit C hereto, and an Opinion of Counsel reasonably satisfactory to the Registrar;

(ii) such Notes (or beneficial interests) are transferred, replaced or exchanged after the Resale Restriction Termination Date therefor and, in the case of any such Restricted Notes, the Issuer has complied with the applicable procedures for delegending in accordance with Section 2.9(h); or

(iii) in connection with such registration of transfer, exchange or replacement the Registrar shall have received an Opinion of Counsel, certificates and such other evidence reasonably satisfactory to the Issuer and the Registrar to the effect that neither such Private Placement Legend nor the related restrictions on transfer are required in order to maintain compliance with the provisions of the Securities Act.

The Holder of a Global Note bearing a Private Placement Legend (other than a Regulation S Temporary Global Note) may exchange an interest therein for an equivalent interest in a Global Note not bearing a Private Placement Legend upon transfer of such interest pursuant to this Section 2.9(d).

(e) Consolidation of Global Notes and Exchange of Certificated Notes for Beneficial Interests in Global Notes . If a Global Note not bearing a Private Placement Legend is Outstanding at the time of a removal of legends pursuant to Section 2.9(h), any interests in a Global Note delegended pursuant to Section 2.9(h) shall be exchanged for interests in such Outstanding Global Note, subject to the proviso at the end of Section 2.14(a).

(f) Retention of Documents. The Registrar and the Trustee shall retain copies of all letters, notices and other written communications received pursuant to this Article II and in accordance with the Trustee's, or if different, the Registar's, record retention procedures. The Issuer shall have the right to inspect and make copies of all such letters, notices or other written communications at any reasonable time upon the giving of reasonable written notice to the Registrar or the Trustee, as the case may be.

(g) General Provisions Relating to Transfers and Exchanges .

(i) Subject to the other provisions of this Section 2.9, when Notes are presented to the Registrar or a co-Registrar with a request to register

the transfer of such Notes or to exchange such Notes for an equal principal amount of Notes of other authorized denominations, the Registrar or co-Registrar shall register the transfer or make the exchange as requested if its requirements for such transaction are met; *provided*, that any Notes presented or surrendered for registration of transfer or exchange shall be duly endorsed or accompanied by a written instrument of transfer in form satisfactory to the Registrar or co-Registrar, duly executed by the Holder thereof or his attorney duly authorized in writing.

(ii) To permit registrations of transfers and exchanges and subject to the other terms and conditions of this Article II, the Issuer will execute, and upon Issuer Order, the Trustee will authenticate and make available for delivery, Certificated Notes and Global Notes, as applicable, at the Registrar's or co-Registrar's request.

(iii) No service charge shall be made to a Holder for any registration of transfer or exchange, but the Issuer and the Trustee may require payment of a sum sufficient to cover any transfer tax, assessments, or similar governmental charge payable in connection therewith (other than any such transfer taxes, assessments or similar governmental charges payable upon exchange or transfer pursuant to Section 3.8, Section 3.9, Section 5.1 or Section 9.5).

(iv) The Registrar or co-Registrar shall not be required to register the transfer of or exchange of (x) any Note for a period beginning (1) 15 days before the mailing of a notice of an offer to repurchase or redeem Notes and ending at the close of business on the day of such mailing or (2) 15 days before an Interest Payment Date and ending on such Interest Payment Date and (y) any Note selected for repurchase or redemption, except the unrepurchased or unredeemed portion thereof, if any.

(v) Prior to the due presentation for registration of transfer of any Note, the Issuer, the Trustee, the Paying Agent, the Transfer Agent, the Registrar or any co-Registrar may deem and treat the Person in whose name a Note is registered as the absolute owner of such Note for the purpose of receiving payment of principal of and interest on such Note and for all other purposes whatsoever, whether or not such Note is overdue, and none of the Issuer, the Trustee, the Paying Agent, the Transfer Agent, the Registrar or any co-Registrar or the Note Custodian shall be affected by notice to the contrary.

(vi) All Notes issued upon any transfer or exchange pursuant to the terms of this Indenture shall evidence the same debt and shall be entitled to the same benefits under this Indenture as the Notes surrendered upon such transfer or exchange.

(vii) Subject to Section 2.7 and this Section 2.9, in connection with the exchange of a portion of a Certificated Note for a beneficial interest in a Global Note, the Trustee shall cancel such Certificated Note, and the Issuer shall execute, and upon Issuer Order, the Trustee shall authenticate and make available for delivery to the exchanging Holder, a new Certificated Note representing the principal amount not so exchanged.

(h) Applicable Procedures for Delegending.

(i) Promptly after one year has elapsed following (A) the Issue Date or (B) if the Issuer has issued Additional Notes with the same terms and the same CUSIP number as the Issue Date Notes pursuant to this Indenture within one year following the Issue Date, the date of original issuances of such Additional Notes, if the relevant Notes are freely tradable pursuant to Rule 144 under the Securities Act by Holders who are not Affiliates of the Issuer where no conditions of Rule 144 are then applicable (other than the holding period requirement in paragraph (d)(1)(ii) of Rule 144 so long as such holding period requirement is satisfied), the Issuer shall:

(1) instruct the Trustee in writing to remove the Private Placement Legend from such Notes, and upon receipt of such instruction, the Private Placement Legend shall be deemed removed from any Global Notes representing such Notes without further action on the part of Holders;

(2) notify Holders of such Notes that the Private Placement Legend has been removed or deemed removed; and

(3) instruct DTC to change the CUSIP number for such Notes to the unrestricted CUSIP number for the Notes.

In no event will the failure of the Issuer to provide any notice set forth in this paragraph or of the Trustee to remove the Private Placement Legend constitute a failure by the Issuer to comply with any of its covenants or agreements set forth in Section 6.1 or otherwise. Any Restricted Note (or security issued in exchange or substitution therefor) as to which such restrictions on transfer shall have expired in accordance with their terms may, upon surrender of such Restricted Note for exchange to the Registrar in accordance with the provisions of Article II of this Indenture, be exchanged for a new Note or Notes, of like tenor and aggregate principal amount, which shall not bear the Private Placement Legend. The Issuer shall notify the Trustee in writing upon occurrence of the Resale Restriction Termination Date for any Note.

(ii) Notwithstanding any provision herein to the contrary, in the event that Rule 144 as promulgated under the Securities Act (or any successor rule) is amended to change the one-year holding period thereunder (or the corresponding period under any successor rule), (A) each reference in this Section 2.9(h) to "one year" and in the Private Placement Legend described in Section 2.8(b) and Exhibit A hereto to "ONE YEAR" shall be deemed for all purposes hereof to be references to such changed period, and (B) all corresponding references in this Indenture (including the definition of Resale Restriction Termination Date), the Notes and the Private Placement Legends thereon shall be deemed for all purposes hereof to be references to such changed period; *provided*, that such changes shall not become effective if they are otherwise prohibited by, or would otherwise cause a violation of, the then-applicable federal securities laws; *provided further* that if such change does not apply to existing Notes, all references to "one year" in this Indenture shall not be deemed for all purposes hereof to be references to such changed period. This Section 2.9(h) shall apply to successive amendments to Rule 144 (or any successor rule) changing the holding period thereunder.

(i) No Obligation of the Trustee.

(i) The Trustee shall have no responsibility or obligation to any beneficial owner of an interest in a Global Note, Agent Members or any other Persons with respect to the accuracy of the records of DTC or its nominee or of Agent Members, with respect to any ownership interest in the Notes or with respect to the delivery to any Agent Member, beneficial owner or other Person (other than DTC) of any notice (including any notice of redemption) or the payment of any amount or delivery of any Notes (or other security or property) under or with respect to such Notes. All notices and communications to be given to the Holders and all payments to be made to Holders in respect of the Notes shall be given or made only to or upon the order of the registered Holders (which shall be DTC or its nominee in the case of a Global Note). The rights of beneficial owners in any Global Note shall be exercised only through DTC, subject to the applicable rules and procedures of DTC. The Trustee may rely and shall be fully protected in relying upon information furnished by DTC with respect to its Agent Members and any beneficial owners.

(ii) The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Note (including any transfers between or among Agent Members or beneficial owners in any Global Note) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when

expressly required by, the terms of this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

Section 2.10 Mutilated, Destroyed, Lost or Stolen Notes.

(a) If a mutilated Note is surrendered to the Registrar or if the Holder of a Note claims that the Note has been lost, destroyed or wrongfully taken, the Issuer shall execute, and upon Issuer Order, the Trustee shall authenticate and make available for delivery, a replacement Note for such mutilated, lost or stolen Note, of like tenor and principal amount, bearing a number not contemporaneously Outstanding if:

(i) the requirements of Section 8-405 of the Uniform Commercial Code are met,

(ii) the Holder satisfies any other reasonable requirements of the Trustee, and

(iii) neither the Issuer nor the Trustee has received notice that such Note has been acquired by a protected purchaser (as defined in Section 8-303 of the Uniform Commercial Code).

If required by the Trustee or the Issuer, such Holder shall furnish an affidavit of loss and indemnity bond sufficient in the judgment of the Issuer and the Trustee to protect the Issuer, the Trustee, the Paying Agent, the Transfer Agent, the Registrar or any co-Registrar and the Note Custodian from any loss that any of them may suffer if a Note is replaced.

(b) Upon the issuance of any new Note under this Section 2.10, the Issuer may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) in connection therewith.

(c) Every new Note issued pursuant to this Section 2.10 in exchange for any mutilated Note, or in lieu of any destroyed, lost or stolen Note, shall constitute an original additional contractual obligation of the Issuer, any Note Guarantor and any other obligor upon the Notes, whether or not the mutilated, destroyed, lost or stolen Note shall be at any time enforceable by anyone, and shall be entitled to all benefits of this Indenture equally and proportionately with any and all other Notes duly issued hereunder.

Section 2.11 Temporary Notes. Until definitive Notes are ready for delivery, the Issuer may execute, and upon Issuer Order, the Trustee will authenticate and make available for delivery, temporary Notes. Temporary Notes will be substantially in the form of definitive Notes but may have variations that the Issuer considers appropriate for temporary Notes. Without unreasonable delay, the Issuer will prepare and execute, and upon Issuer Order, the Trustee will authenticate and make available for delivery, definitive Notes. After the preparation of definitive Notes, the temporary Notes will be exchangeable for definitive Notes upon surrender of the temporary Notes at the office or agency

maintained by the Issuer pursuant to Section 2.3 for that purpose and such exchange shall be without charge to the Holder. Upon surrender for cancellation of any one or more temporary Notes, the Issuer will execute, and upon Issuer Order, the Trustee will authenticate and make available for delivery in exchange therefor, one or more definitive Notes representing an equal principal amount of Notes. Until so exchanged, the Holder of temporary Notes shall in all respects be entitled to the same benefits under this Indenture as a Holder of definitive Notes.

Section 2.12 Cancellation. The Issuer at any time may deliver Notes to the Trustee for cancellation. The Registrar, the Paying Agent and the Transfer Agent shall forward to the Trustee any Notes surrendered to them for registration of transfer, exchange or payment. The Trustee and no one else shall cancel and dispose of cancelled Notes in accordance with its policy of disposal or upon written request of the Issuer, return to the Issuer all Notes surrendered for registration of transfer, exchange, payment or cancellation. The Issuer may not issue new Notes to replace Notes it has paid or delivered to the Trustee for cancellation for any reason other than in connection with a registration of transfer or exchange upon Issuer Order.

Section 2.13 Defaulted Interest. When any installment of interest becomes overdue (a "Defaulted Interest"), such installment shall forthwith cease to be payable to the Holders in whose names the Notes were registered on the Record Date applicable to such installment of interest. Defaulted Interest (including any interest on such Defaulted Interest) shall be paid by the Issuer, at its election, as provided in clause (a) or clause (b) below.

(a) The Issuer may elect to make payment of any Defaulted Interest (including any interest payable on such Defaulted Interest) to the Holders in whose names the Notes are registered at the close of business on a special record date for the payment of such Defaulted Interest (a " Special Record Date"), which shall be fixed in the following manner. The Issuer shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid and the date of the proposed payment, and at the same time the Issuer shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Holders entitled to such Defaulted Interest as provided in this Section 2.13(a). Thereupon the Trustee shall fix a Special Record Date for the payment of such Defaulted Interest, which shall be not more than fifteen (15) calendar days and not less than ten (10) calendar days prior to the date of the proposed payment and not less than ten (10) calendar days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the Issuer of such Special Record Date and, in the name and at the expense of the Issuer, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be sent, first-class mail, postage prepaid, to each Holder at such Holder's address as it appears in the Note Register, not less than ten (10) calendar days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been mailed as aforesaid, such Defaulted Interest shall be paid to the Holders in whose names the Notes are registered at the close of business on such Special Record Date and shall no longer be payable pursuant to clause (b) below; or

(b) The Issuer may make payment of any Defaulted Interest (including any interest on such Defaulted Interest) in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Notes may be listed, and upon such notice as may be required by such exchange, if, after notice given by the Issuer to the Trustee of the proposed payment pursuant to this Section 2.13(b), such manner of payment shall be deemed practicable by the Trustee. The Trustee shall in the name and at the expense of the Issuer cause prompt notice of the proposed payment and the date thereof to be sent, first-class mail, postage prepaid, to each Holder at such Holder's address as it appears in the Note Register.

Section 2.14 Additional Notes.

(a) The Issuer may, from time to time, subject to compliance with any other applicable provisions of this Indenture, without the consent of the Holders, create and issue pursuant to this Indenture additional notes (" Additional Notes") that shall have terms and conditions identical to those of the other Outstanding Notes, except with respect to:

(i) the Issue Date;

(ii) the amount of interest payable on the first Interest Payment Date therefor;

(iii) the issue price; and

(iv) any adjustments necessary in order to conform to and ensure compliance with the Securities Act (or other applicable securities laws) and any agreement applicable to such Additional Notes, which are not adverse in any material respect to the Holder of any Outstanding Notes (other than such Additional Notes).

The Notes issued on the Issue Date and any Additional Notes shall be treated as a single series for all purposes under this Indenture; *provided*, that the Issuer may use different CUSIP or other similar numbers among Issue Date Notes and among Additional Notes to the extent required to comply with securities or tax law requirements, including to permit delegending pursuant to Section 2.9(h).

(b) With respect to any Additional Notes, the Issuer will set forth in an Officer's Certificate of the Issuer (the " Additional Note Certificate"), copies of which will be delivered to the Trustee, the following information:

(i) the aggregate principal amount of such Additional Notes to be authenticated and delivered pursuant to this Indenture;

(ii) the Issue Date and the issue price of such Additional Notes; *provided*, that no Additional Notes may be issued at a price that would cause such Additional Notes to have "original issue discount" within the meaning of Section 1273 of the Code, unless such Additional Notes have a separate CUSIP or other similar number from other Notes; and

(iii) whether such Additional Notes will be subject to transfer restrictions under the Securities Act (or other applicable securities laws).

ARTICLE III

COVENANTS

Section 3.1 Payment of Notes.

(a) The Issuer shall pay the principal of and interest (including Defaulted Interest) on the Notes in U.S. Legal Tender on the dates and in the manner provided in the Notes and in this Indenture. Prior to 10:00 a.m. New York City time, on the Business Day prior to each Interest Payment Date and the Maturity Date, the Issuer shall deposit with the Paying Agent in immediately available funds U.S. Legal Tender sufficient to make cash payments due on such Interest Payment Date or Maturity Date, as the case may be. If the Issuer or an Affiliate of the Issuer is acting as Paying Agent, the Issuer or such Affiliate shall, prior to 10:00 a.m. New York City time on the Business Day prior to each Interest Payment Date and the Maturity Date, segregate and hold in trust U.S. Legal Tender, sufficient to make cash payments due on such Interest Payment Date or Maturity Date, as the case may be. Principal and interest shall be considered paid on the date due if on such date the Trustee or the Paying Agent (other than the Issuer or an Affiliate of the Issuer) holds in accordance with this Indenture U.S. Legal Tender designated for and sufficient to pay all principal and interest then due and the Trustee or the Paying Agent, as the case may be, is not prohibited from paying such money to the Holders on that date pursuant to the terms of this Indenture.

(b) Notwithstanding anything to the contrary contained in this Indenture, the Issuer may, to the extent it is required to do so by law, deduct or withhold income or other similar taxes imposed by the United States of America from principal or interest.

(c) The Issuer hereby instructs the Trustee to establish an "Issue Date Note Account" for reception of the interest and principal payments for the Issue Date Notes.

Section 3.2 Maintenance of Office or Agency.

(a) The Issuer shall maintain each office or agency required under Section 2.3. The Issuer will give prompt written notice to the Trustee of any change in the location of any such office or agency. If at any time the Issuer shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee, and the Issuer hereby appoints the Trustee as its agent to receive all such presentations, surrenders, notices and demands.

(b) The Issuer may also from time to time designate one or more other offices or agencies (in or outside of the City of New York) where the Notes may be presented or surrendered for registration of transfer or for exchange and may from time to time rescind any such designation; *provided, however*, that no such designation or rescission shall in any manner relieve the Issuer of its obligation to maintain an office or agency in the City of New York for such purposes. The Issuer will give prompt written notice to the Trustee of any such designation or rescission and any change in the location of any such other office or agency.

Section 3.3 Corporate Existence. Subject to Article IV, the Issuer will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence.

Section 3.4 Payment of Taxes and Other Claims. The Company will pay or discharge or cause to be paid or discharged, before the same shall become delinquent, (i) all taxes, assessments and governmental charges levied or imposed upon the Company or any Restricted Subsidiary or for which it or any of them are otherwise liable, or upon the income, profits or property of the Company or any Restricted Subsidiary and (ii) all lawful claims for labor, materials and supplies, which, if unpaid, might by law become a liability or Lien upon the property of the Company or any Restricted Subsidiary; *provided, however,* that the Company shall not be required to pay or discharge or cause to be paid or discharged any such tax, assessment, charge or claim whose amount, applicability or validity is being contested in good faith by appropriate proceedings and for which appropriate reserves, if necessary (in the good faith judgment of the Issuer), are being maintained in accordance with GAAP or where the failure to effect such payment will not be disadvantageous to the Holders.

Section 3.5 Compliance Certificate. The Issuer and each Note Guarantor shall deliver to the Trustee within 105 days after the end of each fiscal year of the Company (which fiscal year ends on December 31 of each year, subject to any change in fiscal year following the Issue Date) an Officer's Certificate stating that in the course of the performance by the signers of their duties as Officers of the Issuer or such Note Guarantor, as the case may be, they would normally have knowledge of any Default or Event of Default and whether or not the signers know of any Default or Event of Default that occurred during the previous fiscal year. If they do, the certificate shall describe the Default or Event of Default, its status and what action the Issuer or such Note Guarantor is taking or proposes to take with respect thereto.

Section 3.6 Further Instruments and Acts.

(a) The Issuer and each Note Guarantor will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper or as the Trustee may reasonably request to carry out more effectively the purpose of this Indenture.

(b) The Issuer and the Note Guarantors shall take, and shall cause their Subsidiaries party thereto to take, any and all actions required under the Intercreditor Agreement and the Security Documents to cause the Intercreditor Agreement and the Security Documents to create and maintain, as security for the Obligations of the Issuer and the Note Guarantors hereunder, a valid and enforceable perfected security interest on all the Collateral, in favor of the Security Agent for the equal and ratable benefit of the Holders of the Notes, and the other Permitted Secured Obligations, first in priority to any and all security interests at any time granted upon the Collateral, subject in all respects to Liens imposed by law and Liens for judgments, taxes, assessments or governmental charges.

Section 3.7 Waiver of Stay, Extension or Usury Laws. The Issuer and each Note Guarantor covenant (to the fullest extent permitted by applicable law) that they will not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law or any usury law or other law that would prohibit or forgive the Issuer or such Note Guarantor from paying all or any portion of the principal of or interest on the Notes as contemplated herein, wherever enacted, now or at any time hereafter in force, or which may affect the covenants or the performance of this Indenture. The Issuer and each Note Guarantor hereby expressly waives (to the fullest extent permitted by applicable law) all benefit or advantage of any such law, and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

Section 3.8 Change of Control.

(a) Upon the occurrence of a Change of Control, each Holder will have the right to require that the Issuer purchase all or a portion (in integral multiples of U.S.$1,000) of the Holder's Notes at a purchase price equal to 101% of the principal amount thereof, plus accrued and unpaid interest thereon through the date of purchase (the "Change of Control Payment").

(b) Within 30 days following the date upon which the Change of Control occurred, the Issuer must send, by first-class mail, a notice to each Holder, with a copy to the Trustee, offering to purchase the Notes as described above (a " Change of Control Offer"). The Change of Control Offer shall state, among other things, the purchase date, which must be no earlier than 30 days nor later than 60 days from the date the notice is mailed, other than as may be required by law (the "Change of Control Payment Date").

(c) On the Change of Control Payment Date, the Issuer will, to the extent lawful:

(i) accept for payment all Notes or portions thereof properly tendered and not withdrawn pursuant to the Change of Control Offer;

(ii) deposit with the Paying Agent funds in an amount equal to the Change of Control Payment in respect of all Notes or portions thereof so tendered; and

(iii) deliver or cause to be delivered to the Trustee the Notes so accepted together with an Officer's Certificate stating the aggregate principal amount of Notes or portions thereof being purchased by the Issuer.

(d) If only a portion of a Note is purchased pursuant to a Change of Control Offer, a new Note in a principal amount equal to the portion thereof not purchased will be issued in the name of the Holder thereof upon cancellation of the original Note (or appropriate

adjustments to the amount and beneficial interests in a Global Note will be made, as appropriate); *provided*, that each new Note shall be in a minimum principal amount of U.S.$200,000 and in integral multiples of U.S.$1,000 in excess thereof. Notes (or portions thereof) purchased pursuant to a Change of Control Offer will be cancelled and cannot be reissued.

(e) The Issuer will not be required to make a Change of Control Offer upon a Change of Control if:

(i) a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in this Indenture applicable to a Change of Control Offer made by the Issuer and purchases all Notes properly tendered and not withdrawn under the Change of Control Offer, or

(ii) notice of redemption has been given pursuant to this Indenture as described under Section 5.4 unless and until there is a default in payment of the applicable redemption price.

(f) The Issuer will comply with the requirements of Rule 14e-1 under the Exchange Act and any other applicable securities laws and regulations in connection with the purchase of Notes in connection with a Change of Control Offer. To the extent that the provisions of any securities laws or regulations conflict with the "Change of Control" provisions of this Indenture, the Issuer will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under this Indenture by doing so.

Section 3.9 Limitation on Incurrence of Additional Indebtedness .

(a) The Company will not, and will not cause or permit any of its Restricted Subsidiaries to, directly or indirectly, Incur any Indebtedness, including Acquired Indebtedness, except that the Issuer and/or any of the Note Guarantors may Incur Indebtedness, including Acquired Indebtedness, if, at the time of and immediately after giving *pro forma* effect to the Incurrence thereof and the application of the proceeds therefrom, the Consolidated Fixed Charge Coverage Ratio of the Company is greater than or equal to 2.0 to 1.0.

(b) Notwithstanding clause (a) above, the Company and/or any of its Restricted Subsidiaries, as applicable, may Incur the following Indebtedness ("Permitted Indebtedness"):

(i) Indebtedness not to exceed U.S.$1,500,000,000 in respect of the Notes, excluding Additional Notes;

(ii) Guarantees by (A) any Note Guarantor of Indebtedness of the Issuer or another Note Guarantor permitted under this Indenture and (B) the Issuer of Indebtedness of any Note Guarantor; *provided*, that if any such Guarantee is of Subordinated Indebtedness, then the obligations of the Issuer under the Notes and this Indenture or the Note Guarantee of such Note Guarantor, as applicable, will be senior to the Guarantee of such Subordinated Indebtedness;

(iii) Indebtedness of the Company and/or any of its Restricted Subsidiaries outstanding on the Issue Date (excluding Indebtedness permitted under clauses (v), (vi), (vii) or (x) of this definition of Permitted Indebtedness);

(iv) Hedging Obligations, Compensation Related Hedging Obligations and any Guarantees thereof and any reimbursement obligations with respect to letters of credit related thereto, in each case entered into by the Company and/or any of its Restricted Subsidiaries; *provided*, that upon the drawing of such letters of credit, such obligations are reimbursed within 30 days following such drawing;

(v) intercompany Indebtedness between the Company and any Restricted Subsidiary or between any Restricted Subsidiaries; *provided*, that in the event that at any time any such Indebtedness ceases to be held by the Issuer or a Restricted Subsidiary, such Indebtedness shall be deemed to be Incurred and not permitted by this clause (v) at the time such event occurs;

(vi) Indebtedness of the Company and/or any of its Restricted Subsidiaries arising from (A) the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently drawn against insufficient funds in the ordinary course of business; *provided*, that such Indebtedness is extinguished within five Business Days of Incurrence; or (B) any cash pooling or other cash management agreements in place with a bank or financial institution but only to the extent of offsetting credit balances of the Company and/or its Restricted Subsidiaries pursuant to such cash pooling or other cash management agreement;

(vii) Indebtedness of the Company and/or any of its Restricted Subsidiaries represented by (A) endorsements of negotiable instruments in the ordinary course of business (excluding an *aval*), (B) documentary credits (including all forms of letter of credit), performance bonds or guarantees, advance payments, bank guarantees, bankers' acceptances, surety or appeal bonds or similar instruments for the account of, or guaranteeing performance by, the Company and/or any Restricted Subsidiary in the ordinary course of business, (C) reimbursement obligations with respect to letters of credit in the ordinary course of business (D) reimbursement obligations with respect to letters of credit and performance Guarantees in the ordinary course of business to the extent required pursuant to the terms of any Investment made pursuant to clause (12) of the definition of "Permitted Investment" and (E) other Guarantees by the Company and/or any Restricted Subsidiary in favor

of a bank or financial institution in respect of obligations of that bank or financial institution to a third party in an amount not to exceed U.S.$500 million at any one time outstanding; *provided*, that in the case of clauses (B), (C) and (D), upon the drawing of such letters of credit or the Incurrence of such Indebtedness, such obligations are reimbursed within 30 days following such drawing or Incurrence;

(viii) Refinancing Indebtedness in respect of:

(A) Indebtedness (other than Indebtedness owed to the Company or any Subsidiary of the Company) Incurred pursuant to clause (a) above (it being understood that no Indebtedness outstanding on the Issue Date is Incurred pursuant to such clause (a) above), or

(B) Indebtedness Incurred pursuant to clause (i), (ii) or (iii) above or this clause (viii);

(ix) Capitalized Lease Obligations, Sale and Leaseback Transactions, export credit facilities with a maturity of at least one year and Purchase Money Indebtedness of, including Guarantees of any of the foregoing by, the Company and/or any Restricted Subsidiary, in an aggregate principal amount at any one time outstanding not to exceed U.S.$1 billion;

(x) Indebtedness arising from agreements entered into by the Company and/or a Restricted Subsidiary providing for bona fide indemnification, adjustment of purchase price or similar obligations not for financing purposes, in each case, Incurred or assumed in connection with the acquisition or disposition of any business, assets or Capital Stock of a Restricted Subsidiary (including minority interests); *provided*, that in the case of a disposition, the maximum aggregate liability in respect of such Indebtedness shall at no time exceed the gross proceeds actually received by the Company and its Restricted Subsidiaries in connection with such disposition;

(xi) Indebtedness of the Company and/or any of its Restricted Subsidiaries in an aggregate amount not to exceed U.S.$1 billion at any one time outstanding; *provided*, that no more than U.S.$250 million of such Indebtedness at any one time outstanding (excluding any Indebtedness under a Permitted Liquidity Facility) may be Incurred by Restricted Subsidiaries that are not the Issuer or Note Guarantors, which amount shall be increased by the corresponding amount of other Indebtedness of Restricted Subsidiaries other than the Issuer and the Note Guarantors outstanding on the Issue Date and subsequently repaid from time to time but in any event not to exceed U.S.$500 million at any one time outstanding; *provided, further, however*, that (A) the Company and/or any of its Restricted Subsidiaries may Incur

Indebtedness under a Permitted Liquidity Facility and (B) in the event that the Company and/or any of its Restricted Subsidiaries shall have Incurred Indebtedness under a Permitted Liquidity Facility that increases the amount outstanding at such time pursuant to this clause (xi) in excess of U.S.$ 1 billion, then up to U.S.$1.2 billion may be Incurred pursuant to this clause (xi) at any one time outstanding;

(xii) (A) Indebtedness of the Company and/or any of its Restricted Subsidiaries in respect of factoring arrangements or Inventory Financing arrangements or (B) other Indebtedness of the Company and/or any of its Restricted Subsidiaries with a maturity of 12 months or less for working capital purposes, not to exceed in the aggregate at any one time (calculated as of the end of the most recent fiscal quarter for which consolidated financial information of the Company is available) the greater of:

(1) The sum of:

(x) 20% of the net book value of the inventory of the Company and its Restricted Subsidiaries and

(y) 20% of the net book value of the accounts receivable of the Company and its Restricted Subsidiaries (excluding accounts receivable pledged to secure Indebtedness or subject to a Qualified Receivables Transaction),

less, in each case, the amount of any permanent repayments or reductions of commitments in respect of such Indebtedness made with the Net Cash Proceeds of an Asset Sale in order to comply with Section 3.12; or

(2) U.S.$350 million;

(xiii) [Reserved];

(xiv) Indebtedness of the Company and/or any of its Restricted Subsidiaries for taxes levied, assessments due and other governmental charges required to be paid as a matter of law or regulation in the ordinary course of business; *provided*, that such Indebtedness shall be permitted to be Incurred only at such time that the Facilities Agreement (or any refinancing thereof) shall contain an exception to allow the Incurrence of Indebtedness to pay taxes;

(xv) Indebtedness Incurred pursuant to the Banobras Facility;

(xvi) Indebtedness of the Company and/or any of its Restricted Subsidiaries Incurred and/or issued to refinance Qualified Receivables Transactions in existence on the Issue Date;

(xvii) Acquired Indebtedness in an aggregate amount at any one time outstanding under this clause (xvii) not to exceed U.S.$100 million; and

(xviii) (A) any Indebtedness that constitutes an Investment that the Company and/or any of its Restricted Subsidiaries is contractually committed to Incur as of the Issue Date in any Person (other than a Subsidiary) in which the Company or any of its Restricted Subsidiaries maintains an Investment in equity securities; and (B) Guarantees up to U.S.$100 million in any calendar year by the Company and/or any Restricted Subsidiary of Indebtedness of any Person in which the Company or any of its Restricted Subsidiaries maintains an equity Investment minus any Investment other than such guarantees in such Person during such calendar year pursuant to clause (17)(b) of the definition of "Permitted Investments."

(c) Notwithstanding anything to the contrary contained in this Section 3.9,

(i) The Company shall not, and shall not permit any Note Guarantor to, Incur any Permitted Indebtedness pursuant to Section 3.9(b) if the proceeds thereof are used, directly or indirectly, to Refinance any Subordinated Indebtedness unless such Indebtedness shall be subordinated to the Notes or the applicable Note Guarantee, as the case may be, to at least the same extent as such Subordinated Indebtedness.

(ii) For purposes of determining compliance with, and the outstanding principal amount of, any particular Indebtedness Incurred pursuant to and in compliance with this Section 3.9, the amount of Indebtedness issued at a price that is less than the principal amount thereof will be equal to the amount of the liability in respect thereof determined in accordance with GAAP. Accrual of interest, the accretion or amortization of original issue discount, the payment of regularly scheduled interest in the form of additional Indebtedness of the same instrument or the payment of regularly scheduled dividends on Disqualified Capital Stock in the form of additional Disqualified Capital Stock with the same terms will not be deemed to be an Incurrence of Indebtedness for purposes of this Section 3.9. For purposes of determining compliance with this Section 3.9, mark-to-market fluctuations of hedging obligations or derivatives outstanding on the Issue Date shall not constitute Incurrence of Indebtedness.

(iii) For purposes of determining compliance with this Section 3.9, the principal amount of Indebtedness denominated in foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was Incurred, in the case of term Indebtedness, or first committed, in the case of revolving credit Indebtedness; *provided*, that if such Indebtedness is Incurred to

refinance other Indebtedness denominated in foreign currency, and such refinancing would cause the applicable restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such restriction shall be deemed not to have been exceeded so long as the principal amount of such Refinancing Indebtedness does not exceed the principal amount of such Indebtedness being refinanced. Notwithstanding any other provision of this Section 3.9, the maximum amount of Indebtedness Incurred to refinance other Indebtedness, if Incurred in a different currency from the Indebtedness being refinanced, shall be calculated based on the currency exchange rate applicable to the currencies in which such Refinancing Indebtedness is denominated that is in effect on the date of such refinancing.

(iv) For purposes of determining compliance with this Section 3.9:

(A) in the event that an item of Indebtedness meets the criteria of more than one of the types of Indebtedness described above, including, without limitation, in Section 3.9(a), the Company, in its sole discretion, will classify such item of Indebtedness at the time of Incurrence and only be required to include the amount and type of such Indebtedness in one of the above clauses and may later reclassify all or a portion of such item of Indebtedness as having been Incurred pursuant to any other clause to the extent such Indebtedness could be Incurred pursuant to such clause at the time of such reclassification; and

(B) the Company will be entitled to divide and classify an item of Indebtedness in more than one of the types of Indebtedness described above, including, without limitation, Section 3.9(a).

Section 3.10 [Reserved].

Section 3.11 Limitation on Restricted Payments.

(a) The Company will not, and will not cause or permit any of its Restricted Subsidiaries to, directly or indirectly, take any of the following actions (each, a "Restricted Payment"):

(i) declare or pay any dividend or return of capital or make any distribution on or in respect of shares of Capital Stock of the Company or any Restricted Subsidiary to holders of such Capital Stock, other than:

(A) dividends, distributions or returns on capital payable in Qualified Capital Stock of the Company,

(B) dividends, distributions or returns on capital payable to the Company and/or a Restricted Subsidiary,

(C) dividends, distributions or returns of capital made on a *pro rata* basis to the Company and its Restricted Subsidiaries, on the one hand, and minority holders of Capital Stock of a Restricted Subsidiary, on the other hand (or on less than a *pro rata* basis to any minority holder);

(ii) purchase, redeem or otherwise acquire or retire for value:

(A) any Capital Stock of the Company, or

(B) any Capital Stock of any Restricted Subsidiary held by an Affiliate of the Company or any Preferred Stock of a Restricted Subsidiary, except for:

(1) Capital Stock held by the Company or a Restricted Subsidiary, or

(2) purchases, redemptions, acquisitions or retirements for value of Capital Stock on a *pro rata* basis from the Company and/or any Restricted Subsidiaries, on the one hand, and minority holders of Capital Stock of a Restricted Subsidiary, on the other hand, according to their respective percentage ownership of the Capital Stock of such Restricted Subsidiary;

(iii) make any principal payment on, purchase, defease, redeem, prepay, decrease or otherwise acquire or retire for value, prior to any scheduled final maturity, scheduled repayment or scheduled sinking fund payment, as the case may be, any Subordinated Indebtedness; or

(iv) make any Investment (other than Permitted Investments);

if at the time of the Restricted Payment immediately after giving effect thereto:

(A) a Default or an Event of Default shall have occurred and be continuing;

(B) the Company is not able to Incur at least U.S.$1.00 of additional Indebtedness pursuant to Section 3.9(a); or

(C) the aggregate amount (the amount expended for these purposes, if other than in cash, being the Fair Market Value of the relevant property at the time of the making thereof) of the proposed Restricted Payment and all other Restricted Payments made subsequent to the Issue Date up to the date thereof, less any Investment Return calculated as of the date thereof, shall exceed the sum of:

(1) 50% of cumulative Consolidated Net Income of the Company or, if cumulative Consolidated Net Income of the Company is a loss, minus (i) 100% of the loss, accrued during the period, treated as one accounting period, beginning on the first full fiscal quarter after the Issue Date to the end of the most recent fiscal quarter for which consolidated financial information of the Company is available and (ii) the amount of cash benefits to the Company or a Restricted Subsidiary that is netted against Investments in Similar Businesses pursuant to clause (12) of the definition of "Permitted Investments"; plus

(2) 100% of the aggregate net cash proceeds received by the Company from any Person from any:

- contribution to the equity capital of the Company (not representing an interest in Disqualified Capital Stock) or issuance and sale of Qualified Capital Stock of the Company, in each case, subsequent to the Issue Date, or
- issuance and sale subsequent to the Issue Date (and, in the case of Indebtedness of a Restricted Subsidiary, at such time as it was a Restricted Subsidiary) of any Indebtedness for borrowed money of the Company or any Restricted Subsidiary that has been converted into or exchanged for Qualified Capital Stock of the Company,

excluding, in each case, any net cash proceeds:

- received from a Subsidiary of the Company;
- used to redeem Notes under Article V;
- used to acquire Capital Stock or other assets from an Affiliate of the Company; or
- applied in accordance with clause (ii)(B) or (iii)(A) of Section 3.11(b) below.

(b) Notwithstanding Section 3.11(a), this Section 3.11 does not prohibit:

(i) the payment of any dividend within 60 days after the date of declaration of such dividend if the dividend would have been permitted on the date of declaration pursuant to Section 3.11(a);

(ii) if no Default or Event of Default shall have occurred and be continuing, the acquisition of any shares of Capital Stock of the Company,

(A) in exchange for Qualified Capital Stock of the Company, or

(B) through the application of the net cash proceeds received by the Company from a substantially concurrent sale of Qualified Capital Stock of the Company or a contribution to the equity capital of the Company not representing an interest in Disqualified Capital Stock, in each case not received from a Subsidiary of the Company;

*provided*, that the value of any such Qualified Capital Stock issued in exchange for such acquired Capital Stock and any such net cash proceeds shall be excluded from Section 3.11(a)(iv)(C)(2) (and were not included therein at any time);

(iii) if no Default or Event of Default shall have occurred and be continuing, the voluntary prepayment, purchase, defeasance, redemption or other acquisition or retirement for value of any Subordinated Indebtedness:

(A) solely in exchange for, or through the application of net cash proceeds of a substantially concurrent sale, other than to a Subsidiary of the Company, of Qualified Capital Stock of the Company, or

(B) solely in exchange for Refinancing Indebtedness for such Subordinated Indebtedness,

*provided*, that the value of any Qualified Capital Stock issued in exchange for Subordinated Indebtedness and any net cash proceeds referred to above shall be excluded from Section 3.11(a)(iv)(C)(2) (and were not included therein at any time);

(iv) repurchases by the Company of Common Stock of the Company or options, warrants or other securities exercisable or convertible into Common Stock of the Company from employees or directors of the Company or any of its Subsidiaries or their authorized representatives upon the death, disability or termination of employment or directorship of the employees or directors, in an amount not to exceed U.S.$5 million in any calendar year and any repurchases other than in connection with compensation of Common Stock of the Company pursuant to binding written agreements in effect on the Issue Date;

(v) payments of dividends on Disqualified Capital Stock issued pursuant to the covenant described under Section 3.9; *provided, however*, that such dividends shall be excluded in the calculation of the amount of Restricted Payments;

(vi) non-cash repurchases of Capital Stock deemed to occur upon exercise of stock options, warrants or other similar rights if such Capital Stock represents a portion of the exercise price of such options, warrants or other similar rights;

(vii) cash payments in lieu of the issuance of fractional shares in connection with the exercise of warrants, options or other securities convertible into or exchangeable for Capital Stock of the Company;

(viii) purchases of any Subordinated Indebtedness of the Company (A) at a purchase price not greater than 101% of the principal amount thereof (together with accrued and unpaid interest) in the event of the occurrence of a Change of Control or (B) at a purchase price not greater than 100% of the principal amount thereof (together with accrued and unpaid interest) in the event of an Asset Sale in accordance with provisions similar to those set forth under Section 3.12; *provided, however*, that prior to such purchase of any such Subordinated Indebtedness, the Company has made the Change of Control Offer or Asset Sale Offer as provided under Section 3.8 or Section 3.12, respectively, and has purchased all Notes validly tendered and not properly withdrawn pursuant thereto;

(ix) recapitalization of earnings on or in respect of the Qualified Capital Stock of the Company pursuant to which additional Qualified Capital Stock of the Company or the right to subscribe for additional Capital Stock of the Company is issued to the existing shareholders of the Company on a *pro rata* basis (which, for the avoidance of doubt, shall not allow any payment in cash to be made in respect of Qualified Capital Stock of the Company pursuant to this clause (ix)); and

(x) so long as (A) no Default or Event of Default shall have occurred and be continuing (or result therefrom) and (B) the Company could Incur at least U.S.$1.00 of additional Debt pursuant to Section 3.9(a), payment of any dividends on Capital Stock (other than Disqualified Capital Stock) of the Company in an aggregate amount which, when taken together with all dividends paid pursuant to this clause (x), does not exceed U.S.$50 million in any calendar year; *provided*, that such dividends shall be included in the calculation of the amount of Restricted Payments.

(xi) [Reserved]

In determining the aggregate amount of Restricted Payments made subsequent to the Issue Date, amounts expended pursuant to clauses (i) (without duplication for the declaration

of the relevant dividend), (iv), (viii) and (x) above shall be included in such calculation and amounts expended pursuant to clauses (ii), (iii), (v), (vi), (vii) and (ix) above shall not be included in such calculation.

Section 3.12 Limitation on Asset Sales.

(a) The Company will not, and will not permit any of its Restricted Subsidiaries to, consummate an Asset Sale unless:

(i) the Company or the applicable Restricted Subsidiary, as the case may be, receives consideration at the time of the Asset Sale at least equal to the Fair Market Value (to be determined as of the date on which such sale is contracted) of the assets sold or otherwise disposed of, and

(ii) other than in respect of Permitted Asset Swap Transactions, at least 80% of the consideration received for the assets sold by the Company or the Restricted Subsidiary, as the case may be, in the Asset Sale shall be in the form of cash or Cash Equivalents received at the time of such Asset Sale; *provided, however*, for the purposes of this clause (ii), the following are also deemed to be cash or Cash Equivalents:

(A) the assumption of Indebtedness (other than Subordinated Indebtedness) of the Company or any Restricted Subsidiary and the release of the Company or such Restricted Subsidiary from all liability on such Indebtedness in connection with such Asset Sale;

(B) any securities, notes or obligation received by the Company or any Restricted Subsidiary from the transferee that are, within 180 days after the Asset Sale, converted by the Company or such Restricted Subsidiary into cash, to the extent of cash received in that conversion;

(C) Capital Stock of a Person who is or who, after giving effect to such Asset Sale, becomes, a Restricted Subsidiary; and

(D) any Designated Non-cash Consideration received by the Company or such Restricted Subsidiary in connection with such Asset Sale having an aggregate Fair Market Value which, when taken together with the Fair Market Value of all other Designated Non-cash Consideration received pursuant to this clause (D) since the Issue Date, does not exceed the sum of (1) 3.0% of Consolidated Tangible Assets of the Company calculated as of the end of the most recent fiscal quarter for which consolidated financial information is available (with the Fair Market Value of each item of Designated Non-cash Consideration being measured as of the date it was received and without giving effect to subsequent changes in value of any such item of Designated Non-cash

Consideration) and (2) the amount of cash or Cash Equivalents received in connection with a subsequent sale of such Designated Non-cash Consideration.

(b) The Company or any Restricted Subsidiary may apply the Net Cash Proceeds of any such Asset Sale within 365 days thereof to:

(i) repay any Senior Indebtedness for borrowed money or constituting a Capitalized Lease Obligation and permanently reduce the commitments with respect thereto, or

(ii) purchase:

(A) assets (except for current assets as determined in accordance with GAAP or Capital Stock) to be used by the Company or any Restricted Subsidiary in a Permitted Business, or

(B) substantially all of the assets of a Permitted Business or Capital Stock of a Person engaged in a Permitted Business that will become, upon purchase, a Restricted Subsidiary from a Person other than the Company and its Restricted Subsidiaries.

(c) To the extent all or a portion of the Net Cash Proceeds of any Asset Sale are not applied within the 365 days of the Asset Sale as described in clause (i) or (ii) of Section 3.12(b), the Company will make an offer to purchase Notes (the "Asset Sale Offer"), at a purchase price equal to 100% of the principal amount of the Notes to be purchased, plus accrued and unpaid interest thereon, to the date of purchase (the " Asset Sale Offer Amount"). The Company will purchase pursuant to an Asset Sale Offer from all tendering Holders on a *pro rata* basis, and, at the Company's option, on a *pro rata* basis with the holders of any other Senior Indebtedness with similar provisions requiring the Company to offer to purchase the other Senior Indebtedness with the proceeds of Asset Sales, that principal amount (or accreted value in the case of Indebtedness issued with original issue discount) of Notes and the other Senior Indebtedness to be purchased equal to such unapplied Net Cash Proceeds. The Company may satisfy its obligations under this Section 3.12 with respect to the Net Cash Proceeds of an Asset Sale by making an Asset Sale Offer prior to the expiration of the relevant 365-day period.

(d) Pending the final application of any Net Cash Proceeds pursuant to this Section 3.12, the holder of such Net Cash Proceeds may apply such Net Cash Proceeds temporarily to reduce Indebtedness outstanding under a revolving credit facility or otherwise invest such Net Cash Proceeds in any manner not prohibited by this Indenture.

(e) The purchase of Notes pursuant to an Asset Sale Offer shall occur not less than 20 Business Days following the date thereof, or any longer period as may be required by law, nor more than 45 days following the 365th day following the Asset Sale. The Company may, however, defer an Asset Sale Offer until there is an aggregate amount of unapplied Net Cash Proceeds from one or more Asset Sales equal to or in excess of U.S.$100 million. At that time, the entire amount of unapplied Net Cash Proceeds, and not just the amount in excess of U.S.$100 million, shall be applied as required pursuant to this Section 3.12.

(f) Each Asset Sale Offer Notice shall be mailed first class, postage prepaid, to the record Holders as shown on the Note Register within 20 days following such 365th day (or such earlier date as the Company shall have elected to make such Asset Sale Offer), with a copy to the Trustee offering to purchase the Notes as described above. Each notice of an Asset Sale Offer shall state, among other things, the purchase date, which must be no earlier than 30 days nor later than 60 days from the date the notice is mailed, other than as may be required by law (the " Asset Sale Offer Payment Date"). Upon receiving notice of an Asset Sale Offer, Holders may elect to tender their Notes in whole or in part, in minimum denominations of U.S.$200,000 and in any integral multiples of U.S.$1,000 in excess thereof in exchange for cash.

(g) On the Asset Sale Offer Payment Date, the Company shall, to the extent lawful:

(i) accept for payment all Notes or portions thereof properly tendered pursuant to the Asset Sale Offer;

(ii) deposit with the Paying Agent funds in an amount equal to the Asset Sale Offer Amount in respect of all Notes or portions thereof so tendered; and

(iii) deliver or cause to be delivered to the Trustee the Notes so accepted together with an Officer's Certificate stating the aggregate principal amount of Notes or portions thereof being purchased by the Company.

(h) To the extent Holders of Notes and holders of other Senior Indebtedness, if any, which are the subject of an Asset Sale Offer properly tender and do not withdraw Notes or the other Senior Indebtedness in an aggregate amount exceeding the amount of unapplied Net Cash Proceeds, the Company shall purchase the Notes and the other Senior Indebtedness on a *pro rata* basis (based on amounts tendered). If only a portion of a Note is purchased pursuant to an Asset Sale Offer, a new Note in a principal amount equal to the portion thereof not purchased shall be issued in the name of the holder thereof upon cancellation of the original Note (or appropriate adjustments to the amount and beneficial interests in a global note shall be made, as appropriate). Notes (or portions thereof) purchased pursuant to an Asset Sale Offer shall be cancelled and cannot be reissued.

(i) The Company shall comply with the requirements of Rule 14e-1 under the Exchange Act and any other applicable securities laws in connection with the purchase of Notes pursuant to an Asset Sale Offer. To the extent that the provisions of any applicable securities laws or regulations conflict with this Section 3.12, the Company shall comply with these laws and regulations and shall not be deemed to have breached its obligations under the "Asset Sale" provisions of this Indenture by doing so.

(j) Upon completion of an Asset Sale Offer, the amount of Net Cash Proceeds shall be reset at zero. Accordingly, to the extent that the aggregate amount of Notes and other Indebtedness tendered pursuant to an Asset Sale Offer is less than the aggregate amount of unapplied Net Cash Proceeds, the Company may use any remaining Net Cash Proceeds for general corporate purposes of the Company and its Restricted Subsidiaries.

(k) In the event of the transfer of substantially all (but not all) of the property and assets of the Company and its Restricted Subsidiaries as an entirety to a Person in a transaction permitted under Article IV, the Successor Company shall be deemed to have sold the properties and assets of the Company and its Restricted Subsidiaries not so transferred for purposes of this Section 3.12, and shall comply with the provisions of this Section 3.12 with respect to the deemed sale as if it were an Asset Sale. In addition, the Fair Market Value of properties and assets of the Company or its Restricted Subsidiaries so deemed to be sold shall be deemed to be Net Cash Proceeds for purposes of this Section 3.12.

(l) If at any time any non-cash consideration received by the Company or any Restricted Subsidiary, as the case may be, in connection with any Asset Sale, is converted into or sold or otherwise disposed of for cash (other than interest received with respect to any non-cash consideration), the conversion or disposition shall be deemed to constitute an Asset Sale hereunder and the Net Cash Proceeds thereof shall be applied in accordance with this Section 3.12 within 365 days of conversion or disposition.

Section 3.13 Limitation on the Ownership of Capital Stock of Restricted Subsidiaries . The Company shall not permit any Person other than the Company or another Restricted Subsidiary to, directly or indirectly, own or control any Capital Stock of any Restricted Subsidiary, except for:

(i) Capital Stock owned by such Person on the Issue Date;

(ii) directors' qualifying shares;

(iii) the sale or Disposition of 100% of the shares of the Capital Stock of any Restricted Subsidiary (other than the Issuer) held by the Company and its Restricted Subsidiaries to any Person other than the Company or another Restricted Subsidiary effected in accordance with, as applicable, Section 3.12 and Article IV;

(iv) in the case of a Restricted Subsidiary other than a Restricted Subsidiary that is a Wholly Owned Subsidiary,

(A) the issuance by that Restricted Subsidiary of Capital Stock on a *pro rata* basis to the Company and its Restricted Subsidiaries, on the one hand, and minority holders of Capital Stock of such Restricted Subsidiary, on the other hand (or on less than a *pro rata* basis to any minority holder); or

(B) sales, transfers and other dispositions of Capital Stock in a Restricted Subsidiary to the extent required by, or made pursuant to, buy/sell, put/call or similar shareholder arrangements set forth in binding agreements in effect on the Issue Date; and

(v) the sale of Capital Stock of a Restricted Subsidiary (other than the Issuer) by the Company or another Restricted Subsidiary or the sale or

issuance by a Restricted Subsidiary of its newly-issued Capital Stock if such sale or issuance is made in compliance with Section 3.12 and either:

(A) such Restricted Subsidiary is no longer a Subsidiary, and the continuing Investment of the Company and its Restricted Subsidiaries in such former Restricted Subsidiary is in compliance with Section 3.11, or

(B) such Restricted Subsidiary continues to be a Restricted Subsidiary.

Section 3.14 Limitation on Designation of Unrestricted Subsidiaries .

(a) The Company may designate after the Issue Date any Subsidiary of the Company other than the Issuer or a Note Guarantor as an Unrestricted Subsidiary under this Indenture (a "Designation") only if:

(i) no Default or Event of Default shall have occurred and be continuing at the time of or after giving effect to such Designation and any transactions between the Company or any of its Restricted Subsidiaries and such Unrestricted Subsidiary are in compliance with Section 3.18;

(ii) at the time of and after giving effect to such Designation, the Company could Incur U.S.$1.00 of additional Indebtedness pursuant to Section 3.9(a);

(iii) the Company would be permitted to make an Investment at the time of Designation (assuming the effectiveness of such Designation and treating such Designation as an Investment at the time of Designation) as a Restricted Payment pursuant to Section 3.11(a) in an amount (the "Designation Amount") equal to the amount of the Company's Investment in such Subsidiary on such date; and

(iv) the terms of any Affiliate Transaction existing on the date of such Designation between the Subsidiary being designated (and its Subsidiaries) and the Company or any Restricted Subsidiary would be permitted under Section 3.18 if entered into immediately following such Designation.

(b) Neither the Company nor any Restricted Subsidiary shall at any time:

(i) provide credit support for, subject any of its property or assets (other than the Capital Stock of any Unrestricted Subsidiary) to the satisfaction of, or Guarantee, any Indebtedness of any Unrestricted Subsidiary (including any undertaking, agreement or instrument evidencing such Indebtedness);

(ii) be directly or indirectly liable for any Indebtedness of any Unrestricted Subsidiary; or

(iii) be directly or indirectly liable for any Indebtedness which provides that the Holder thereof may (upon notice, lapse of time or both) declare a default thereon or cause the payment thereof to be accelerated or payable prior to its final scheduled maturity upon the occurrence of a default with respect to any Indebtedness of any Unrestricted Subsidiary.

(c) The Company may revoke any Designation of a Subsidiary as an Unrestricted Subsidiary (a " Revocation") only if:

(i) no Default or Event of Default shall have occurred and be continuing at the time of and after giving effect to such Revocation; and

(ii) all Liens and Indebtedness of such Unrestricted Subsidiary outstanding immediately following such Revocation, if Incurred at such time, would have been permitted to be Incurred for all purposes of this Indenture.

(d) The Designation of a Subsidiary of the Company as an Unrestricted Subsidiary shall be deemed to include the Designation of all of the Subsidiaries of such Subsidiary as Unrestricted Subsidiaries. All Designations and Revocations must be evidenced by an Officer's Certificate of the Issuer, delivered to the Trustee certifying compliance with the preceding provisions.

Section 3.15 Limitation on Dividends and Other Payment Restrictions Affecting Restricted Subsidiaries .

(a) Except as provided in clause (b) below, the Company shall not, and shall not cause or permit any of its Restricted Subsidiaries to, directly or indirectly, create or otherwise cause or permit to exist or become effective any consensual encumbrance or restriction on the ability of any Restricted Subsidiary to:

(i) pay dividends or make any other distributions on or in respect of its Capital Stock to the Company or any other Restricted Subsidiary or pay any Indebtedness owed to the Company or any other Restricted Subsidiary;

(ii) make loans or advances to, or make any Investment in, the Company or any other Restricted Subsidiary; or

(iii) transfer any of its property or assets to the Company or any other Restricted Subsidiary.

(b) Section 3.15(a) shall not apply to encumbrances or restrictions existing under or by reason of:

(i) applicable law, rule, regulation or order;

(ii) this Indenture;

(iii) any encumbrance or restriction pursuant to an agreement in effect at or entered into on the Issue Date, and any amendments, restatements, renewals, replacements or refinancings thereof; *provided*, that any amendment, restatement, renewal, replacement or refinancing is not materially more restrictive with respect to such encumbrances or restrictions than those in existence on the Issue Date as determined in good faith by the Company's senior management;

(iv) customary non-assignment provisions of any contract and customary provisions restricting assignment or subletting in any lease governing a leasehold interest of any Restricted Subsidiary, or any customary restriction on the ability of a Restricted Subsidiary to dividend, distribute or otherwise transfer any asset which secures Indebtedness secured by a Lien, in each case permitted to be Incurred under this Indenture;

(v) any instrument governing Acquired Indebtedness not Incurred in connection with, or in anticipation or contemplation of, the relevant acquisition, merger or consolidation, which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person or the properties or assets of the Person so acquired;

(vi) restrictions with respect to a Restricted Subsidiary of the Company imposed pursuant to a binding agreement which has been entered into for the sale or disposition of Capital Stock or assets of such Restricted Subsidiary; *provided*, that such restrictions apply solely to the Capital Stock or assets of such Restricted Subsidiary being sold (and in the case of Capital Stock, its Subsidiaries);

(vii) customary restrictions imposed on the transfer of copyrighted or patented materials;

(viii) an agreement governing Indebtedness Incurred to Refinance the Indebtedness issued, assumed or Incurred pursuant to an agreement referred to in clause (iii) or (v) of this Section 3.15(b); *provided*, that such Refinancing agreement is not materially more restrictive with respect to such encumbrances or restrictions than those contained in the agreement referred to in such clause (iii) or (v) as determined in good faith by the Company's senior management;

(ix) Liens permitted to be Incurred pursuant to the provisions of the covenant described under Section 3.17 that limit the right of any person to transfer the assets subject to such Liens;

(x) Purchase Money Indebtedness for property acquired in the ordinary course of business and Capitalized Lease Obligations that impose restrictions of the nature discussed in clause (iii) of this Section 3.15(b) above on the property so acquired;

(xi) restrictions on cash or other deposits imposed by customers under contracts or other arrangements entered into or agreed to in the ordinary course of business not materially more restrictive than those existing on the Issue Date as determined in good faith by the Company's senior management;

(xii) customary provisions in joint venture agreements relating to dividends or other distributions in respect of such joint venture or the securities, assets or revenues of such joint venture;

(xiii) restrictions in Indebtedness Incurred by a Restricted Subsidiary in compliance with the covenant described under Section 3.9; *provided*, that such restrictions (A) are not materially more restrictive with respect to such encumbrances and restrictions than those such Restricted Subsidiary was subject to in agreements related to obligations referenced in clause (iii) above as determined in good faith by the Company's senior management or (B) constitute financial covenants or similar restrictions that limit the ability to pay dividends or make distributions upon the occurrence or continuance of a default or event of default or that would result in a default or event of default under such Indebtedness upon the declaration or payment of dividends or other distributions; and

(xiv) net worth provisions in leases entered into by the Company or any Restricted Subsidiary in the ordinary course of business not materially more restrictive than those existing on the Issue Date as determined in good faith by the Company's senior management.

Section 3.16 Limitation on Layered Indebtedness. The Company shall not, and shall not permit the Issuer or any other Note Guarantor to, directly or indirectly, Incur any Indebtedness that is subordinate in right of payment to any other Indebtedness, unless such Indebtedness is expressly subordinate in right of payment to the Notes or, in the case of a Note Guarantor, its Note Guarantee, to the same extent, on the same terms and for so long (except as a result of the provisions of the Intercreditor Agreement applicable to Facilities Agreement Indebtedness and any refinancing thereof) as such Indebtedness is subordinate to such other Indebtedness.

Section 3.17 Limitation on Liens. The Company shall not, and shall not cause or permit any of its Restricted Subsidiaries to, directly or indirectly, incur, grant, assume or suffer to exist any Liens of any kind (except for Permitted Liens) (a) against or upon any of their respective properties or assets, whether owned on the Issue Date or acquired after the Issue Date, or any proceeds therefrom, to secure any Indebtedness or trade payables or (b) deemed to exist in respect of Capitalized Lease Obligations (including any Capitalized Lease Obligations in respect of Sale and Leaseback Transactions), in each case, unless contemporaneously therewith effective provision is made:

(i) in the case of the Issuer or any Restricted Subsidiary that is not a Note Guarantor, to secure the Notes and all other amounts due under this Indenture; and

(ii) in the case of a Note Guarantor, to secure such Note Guarantor's Note Guarantee of the Notes and all other amounts due under this Indenture,

in each case, equally and ratably with such Indebtedness or other obligation (or, in the event that such Indebtedness is subordinated in right of payment to the Notes or such Note Guarantee, as the case may be, prior to such Indebtedness or other obligation) with a Lien on the same properties and assets securing such Indebtedness or other obligation for so long as such Indebtedness or other obligation is secured by such Lien.

Section 3.18 Limitation on Transactions with Affiliates.

(a) The Company shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly, enter into any transaction or series of related transactions (including, without limitation, the purchase, sale, lease or exchange of any property or the rendering of any service) with, or for the benefit of, any Affiliate of the Company (each an "Affiliate Transaction"), unless the terms of such Affiliate Transaction are no less favorable than those that could reasonably be expected to be obtained in a comparable transaction at such time on an arm's-length basis from a Person that is not an Affiliate of the Company;

(b) The provisions of Section 3.18(a) above shall not apply to:

(i) Affiliate Transactions with or among the Company and any Restricted Subsidiary or between or among Restricted Subsidiaries;

(ii) reasonable fees and compensation paid to, and any indemnity provided on behalf of, officers, directors, employees, consultants or agents of the Company or any Restricted Subsidiary as determined in good faith by the Company's Board of Directors or, to the extent consistent with past practice, senior management;

(iii) Affiliate Transactions undertaken pursuant to any contractual obligations or rights in existence on the Issue Date (as in effect on the Issue Date with modifications, extensions and replacements thereof not materially adverse to the Company and its Restricted Subsidiaries) as determined in good faith by the Company's senior management;

(iv) any Restricted Payments in compliance with Section 3.11;

(v) payments and issuances of Qualified Capital Stock to any officers, directors and employees of the Company or any Restricted Subsidiary pursuant to any management equity plan or stock option plan or any other stock subscription or shareholder agreement, and any employment agreements, stock option plans or other compensatory arrangements (and any successor plans thereto) and any supplemental executive retirement benefit plans or arrangements with any such officers, directors or employees that are, in each case, approved in good faith by the Board of Directors or, to the extent consistent with past practice, senior management of the Company;

(vi) loans and advances to officers, directors and employees of the Company or any Restricted Subsidiary for travel, entertainment, moving and other relocation expenses, in each case made in the ordinary course of business in amounts consistent with the past practice of the Company or such Restricted Subsidiary; and

(vii) loans made by the Company or any Restricted Subsidiary to employees or directors in an aggregate amount not to exceed U.S.$15 million (or its equivalent in another currency) at any time outstanding.

Section 3.19 Conduct of Business. The Company and its Restricted Subsidiaries shall not engage in any business other than a Permitted Business.

Section 3.20 Reports to Holders.

(a) Notwithstanding that the Company may not be subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, so long as any Notes remain outstanding, the Company shall:

(i) provide the Trustee and the Holders with:

(A) annual reports on Form 20-F (or any successor form) containing the information required to be contained therein (or such successor form) within the time period required under the rules of the Commission for the filing of Form 20-F (or any successor form) by "foreign private issuers" (as defined in Rule 3b-4 of the Exchange Act (or any successor rule));

(B) reports on Form 6-K (or any successor form) including, whether or not required, unaudited quarterly financial statements (which shall

include at least a balance sheet, income statement and cash flow statement) including a discussion of financial condition and results of operations of the Company in accordance with past practice, within 45 days after the end of each of the first three fiscal quarters of each fiscal year;

(C) such other reports on Form 6-K (or any successor form) promptly from time to time after the occurrence of an event that would be required to be reported on a Form 6-K (or any successor form); and

(ii) file with the Commission, to the extent permitted, the information, documents and reports referred to in clause (i) within the periods specified for such filings under the Exchange Act (whether or not applicable to the Company).

(b) In addition, at any time when the Company is not subject to or is not current in its reporting obligations under clause (ii) of Section 3.20(a), the Company shall make available, upon request, to any Holder and any prospective purchaser of Notes the information required pursuant to Rule 144A(d)(4) under the Securities Act.

(c) Notwithstanding anything in this Indenture to the contrary, the Company shall not be deemed to have failed to comply with any of its obligations hereunder for purposes of clause (iv) of Section 6.1(a) or for any other purpose hereunder until 75 days after the date any report hereunder is due.

(d) Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such reports shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officer's Certificates).

Section 3.21 Payment of Additional Amounts .

(a) All payments made by the Issuer or the Note Guarantors under, or with respect to, the Notes shall be made free and clear of, and without withholding or deduction for or on account of any present or future tax, duty, levy, impost, assessment or other governmental charge (including penalties, interest and other liabilities related thereto) (collectively, "Taxes") imposed or levied by or on behalf of the United States, Mexico, Spain, the Netherlands, the United Kingdom, France, Switzerland or, in the event that the Issuer appoints additional paying agents, by the jurisdictions of such additional paying agents (a "Taxing Jurisdiction"), unless the Issuer or such Note Guarantor, as the case may be, is required to withhold or deduct Taxes by law or by the official interpretation or administration thereof.

(b) If the Issuer or any Note Guarantor is so required to withhold or deduct any amount for, or on account of, such Taxes from any payment made under or with respect to the Notes, the Issuer or such Note Guarantor, as the case may be, shall pay such additional amounts (" Additional Amounts") as may be necessary so that the net amount received by each

Holder (including Additional Amounts) after such withholding or deduction shall not be less than the amount such Holder would have received if such Taxes had not been required to be withheld or deducted; *provided, however*, that the foregoing obligation to pay Additional Amounts does not apply to:

(i) any Taxes imposed solely because at any time there is or was a connection between the Holder and a Taxing Jurisdiction (other than the mere purchase of the Notes, or receipt of a payment or the ownership or holding of a Note),

(ii) any estate, inheritance, gift, sales, transfer, personal property or similar Tax imposed with respect to the Notes,

(iii) any Taxes imposed solely because the Holder or any other person fails to comply with any certification, identification or other reporting requirement concerning the nationality, residence, identity or connection with a Taxing Jurisdiction of the Holder or any beneficial owner of the Note if compliance is required by the applicable law of the Taxing Jurisdiction as a precondition to exemption from, or reduction in the rate of, the tax, assessment or other governmental charge, and the Issuer has given the Holders at least 30 days' notice that Holders shall be required to provide such information and identification; *provided*, *however*, this clause (iii) shall not apply if the provision of information, documentation or other evidence described in this clause (iii) would be materially more onerous, in form, in procedure or in the substance of information disclosed, to a Holder or beneficial owner of the Notes than comparable information or other reporting requirements imposed under U.S. tax law, regulation (including proposed regulations) and administrative practice,

(iv) any Taxes payable otherwise than by deduction or withholding from payments on the Notes,

(v) any Taxes imposed on a payment to or for the benefit of an individual pursuant to European Council Directive 2003/48/EC or any other directive implementing the conclusions of the ECOFIN Council meeting of November 26-27, 2000 or any law implementing or complying with, or introduced in order to conform to, such directives,

(vi) any Taxes that would have been avoided by presenting for payment (where presentation is required) the relevant Note to another Paying Agent,

(vii) any Taxes with respect to such Note presented for payment more than 30 days after the date on which the payment became due and payable or the date on which payment thereof is duly provided for and notice thereof given to Holders, whichever occurs later, except to the extent

that the Holders of such Note would have been entitled to such Additional Amounts on presenting such Note for payment on any date during such 30 day period, and

(viii) any payment on the Note to a Holder that is a fiduciary or partnership or a person other than the sole beneficial owner of any such payment, to the extent that a beneficiary or settlor with respect to such fiduciary, a member of such a partnership or the beneficial owner of the payment would not have been entitled to the Additional Amounts had the beneficiary, settlor, member or beneficial owner been the Holder of the Note.

(c) The obligations in Section 3.21(a) and Section 3.21(b) shall survive any termination or discharge of this Indenture and shall apply mutatis mutandis to any Taxing Jurisdiction with respect to any successor to the Issuer or any Note Guarantor, as the case may be. The Issuer or such Note Guarantor, as applicable, shall (i) make such withholding or deduction and (ii) remit the full amount deducted or withheld to the relevant Taxing Jurisdiction in accordance with applicable law. The Issuer or such Note Guarantor, as applicable, shall use all reasonable efforts to obtain certified copies of tax receipts evidencing the payment of any Taxes so deducted or withheld from each Taxing Jurisdiction imposing such Taxes and shall furnish such certified copies to the Trustee within 30 days after the date the payment of any Taxes so deducted or so withheld is due pursuant to applicable law or, if such tax receipts are not reasonably available to the Issuer or such Note Guarantor, as applicable, furnish such other documentation that provides reasonable evidence of such payment by the Issuer or such Note Guarantor, as applicable.

(d) Any reference in this Indenture, any supplemental indenture or the Notes to principal, premium, interest or any other amount payable in respect of the Notes by the Issuer shall be deemed also to refer to any Additional Amount that may be payable with respect to that amount under the obligations referred to in this subsection.

(e) In the event that Additional Amounts actually paid with respect to the Notes pursuant to this Section 3.21 are based on rates of deduction or withholding of withholding taxes in excess of the appropriate rate applicable to the Holder of such Notes, and as a result thereof such Holder is entitled to make a claim for a refund or credit of such excess from the authority imposing such withholding tax, then such Holder shall, by accepting such Notes, and without any further action, be deemed to have assigned and transferred all right, title and interest to any such claim for a refund or credit of such excess to the Issuer. However, by making such assignment, the Holder makes no representation or warranty that the Issuer shall be entitled to receive such claim for a refund or credit and incurs no other obligation with respect thereto.

Section 3.22 Suspension of Covenants.

(a) During any period of time that the Notes do not have Investment Grade Ratings from two of the Rating Agencies and (i) the Consolidated Leverage Ratio of the Company is less than 3.5:1 and (ii) no Default or Event of Default has occurred and is continuing

(the occurrence of the events described in the foregoing clauses (i) and (ii) being collectively referred to as a "Partial Covenant Suspension Event"), the Company and its Restricted Subsidiaries shall not be subject to the provisions of this Indenture described under Sections 3.12, 3.13, 3.14(b), 3.15, 3.18, 3.19, 4.1(a)(ii) and 4.1(b)(ii) (collectively, the "Partial Suspended Covenants").

(b) During any period of time that (i) the Notes have Investment Grade Ratings from two of the Rating Agencies and (ii) no Default or Event of Default has occurred and is continuing (the occurrence of the events described in the foregoing clauses (i) and (ii) being collectively referred to as a " Covenant Suspension Event"), the Company and its Restricted Subsidiaries shall not be subject to the provisions of this Indenture described under Sections 3.9, 3.11, 3.12, 3.13, 3.14(b), 3.15, 3.16, 3.18, 3.19, 4.1(a)(ii) and 4.1(b)(ii) (collectively, the "Suspended Covenants").

(c) In addition, (x) no Subsidiary that is a Restricted Subsidiary on the date of the occurrence of a Partial Covenant Suspension Event (the " Partial Covenant Suspension Date") or a Covenant Suspension Event (the "Suspension Date") may be redesignated as an Unrestricted Subsidiary during the Partial Suspension Period or the Suspension Period, as applicable and (y) the Additional Note Guarantor shall be released from its obligation to guarantee the Notes on the date of a Partial Covenant Suspension Event or a Covenant Suspension Event, as the case may be.

(d) The Additional Note Guarantors shall be released from their obligation to guarantee the Notes upon the occurrence of a Partial Covenant Suspension Event or a Covenant Suspension Event; *provided*, that upon the occurrence of a Partial Covenant Reversion Date or a Reversion Date, as applicable, the guarantee of the Notes by the Additional Note Guarantors shall be reinstated in accordance with and subject to the conditions in Section 3.21(d).

(e) In the event that the Company and its Restricted Subsidiaries are not subject to the Partial Suspended Covenants or the Suspended Covenants, as the case may be, for any period of time as a result of the foregoing, and on any subsequent date (in the case of Partial Suspended Covenants, such subsequent date being the "Partial Covenant Reversion Date" and, in the case of Suspended Covenants, such subsequent date being the " Reversion Date") (i) the Consolidated Leverage Ratio of the Company is not less than 3.5:1 during the applicable Partial Suspension Period or (ii) the Notes do not have Investment Grade Ratings from at least two of the Rating Agencies during the applicable Suspension Period, then in each case in clauses (i) and (ii), the Company and its Restricted Subsidiaries will thereafter again be subject to the Partial Suspended Covenants or the Suspended Covenants, as applicable, and the Notes will again be guaranteed by the Additional Note Guarantors (unless, solely with respect to any Additional Note Guarantor, the conditions for release as described under Section 10.2 are otherwise satisfied during the Partial Suspension Period or the Suspension Period, as applicable). The Issuer shall cause such Additional Note Guarantor to promptly execute and deliver to the Trustee a supplemental indenture hereto in form and substance reasonably satisfactory to the Trustee in accordance with the provisions of Article IX, evidencing that such Additional Note Guarantor's guarantee on substantially the terms set forth in Article X. The period of time between the Partial Covenant Suspension Date and the Partial Covenant Reversion Date is referred to as the " Partial Suspension Period" and the period of time between the Suspension Date and the

Reversion Date is referred to as the "Suspension Period." Notwithstanding that the Partial Suspended Covenants, the Suspended Covenants and the guarantees by the Additional Note Guarantors may be reinstated, no Default or Event of Default will be deemed to have occurred as a result of a failure to comply with the Partial Suspended Covenants during the Partial Suspension Period or the Suspended Covenants during the Suspension Period, as the case may be (or upon termination of the applicable Partial Suspension Period or the Suspension Period or after that time based solely on events that occurred during the applicable Partial Suspension Period or the Suspension Period, as the case may be).

(f) On the Reversion Date, all Indebtedness Incurred during the Suspension Period shall be classified to have been Incurred pursuant to Section 3.9(a) or Section 3.9(b) (to the extent such Indebtedness would be permitted to be Incurred thereunder as of the Reversion Date and after giving effect to Indebtedness Incurred prior to the Suspension Period and outstanding on the Reversion Date). To the extent such Indebtedness would not be so permitted to be Incurred pursuant to Section 3.9(a) or 3.9(b), such Indebtedness shall be deemed to have been outstanding on the Issue Date, so that it is classified as permitted under clause (iii) of Section 3.9(b). Calculations made after the Reversion Date of the amount available to be made as Restricted Payments under Section 3.11 shall be made as though Section 3.11 had been in effect since the Issue Date and throughout the Suspension Period. The Issuer will give the Trustee written notice of any occurrence of a Reversion Date not later than five (5) Business Days after such Reversion Date. After any such notice of the occurrence of a Reversion Date, the Trustee shall assume the Suspended Covenants apply and are in full force and effect. Accordingly, Restricted Payments made during the Suspension Period will reduce the amount available to be made as Restricted Payments under Section 3.11(a).

(g) The Issuer will give the Trustee written notice of any Partial Covenant Suspension Event or Covenant Suspension Event and in any event not later than five (5) Business Days after such Partial Covenant Suspension Event or Covenant Suspension Event has occurred. In the absence of such notice, the Trustee shall assume that the Partial Suspended Covenants or the Suspended Covenants, as applicable, apply and are in full force and effect.

(h) For purposes of this Section 3.22 only, "Consolidated Leverage Ratio" and all associated definitions shall have the meaning set forth in Exhibit E hereto.

## ARTICLE IV

## SUCCESSOR COMPANY

Section 4.1 Merger, Consolidation and Sale of Assets.

(a) The Issuer shall not, in a single transaction or series of related transactions, consolidate or merge with or into any Person (whether or not the Issuer is the surviving or continuing Person), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of the Issuer's properties and assets, to any Person unless:

(i) either:

(A) the Issuer shall be the surviving or continuing corporation, or

(B) the Person (if other than the Issuer) formed by such consolidation or into which the Issuer is merged or the Person which acquires by sale, assignment, transfer, lease, conveyance or other disposition the properties and assets of the Issuer substantially as an entirety (the "Successor Issuer"):

(1) shall be a Person organized and validly existing under the laws of Mexico, the United States of America, any State thereof or the District of Columbia, Canada, France, Belgium, Germany, Italy, Luxembourg, the Netherlands, Portugal, Spain, Switzerland or the United Kingdom, or any political subdivision thereof (the " Permitted Merger Jurisdictions"); and

(2) shall expressly assume, by a supplemental indenture (in form and substance satisfactory to the Trustee), executed and delivered to the Trustee, the due and punctual payment of the principal of, and premium, if any, and interest on all of the Notes and the performance and observance of every covenant of the Notes and this Indenture on the part of the Issuer to be performed or observed and provide the Trustee with an Officer's Certificate and Opinion of Counsel, and such transaction is otherwise in compliance with this Indenture;

(ii) immediately after giving effect to such transaction and the assumption contemplated by clause (i)(B)(2) of this Section 4.1(a) (including giving effect on a pro forma basis to any Indebtedness, including any Acquired Indebtedness, Incurred or anticipated to be Incurred or discharged in connection with or in respect of such transaction):

(A) the Company shall have a Consolidated Fixed Charge Coverage Ratio that shall be not less than the Consolidated Fixed Charge Coverage Ratio of the Company immediately prior to such transaction; or

(B) the Issuer or such Successor Issuer, as the case may be, shall be able to Incur at least U.S.$1.00 of additional Indebtedness pursuant to Section 3.9(a);

(iii) immediately before and immediately after giving effect to such transaction and the assumption contemplated by clause (i)(B)(2) of this Section 4.1(a) (including, without limitation, giving effect on a pro forma basis to any Indebtedness, including any Acquired Indebtedness, Incurred or anticipated to be Incurred or discharged and any Lien granted in connection with or in respect of the transaction), no Default or Event of Default shall have occurred or be continuing;

(iv) in the case of a transaction resulting in a Successor Issuer, each Note Guarantor has confirmed by supplemental indenture that its Note Guarantee shall apply for Obligations of the Successor Issuer in respect of this Indenture and the Notes; and

(v) if the Issuer merges with a Person, or the Successor Issuer is, organized under the laws of any of the Permitted Merger Jurisdictions, the Issuer or the Successor Issuer shall have delivered to the Trustee an Opinion of Counsel stating that, as applicable:

(A) the Holders of the Notes shall not recognize income, gain or loss for the purposes of the income tax laws of the United States or the applicable Permitted Merger Jurisdiction as a result of the transaction and shall be taxed in the Holder's home jurisdiction in the same manner and on the same amounts (assuming solely for this purpose that no Additional Amounts are required to be paid on the Notes) and at the same times as would have been the case if the transaction had not occurred;

(B) any payment of interest or principal under or relating to the Notes or any Guarantees shall be paid in compliance with any requirements under Section 3.21; and

(C) no other taxes on income, including capital gains, shall be payable by Holders of the Notes under the laws of the United States or the applicable Permitted Merger Jurisdiction relating to the acquisition, ownership or disposition of the Notes, including the receipt of interest or principal thereon; *provided*, that the Holder does not use or hold, and is not deemed to use or hold the Notes in carrying on a business in the United States or the applicable Permitted Merger Jurisdiction.

The provisions of clauses (ii) and (iii) of this Section 4.1(a) will not apply to:

(x) any transfer of the properties or assets of the Company or a Restricted Subsidiary to the Issuer;

(y) any merger of the Company or a Restricted Subsidiary into the Issuer; or

(z) any merger of the Issuer into the Company or a Wholly Owned Subsidiary of the Company.

For purposes of this Section 4.1, the transfer (by lease, assignment, sale or otherwise, in a single transaction or series of transactions) of all or substantially all of the properties or assets of one or more Restricted Subsidiaries of the Issuer, the Capital Stock of which constitutes all or substantially all of the properties and assets of the Issuer (determined on a consolidated basis for the Issuer and its Restricted Subsidiaries), shall be deemed to be the transfer of all or substantially all of the properties and assets of the Issuer.

The Successor Issuer will succeed to, and be substituted for, such Issuer under this Indenture and the Notes, as applicable. For the avoidance of doubt, compliance with this Section 4.1 will not affect the obligations of the Issuer (including a Successor Issuer, if applicable) under Section 3.8 if applicable.

(b) The Company will not, in a single transaction or series of related transactions, consolidate or merge with or into any Person (whether or not the Company is the surviving or continuing Person), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of the Company's properties and assets (determined on a consolidated basis for the Company and its Restricted Subsidiaries), to any Person unless:

(i) either:

(A) the Company shall be the surviving or continuing corporation, or

(B) the Person (if other than the Company) formed by such consolidation or into which the Company is merged or the Person which acquires by sale, assignment, transfer, lease, conveyance or other disposition the properties and assets of the Company and the Restricted Subsidiaries substantially as an entirety (the "Successor Company"):

(1) shall be a corporation organized and validly existing under the laws of a Permitted Merger Jurisdictions; and

(2) shall expressly assume all of the Obligations of the Company under this Indenture, the Notes and the Company's Note Guarantee by executing a supplemental indenture and provide the Trustee with an Officer's Certificate and Opinion of Counsel, and such transaction is otherwise in compliance this Indenture;

(ii) immediately after giving effect to such transaction and the assumption contemplated by clause (i)(B)(2) of this Section 4.1(b) (including giving effect on a pro forma basis to any Indebtedness, including any Acquired Indebtedness, Incurred or anticipated to be Incurred or discharged in connection with or in respect of such transaction), the Company or such Successor Company, as the case may be:

(A) will have a Consolidated Fixed Charge Coverage Ratio that will be not less than the Consolidated Fixed Charge Coverage Ratio of the Company immediately prior to such transaction; or

(B) will be able to Incur at least U.S.$1.00 of additional Indebtedness pursuant to Section 3.9(a); and

(iii) immediately before and immediately after giving effect to such transaction and the assumption contemplated by clause (i)(B)(2) of this Section 4.1(b) (including, without limitation, giving effect on a *pro forma* basis to any Indebtedness, including any Acquired Indebtedness, Incurred or anticipated to be Incurred or discharged and any Lien granted in connection with or in respect of the transaction), no Default or Event of Default shall have occurred or be continuing.

The provisions of clauses (ii) and (iii) of this Section 4.1(b) shall not apply to:

(x) any transfer of the properties or assets of a Restricted Subsidiary to the Company or a Note Guarantor;

(y) any merger of a Restricted Subsidiary into the Company or a Note Guarantor; or

(z) any merger of the Company into another Note Guarantor or a Wholly Owned Subsidiary of the Company.

The Successor Company shall succeed to, and be substituted for such Company under this Indenture, the Notes and/or the Note Guarantee, as applicable.

(c) Each Note Guarantor other than the Company shall not, and the Company shall not cause or permit any such Note Guarantor to, consolidate with or merge into, or sell or dispose of all or substantially all of its assets to, any Person (other than the Issuer) that is not a Note Guarantor unless:

(i) such Person (if such Person is the surviving entity) (the "Successor Note Guarantor") assumes all of the obligations of such Note Guarantor in respect of its Note Guarantee by executing a supplemental indenture and providing the Trustee with an Officer's Certificate and Opinion of Counsel, and such transaction is otherwise in compliance with this Indenture;

(ii) such Note Guarantee is to be released as provided under Section 10.2(b); or

(iii) such sale or other disposition of substantially all of such Note Guarantor's assets is made in accordance with Section 3.12.

Subject to certain limitations described in this Indenture, the Successor Note Guarantor will succeed to, and be substituted for, such Note Guarantor under this Indenture and such Note Guarantor's Note Guarantee. The provisions of clauses (i), (ii) and (iii) of this Section 4.1(c) will not apply to:

(x) any transfer of the properties or assets of a Note Guarantor to the Issuer or another Note Guarantor;

(y) any merger of a Note Guarantor into the Issuer or another Note Guarantor; or

(z) any merger of a Note Guarantor into a Wholly Owned Subsidiary of the Company.

ARTICLE V

OPTIONAL REDEMPTION OF NOTES

Section 5.1 Optional Redemption. The Issuer may redeem the Notes, at its option, in whole at any time or in part from time to time, subject to the conditions and at the redemption prices specified in the Form of Note in Exhibit A hereto.

Section 5.2 [Reserved].

Section 5.3 Notices to Trustee. If the Issuer elects to redeem the Notes pursuant to the optional redemption provisions of Section 5.1 hereof, it shall furnish to the Trustee, at least 45 days but not more than 60 days before the Redemption Date, an Officer's Certificate setting forth: (a) the Redemption Date, (b) the principal amount of Notes to be redeemed, (c) the CUSIP numbers of the Notes, (d) the redemption price and (e) the amount of interest to be paid with respect to each multiple of U.S.$1,000 principal amount of Notes to be redeemed.

Section 5.4 Notice of Redemption.

(a) The Issuer shall prepare and mail or cause to be mailed a notice of redemption, in the manner provided for in Section 12.1, not less than 30 nor more than 60 days prior to the Redemption Date, to each Holder of Notes to be redeemed.

(b) All notices of redemption shall state:

(i) the Redemption Date,

(ii) the redemption price and the amount of any accrued interest payable as provided in Section 5.7,

(iii) whether or not the Issuer is redeeming all Outstanding Notes,

(iv) if the Issuer is not redeeming all Outstanding Notes, the aggregate principal amount of Notes that the Issuer is redeeming and the aggregate principal amount of Notes that will be Outstanding after the partial redemption, as well as the identification of the particular Notes, or portions of the particular Notes, that the Issuer is redeeming,

(v) if the Issuer is redeeming only part of a Note, the notice that relates to that Note shall state that on and after the Redemption Date, upon surrender of that Note, the Holder will receive, without charge, a new Note or Notes of authorized denominations for the principal amount of the Note remaining unredeemed,

(vi) that on the Redemption Date the redemption price and any accrued interest payable to the Redemption Date as provided in Section 5.7 will become due and payable in respect of each Note, or the portion of each Note, to be redeemed, and, unless the Issuer defaults in making the redemption payment, that interest on each Note, or the portion of each Note, to be redeemed, will cease to accrue on and after the Redemption Date,

(vii) the place or places where a Holder must surrender Notes for payment of the redemption price and any accrued interest payable on the Redemption Date, and

(viii) the CUSIP number, if any, listed in the notice or printed on the Notes, and that no representation is made as to the accuracy or correctness of such CUSIP number.

(c) At the Issuer's request, the Trustee shall give the notice of redemption in the Issuer's names and at its expense; provided, however, that the Issuer shall have delivered to the Trustee, at least 45 days prior to the Redemption Date, an Officer's Certificate requesting that the Trustee give such notice and setting forth the information to be stated in such notice as provided in the preceding Section 5.4(b).

Section 5.5 Selection of Notes to Be Redeemed in Part.

(a) If the Issuer is not redeeming all Outstanding Notes, the Trustee shall select the Notes to be redeemed in compliance with the requirements of the principal national securities exchange, if any, on which the Notes are listed or, if the Notes are not then listed on a national securities exchange, on a pro rata basis, by lot or by any other method as the Trustee shall deem fair and appropriate; provided, however, that if a partial redemption is made with the proceeds of an Equity Offering, selection of the Notes, or portions of the Notes, for redemption shall be made by the Trustee only on a pro rata basis, or on as nearly a pro rata basis as is practicable (subject to the procedures of DTC), unless the method is otherwise prohibited. The Trustee shall make the selection from the then Outstanding Notes not previously called for redemption. The Trustee shall promptly notify the Issuer in writing of the Notes selected for redemption and, in the case of any Notes selected for partial redemption, the principal amount of the Notes to be redeemed. In the event of a partial redemption by lot, the Trustee shall select the particular Notes to be redeemed not less than 30 nor more than 60 days prior to the relevant Redemption Date from the then Outstanding Notes not previously called-for redemption. No Notes of U.S.$200,000 principal amount or less shall be redeemed in part. The Trustee may select for redemption portions with minimum denominations of U.S.$200,000 and in integral multiples of U.S.$1,000 in excess thereof.

(b) For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to redemption of Notes shall relate, in the case of any Note redeemed or to be redeemed only in part, to the portion of the principal amount of that Note which has been or is to be redeemed.

Section 5.6 Deposit of Redemption Price. On or prior to 10 :00 a.m. New York City time, on the Business Day prior to the Redemption Date, the Issuer shall deposit with the Trustee or with a Paying Agent (or, if the Issuer or a Note Guarantor is acting as the Paying Agent, segregate and hold in trust as provided in Section 2.4) an amount of money in immediately available funds sufficient to pay the redemption price of, and accrued interest on, all the Notes that the Issuer is redeeming on that date.

Section 5.7 Notes Payable on Redemption Date. If the Issuer, or the Trustee on behalf of the Issuer, gives notice of redemption in accordance with this Article V, the Notes, or the portions of Notes, called-for redemption, shall, on the Redemption Date, become due and payable at the redemption price specified in the notice (together with accrued interest, if any, to the Redemption Date), and from and after the Redemption Date (unless the Issuer shall default in the payment of the redemption price and accrued interest) the Notes or the portions of Notes shall cease to bear interest. Upon surrender of any Note for redemption in accordance with the notice, the Issuer shall pay the Notes at the redemption price, together with accrued interest, if any, to the Redemption Date (subject to the rights of Holders of record on the relevant record date to receive interest due on the relevant Interest Payment Date). If the Issuer shall fail to pay any Note called-for redemption upon its surrender for redemption, the principal shall, until paid, bear interest from the Redemption Date at the rate borne by the Notes.

Section 5.8 Unredeemed Portions of Partially Redeemed Note. Upon surrender of a Note that is to be redeemed in part, the Issuer shall execute, and the Trustee shall authenticate and make available for delivery to the Holder of the Note, at the expense of the Issuer, a new Note or Notes, of any authorized denomination as requested by the Holder, in an aggregate principal amount equal to, and in exchange for, the unredeemed portion of the principal of the Note surrendered, *provided*, that each new Note will be in a principal amount of U.S.$200,000 or an integral multiple of U.S.$1,000 in excess thereof.

## ARTICLE VI

## DEFAULTS AND REMEDIES

Section 6.1 Events of Default.

(a) Each of the following is an "Event of Default":

(i) default in the payment when due of the principal of or premium, if any, on any Notes, including the failure to make a required payment to purchase Notes tendered pursuant to an optional redemption, a Change of Control Offer or an Asset Sale Offer;

(ii) default for 30 days or more in the payment when due of interest or Additional Amounts on any Notes;

(iii) the failure to perform or comply with any of the provisions described under Article IV;

(iv) the failure by the Company or any Restricted Subsidiary to comply with, or in the case of non-guarantor Restricted Subsidiaries, to perform according to, any other covenant or agreement contained in this Indenture or in the Notes for 45 days or more after written notice to the Company and the Issuer from the Trustee or the Holders of at least 25% in aggregate principal amount of the then Outstanding Notes;

(v) default by the Company or any Restricted Subsidiary under any Indebtedness which:

(A) is caused by a failure to pay principal of, or premium, if any, when due or interest on such Indebtedness prior to the later of the expiration of any applicable grace period provided in such Indebtedness on the date of such default or five (5) days past when due; or

(B) results in the acceleration of such Indebtedness prior to its stated maturity;

and the principal or accreted amount of Indebtedness covered by clauses (v)(A) or (v)(B) of this Section 6.1(a) at the relevant time, aggregates U.S.$50 million or more;

(vi) failure by the Company or any of its Restricted Subsidiaries to pay one or more final judgments against any of them, aggregating U.S.$100 million or more, which judgment(s) are not paid, discharged or stayed for a period of 60 days or more;

(vii) a Bankruptcy Event of Default; or

(viii) except as permitted herein, any Note Guarantee is held to be unenforceable or invalid in a judicial proceeding or ceases for any reason to be in full force and effect or any Note Guarantor, or any Person acting on behalf of any Note Guarantor, denies or disaffirms such Note Guarantor's obligations under its Note Guarantee.

The foregoing will constitute Events of Default whatever the reason for any such Event of Default and whether it is voluntary or involuntary or is effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body.

(b) The Issuer shall deliver within 30 days to the Trustee written notice of any event which would constitute a Default or Event of Default, their status and what action the Issuer is taking or proposes to take in respect thereof.

Section 6.2 Acceleration.

(a) If an Event of Default (other than an Event of Default specified in clause (vii) of Section 6.1(a) above with respect to the Issuer or the Company) shall occur and be continuing, the Trustee or the Holders of at least 25% in principal amount of then Outstanding Notes may declare the unpaid principal of (and premium, if any) and accrued and unpaid interest on all the Notes to be immediately due and payable by notice in writing to the Issuer, the Company and the Trustee specifying the Event of Default and that it is a "notice of acceleration." If an Event of Default specified in clause (vii) of Section 6.1(a) above occurs with respect to the Company, then the unpaid principal of (and premium, if any) and accrued and unpaid interest on all the Notes will become immediately due and payable without any declaration or other act on the part of the Trustee or any Holder.

(b) At any time after a declaration of acceleration with respect to the Notes as described in the preceding paragraph, the Holders of a majority in principal amount of the Notes may rescind and cancel such declaration and its consequences:

(i) if the rescission would not conflict with any judgment or decree;

(ii) if all existing Events of Default have been cured or waived, except nonpayment of principal or interest that has become due solely because of the acceleration;

(iii) to the extent the payment of such interest is lawful, interest on overdue installments of interest and overdue principal, which has become due otherwise than by such declaration of acceleration, has been paid; and

(iv) if the Issuer has paid the Trustee its reasonable compensation and reimbursed the Trustee for its reasonable expenses, disbursements and advances.

Section 6.3 Other Remedies.

(a) If an Event of Default occurs and is continuing, the Trustee may pursue any available remedy to collect the payment of principal of and interest on the Notes or to enforce the performance of any provision of the Notes or this Indenture.

(b) The Trustee may maintain a proceeding even if it does not possess any of the Notes or does not produce any of them in the proceeding. A delay or omission by the Trustee

or any Holder in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. No remedy is exclusive of any other remedy. All available remedies are cumulative to the extent permitted by law.

Section 6.4 Waiver of Past Defaults. Subject to Section 6.2, the Holders of a majority in principal amount of the then Outstanding Notes may waive any existing Default or Event of Default, and its consequences, except a default in the payment of the principal of, premium, if any, or interest on any Notes.

Section 6.5 Control by Majority. The Holders of a majority in principal amount of the then Outstanding Notes may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or of exercising any trust or power conferred on the Trustee. Subject to Section 7.1 and Section 7.2, however, the Trustee may refuse to follow any direction that conflicts with law or this Indenture; *provided, however*, that the Trustee may take any other action deemed proper by the Trustee that is not inconsistent with such direction.

Section 6.6 Limitation on Suits.

(a) No Holder of any Notes shall have any right to institute any proceeding with respect hereto or for any remedy hereunder, unless:

(i) such Holder gives to the Trustee written notice of a continuing Event of Default;

(ii) Holders of at least 25% in principal amount of the then Outstanding Notes make a written request to pursue the remedy;

(iii) such Holders of the Notes provide to the Trustee indemnity satisfactory to it;

(iv) the Trustee does not comply within 60 days; and

(v) during such 60 day period the Holders of a majority in principal amount of the then Outstanding Notes do not give the Trustee a written direction which, in the opinion of the Trustee, is inconsistent with the request;

*provided*, that a Holder of a Note may institute suit for enforcement of payment of the principal of and premium, if any, or interest on such Note on or after the respective due dates expressed in such Note.

Section 6.7 Rights of Holders to Receive Payment. Notwithstanding any other provision of this Indenture (including, without limitation, Section 6.6), the right of any Holder to receive payment of principal or interest on the Notes held by such Holder, on or after the respective due dates, Redemption Dates or repurchase date expressed in this Indenture or the Notes, or to bring suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such Holder.

Section 6.8 Collection Suit by Trustee. If an Event of Default specified in clause (i) and (ii) of Section 6.1(a) occurs and is continuing, the Trustee may recover judgment in its own name and as trustee of an express trust against the Issuer and each Note Guarantor for the whole amount then due and owing (together with applicable interest on any overdue principal and, to the extent lawful, interest on overdue interest) and the amounts provided for in Section 7.7.

Section 6.9 Trustee May File Proofs of Claim, etc.

(a) The Trustee may (irrespective of whether the principal of the Notes is then due):

(i) file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee and the Holders under this Indenture and the Notes allowed in any bankruptcy, insolvency, liquidation or other judicial proceedings relative to the Issuer, any Note Guarantor or any Subsidiary of the Issuer or their respective creditors or properties; and

(ii) collect and receive any monies or other property payable or deliverable in respect of any such claims and distribute them in accordance with this Indenture.

Any receiver, trustee, liquidator, sequestrator (or other similar official) in any such proceeding is hereby authorized by each Holder to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, taxes, disbursements and advances of the Trustee, its agent and counsel, and any other amounts due to the Trustee pursuant to Section 7.7.

(b) Nothing in this Indenture shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

Section 6.10 Priorities. If the Trustee collects any money or property pursuant to this Article VI, it shall pay out the money or property in the following order:

FIRST: to the Trustee for amounts due under Section 7.7;

SECOND: if the Holders proceed against the Issuer directly without the Trustee in accordance with this Indenture, to Holders for their collection costs;

THIRD: to Holders for amounts due and unpaid on the Notes for principal and interest, ratably, without preference or priority of any kind, according to the amounts due and payable on the Notes for principal and interest, respectively; and

FOURTH: to the Issuer or, to the extent the Trustee collects any amount pursuant to Article X hereof from any Note Guarantor, to such Note Guarantor, or to such party as a court of competent jurisdiction shall direct.

The Trustee may, upon notice to the Company and the Issuer, fix a record date and payment date for any payment to Holders pursuant to this Section 6.10.

Section 6.11 Undertaking for Costs. In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 6.11 does not apply to a suit by the Trustee, a suit by the Company, a suit by a Holder pursuant to Section 6.7 or a suit by Holders of more than 10% in principal amount of Outstanding Notes.

## ARTICLE VII

## TRUSTEE

Section 7.1 Duties of Trustee.

(a) If a Default or an Event of Default has occurred and is continuing, the Trustee shall exercise the rights and powers vested in it by this Indenture and use the same degree of care and skill in their exercise as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

(b) Except during the continuance of a Default or an Event of Default:

(i) the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture. However, in the case of any such certificates or opinions that by any provisions hereof are specifically required to be furnished to the Trustee, the Trustee shall examine such certificates and opinions to determine whether or not they conform to the requirements of this Indenture.

(c) The Trustee may not be relieved from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that:

(i) this clause (c) does not limit the effect of clause (b) of this Section 7.1;

(ii) the Trustee shall not be liable for any error of judgment made in good faith by a Trust Officer unless it is proved that the Trustee was negligent in ascertaining the pertinent facts; and

(iii) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 6.2, 6.4 or 6.5.

(d) The Trustee shall not be liable for interest on any money received by it except as the Trustee may agree in writing with the Issuer.

(e) Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

(f) No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers, if it shall have reasonable grounds to believe that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(g) Every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Article VII.

(h) Unless otherwise specifically provided in this Indenture, any demand, request, direction or notice from the Issuer shall be sufficient if signed by an Officer of the Issuer.

(i) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders unless such Holders shall have offered to the Trustee reasonable security or indemnity against the costs, expenses (including reasonable attorneys' fees and expenses) and liabilities that might be incurred by it in compliance with such request or direction.

Section 7.2 Rights of Trustee.

Subject to Section 7.1:

(a) The Trustee may rely on any document reasonably believed by it to be genuine and to have been signed or presented by the proper person. The Trustee need not investigate any fact or matter stated in the document.

(b) Before the Trustee acts or refrains from acting at the direction of the Issuer or any Note Guarantor, it may require an Officer's Certificate or an Opinion of Counsel. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on an Officer's Certificate or Opinion of Counsel.

(c) The Trustee may act through its attorneys and agents and shall not be responsible for the misconduct or negligence of any agent appointed with due care.

(d) The Trustee shall not be liable for any action it takes or omits to take in good faith which it believes to be authorized or within its rights or powers; provided, however, that the Trustee's conduct does not constitute willful misconduct or negligence.

(e) The Trustee may consult with counsel of its selection, and the advice or opinion of counsel with respect to legal matters relating to this Indenture and the Notes shall be full and complete authorization and protection from liability in respect to any action taken, omitted or suffered by it hereunder in good faith and in accordance with the advice or opinion of such counsel.

(f) If the Trustee shall determine, it shall be entitled to examine the books, records and premises of the Issuer, personally or by agent or attorney.

(g) The Trustee shall not be deemed to have notice of any Default or Event of Default unless a Trust Officer of the Trustee has received written notice at the Corporate Trust Office of any event which is in fact such a default, and such notice references the Notes and this Indenture.

(h) The rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and to each agent, custodian and other Person employed to act hereunder.

(i) The Trustee may request that the Issuer deliver an Officer's Certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture, which Officer's Certificate may be signed by any Person authorized to sign an Officer's Certificate, including any Person specified as so authorized in any such certificate previously delivered and not superseded.

(j) The permissive rights of the Trustee enumerated herein shall not be construed as duties.

(k) In no event shall the Trustee be liable, directly or indirectly, for any special, indirect, punitive or consequential damages, even if the Trustee has been advised of the possibility of such damages.

(l) The Trustee shall not be responsible or liable for any failure or delay in the performance of its obligations under this Indenture arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control, including without limitation, acts of God; earthquakes; fires; floods; wars; civil or military disturbances; sabotage; epidemics; riots,

interruptions, loss or malfunctions of utilities, computer (hardware or software) or communications service; accidents; labor disputes; acts of civil or military authority or governmental actions; it being understood that the Trustee shall use its best efforts to resume performance as soon as practicable under the circumstances.

(m) The Trustee shall at no time have any responsibility or liability for or in respect to the legality, validity or enforceability of any Collateral or any arrangement or agreement between the Issuer or the Company and any other Person with respect thereto, or the perfection or priority of any security interest created in any of the Collateral or maintenance of any perfection and priority, or for or with respect to the sufficiency of the Collateral following an Event of Default.

Section 7.3 Individual Rights of Trustee. The Trustee in its individual or any other capacity may become the owner or pledgee of Notes and may otherwise deal with the Issuer, the Note Guarantors or any Affiliate of the Issuer with the same rights it would have if it were not Trustee. Any Paying Agent, Transfer Agent, Registrar or co-Registrar may do the same with like rights. However, the Trustee must comply with Section 7.10.

Section 7.4 Trustee's Disclaimer. The Trustee shall not be responsible for and makes no representation as to the validity or adequacy of this Indenture or the Notes, it shall not be accountable for the Issuer's use of the proceeds from the Notes, and it shall not be responsible for any statement of the Issuer in this Indenture or in any document issued in connection with the sale of the Notes or in the Notes other than the Trustee's certificate of authentication.

Section 7.5 Notice of Defaults. If a Default or Event of Default occurs and is continuing and if a Trust Officer has actual knowledge thereof, the Trustee shall mail to each Holder notice of the Default or Event of Default within 90 days after the occurrence thereof. Except in the case of a Default or Event of Default in payment of principal or interest on any Note (including payments pursuant to the optional redemption or required repurchase provisions of such Note, if any), the Trustee may withhold the notice if and so long as a committee of its Trust Officers in good faith determines that withholding the notice is in the interests of the Holders.

Section 7.6 [Reserved].

Section 7.7 Compensation and Indemnity.

(a) The Issuer shall pay to the Trustee from time to time reasonable compensation for its acceptance of this Indenture and services hereunder as the Issuer and the Trustee shall from time to time agree in writing. The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust. The Issuer shall reimburse the Trustee upon request for all reasonable out-of-pocket expenses incurred or made by it, including costs of collection, costs of preparing and reviewing reports, certificates and other documents, costs of preparation and mailing of notices to Holders and reasonable costs of

counsel retained by the Trustee in connection with the review, negotiation, execution and delivery of this Indenture or otherwise, in addition to the compensation for its services. Such expenses shall include the reasonable compensation and expenses, disbursements and advances of the Trustee's agents, counsel, accountants and experts.

(b) The Issuer and each Note Guarantor shall jointly and severally indemnify the Trustee against any and all loss, liability or expense (including reasonable attorneys' fees and expenses) incurred by it without negligence, willful misconduct or bad faith on its part in connection with the acceptance and administration of this trust and the performance of its duties hereunder, including the costs and expenses of enforcing this Indenture (including this Section 7.7) and of defending itself against any claims (whether asserted by any Holder, the Issuer, any Note Guarantor or otherwise). The Trustee shall notify the Issuer and each Note Guarantor promptly of any claim for which it may seek indemnity. Failure by the Trustee to so notify the Issuer or any Note Guarantor shall not relieve the Issuer or any Note Guarantor of its obligations hereunder. The Issuer shall defend the claim and the Trustee may have separate counsel and the Issuer shall pay the fees and expenses of such counsel; *provided*, that the Issuer shall not be required to pay such fees and expenses if it assumes the Trustee's defense, and, in the reasonable judgment of outside counsel to the Trustee, there is no conflict of interest between the Issuer and the Trustee in connection with such defense. The Issuer need not reimburse any expense or indemnify against any loss, liability or expense incurred by the Trustee through the Trustee's own willful misconduct, negligence or bad faith.

(c) To secure the Issuer's payment obligations in this Section 7.7, the Trustee shall have a lien prior to the Notes on all money or property held or collected by the Trustee other than money or property held in trust to pay principal of and interest on particular Notes. The Trustee's right to receive payment of any amounts due under this Section 7.7 shall not be subordinate to any other liability or Indebtedness of the Issuer.

(d) The Issuer's obligations pursuant to this Section 7.7 shall survive the discharge of this Indenture and the resignation or removal of the Trustee. When the Trustee incurs expenses after the occurrence of a Bankruptcy Event of Default, the expenses are intended to constitute expenses of administration under any Bankruptcy Law; *provided, however*, that this shall not affect the Trustee's rights as set forth in this Section 7.7 or Section 6.10.

Section 7.8 Replacement of Trustee.

(a) The Trustee may resign at any time by so notifying the Company and the Issuer. The Holders of a majority in principal amount of the then Outstanding Notes may remove the Trustee by so notifying the Trustee and may appoint a successor Trustee reasonably acceptable to the Issuer. The Issuer shall remove the Trustee if:

(i) the Trustee fails to comply with Section 7.10;

(ii) the Trustee is adjudged bankrupt or insolvent;

(iii) a receiver or other public officer takes charge of the Trustee or its property; or

(iv) the Trustee otherwise becomes incapable of acting.

(b) If the Trustee resigns or is removed by the Issuer or by the Holders of a majority in principal amount of the then Outstanding Notes and such Holders do not reasonably promptly appoint a successor Trustee, or if a vacancy exists in the office of the Trustee for any reason (the Trustee in such event being referred to herein as the retiring Trustee), the Issuer shall promptly appoint a successor Trustee.

(c) A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Issuer. Thereupon the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee shall mail a notice of its succession to Holders. The retiring Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee, subject to the lien provided for in Section 7.7(c).

(d) If a successor Trustee does not take office within 30 days after the retiring Trustee resigns or is removed, the retiring Trustee or the Holders of 10% in principal amount of the then Outstanding Notes may petition, at the Issuer's expense, any court of competent jurisdiction for the appointment of a successor Trustee.

(e) If the Trustee fails to comply with Section 7.10, any Holder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(f) Notwithstanding the replacement of the Trustee pursuant to this Section 7.8, the Issuer's obligations under Section 7.7 shall continue for the benefit of the retiring Trustee.

Section 7.9 Successor Trustee by Merger.

(a) If the Trustee consolidates with, merges or converts into, or transfers all or substantially all its corporate trust business or assets to, another Person, the resulting, surviving or transferee Person without any further act shall be the successor Trustee.

(b) In case at the time such successor or successors to the Trustee shall succeed to the trusts created by this Indenture, any of the Notes shall have been authenticated but not delivered, any such successor to the Trustee may adopt the certificate of authentication of any predecessor trustee, and deliver such Notes so authenticated; and in case at that time any of the Notes shall not have been authenticated, any successor to the Trustee may authenticate such Notes either in the name of any predecessor hereunder or in the name of the successor to the Trustee; and in all such cases such certificates of authentication and such delivery shall be valid for purposes of this Indenture.

Section 7.10 Eligibility; Disqualification. The Trustee shall at all times be a Trustee hereunder that is a Person organized and doing business under the laws of the United States or of any state thereof that is authorized under such laws to exercise corporate trustee power, that is subject to supervision or

examination by federal or state authorities and that has, together with its parent, a combined capital and surplus of at least U.S.$50,000,000 as set forth in its most recent published annual report of condition.

Section 7.11 [Reserved].

Section 7.12 [Reserved].

Section 7.13 Authorization and Instruction of the Trustee With Respect to the Collateral. Each Holder and the Issuer authorize and instruct the Trustee (a) to enter into (or cause an agent or grant such powers of attorney to enter into), on its own behalf and on behalf of the Holders of Notes, such documents (the "Security Documents") as are necessary or desirable (which shall be evidenced by a written instruction from the Issuer to the Trustee) in order to create and maintain the security interest of the Trustee and the Holders of Notes in the Collateral as may from time to time be provided to equally and ratably secure the Notes, (b) to grant such powers of attorney and to do or cause to be done all such acts and things, on its own behalf and in the name and on behalf of the Holders of Notes, as are necessary or desirable (which shall be evidenced by a written instruction from the Issuer to the Trustee) to create and maintain the security interest of the Trustee and the Holders of Notes in such Collateral, (c) to appoint the Security Agent to serve as direct representative of the Trustee and the Holders of Notes in connection with the creation and maintenance of the security interest of the Trustee and the Holders of Notes in such Collateral, (d) to accept the security interest in the Collateral on behalf of each Holder, and (e) to grant powers in favor of an attorney to execute an accession public deed before a Spanish notary public accepting the security interest in the Collateral on behalf of the Holders of Notes. It is understood and acknowledged that, in certain circumstances, the Security Documents may be amended, modified or waived without the consent of the Trustee or the Holders of Notes. It is understood and acknowledged that the Security Agent, in addition to being appointed by and acting on behalf of the Trustee and the Holders of Notes, has also been appointed by and is acting on behalf of (and may in the future be appointed by and act on behalf of) other creditors of the Company and its Subsidiaries. The Trustee will not have the right to cause the Security Agent to foreclose on the Collateral upon the occurrence of an Event of Default in respect of the Notes. The Trustee shall at no time have any responsibility or liability for or in respect to the legality, validity or enforceability of any Collateral or any arrangement or agreement between the Issuer or the Company and any other Person with respect thereto, or the perfection or priority of any security interest created in any of the Collateral or maintenance of any perfection and priority, or for or with respect to the sufficiency of the Collateral following an Event of Default.

ARTICLE VIII

DEFEASANCE; DISCHARGE OF INDENTURE

Section 8.1 Legal Defeasance and Covenant Defeasance .

(a) The Issuer may, at its option, at any time, elect to have either Section 8.1(b) or (c) be applied to all Outstanding Notes upon compliance with the conditions set forth in Section 8.2.

(b) Upon the Issuer's exercise under Section 8.1(a) of the option applicable to this clause (b), the Issuer shall, subject to the satisfaction of the conditions set forth in Section 8.2, be deemed to have been discharged from its obligations with respect to all Outstanding Notes on the date all of the conditions set forth in Section 8.2 are satisfied (hereinafter, "Legal Defeasance"). For this purpose, Legal Defeasance means that the Issuer shall be deemed to have paid and discharged the entire Indebtedness represented by the then Outstanding Notes, which shall thereafter be deemed to be Outstanding only for the purposes of Section 8.3 hereof and the other sections of this Indenture referred to in subclause (i) or (ii) of this clause (b), and to have satisfied all its other obligations under such Notes and this Indenture (and the Trustee, on demand of and at the expense of the Issuer, shall execute proper instruments acknowledging the same), except for the following provisions, which shall survive until otherwise terminated or discharged hereunder:

(i) the rights of Holders of Outstanding Notes to receive solely from the trust fund described in Section 8.3, and as more fully set forth in Section 2.4 payments in respect of the principal of, premium, if any, and interest on such Notes when such payments are due,

(ii) the Issuer's obligations with respect to such Notes under Article II and Section 3.2 hereof,

(iii) the rights, powers, trusts, duties and immunities of the Trustee hereunder and the Issuer's obligations in connection therewith, and

(iv) this Article VIII.

Subject to compliance with this Article VIII, the Issuer may exercise its option under this clause (b) notwithstanding the prior exercise of its option under Section 8.1(c) hereof.

(c) Upon the Issuer's exercise under Section 8.1(a) hereof of the option applicable to this clause (c), the Issuer shall, subject to the satisfaction of the applicable conditions set forth in Section 8.2, be released from its obligations under Sections 3.4, 3.5, 3.8, 3.9, 3.11, 3.12, 3.13, 3.14, 3.15, 3.16, 3.17, 3.18, 3.19, 3.20, Section 3.21, Section 3.22, 4.1(a) and 4.1(b) hereof with respect to the then Outstanding Notes on and after the date the conditions set forth below are satisfied (hereinafter, "Covenant Defeasance"), and the Notes shall thereafter be deemed not Outstanding for the purposes of any direction, waiver, consent or declaration or act of Holders (and the consequences of any thereof) in connection with such covenants, but shall continue to be Outstanding for all other purposes hereunder (it being understood that such Notes shall not be deemed Outstanding for accounting purposes). For this purpose, such Covenant Defeasance means that, with respect to the then Outstanding Notes, the Issuer may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such covenant, whether directly or indirectly, by reason of any reference elsewhere herein to any such covenant or by reason of any reference in any such covenant to any other

provision herein or in any other document and such omission to comply shall not constitute a Default or an Event or Default under clause (iii) of Section 6.1(a) (solely with respect to any failure to perform under or comply with clause (ii) or (iii) of Section 4.1(a)), clause (iv) of Section 6.1(a) or clause (v) of Section 6.1(a) hereof, but, except as specified above, the remainder of this Indenture and such Notes shall be unaffected thereby.

Section 8.2 Conditions to Defeasance. The Company or, as applicable, the Issuer, may exercise its Legal Defeasance option or its Covenant Defeasance option only if:

(a) the Issuer has irrevocably deposited with the Trustee, in trust, for the benefit of the Holders cash in U.S. Legal Tender or U.S. Government Obligations, in such amounts as will be sufficient without reinvestment, in the opinion of a nationally recognized firm of independent public accountants, to pay the principal of, premium, if any, and interest (including Additional Amounts) on the Notes on the stated date for payment thereof or on the applicable Redemption Date, as the case may be;

(b) in the case of Legal Defeasance, the Issuer has delivered to the Trustee an Opinion of Counsel reasonably acceptable to the Trustee (subject to customary exceptions and exclusions) and independent of the Issuer to the effect that:

(i) the Issuer has received from, or there has been published by, the Internal Revenue Service a ruling; or

(ii) since the Issue Date, there has been a change in the applicable U.S. federal income tax law,

in either case to the effect that, and based thereon such Opinion of Counsel shall state that, the Holders will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such Legal Defeasance and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Legal Defeasance had not occurred;

(c) in the case of Covenant Defeasance, the Issuer has delivered to the Trustee an Opinion of Counsel reasonably acceptable to the Trustee (subject to customary exceptions and exclusions) to the effect that the Holders will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such Covenant Defeasance and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Covenant Defeasance had not occurred;

(d) no Default or Event of Default shall have occurred and be continuing on the date of the deposit pursuant to Section 8.2(a) (except any Default or Event of Default resulting from the failure to comply with Section 3.9 as a result of the borrowing of the funds required to effect such deposit);

(e) the Trustee has received an Officer's Certificate stating that such Legal Defeasance or Covenant Defeasance shall not result in a breach or violation of, or constitute a default under this Indenture or any other material agreement or instrument to which the Issuer or any of its Subsidiaries is a party or by which the Issuer or any of its Subsidiaries is bound;

(f) the Issuer has delivered to the Trustee an Officer's Certificate stating that the deposit was not made by the Issuer with the intent of preferring the Holders over any other creditors of the Issuer or any Subsidiary of the Issuer or with the intent of defeating, hindering, delaying or defrauding any other creditors of the Issuer or others;

(g) the Issuer has delivered to the Trustee an Officer's Certificate and an Opinion of Counsel from counsel reasonably acceptable to the Trustee (subject to customary exceptions and exclusions) and independent of the Issuer, each stating that all conditions precedent provided for or relating to the Legal Defeasance or the Covenant Defeasance have been complied with; and

(h) the Issuer has delivered to the Trustee an Opinion of Counsel from counsel reasonably acceptable to the Trustee and independent of the Issuer to the effect that the trust resulting from the deposit does not constitute, or is qualified as, a regulated investment company under the Investment Company Act of 1940.

Section 8.3 Application of Trust Money. The Trustee shall hold in trust U.S. Legal Tender or U.S. Government Obligations deposited with it pursuant to this Article VIII. It shall apply the deposited U.S. Legal Tender or U.S. Government Obligations through the Paying Agent and in accordance with this Indenture to the payment of principal of and interest on the Notes.

Section 8.4 Repayment to Issuer.

(a) The Trustee and the Paying Agent shall promptly turn over to the Issuer upon request any excess money or securities held by them upon payment of all the obligations under this Indenture.

(b) Subject to any applicable abandoned property law, the Trustee and the Paying Agent shall pay to the Issuer upon request any money held by them for the payment of principal of, premium or interest on the Notes that remains unclaimed for two years, and, thereafter, Holders entitled to the money must look to the Issuer for payment as general creditors.

Section 8.5 Indemnity for U.S. Government Obligations. The Issuer shall pay and shall indemnify the Trustee against any tax, fee or other charge imposed on or assessed against deposited U.S. Government Obligations or the principal and interest received on such U.S. Government Obligations.

Section 8.6 Reinstatement. If the Trustee or Paying Agent is unable to apply any U.S. Legal Tender or U.S. Government Obligations in accordance with this Article VIII by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the obligations of the Issuer under this Indenture and the

Notes shall be revived and reinstated as though no deposit had occurred pursuant to this Article VIII until such time as the Trustee or Paying Agent is permitted to apply all such U.S. Legal Tender or U.S. Government Obligations in accordance with this Article VIII; *provided, however*, that, if the Issuer has made any payment of principal of, premium or interest on any Notes because of the reinstatement of its obligations, the Issuer shall be subrogated to the rights of the Holders of such Notes to receive such payment from U.S. Legal Tender or U.S. Government Obligations held by the Trustee or Paying Agent.

Section 8.7 Satisfaction and Discharge. This Indenture will be discharged and will cease to be of further effect (except as to surviving rights of registration of transfer or exchange of the Notes, as expressly provided for in this Indenture) as to all Outstanding Notes when:

(a) either:

(i) all the Notes theretofore authenticated and delivered (except lost, stolen or destroyed Notes which have been replaced or paid and Notes for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Issuer and thereafter repaid to the Issuer or discharged from such trust) have been delivered to the Trustee for cancellation; or

(ii) all Notes not theretofore delivered to the Trustee for cancellation have become due and payable, and the Issuer has irrevocably deposited or caused to be deposited with the Trustee U.S. Legal Tender or U.S. Government Obligations sufficient without reinvestment to pay and discharge the entire Indebtedness on the Notes not theretofore delivered to the Trustee for cancellation, for principal of, premium, if any, and interest on the Notes to the date of deposit, together with irrevocable instructions from the Issuer directing the Trustee to apply such funds to the payment;

(b) the Issuer has paid all other sums payable under this Indenture and the Notes by it; and

(c) the Issuer has delivered to the Trustee an Officer's Certificate and an Opinion of Counsel stating that all conditions precedent under this Indenture relating to the satisfaction and discharge of this Indenture have been complied with.

ARTICLE IX

AMENDMENTS

Section 9.1 Without Consent of Holders.

(a) The Issuer, the Note Guarantors and the Trustee may amend or supplement this Indenture, the Notes or the Note Guarantees without notice to or consent of any Holder:

(i) to cure any ambiguity, omission, defect or inconsistency;

(ii) to comply with Article IV in respect of the assumption by a Successor Issuer of the obligations of the Issuer under the Notes and this Indenture;

(iii) to provide for uncertificated Notes in addition to or in place of Certificated Notes; provided, however, that the uncertificated Notes are issued in registered form for purposes of Section 163(f) of the Code;

(iv) to add guarantees with respect to the Notes or to secure the Notes;

(v) to add to the covenants of the Issuer or the Note Guarantors for the benefit of the Holders or to surrender any right or power herein conferred upon the Issuer or the Note Guarantors;

(vi) to make any change that does not, in the opinion of the Trustee, adversely affect the rights of any Holder in any material respect;

(vii) to conform the text of this Indenture, the Note Guarantees or the Notes to any provision of the section "Description of Notes" in the Offering Memorandum to the extent that such provision in such "Description of Notes" was intended to be a verbatim recitation of a provision of this Indenture or the Notes or Note Guarantees;

(viii) to comply with the requirements of any applicable securities depositary;

(ix) to provide for the issuance of Additional Notes as permitted by Section 2.2(c) and Section 2.14, which will have terms substantially identical to the other Outstanding Notes except as specified in Section 2.13, or Section 2.14, and which will be treated, together with any other Outstanding Notes, as a single issue of securities; or

(x) in order to effect and maintain the listing of the Notes on the Global Exchange Market of the Irish Stock Exchange.

(b) After an amendment or supplement under this Section 9.1 becomes effective, the Issuer shall mail to Holders a notice briefly describing such amendment. The failure to give such notice to all Holders, or any defect therein, shall not impair or affect the validity of an amendment under this Section 9.1.

Section 9.2 With Consent of Holders.

(a) The Issuer, the Note Guarantors and the Trustee may amend or supplement this Indenture or the Notes without notice to any Holder but with the written consent of the Holders of at least a majority in principal amount of the then Outstanding Notes (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes). Subject to Section 6.4, the Holder or Holders of a majority in aggregate principal amount of the then Outstanding Notes may waive compliance by the Issuer and the Note Guarantors with any provision of this Indenture or the Notes. However, without the consent of each Holder affected, an amendment, supplement or waiver may not:

(i) reduce the amount of Notes whose Holders must consent to an amendment, supplement or waiver;

(ii) reduce the rate of or change or have the effect of changing the time for payment of interest, including Defaulted Interest, on any Notes;

(iii) reduce the principal of or change or have the effect of changing the fixed maturity of any Notes, or change the date on which any Notes may be subject to redemption, or reduce the redemption price therefor;

(iv) make any Notes payable in money other than that stated in the Notes;

(v) make any change in the provisions of this Indenture entitling each Holder to receive payment of principal of, premium, if any, and interest on such Notes on or after the due date thereof or to bring suit to enforce such payment, or permitting Holders of a majority in principal amount of the then Outstanding Notes to waive Defaults or Events of Default;

(vi) amend, change or modify in any material respect any obligations of the Issuer to make and consummate a Change of Control Offer in respect of a Change of Control that has occurred or make and consummate an Asset Sale Offer with respect to any Asset Sale that has been consummated;

(vii) make any change in the provisions of this Indenture described under Section 3.21 that adversely affects the rights of any Holder or amend the terms of the Notes in a way that would result in a loss of exemption from Taxes; or

(viii) make any change to the provisions of this Indenture or the Notes that adversely affect the ranking of the Notes.

(b) It shall not be necessary for the consent of the Holders under this Section 9.2 to approve the particular form of any proposed amendment, supplement or waiver but it shall be sufficient if such consent approves the substance thereof.

(c) After an amendment, supplement or waiver under this Section 9.2 becomes effective, the Issuer shall mail to Holders a notice briefly describing such amendment, supplement or waiver. The failure to give such notice to all Holders, or any defect therein, shall not impair or affect the validity of an amendment, supplement or waiver under this Section 9.2.

(d) The Notes issued on the Issue Date, and any Additional Notes part of the same series, will be treated as a single series for all purposes under this Indenture, including with respect to waivers and amendments. For the purposes of calculating the aggregate principal amount of Notes that have consented to or voted in favor of any amendment, waiver, consent, modifications or other similar action, the Issuer (acting reasonably and in good faith) shall be entitled to select a record date as of which the principal amount of any Notes shall be calculated in such consent or voting process.

Section 9.3 [Reserved].

Section 9.4 Revocation and Effect of Consents and Waivers.

(a) A consent to an amendment, supplement or waiver by a Holder of a Note shall bind the Holder and every subsequent Holder of that Note or portion of the Note that evidences the same debt as the consenting Holder's Note, even if notation of the consent or waiver is not made on the Note. However, any such Holder or subsequent Holder may revoke the consent or waiver as to such Holder's Note or portion of the Note if the Trustee receives the notice of revocation before the date the amendment, supplement or waiver becomes effective. After an amendment, supplement or waiver becomes effective, it shall bind every Holder, except as otherwise provided in this Article IX. An amendment, supplement or waiver shall become effective upon receipt by the Trustee of the requisite number of written consents under Section 9.2.

(b) The Issuer may, but shall not be obligated to, fix a record date for the purpose of determining the Holders entitled to give their consent or take any other action described above or required or permitted to be taken pursuant to this Indenture. If a record date is fixed, then notwithstanding the immediately preceding paragraph, those Persons who were Holders at such record date (or their duly designated proxies), and only those Persons, shall be entitled to give such consent or to revoke any consent previously given or to take any such action, whether or not such Persons continue to be Holders after such record date. No such consent shall be valid or effective for more than 90 days after such record date.

Section 9.5 Notation on or Exchange of Notes. If an amendment or supplement changes the terms of a Note, the Trustee may require the Holder of the Note to deliver it to the Trustee. The Trustee may place an appropriate notation on the Note regarding the changed terms and return it to the Holder. Alternatively, if the Issuer or the Trustee so determines, the Issuer, in exchange for the Note, will execute and upon Issuer Order, the Trustee will authenticate and make available for delivery a new Note that reflects the changed terms. Failure to make the appropriate notation or to issue a new Note shall not affect the validity of such amendment or supplement.

Section 9.6 Trustee to Sign Amendments and Supplements. The Trustee shall sign any amendment, supplement or waiver authorized pursuant to this Article IX if the amendment or supplement does not adversely affect the rights, duties, liabilities or immunities of the Trustee. If it does, the Trustee may but need not sign it. In signing such amendment, supplement or waiver, the Trustee shall be entitled to receive indemnity reasonably satisfactory to it and to receive, and (subject to Section 7.1 and Section 7.2) shall be fully protected in relying upon, in addition to the documents required by Section 12.4, an Opinion of Counsel and an Officer's Certificate each stating that such amendment, supplement or waiver is authorized or permitted by this Indenture and that all conditions precedent to the execution of such amendment, supplement or waiver have been complied with.

## ARTICLE X

## NOTE GUARANTEES

Section 10.1 Note Guarantees.

(a) Each Note Guarantor hereby fully and unconditionally guarantees, as primary obligor and not merely as surety, jointly and severally with each other Note Guarantor, to each Holder and the Trustee, the full and punctual payment when due, whether at maturity, by acceleration, by redemption or otherwise, of the Obligations (such guaranteed Obligations, the "Guaranteed Obligations"). Each Note Guarantor further agrees that its Note Guarantee herein constitutes a guarantee of payment when due (and not a guarantee of collection) and agrees to pay, in addition to the amounts stated in Section 10.1(f), any and all expenses (including reasonable counsel fees and expenses) incurred by the Trustee or the Holders in enforcing or exercising any rights under any Note Guarantee.

(b) In no event shall the Trustee or the Holders be obligated to take any action, obtain any judgment or file any claim prior to enforcing or exercising any rights under any Note Guarantee.

(c) Each Note Guarantor further agrees that its Note Guarantee constitutes an absolute and unconditional and continuing guarantee. Each Note Guarantor hereby waives, to the extent permitted by law:

(i) any claim as to the legality, validity, regularity or enforceability of this Indenture, the Notes or any other agreement;

(ii) any claim as to the lack of authority of the Issuer to execute or deliver this Indenture, the Notes or any other agreement;

(iii) diligence, presentation to, demand of payment from and protest to the Issuer of any of the Obligations and notice of protest for nonpayment;

(iv) the occurrence of any Default or Event of Default under this Indenture, the Notes or any other agreement;

(v) notice of any Default or Event of Default under this Indenture, the Notes or any other agreement;

(vi) the failure of the Trustee or any Holder to assert any claim or demand or to enforce any right or remedy against the Issuer or any other Person under this Indenture, the Notes or any other agreement;

(vii) any extension or renewal of the Obligations, this Indenture, the Notes or any other agreement;

(viii) any rescission, waiver, amendment or modification of any of the terms or provisions of this Indenture, the Notes or any other agreement;

(ix) the existence of any bankruptcy, insolvency, reorganization or similar proceedings involving the Issuer;

(x) any setoff, counterclaim, recoupment, termination or defense of any kind or nature which may be available to or asserted by any Note Guarantor or the Issuer against the Holders or the Trustee;

(xi) any impairment, taking, furnishing, exchange or release of, or failure to perfect or obtain protection of any security interest in, any collateral securing this Indenture and the Notes and any right to require that any resort be had by the Trustee or any Holder to any such collateral;

(xii) the failure of the Trustee or any Holder to exercise any right or remedy against any other Note Guarantor;

(xiii) any change in the ownership of the Issuer;

(xiv) any change in the laws, rules or regulations of any jurisdiction;

(xv) any present or future action of any governmental authority or court amending, varying, reducing or otherwise affecting, or purporting to amend, vary, reduce or otherwise affect, any of the obligations of the Issuer under this Indenture or the Notes or of any Note Guarantor under its Note Guarantee; and

(xvi) any other act or thing or omission or delay to do any other act or thing which may or might in any manner or to any extent vary the risk of each Note Guarantor or would otherwise operate as a discharge of such Note Guarantor as a matter of law or equity.

(d) Each of the Note Guarantors further expressly waives irrevocably and unconditionally:

(i) Any right it may have to first require any Holder to proceed against, initiate any actions before a court of law or any other judge or

authority, or enforce any other rights or security or claim payment from the Issuer or any other Person (including any Note Guarantor or any other guarantor of the Notes) before claiming from it under this Indenture;

(ii) Any right to which it may be entitled to have the assets of the Issuer or any other Person (including any Note Guarantor or any other guarantor of the Notes) first be used, applied or depleted as payment of the Issuer's or the Note Guarantors' obligations hereunder, prior to any amount being claimed from or paid by any of the Note Guarantors hereunder;

(iii) Any right to which it may be entitled to have claims hereunder divided between the Note Guarantors;

(iv) To the extent applicable, the benefits of *orden*, *excusión*, *división*, *quita* and *espera* and any right specified in articles 2814, 2815, 2817, 2818, 2819, 2820, 2821, 2822, 2823, 2826, 2837, 2838, 2839, 2840, 2845, 2846, 2847 and any other related or applicable articles that are not explicitly set forth herein because of Note Guarantor's knowledge thereof of the *Código Civil Federal* of Mexico, and the *Código Civil* of each State of the Mexican Republic and the Federal District of Mexico.

(e) The obligations assumed by each Note Guarantor hereunder shall not be affected by the absence of judicial request of payment by a Holder to the Issuer or by whether any such person takes timely action pursuant to articles 2848 and 2849 of the Código Civil Federal of Mexico and the Código Civil of each State of the Mexican Republic and the Federal District of Mexico and each Note Guarantor hereby expressly waives the provisions of such articles.

(f) The obligations of each Note Guarantor hereunder shall not be subject to any reduction, limitation, impairment or termination for any reason (other than payment of the Obligations in full), including any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to any defense of setoff, counterclaim, recoupment or termination whatsoever or by reason of the invalidity, illegality or unenforceability of the Obligations or otherwise. Without limiting the generality of the foregoing, the obligations of each Note Guarantor herein shall not be discharged or impaired or otherwise affected by the failure of any Holder to assert any claim or demand or to enforce any remedy under this Indenture, the Notes or any other agreement, by any waiver or modification of any thereof, by any default, failure or delay, willful or otherwise, in the performance of the Obligations, or by any other act or thing or omission or delay to do any other act or thing which may or might in any manner or to any extent vary the risk of such Note Guarantor or would otherwise operate as a discharge of such Note Guarantor as a matter of law or equity.

(g) Except as provided in Section 10.2, the obligations of each Note Guarantor hereunder shall not be subject to any reduction, limitation, impairment or termination for any reason other than payment of the Obligations in full.

(h) Each Note Guarantor further agrees that its Note Guarantee herein shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of principal of or interest on any of the Obligations is rescinded or must otherwise be restored by any Holder upon the bankruptcy or reorganization of the Issuer or otherwise.

(i) In furtherance of the foregoing and not in limitation of any other right which the Trustee or any Holder has at law or in equity against each Note Guarantor by virtue hereof, upon the failure of the Issuer to pay any of the Obligations when and as the same shall become due, whether at maturity, by acceleration, by redemption or otherwise, each Note Guarantor hereby promises to and will, upon receipt of written demand by the Trustee, forthwith pay, or cause to be paid, in cash, to the Holders an amount equal to the sum of:

(i) the unpaid amount of such Obligations then due and owing; and

(ii) accrued and unpaid interest on such Obligations then due and owing (but only to the extent not prohibited by law);

*provided*, that any delay by the Trustee in giving such written demand shall in no event affect any Note Guarantor's obligations under its Note Guarantee.

(j) Each Note Guarantor further agrees that, as between such Note Guarantor, on the one hand, and the Holders, on the other hand:

(i) the maturity of the Obligations guaranteed hereby may be accelerated as provided in this Indenture for the purposes of its Note Guarantee herein, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the Obligations guaranteed hereby; and

(ii) in the event of any such declaration of acceleration of such Obligations, such Obligations (whether or not due and payable) shall forthwith become due and payable by the Note Guarantor for the purposes of this Note Guarantee.

Section 10.2 Limitation on Liability; Termination, Release and Discharge.

(a) Subject to the limitations set out in Section 10.5 and Section 10.6, the obligations of each Note Guarantor hereunder will be limited to the maximum amount as will, after giving effect to all other contingent and fixed liabilities of such Note Guarantor and after giving effect to any collections from or payments made by or on behalf of any other Note Guarantor in respect of the obligations of such other Note Guarantor under its Note Guarantee or pursuant to its contribution obligations under this Indenture, result in the obligations of such Note Guarantor under its Note Guarantee not constituting a fraudulent conveyance or fraudulent transfer under federal or state law.

(b) A Note Guarantor will be released and relieved of its obligations under its Note Guarantee in the event that:

(i) there is a Legal Defeasance of the Notes pursuant to Article VIII;

(ii) with respect to any Note Guarantor other than the Company, there is a sale or other disposition of Capital Stock of such Note Guarantor following which such Note Guarantor is no longer a direct or indirect Subsidiary of the Company;

(iii) with respect to any Note Guarantor other than the Company, such Note Guarantor is designated as an Unrestricted Subsidiary in accordance with Section 3.14;

(iv) solely with respect to an Additional Note Guarantor, either (A) the Facilities Agreement Indebtedness has been repaid in full and such Additional Note Guarantor is not a guarantor of the Indebtedness Incurred to refinance such Facilities Agreement Indebtedness or (B) at least 85% of the outstanding Indebtedness of the Company and its Restricted Subsidiaries is not guaranteed by such Additional Note Guarantor; or

(v) solely with respect to an Additional Note Guarantor, upon the occurrence of a Partial Covenant Suspension Event or Covenant Suspension Event until the occurrence of a Partial Covenant Reversion Date or a Reversion Date, as applicable, at which time the guarantee of the Notes by such Additional Note Guarantor shall be reinstated unless such Additional Note Guarantor would have been released at any time during the Partial Suspension Period or the Suspension Period, as applicable, pursuant to clause (i), (ii), (iii) or (iv) of this Section 10.2(b).

Section 10.3 Right of Contribution. Each Note Guarantor that makes a payment or distribution under a Note Guarantee will be entitled to a contribution from each other Note Guarantor in a *pro rata* amount, based on the net assets of each Note Guarantor determined in accordance with GAAP. The provisions of this Section 10.3 shall in no respect limit the obligations and liabilities of each Note Guarantor to the Trustee and the Holders and each Note Guarantor shall remain liable to the Trustee and the Holders for the full amount guaranteed by such Note Guarantor hereunder.

Section 10.4 No Subrogation. Each Note Guarantor agrees that it shall not be entitled to any right of subrogation in respect of any Guaranteed Obligations until payment in full in cash or Cash Equivalents of all Obligations. If any amount shall be paid to any Note Guarantor on account of such subrogation rights at any time when all of the Obligations shall not have been paid in full in cash or Cash Equivalents,

such amount shall be held by such Note Guarantor in trust for the Trustee and the Holders, segregated from other funds of such Note Guarantor, and shall, forthwith upon receipt by such Note Guarantor, be turned over to the Trustee in the exact form received by such Note Guarantor (duly endorsed by such Note Guarantor to the Trustee, if required), to be applied against the Obligations.

Section 10.5 French Guarantee Limitation.

(a) The obligations of any Note Guarantor incorporated in France (a "French Note Guarantor") are subject to the limitations set out in this Section 10.5.

(b) The obligations and liabilities of any French Note Guarantor under the Indenture and the Notes, and in particular under this Article X, shall not include any obligation or liability which, if incurred, would constitute the provision of financial assistance within the meaning of article L.225-216 of the French Commercial Code and/or would constitute a misuse of corporate assets within the meaning of article(s) L. 241-3 or L. 242-6 of the French Commercial Code or any other law or regulations having the same effect, as interpreted by French courts.

(c) The obligations and liabilities of any French Note Guarantor under this Article X for the Issuer's obligations under the Indenture and the Notes shall be limited, at any time, to an amount equal to the aggregate of all amounts made available under the Notes and the Indenture to the Issuer to the extent directly or indirectly on-lent to such French Note Guarantor and/or its direct and indirect Subsidiaries under intercompany loan agreements (excluding, for the avoidance of doubt, any cash-pooling arrangements or other cash management agreements, *provided*, that the proceeds of the Notes shall not be used, in whole or in part, to finance, directly or indirectly, such cash pooling arrangements or other cash management agreements) and outstanding at the date a payment is to be made by such French Note Guarantor under this Article X, it being specified that any payment made by a French Note Guarantor under this Article X in respect of the obligations of the Issuer shall reduce *pro tanto* the outstanding amount of the intercompany loans due by such French Note Guarantor or its relevant direct or indirect Subsidiary under the intercompany loan agreements referred to above and that any repayment of the intercompany loans by the French Note Guarantor or its relevant direct or indirect Subsidiary shall reduce *pro tanto* the amount payable by the French Note Guarantor under this Article X.

(d) It is acknowledged that no French Note Guarantor is acting jointly and severally with the other Note Guarantors and no French Guarantor shall therefore be considered as "*co-débiteur solidaire*" as to its obligations pursuant to the guarantee given pursuant to this Article X.

Section 10.6 Swiss Guarantee Limitation.

(a) The obligations of any Note Guarantor incorporated in Switzerland (a "Swiss Note Guarantor") are subject to the limitations set out in this Section 10.6.

(b) The obligations and liabilities of a Swiss Note Guarantor under the Indenture, the Notes or any other agreement, and in particular under this Article X, in relation to the obligations, undertakings, indemnities or liabilities of a Note Guarantor other than that Swiss Note Guarantor or any of its fully owned and controlled subsidiaries (the "Restricted Obligations") shall not include any obligation or liability which, if incurred, would constitute the provision of financial assistance not permitted under the laws of Switzerland then in force and/or would constitute a misuse of corporate assets under Swiss law as interpreted by Swiss courts and shall be limited to the amount of that Swiss Note Guarantor's Free Reserves Available for Distribution (as defined below) at the time payment is requested, *provided*, that such limitation is a requirement under applicable law (including any case law) at that point in time and that such limitation shall not free the Swiss Note Guarantor from its obligations in excess thereof, but merely postpone the performance date until such time as performance is permitted notwithstanding such limitation.

(c) For the purpose of this clause, "Free Reserves Available for Distribution" means an amount equal to the maximal amount in which the relevant Swiss Note Guarantor can make a dividend payment to its shareholder(s) (being the balance sheet profit and any freely disposable reserves available for this purpose, in each case in accordance with applicable Swiss law).

(d) As soon as possible after having been requested to discharge a Restricted Obligation, the Swiss Note Guarantor shall, if it cannot discharge the full amount of the Restricted Obligations, provide the Trustee with an interim statutory balance sheet audited by the statutory auditors of the Swiss Note Guarantor setting out the Free Reserves Available for Distribution and, immediately thereafter, pay the amount corresponding to the Free Reserves Available for Distribution to the Trustee (save to the extent provided below).

(e) In respect of the Restricted Obligations, the Swiss Note Guarantor shall:

(i) if and to the extent required by applicable law in force at the relevant time:

(A) subject to any applicable double taxation treaties, deduct Swiss withholding tax at the rate of 35 percent (or such other rate as is in force at that time) from any payment made by it;

(B) pay any such deduction to the Swiss Federal Tax Administration; and

(C) notify and provide evidence to the Trustee that the Swiss withholding tax has been paid to the Swiss Federal Tax Administration;

(ii) to the extent such deduction is made, not be required to make a gross-up, indemnify or otherwise hold harmless the Trustee or the Holders for the deduction of the Swiss withholding tax notwithstanding anything to the contrary contained in the Indenture, the Notes or any other agreement, unless grossing up is permitted under the laws of

Switzerland then in force and *provided*, that this should not in any way limit any obligations of any non-Swiss Note Guarantors under the Indenture, the Notes or any other agreement to indemnify the Trustee or the Holders in respect of the deduction of the Swiss withholding tax. The Swiss Note Guarantor shall use all reasonable efforts to procure that any person which is entitled to a full or partial refund of any Swiss withholding tax paid pursuant to paragraph (a) above will, as soon as possible after the deduction of the Swiss withholding tax: (y) request a refund of the Swiss withholding tax under any applicable law (including double taxation treaties) and (z) pay to the Trustee upon receipt any amount so refunded.

(f) The Swiss Note Guarantor will take, and cause to be taken, all and any other action, including, without limitation, the passing of any shareholders' resolutions to approve any payment or other performance under the Indenture and the Notes and the receipt of any confirmations from the Swiss Note Guarantor's auditors, whether following a request to discharge a Restricted Obligation or which may be required as a matter of mandatory Swiss law in force at the time it is required to make a payment or perform other obligations under the Indenture, the Notes or any other agreement in order to allow a prompt payment or performance of other obligations under the Indenture or the Notes.

(g) If the enforcement of the Restricted Obligations would be limited due to the effects referred to in this Section 10.6 and if any asset of the Swiss Note Guarantor has a book value that is less than its market value (an "Undervalued Asset"), the Swiss Note Guarantor shall, to the extent permitted by applicable law and its accounting standards (i) write up the book value of such Undervalued Asset such that its balance sheet reflects a book value that is equal to the market value of such Undervalued Asset, and (ii) make reasonable efforts to realize the Undervalued Asset for a sum which is at least equal to the market value of such asset. Without prejudice to the rights of the Trustee and the Holders under the Indenture, the Notes or any other agreement, the Swiss Note Guarantor will only be required to realize an Undervalued Asset if such asset is not necessary for the Swiss Note Guarantor's business ( *nicht betriebsnotwendig*).

## ARTICLE XI

## COLLATERAL

Section 11.1 The Collateral. Subject to Section 11.2, the Issuer and the Note Guarantors agree that the Notes will be at all times secured by a first-priority security interest in the Collateral on at least an equal and ratable basis with the Permitted Secured Obligations.

Section 11.2 Release of the Collateral.

(a) The Notes will cease to be secured by a security interest in the Collateral in accordance with the provisions of the Intercreditor Agreement.

(b) In addition to the Collateral release provisions set forth in the Intercreditor Agreement, the Notes will cease to be secured by a security interest on the Collateral upon:

(i) (A) payment in full of the principal of, any accrued and unpaid interest on, the Notes and all other amounts or Obligations that are due and payable at or prior to the time such principal, accrued and unpaid interest, if any, are paid, (B) a satisfaction and discharge of this Indenture or (C) a Legal Defeasance or Covenant Defeasance pursuant to Article VIII; or

(ii) a refinancing of the Facilities Agreement Indebtedness in full as a result of which the Collateral does not secure Indebtedness Incurred to refinance such Facilities Agreement Indebtedness.

## ARTICLE XII

## MISCELLANEOUS

Section 12.1 Notices.

(a) Any notice or communication shall be in writing and delivered in person or mailed by first-class mail, postage prepaid, addressed as follows:

if to the Issuer and the Note Guarantors:

c/o CEMEX, S.A.B. de C.V.
Av. Ricardo Margáin Zozaya #325
Colonia Valle del Campestre
Garza García, Nuevo León
México 66265
Attention: Chief Financial Officer
Fax: +1 52 81 8888 4417

if to the Trustee:

The Bank of New York Mellon
101 Barclay Street – 4E
New York, NY 10286
Attention: International Corporate Trust
Fax: 212-815-5915

The Issuer or the Trustee by notice to the other may designate additional or different addresses for subsequent notices or communications.

(b) All notices to Holders of Notes will be validly given if mailed to them at their respective addresses in the register of the Holders of such Notes, if any, maintained by the Registrar. For so long as any Notes are represented by Global Notes, all notices to Holders of the Notes will be delivered to DTC, delivery of which shall be deemed to satisfy the requirements of this paragraph.

(c) Each such notice shall be deemed to have been given on the date of delivery or mailing. Any notice or communication mailed to a Holder shall be mailed to such Person by first-class mail or other equivalent means and shall be sufficiently given to them if so mailed within the time prescribed. Failure to mail a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders. If a notice or communication is mailed in the manner provided above, it is duly given, whether or not the addressee receives it.

(d) Subject to Section 7.1(c) and Section 7.2(a), the Trustee shall accept electronic transmissions; *provided*, that (i) the Trustee shall not have any duty or obligation to verify or confirm that the Person sending instructions, directions, reports, notices or other communications or information by electronic transmission is, in fact, a Person authorized to give such instructions, directions, reports, notices or other communications or information on behalf of the party purporting to send such electronic transmission; and the Trustee shall not have any liability for any losses, liabilities, costs or expenses incurred or sustained by any party as a result of such reliance upon or compliance with such instructions, directions, reports, notices or other communications or information and (ii) each other party agrees to assume all risks arising out of the use of electronic methods to submit instructions, directions, reports, notices or other communications or information to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, notices, reports or other communications or information, and the risk of interception and misuse by third parties.

(e) Any notice or communication mailed to a registered Holder shall be mailed to the Holder at the Holder's address as it appears on the Note Register and shall be sufficiently given if so mailed within the time prescribed.

(f) Failure to mail a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders. If a notice or communication is mailed in the manner provided above, it is duly given, whether or not the addressee receives it.

(g) Any notice or communication delivered to the Issuer or the Company under the provisions herein shall constitute notice to the Note Guarantors.

Section 12.2 Communication by Holders with Other Holders. Holders may communicate with other Holders with respect to their rights under this Indenture (including the Note Guarantees) or the Notes.

Section 12.3 Certificate and Opinion as to Conditions Precedent. Upon any request or application by the Issuer to the Trustee to take or refrain from taking any action under this Indenture, the Issuer shall furnish to the Trustee:

(a) an Officer's Certificate in form and substance reasonably satisfactory to the Trustee stating that, in the opinion of the signers, all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with; and

(b) an Opinion of Counsel in form and substance reasonably satisfactory to the Trustee stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

Section 12.4 Statements Required in Certificate or Opinion. Each certificate or opinion, including an Opinion of Counsel or Officer's Certificate, with respect to compliance with a covenant or condition provided for in this Indenture shall include:

(a) a statement that the individual making such certificate or opinion has read such covenant or condition;

(b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(c) a statement that, in the opinion of such individual, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(d) a statement as to whether or not, in the opinion of such individual, such covenant or condition has been complied with.

In giving an Opinion of Counsel, counsel may rely as to factual matters on an Officer's Certificate or on certificates of public officials.

Section 12.5 Rules by Trustee, Paying Agent, Transfer Agent and Registrar. The Trustee may make reasonable rules for action by, or a meeting of, Holders. The Paying Agent, Transfer Agent and the Registrar may make reasonable rules for their functions.

Section 12.6 Legal Holidays. A "Legal Holiday" is a Saturday, a Sunday or other day on which commercial banking institutions are authorized or required to be closed in New York City, Mexico, Madrid, Amsterdam, London, Paris or Zurich. If a payment date is a Legal Holiday, payment shall be made on the next succeeding day that is not a Legal Holiday, and no interest shall accrue for the intervening period. If a regular record date is a Legal Holiday, the record date shall not be affected.

Section 12.7 Governing Law, etc.

(a) THIS INDENTURE (INCLUDING EACH NOTE GUARANTEE) AND THE NOTES SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK. THE PARTIES HERETO EACH HEREBY

WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS INDENTURE, THE NOTES OR EACH NOTE GUARANTEE OR ANY TRANSACTION RELATED HERETO OR THERETO TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

(b) Each of the parties hereto hereby:

(i) agrees that any suit, action or proceeding against it arising out of or relating to this Indenture (including the Note Guarantees) or the Notes, as the case may be, may be instituted in any Federal or state court sitting in the City of New York and in the courts of its own corporate domicile, in respect of actions brought against it as a defendant,

(ii) waives to the fullest extent permitted by applicable law, any objection which it may now or hereafter have to the laying of venue of any such suit, action or proceeding, any claim that any suit, action or proceeding in such a court has been brought in an inconvenient forum, and any right to which it may be entitled, on account of place of residence or domicile,

(iii) irrevocably submits to the jurisdiction of such courts in any suit, action or proceeding,

(iv) agrees that final judgment in any such suit, action or proceeding brought in such a court shall be conclusive and binding may be enforced in the courts of the jurisdiction of which it is subject by a suit upon judgment, and

(v) agrees that service of process by mail to the addresses specified herein shall constitute personal service of such process on it in any such suit, action or proceeding.

(c) The Note Guarantors (other than CEMEX Corp.) have appointed CEMEX NY Corporation, 590 Madison Avenue, 41st Floor, New York, NY 10022, as its authorized agent (the "Authorized Agent") upon whom all writs, process and summonses may be served in any suit, action or proceeding arising out of or based upon this Indenture or the Notes which may be instituted in any state or federal court in the City of New York, New York. The Note Guarantors (other than CEMEX Corp.) hereby represent and warrant that the Authorized Agent has accepted such appointment and has agreed to act as said agent for service of process, and the Note Guarantors (other than CEMEX Corp.) agree to take any and all action, including the filing of any and all documents, that may be necessary to continue each such appointment in full force and effect as aforesaid so long as the Notes remain outstanding. The Note Guarantors (other than CEMEX Corp.) agree that the appointment of the Authorized Agent shall be irrevocable so long as any of the Notes remain outstanding or until the irrevocable appointment by the Note Guarantors (other than CEMEX Corp.) of a successor agent in the City of New York, New York as each of their authorized agent for such purpose and the acceptance of such appointment by such successor. Service of process upon the Authorized Agent shall be deemed, in every respect, effective service of process upon the Note Guarantors (other than CEMEX Corp.).

(d) To the extent that any of the Issuer and the Note Guarantors have or hereafter may acquire any immunity (sovereign or otherwise) from any legal action, suit or proceeding, from jurisdiction of any court or from set-off or any legal process (whether service or notice, attachment in aid or otherwise) with respect to itself or any of its property, the Issuer and the Note Guarantors hereby irrevocably waive and agree not to plead or claim such immunity in respect of their obligations under this Indenture or the Notes.

(e) Nothing in this Section 12.7 shall affect the right of the Trustee or any Holder of the Notes to serve process in any other manner permitted by law.

Section 12.8 [Reserved].

Section 12.9 No Recourse Against Others. An incorporator, director, officer, employee, stockholder or controlling person, as such, of the Issuer or any Note Guarantor shall not have any liability for any obligations of the Issuer or any Note Guarantor under the Notes or this Indenture or for any claims based on, in respect of or by reason of such obligations or their creation. By accepting a Note, each Holder shall waive and release all such liability.

Section 12.10 Successors. All agreements of the Issuer and any Note Guarantor in this Indenture and the Notes shall bind their respective successors. All agreements of the Trustee in this Indenture shall bind its successors.

Section 12.11 Duplicate and Counterpart Originals. The parties may sign any number of copies of this Indenture. One signed copy is enough to prove this Indenture. This Indenture may be executed in any number of counterparts, each of which so executed shall be an original, but all of them together represent the same agreement. Signatures of the parties hereto transmitted by facsimile or pdf shall be deemed to be their original signatures for all purposes.

Section 12.12 Severability. In case any provision in this Indenture or in the Notes shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 12.13 [Reserved].

Section 12.14 Currency Indemnity.

(a) U.S. Legal Tender is the sole currency of account and payment for all sums payable by the Issuer and any Note Guarantor under or in connection with the Notes or this Indenture, including damages. Any amount received or recovered in currency other than U.S. Legal Tender in respect of the Notes (whether as a result of, or of the enforcement of, a judgment or order of a court of any jurisdiction, in the winding-up or dissolution of the Issuer, a Note

Guarantor or any Subsidiary of the Issuer or otherwise) by any Holder of the Notes in respect of any sum expressed to be due to it from the Issuer or any Note Guarantor shall only constitute a discharge of them under the Notes and this Indenture only to the extent of the U.S. Legal Tender amount which the recipient is able to purchase with the amount so received or recovered in that other currency on the date of that receipt or recovery (or, if it is not practicable to make that purchase on that date, on the first date on which it is practicable to do so). If that U.S. Legal Tender amount is less than the U.S. Legal Tender amount expressed to be due to the recipient under the Notes or this Indenture, the Issuer and the Note Guarantors shall jointly and severally indemnify and hold harmless the recipient, to the greatest extent permitted by law, against any loss or cost sustained by it in making any such purchase. For the purposes of this Section 12.14, it will be sufficient for the Holder of a Note to certify that it would have suffered a loss had an actual purchase of U.S. Legal Tender been made with the amount so received in that other currency on the date of receipt or recovery (or, if a purchase of U.S. Legal Tender on such date had not been practicable, on the first date on which it would have been practicable).

(b) The indemnities of the Issuer and the Note Guarantors contained in this Section 12.14, to the extent permitted by law: (i) constitute a separate and independent obligation from the other obligations of the Issuer and the Note Guarantors under this Indenture and the Notes; (ii) shall give rise to a separate and independent cause of action against the Issuer and the Note Guarantors; (iii) shall apply irrespective of any waiver granted by any Holder of the Notes or the Trustee from time to time; and (iv) shall continue in full force and effect notwithstanding any other judgment, order, claim or proof of claim for a liquidated amount in respect of any sum due under the Notes or this Indenture or any other judgment or order.

Section 12.15 Table of Contents; Headings. The table of contents and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not intended to be considered a part hereof and shall not modify or restrict any of the terms or provisions hereof.

Section 12.16 USA PATRIOT Act. The parties hereto acknowledge that, in accordance with Section 326 of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law on October 26, 2001)) (as amended, modified or supplemented from time to time, the "USA PATRIOT Act"), the Trustee, like all financial institutions, is required to obtain, verify, and record information that identifies each person or legal entity that opens an account. The parties to this Agreement agree that they will provide the Trustee with such information as the Trustee may request in order for the Trustee to satisfy the requirements of the USA PATRIOT Act.

*[Signature page follows]*

IN WITNESS WHEREOF, the parties have caused this Indenture to be duly executed as of the date first written above.

CEMEX Finance LLC, as Issuer

By: /s/ Héctor Vela
Name: Héctor Vela
Title: Attorney-In-Fact

CEMEX, S.A.B. de C.V., as Note Guarantor

By: /s/ Héctor Vela
Name: Héctor Vela
Title: Attorney-In-Fact

CEMEX México, S.A. de C.V., as Note Guarantor

By: /s/ Héctor Vela
Name: Héctor Vela
Title: Attorney-In-Fact

CEMEX España, S.A., as Note Guarantor

By: /s/ Héctor Vela
Name: Héctor Vela
Title: Attorney-In-Fact

Cemex Research Group AG, as Note Guarantor

By: /s/ Héctor Vela
Name: Héctor Vela
Title: Attorney-In-Fact

New Sunward Holding B.V., as Additional Note Guarantor

By: /s/ Héctor Vela
Name: Héctor Vela
Title: Attorney-In-Fact

Cemex Shipping B.V., as Note Guarantor

By: /s/ Héctor Vela
Name: Héctor Vela
Title: Attorney-In-Fact

Cemex Asia B.V., as Note Guarantor

By: /s/ Héctor Vela
Name: Héctor Vela
Title: Attorney-In-Fact

Cemex Egyptian Investments B.V., as Note Guarantor

By: /s/ Héctor Vela
Name: Héctor Vela
Title: Attorney-In-Fact

CEMEX UK, as Note Guarantor

By: /s/ Héctor Vela
Name: Héctor Vela
Title: Attorney-In-Fact

By: /s/ Jaime Chapa
Name: Jaime Chapa
Title: Attorney-In-Fact

CEMEX France Gestion (S.A.S.), as Note Guarantor

By: /s/ Héctor Vela
Name: Héctor Vela
Title: Attorney-In-Fact

CEMEX Corp., as Note Guarantor

By: /s/ Héctor Vela
Name: Héctor Vela
Title: Attorney-In-Fact

CEMEX Concretos, S.A. de C.V., as Additional Note Guarantor

By: /s/ Héctor Vela
Name: Héctor Vela
Title: Attorney-In-Fact

Empresas Tolteca de México, S.A. de C.V., as Additional Note Guarantor

By: /s/ Héctor Vela
Name: Héctor Vela
Title: Attorney-In-Fact

THE BANK OF NEW YORK MELLON, as Trustee

By: /s/ Erica Walker
Name: Erica Walker
Title: Vice President

**SCHEDULE I**

NOTE GUARANTORS

1. CEMEX, S.A.B. de C.V. (Mexico)
2. CEMEX España, S.A. (Spain)
3. CEMEX México, S.A. de C.V. (Mexico)
4. New Sunward Holding B.V. (the Netherlands)
5. Cemex Asia B.V. (the Netherlands)
6. CEMEX Concretos, S.A. de C.V. (Mexico)
7. CEMEX Corp. (Delaware)
8. Cemex Egyptian Investments B.V. (the Netherlands)
9. CEMEX France Gestion (S.A.S.) (France)
10. Cemex Research Group AG (Switzerland)
11. Cemex Shipping B.V. (the Netherlands)
12. CEMEX UK (United Kingdom)
13. Empresas Tolteca de México, S.A. de C.V. (Mexico)

**EXHIBIT A**

FORM OF NOTE

[*Include the following legend for Global Notes only:*

"THIS IS A GLOBAL NOTE WITHIN THE MEANING OF THE INDENTURE REFERRED TO HEREINAFTER.

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), NEW YORK, NEW YORK, TO THE ISSUER OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFERS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF DTC OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN THE INDENTURE REFERRED TO ON THE REVERSE HEREOF."]

[*Include the following legend on all Notes that are Restricted Notes:*

"THE NOTES EVIDENCED HEREBY HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND [*Include the following on all Regulation S Notes that are Restricted Notes:* , PRIOR TO THE EXPIRATION OF THE 40-DAY DISTRIBUTION COMPLIANCE PERIOD (AS DEFINED IN REGULATION S UNDER THE SECURITIES ACT),] MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT (A) (1) TO CEMEX FINANCE LLC, (2) TO A PERSON WHO THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A AND TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS MADE IN RELIANCE ON RULE 144A, (3) IN AN OFFSHORE TRANSACTION COMPLYING WITH RULE 903 OR RULE 904 OF REGULATION S UNDER THE SECURITIES ACT, (4) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT (IF AVAILABLE), OR

(5) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT AND (B) IN ACCORDANCE WITH ALL APPLICABLE SECURITIES LAWS OF THE STATES OF THE UNITED STATES. THIS LEGEND CAN ONLY BE REMOVED AT THE OPTION OF THE ISSUER."]

[*Include the following on all Regulation S Notes that are Restricted Notes:* PRIOR TO THE EXPIRATION OF THE 40-DAY DISTRIBUTION COMPLIANCE PERIOD (AS DEFINED IN REGULATION S UNDER THE SECURITIES ACT),] EACH PERSON ACQUIRING AN OWNERSHIP INTEREST IN THE NOTES (1) SHALL BE DEEMED TO REPRESENT AND WARRANT THAT IT EITHER (A) IS A "QUALIFIED INSTITUTIONAL BUYER" (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT), (B) IS NOT A U.S. PERSON (AS DEFINED IN REGULATION S) AND IS OUTSIDE THE UNITED STATES OR (C) IS ACQUIRING SUCH OWNERSHIP INTEREST PURSUANT TO A VALID REGISTRATION STATEMENT OR IN ANOTHER TRANSACTION EXEMPT FROM SUCH REGISTRATION; (2) AGREES THAT [*Include the following on all Regulation S Notes that are Restricted Notes:* PRIOR TO THE EXPIRATION OF THE 40-DAY DISTRIBUTION COMPLIANCE PERIOD (AS DEFINED IN REGULATION S UNDER THE SECURITIES ACT),] (X) IT WILL NOT RESELL OR OTHERWISE TRANSFER THIS NOTE EXCEPT IN ACCORDANCE WITH THE FOREGOING RESTRICTIONS, AND IN ANY CASE IN COMPLIANCE WITH ALL APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES AND ANY OTHER APPLICABLE JURISDICTION; (Y) PRIOR TO SUCH TRANSFER, IT WILL FURNISH TO THE BANK OF NEW YORK MELLON, AS TRUSTEE (OR A SUCCESSOR TRUSTEE, AS APPLICABLE), SUCH CERTIFICATIONS, LEGAL OPINIONS OR OTHER INFORMATION AS THE TRUSTEE MAY REASONABLY REQUIRE TO CONFIRM THAT SUCH TRANSFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND (Z) IT WILL DELIVER TO EACH PERSON TO WHOM THIS SECURITY IS TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND. AS USED HEREIN, THE TERMS "UNITED STATES", "U.S. PERSON" AND "OFFSHORE TRANSACTION" HAVE THE MEANINGS GIVEN TO THEM BY REGULATION S UNDER THE SECURITIES ACT."]

[*Regulation S Temporary Global Note Legend:*

THIS GLOBAL NOTE IS A TEMPORARY GLOBAL NOTE FOR PURPOSES OF REGULATION S UNDER THE SECURITIES ACT. NEITHER THIS TEMPORARY GLOBAL NOTE NOR ANY INTEREST HEREIN MAY BE OFFERED, SOLD, DELIVERED OR EXCHANGED FOR AN INTEREST IN A PERMANENT GLOBAL NOTE OR OTHER NOTE EXCEPT UPON DELIVERY OF THE CERTIFICATIONS SPECIFIED IN THE INDENTURE.]

**FORM OF FACE OF NOTE**

**9.375% Senior Secured Notes due 2022**

No. [ ] Principal Amount U.S.$[ ]

*[If the Note is a Global Note include the following two lines:*
as revised by the Schedule of Increases and
Decreases in Global Note attached hereto]

CUSIP NO. [1]

ISIN NO. [2]

CEMEX Finance LLC, a Delaware limited liability company (together with its successors and assigns, the " Issuer"), promises to pay to Cede & Co., or registered assigns, the principal sum of [ ] Dollars [ *If the Note is a Global Note, add the following* , as revised by the Schedule of Increases and Decreases in Global Note attached hereto], on October 12, 2022.

Interest Payment Dates: April 12 and October 12, commencing on April 12, 2013
Record Dates: April 1 and October 1

[1] CUSIP No. for Rule 144A Note: **12516UAC9**; CUSIP No. for Regulation S Note: **U12763AC9**
[2] ISIN No. for Rule 144A Note: **US12516UAC99**; ISIN No. for Regulation S Note: **USU12763AC92**

Additional provisions of this Note are set forth on the other side of this Note.

CEMEX FINANCE LLC

By: _____
Name:
Title:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

THE BANK OF NEW YORK MELLON as Trustee, certifies that this is one of the Notes referred to in the Indenture.

By: _____ Date: _____
Authorized Signatory

**FORM OF REVERSE SIDE OF NOTE**

**9.375% Senior Secured Notes due 2022**

Capitalized terms used but not defined herein shall have the meanings assigned to them in the Indenture referred to below unless otherwise indicated.

1. Interest

CEMEX Finance LLC, a Delaware limited liability company (together with its successors and assigns, the " Issuer"), promises to pay interest on the principal amount of this Note at the rate per annum shown above.

The Issuer will pay interest semiannually in arrears on each Interest Payment Date of each year commencing April 12, 2013; *provided*, that if any such Interest Payment Date is not a Business Day, then such payment shall be made on the next succeeding Business Day. Interest on the Notes will accrue from the most recent date to which interest has been paid on the Notes or, if no interest has been paid, from October 12, 2012; *provided*, that if there is no existing Default or Event of Default on the payment of interest, and if this Note is authenticated between a Record Date referred to on the face hereof and the next succeeding Interest Payment Date (but after October 12, 2012), interest shall accrue from such next succeeding Interest Payment Date, except in the case of the original issuance of Notes, in which case interest shall accrue from October 12, 2012. The Issuer shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue principal at the then applicable interest rate on the Notes to the extent lawful; it shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue installments of interest (" Defaulted Interest"), without regard to any applicable grace period, at the same rate to the extent lawful. Interest will be computed on the basis of a 360-day year of twelve 30-day months. Each interest period shall end on (but not include) the relevant interest payment date.

All payments made by the Issuer in respect of the Notes will be made free and clear of and without deduction or withholding for or on account of any Taxes imposed or levied by or on behalf of any Taxing Jurisdiction, unless such withholding or deduction is required by law or by the interpretation or administration thereof. In that event, the Issuer will pay to each Holder of the Notes Additional Amounts as provided in the Indenture subject to the limitations set forth in the Indenture.

2. Method of Payment

By at least 10:00 a.m. (New York City time) on the Business Day prior to the date on which any principal of or interest on any Note is due and payable, the Issuer shall irrevocably deposit with the Trustee or the Paying Agent money sufficient to pay such principal and/or interest. The Issuer will pay interest (except Defaulted Interest) on the applicable Interest Payment Date to the Persons who are registered Holders of Notes at the close of business on the Record Date preceding the Interest Payment Date even if Notes are canceled, repurchased or redeemed after the Record Date and on or before the relevant Interest Payment Date, except as provided in Section 2.13 of the Indenture with respect to Defaulted Interest. Holders must surrender Notes to a Paying Agent to collect principal payments. The Issuer will pay principal and interest in U.S. Legal Tender.

Payments in respect of Notes represented by a Global Note (including principal and interest) will be made by the transfer of immediately available funds to the accounts specified by the DTC. The Issuer will make all payments in respect of a Certificated Note (including principal and interest) by mailing a check to the registered address of each registered Holder thereof as set forth in the Note Register; *provided*, *however*, that payments on the Notes may also be made, in the case of a Holder of at least U.S.$10,000,000 aggregate principal amount of Notes, by wire transfer to a U.S. dollar account maintained by the payee with a bank in the United States if such Holder elects payment by wire transfer by giving written notice to the Trustee or the Paying Agent to such effect designating such account no later than 10 days immediately preceding the relevant due date for payment (or such other date as the Trustee may accept in its discretion).

3. Paying Agent and Registrar

Initially, The Bank of New York Mellon, the Trustee under the Indenture, will act as Trustee, Paying Agent and Registrar. The Issuer may appoint and change any Paying Agent, Registrar or co-Registrar without notice to any Holder. The Issuer, any Note Guarantor or any of their respective Affiliates may act as Paying Agent, Registrar or co-Registrar.

4. Indenture

The Issuer issued the Notes under an Indenture, dated as of October 12, 2012 (as it may be amended or supplemented from time to time in accordance with the terms thereof, the "Indenture"), among the Issuer, the Note Guarantors and the Trustee. The terms of the Notes include those stated in the Indenture. The Notes are subject to all such terms, and Holders are referred to the Indenture for a statement of those terms. Each Holder, by accepting a Note, agrees to be bound by all of the terms and provisions of the Indenture, as amended or supplemented from time to time.

The Notes are general senior obligations, which are secured by a first priority security interest in the Collateral on an equal and ratable basis with the other Permitted Secured Obligations, subject to the Collateral release provisions set forth in the Intercreditor Agreement. U.S.$1,500,000,000 in aggregate principal amount of Notes will be initially issued on the Issue Date. Subject to the conditions set forth in the Indenture and without the consent of the Holders, the Issuer may issue Additional Notes. All Notes will be treated as a single series of securities under the Indenture. The Indenture imposes certain limitations on, among other things, the ability of the Issuer and its Restricted Subsidiaries to: Incur Indebtedness, make Restricted Payments, incur Liens, designate Unrestricted Subsidiaries, make Asset Sales, enter into transactions with Affiliates, or consolidate or merge or transfer or convey all or substantially all of the Issuer's assets.

To guarantee the due and punctual payment of the principal of (and premium, if any) and interest on the Notes and all other amounts payable by the Issuer under the Indenture and the Notes when and as the same shall be due and payable, whether at maturity, by

acceleration or otherwise, according to the terms of the Notes and the Indenture, the Note Guarantors have unconditionally guaranteed, jointly and severally, such obligations pursuant to the terms of the Indenture. Each Note Guarantee will be subject to release as provided in the Indenture.

The obligations of each Note Guarantor in respect of its Note Guarantee will be limited to the maximum amount as will, after giving effect to all other contingent and fixed liabilities of such Note Guarantor and after giving effect to any collections from or payments made by or on behalf of any other Note Guarantor in respect of the obligations of such other Note Guarantor under its Note Guarantee or pursuant to its contribution obligations under the Indenture, result in the obligations of such Note Guarantor under its Note Guarantee not constituting a fraudulent conveyance, fraudulent transfer, or similar illegal transfer under federal or state law or the law of the jurisdiction or formation and incorporation of such Note Guarantors.

5. Optional Redemption

Except as stated below, the Issuer may not redeem the Notes. The Issuer may redeem the Notes, at its option, in whole at any time or in part from time to time, on and after October 12, 2017, at the following redemption prices, expressed as percentages of the principal amount thereof, if redeemed during the twelve-month period commencing on October 12 of any year set forth below, plus any accrued and unpaid interest on the principal amount of the Notes to the date of redemption:

| Year | Percentage |
|---|---|
| 2017 | 104.69% |
| 2018 | 102.34% |
| 2019 | 101.17% |
| 2020 and thereafter | 100.00% |

*provided, however*, that the Issuer shall not have the right to exercise any such optional redemption at any time when the Issuer is prohibited from having such an option under the Facilities Agreement.

Prior to October 12, 2017, the Issuer will have the right, at its option, to redeem any of the Notes, in whole or in part, at any time or from time to time prior to their maturity at a redemption price equal to the greater of (1) 100% of the principal amount of such Notes and (2) the sum of the present value of each remaining scheduled payment of principal and interest thereon (exclusive of interest accrued to the date of redemption) discounted to the Redemption Date on a semi-annual basis (assuming a 360-day year consisting of twelve 30-day months) at the Treasury Rate (as defined below) plus 50 basis points, plus in each case any accrued and unpaid interest on the principal amount of the Notes to the date of redemption,

*provided, however,* that the Issuer shall not have the right to exercise any such optional redemption at any time when the Issuer is prohibited from having such an option under the Facilities Agreement.

"Treasury Rate" means, with respect to any Redemption Date, the rate per annum equal to the semi-annual equivalent yield to maturity or interpolated maturity (on a day count basis) of the Comparable Treasury Issue, assuming a price for the Comparable Treasury Issue (expressed as a percentage of its principal amount) equal to the Comparable Treasury Price (as defined below) for such Redemption Date.

"Comparable Treasury Issue" means the United States Treasury security or securities selected by an Independent Investment Banker (as defined below) as having an actual or interpolated maturity comparable to the remaining term of the Notes to be redeemed that would be utilized, at the time of selection and in accordance with customary financial practice, in pricing new issues of corporate debt securities of a comparable maturity to the remaining term of such Notes.

"Independent Investment Banker" means one of the Reference Treasury Dealers (as defined below) appointed by the Issuer.

"Comparable Treasury Price" means, with respect to any Redemption Date (1) the average of the Reference Treasury Dealer Quotations for such Redemption Date, after excluding the highest and lowest such Reference Treasury Dealer Quotation or (2) if the Independent Investment Banker or Issuer obtains fewer than four such Reference Treasury Dealer Quotations, the average of all such quotations.

"Reference Treasury Dealer" means any one of J.P. Morgan Securities LLC, Barclays Capital Inc. or RBS Securities Inc. or their respective affiliates which are primary United States government securities dealers and not less than two other leading primary United States government securities dealers in New York City reasonably designated by the Issuer; *provided, however*, that if any of the foregoing shall cease to be a primary United States government securities dealer in New York City (a "Primary Treasury Dealer"), the Issuer will substitute therefore another Primary Treasury Dealer.

"Reference Treasury Dealer Quotation" means, with respect to each Reference Treasury Dealer and any Redemption Date, the average, as determined by the Independent Investment Banker or Issuer, of the bid and asked price for the Comparable Treasury Issue (expressed in each case as a percentage of its principal amount) quoted in writing to the Independent Investment Banker or Issuer by such Reference Treasury Dealer at 3:30 p.m. New York time on the third business day preceding such Redemption Date.

*Optional Redemption upon Equity Offerings*. At any time, or from time to time, on or prior to October 12, 2015, the Issuer may, at its option, use the net cash proceeds of one or more Equity Offerings to redeem in the aggregate up to 35% of the aggregate principal amount of the Notes issued pursuant to the Indenture at a redemption price equal to 109.375% of the principal amount thereof plus any accrued and unpaid interest on the principal amount of the Notes to the date of redemption; *provided*, that:

- after giving effect to any such redemption at least 65% of the aggregate principal amount of the Notes issued under the Indenture remains outstanding; and
- the Issuer shall make such redemption not more than 90 days after the consummation of such Equity Offering;

*provided, however*, that the Issuer shall not have the right to exercise any such optional redemption at any time when the Issuer is prohibited from exercising such an option under the Facilities Agreement.

"Equity Offering" means any public or private sale of Qualified Capital Stock after the Issue Date for cash other than issuances to any Subsidiary of the Company.

*Optional Redemption for Changes in Withholding Taxes*. If, as a result of any amendment to, or change in, the laws (or any rules or regulations thereunder) of a Taxing Jurisdiction affecting taxation, or any amendment to or change in an official interpretation or application of such laws, rules or regulations that has a general effect, which amendment to or change of such laws, rules or regulations becomes effective on or after the Issue Date (which, in the case of a merger, consolidation or other transaction permitted and described under Article IV shall be treated for this purpose as the date of such transaction) we would be obligated, after taking all reasonable measures to avoid this requirement, to pay Additional Amounts in excess of those attributable to a withholding tax rate of 10% with respect to the Notes (see "Additional Amounts"), then, at our option, all, but not less than all, of the Notes may be redeemed at any time on giving not less than 30 nor more than 60 days' notice, at a redemption price equal to 100% of the outstanding principal amount, plus any accrued and unpaid interest on the principal amount of the Notes to the date of redemption; *provided*, *however*, that (1) no notice of redemption for tax reasons may be given earlier than 90 days prior to the earliest date on which we would be obligated to pay these Additional Amounts if a payment on the Notes were then due, and (2) at the time such notice of redemption is given such obligation to pay such Additional Amounts remains in effect; *provided, further, however*, that the Issuer shall not have the right to exercise any such optional redemption at any time when the Issuer is prohibited from having such an option under the Facilities Agreement.

Prior to the delivery of any notice of redemption pursuant to this provision, the Issuer will deliver to the Trustee:

- an Officer's Certificate stating that the Issuer is entitled to effect the redemption and setting forth a statement of facts showing that the conditions precedent to the Issuer's right to redeem have occurred, and
- an opinion of outside legal counsel of recognized standing in the affected Taxing Jurisdiction to the effect that the Issuer has or will become obligated to pay such Additional Amounts as a result of such change or amendment.

This notice, once delivered by the Issuer to the Trustee, will be irrevocable.

In the case of any partial redemption, selection of the Notes for redemption will be made in accordance with Article V of the Indenture. On and after the Redemption Date,

interest will cease to accrue on Notes or portions thereof called-for redemption as long as the Issuer has deposited with the Paying Agent funds in satisfaction of the applicable redemption price pursuant to the Indenture.

6. Mandatory Repurchase Provisions

*Change Of Control Offer*. Upon the occurrence of a Change of Control, each Holder of Notes will have the right to require that the Issuer purchase all or a portion (in integral multiples of U.S.$1,000) of the Holder's Notes at a purchase price equal to 101% of the principal amount thereof, plus accrued and unpaid interest through the date of purchase. Within 30 days following the date upon which the Change of Control occurred, the Issuer must make a Change of Control Offer pursuant to a Change of Control Notice. As more fully described in the Indenture, the Change of Control Notice shall state, among other things, the Change of Control Payment Date, which must be no earlier than 30 days nor later than 60 days from the date the notice is mailed, other than as may be required by applicable law.

*Asset Sale Offer*. The Indenture imposes certain limitations on the ability of the Company and its Restricted Subsidiaries to make Asset Sales. In the event the proceeds from a permitted Asset Sale exceed certain amounts and are not applied as specified in the Indenture, the Company will be required to make an Asset Sale Offer to purchase to the extent of such remaining proceeds each Holder's Notes together with holders of certain other Indebtedness at 100% of the principal amount thereof, plus accrued interest (if any) to the Asset Sale Offer Payment Date, as more fully set forth in the Indenture.

7. Denominations; Transfer; Exchange

The Notes are in fully registered form without coupons, and only in denominations of principal amount of U.S.$200,000 and in integral multiples of U.S.$1,000 in excess thereof. A Holder may transfer or exchange Notes in accordance with the Indenture. The Registrar may require a Holder, among other things, to furnish appropriate endorsements or transfer documents and to pay any taxes and fees required by law or permitted by the Indenture. The Registrar shall not be required to register the transfer or exchange of (x) any Note for a period beginning: (1) 15 days before the mailing of a notice of an offer to repurchase or redeem Notes and ending at the close of business on the day of such mailing or (2) 15 days before an Interest Payment Date and ending on such Interest Payment Date and (y) any Note selected for repurchase or redemption, except the unrepurchased or unredeemed portion thereof, if any.

8. Persons Deemed Owners

The registered holder of this Note may be treated as the owner of it for all purposes.

9. Unclaimed Money

If money for the payment of principal or interest remains unclaimed for two years, the Trustee or Paying Agent shall pay the money back to the Issuer at its request unless an abandoned property law designates another Person. After any such payment, Holders entitled to the money must look only to the Issuer and not to the Trustee for payment.

10. Discharge Prior to Redemption or Maturity

Subject to certain conditions set forth in the Indenture, the Issuer at any time may terminate some or all of its obligations under the Notes and the Indenture if the Issuer deposits with the Trustee U.S. Legal Tender or U.S. Government Obligations for the payment of principal of and interest on the Notes to redemption or maturity, as the case may be.

11. Amendment, Waiver

Subject to certain exceptions set forth in the Indenture, (i) the Indenture or the Notes may be amended or supplemented with the written consent of the Holders of at least a majority in principal amount of the then Outstanding Notes and (ii) any default (other than with respect to nonpayment or in respect of a provision that cannot be amended or supplemented without the written consent of each Holder affected) or noncompliance with any provision may be waived with the written consent of the Holders of a majority in aggregate principal amount of the then Outstanding Notes. Subject to certain exceptions set forth in the Indenture, without the consent of any Holder, the Issuer and the Trustee may amend or supplement the Indenture or the Notes to, among other things, cure any ambiguity, omission, defect or inconsistency, or to comply with Article IV of the Indenture, or to provide for uncertificated Notes in addition to or in place of certificated Notes, or to add guarantees with respect to the Notes or to secure the Notes, or to add additional covenants or surrender rights and powers conferred on the Issuer or the Note Guarantors, or to make any change that does not adversely affect the rights of any Holder, or to provide for the issuance of Additional Notes.

12. Defaults and Remedies

If an Event of Default occurs and is continuing, the Trustee or the Holders of at least 25% in principal amount of the Outstanding Notes may declare all the Notes to be due and payable immediately. A Bankruptcy Event of Default will result in the Notes being due and payable immediately upon the occurrence of such Bankruptcy Event of Default.

Holders may not enforce the Indenture or the Notes except as provided in the Indenture. The Trustee may refuse to enforce the Indenture or the Notes unless it receives reasonable indemnity or security. Subject to certain limitations, Holders of a majority in principal amount of the Outstanding Notes may direct the Trustee in its exercise of any trust or power. The Trustee may withhold from Holders notice of any continuing Default or Event of Default (except a Default or Event of Default in payment of principal or interest) if it determines that withholding notice is in their interest.

13. Trustee Dealings with the Issuer and the Note Guarantors

Subject to certain limitations set forth in the Indenture, the Trustee under the Indenture, in its individual or any other capacity, may become the owner or pledgee of Notes and may otherwise deal with and collect obligations owed to it by the Issuer, any Note Guarantor or its Affiliates and may otherwise deal with the Issuer, any Note Guarantor or its Affiliates with the same rights it would have if it were not Trustee.

14. No Recourse Against Others

An incorporator, director, officer, employee, stockholder or controlling person, as such, of the Issuer or any Note Guarantor shall not have any liability for any obligations of the Issuer or any Note Guarantor under the Notes or the Indenture or for any claims based on, in respect of or by reason of such obligations or their creation. By accepting a Note, each holder waives and releases all such liability.

15. Authentication

Any Officer of the Issuer may sign the Notes for the Issuer by manual or facsimile signature. This Note shall not be valid until an authorized signatory of the Trustee (or an Authenticating Agent) manually signs the certificate of authentication on the other side of this Note.

16. Abbreviations

Customary abbreviations may be used in the name of a Holder or an assignee, such as TEN COM (= tenants in common), TEN ENT (= tenants by the entirety), JT TEN (= joint tenants with rights of survivorship and not as tenants in common), CUST (=custodian) and U/G/M/A (= Uniform Gift to Minors Act).

17. CUSIP Numbers

Pursuant to a recommendation promulgated by the Committee on Uniform Security Identification Procedures the Issuer has caused CUSIP or other similar numbers to be printed on the Notes and has directed the Trustee to use CUSIP numbers in notices of redemption as a convenience to Holders. No representation is made as to the accuracy of such numbers either as printed on the Notes or as contained in any notice of redemption and reliance may be placed only on the other identification numbers placed thereon.

18. Governing Law

This Note shall be governed by, and construed in accordance with, the laws of the State of New York.

19. Currency of Account; Conversion of Currency .

U.S. Legal Tender is the sole currency of account and payment for all sums payable by the Issuer and the Note Guarantors under or in connection with the Notes or the Indenture, including damages. The Issuer and the Note Guarantors will indemnify the Holders as provided in respect of the conversion of currency relating to the Notes and the Indenture.

20. Agent for Service; Submission to Jurisdiction; Waiver of Immunities .

The Issuer and the Note Guarantors have agreed that any suit, action or proceeding against the Issuer or any Note Guarantor brought by any Holder or the Trustee arising out of or based upon the Indenture or the Notes may be instituted in any state or federal

court in the City of New York, New York. The Note Guarantors (other than CEMEX Corp.) have irrevocably submitted to the jurisdiction of such courts for such purpose and waived, to the fullest extent permitted by law, trial by jury and any objection it may now or hereafter have to the laying of venue of any such proceeding, and any claim it may now or hereafter have that any proceeding in any such court is brought in an inconvenient forum. The Issuer and the Note Guarantors have appointed CEMEX NY Corporation, 590 Madison Avenue, 41st Floor, New York, NY 10022, as each of their authorized agent upon whom all writs, process and summonses may be served in any suit, action or proceeding arising out of or based upon the Indenture or the Notes which may be instituted in any state or federal court in the City of New York, New York. To the extent that any of the Issuer and the Note Guarantors have or hereafter may acquire any immunity (sovereign or otherwise) from any legal action, suit or proceeding, from jurisdiction of any court or from set-off or any legal process (whether service or notice, attachment in aid or otherwise) with respect to itself or any of its property, the Issuer and the Note Guarantors have irrevocably waived and agreed not to plead or claim such immunity in respect of its obligations under the Indenture or the Notes.

The Issuer will furnish to any Holder upon written request and without charge to the Holder a copy of the Indenture which has in it the text of this Note in larger type. Requests may be made to:

CEMEX Finance LLC

c/o CEMEX, S.A.B. de C.V.
Av. Ricardo Margáin Zozaya # 325
Colonia Valle del Campestre
Garza García, Nuevo León, México 66265
Tel: +5281-8888-8888

**ASSIGNMENT FORM**

To assign this Note, fill in the form below:

I or we assign and transfer this Note to

_____

(Print or type assignee's name, address and zip code)

_____

(Insert assignee's soc. sec. or tax I.D. No.)

and irrevocably appoint _____ as agent to transfer this Note on the books of the Issuer. The agent may substitute another to act for him.

Date: _____ Your Signature: _____

Signature Guarantee: _____

(Signature must be guaranteed)

Sign exactly as your name appears on the other side of this Note.

The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program), pursuant to Exchange Act Rule 17Ad-15.

*To be attached to Global Notes only:*

SCHEDULE OF INCREASES OR DECREASES IN GLOBAL NOTE

The following increases or decreases in this Global Note have been made:

| Date of Exchange | Amount of decrease in Principal Amount of this Global Note | Amount of increase in Principal Amount of this Global Note | Principal Amount of this Global Note following such decrease or increase | Signature of authorized signatory of Trustee or Note Custodian |
|---|---|---|---|---|
| | | | | |

OPTION OF HOLDER TO ELECT PURCHASE

If you want to elect to have this Note purchased by the Issuer pursuant to Section 3.8 or Section 3.12 or of the Indenture, check either box:

☐ **Section 3.8** ☐ **Section 3.12**

If you want to elect to have only part of this Note purchased by the Issuer pursuant to Section 3.12 of the Indenture, state the principal amount (which must be in minimum denominations of U.S.$200,000 and in an integral multiple of U.S.$1,000):
U.S.$ _____

Date: _____ Your Signature _____
(Sign exactly as your name appears on the other side of the Note)

Signature Guarantee: _____
(Signature must be guaranteed)

The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program), pursuant to Exchange Act Rule 17Ad-15.

**EXHIBIT B**

FORM OF CERTIFICATION FOR TRANSFER PURSUANT TO REGULATION S

[Date]

The Bank of New York Mellon
101 Barclay Street – 4E
New York, NY 10286
Attention: International Corporate Trust

Re: 9.375% Senior Secured Notes due 2022 (the "Notes") of CEMEX Finance LLC (the "Issuer")

Ladies and Gentlemen:

Reference is hereby made to the Indenture, dated as of October 12, 2012 (as amended and supplemented from time to time, the "Indenture"), among the Issuer, the Note Guarantors named therein and The Bank of New York Mellon, as Trustee. Capitalized terms used but not defined herein shall have the meanings given them in the Indenture or Regulation S under the Securities Act of 1933, as amended (the "Securities Act"), as the case may be.

In connection with our proposed transfer of U.S.$[ ] aggregate principal amount of the Notes, which represent an interest in a Rule 144A Global Note beneficially owned by the undersigned ("Transferor"), we confirm that such transfer has been effected pursuant to and in accordance with Regulation S and, accordingly, we represent that:

(a) the offer of the Notes was not made to a person in the United States;

(b) either (i) at the time the buy order was originated, the transferee was outside the United States or we and any person acting on our behalf reasonably believed that the transferee was outside the United States or (ii) the transaction was executed in, on or through the facilities of a designated off-shore securities market and neither we nor any person acting on our behalf knows that the transaction has been pre-arranged with a buyer in the United States;

(c) no directed selling efforts have been made in the United States in contravention of the requirements of Rule 903(b) or Rule 904(b) of Regulation S, as applicable;

(d) the transaction is not part of a plan or scheme to evade the registration requirements of the Securities Act; and

(e) we are the beneficial owner of the principal amount of Notes being transferred.

In addition, if the transfer is made during a Distribution Compliance Period and the provisions of Rule 904(b)(1) or Rule 904(b)(2) of Regulation S are applicable thereto, we confirm that such transfer has been made in accordance with the applicable provisions of Rule 904(b)(1) or Rule 904(b)(2), as the case may be.

You, the Issuer and the Note Guarantors are entitled to rely upon this letter and are irrevocably authorized to produce this letter or a copy hereof to any interested party in any administrative or legal proceedings or official inquiry with respect to the matters covered hereby.

Very truly yours,

[Name of Transferor]

By: _____

_____

Authorized Signature]

Signature Guarantee: _____

(Signature must be guaranteed)

The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program), pursuant to Exchange Act Rule 17Ad-15.

**EXHIBIT C**

FORM OF CERTIFICATION FOR TRANSFER PURSUANT TO RULE 144

[Date]

The Bank of New York Mellon
101 Barclay Street – 4E
New York, NY 10286
Attention: International Corporate Trust

Re: 9.375% Senior Secured Notes due 2022 (the "Notes") of CEMEX Finance LLC (the "Issuer")

Ladies and Gentlemen:

Reference is hereby made to the Indenture, dated as of October 12, 2022 (as amended and supplemented from time to time, the "Indenture"), among the Issuer, the Note Guarantors named therein and The Bank of New York Mellon, as Trustee. Capitalized terms used but not defined herein shall have the meanings given them in the Indenture.

In connection with our proposed transfer of U.S.$[ ] aggregate principal amount of the Notes, which represent an interest in a 144A Global Note beneficially owned by the undersigned ("Transferor"), we confirm that such transfer has been effected pursuant to and in accordance with Rule 144 under the Securities Act.

You, the Issuer and the Note Guarantors are entitled to rely upon this letter and are irrevocably authorized to produce this letter or a copy hereof to any interested party in any administrative or legal proceedings or official inquiry with respect to the matters covered hereby.

Very truly yours,

[Name of Transferor]

By: _____

_____
Authorized Signature]

Signature Guarantee: _____
(Signature must be guaranteed)

The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program), pursuant to Exchange Act Rule 17Ad-15.

**EXHIBIT D**

FORM OF CERTIFICATION FOR TRANSFER PURSUANT TO RULE 144A

[Date]

The Bank of New York Mellon
101 Barclay Street – 4E
New York, NY 10286
Attention: International Corporate Trust

Re: 9.375% Senior Secured Notes due 2022 (the "Notes") of CEMEX Finance LLC (the "Issuer")

Ladies and Gentlemen:

Reference is hereby made to the Indenture, dated as of October 12, 2012 (as amended and supplemented from time to time, the " Indenture"), among the Issuer, the Note Guarantors named therein and The Bank of New York Mellon, as Trustee. Capitalized terms used but not defined herein shall have the meanings given them in the Indenture.

In connection with our proposed transfer of U.S.$[ ] aggregate principal amount of the Notes, which represent an interest in a Regulation S Global Note beneficially owned by the undersigned (" Transferor"), we confirm that such transfer has been effected pursuant to and in accordance with Rule 144A under the Securities Act of 1933, as amended, and, accordingly, we represent that the beneficial interest will be transferred to a Person that we reasonably believe is purchasing the beneficial interest for its own account, or for one or more accounts with respect to which such Person exercises sole investment discretion, and such Person and each such account is a "qualified institutional buyer" within the meaning of Rule 144A in a transaction meeting the requirements of Rule 144A and such transfer is in compliance with any applicable blue sky securities laws of any state of the United States.

You, the Issuer and the Note Guarantors are entitled to rely upon this letter and are irrevocably authorized to produce this letter or a copy hereof to any interested party in any administrative or legal proceedings or official inquiry with respect to the matters covered hereby.

Very truly yours,

[Name of Transferor]

By: _____

_____

Authorized Signature]

Signature Guarantee: _____

(Signature must be guaranteed)

The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program), pursuant to Exchange Act Rule 17Ad-15.

**EXHIBIT E**

"CONSOLIDATED LEVERAGE RATIO" AND RELATED DEFINITIONS

The definition of "Consolidated Leverage Ratio" comes from the 2009 Financing Agreement, as in effect immediately prior to giving effect to the amendment and restatement thereof on September 17, 2012, and is to be used solely for purposes of calculating the Consolidated Leverage Ratio in the context of determining whether a Partial Covenant Suspension Event has occurred.

"**2012 CB Amount**" means an aggregate amount equal to the Relevant Existing Financial Indebtedness maturing on or prior to the 2012 CB Maturity Date.

"**2012 CB Maturity Date**" means the final maturity date of the Relevant Existing Financial Indebtedness maturing in September, 2012 (being 21 September, 2012).

"**Acceptable Bank**" means:

(a) a bank or financial institution which has a rating for its long-term unsecured and non credit-enhanced debt obligations of A- or higher by S&P or A- or higher by Fitch or A3 or higher by Moody's or a comparable rating from an internationally recognised credit rating agency;

(b) any other bank or financial institution in a jurisdiction in which a member of the Group conducts commercial operations where such member of the Group, in the ordinary course of trading, subscribes for certificates of deposit issued by such bank or financial institution; or

(c) any other bank or financial institution approved by the Administrative Agent.

"**Accession Letter**" means a document substantially in the form set out in Schedule 4 ( *Form of Accession Letter*) of the Financing Agreement.

"**Additional Guarantor**" means a company that becomes an Additional Guarantor in accordance with Clause 28 ( *Changes to the Obligors*) of the Financing Agreement.

"**Additional Security Provider**" means a company that becomes an Additional Security Provider in accordance with Clause 28 ( *Changes to the Obligors*) of the Financing Agreement.

"**Administrative Agent**" means Citibank International PLC, as administrative agent of the Finance Parties (other than itself) under the Financing Agreement.

"**Affiliate**" means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company.

"**Applicable GAAP**" means:

(a) in the case of the Company, Mexican FRS or, if adopted by the Company in accordance with Clause 22.3 ( *Requirements as to financial statements*) of the Financing Agreement, IFRS;

(b) in the case of CEMEX España, Spanish GAAP or, if adopted by CEMEX España in accordance with Clause 22.3 ( *Requirements as to financial statements*) of the Financing Agreement, IFRS; and

(c) in the case of any other Obligor, the generally accepted accounting principles applying to it in the country of its incorporation or in a jurisdiction agreed to by the Administrative Agent or, if adopted by the relevant Obligor, IFRS.

"**Authorised Signatory**" means, in relation to any Obligor, any person who is duly authorised and in respect of whom the Administrative Agent has received a certificate signed by a director or another Authorised Signatory of such Obligor setting out the name and signature of such person and confirming such person's authority to act.

"**Banobras Facility**" means a revolving loan agreement ( *Contrato de Apertura de Crédito en Cuenta Corriente* ) between CEMEX CONCRETOS, S.A. de C.V., as borrower and Banco Nacional de Obras y Servicios Públicos, Sociedad Nacional de Crédito, Institución de Banca de Desarrollo, as lender ( "**Banobras**"), in an aggregate principal amount equal to Mex$5,000,000,000.00 (five billion pesos), dated April 22, 2009, which was formalized by means of public deeds number 116,380 and 116,381 dated April 22, 2009, granted before Mr. José Angel Villalobos Magaña, notary public number 9 for Mexico, Federal District, as such facility may be amended from time to time.

"**Base Currency**" means US dollars.

"**Base Currency Amount**" means on any date:

(a) in relation to an amount or Exposure denominated in the Base Currency, that amount or the amount of that Exposure; and

(b) in relation to an amount or Exposure denominated in a currency other than the Base Currency, that amount or the amount of that Exposure converted into the Base Currency at:

(i) for the purposes of determining the Majority Participating Creditors, the exchange rate displayed on the appropriate Reuters screen at or about 11:00 a.m. on the date on which such determination is made (or if the agreed page is replaced or services cease to be available, the Administrative Agent may specify another page or service displaying the appropriate rate after consultation with the Company and the Participating Creditors); and

(ii) for all other purposes, the exchange rate displayed on the appropriate Reuters screen at or about 11:00 a.m. on the date which is five Business Days before that date (or if the agreed page is replaced or services cease to be available, the Administrative Agent may specify another page or service displaying the appropriate rate after consultation with the Company and the Participating Creditors).

"**Bilateral Bank Facilities**" means the facilities described in Part IB of Part II of Schedule 1 ( *The Original Participating Creditors* ) of the Financing Agreement.

"**Borrower**" means an Original Borrower unless it has ceased to be a Borrower in accordance with Clause 28.2 ( *Resignation of a Borrower*) of the Financing Agreement.

"**Business Day**" means a day (other than a Saturday or Sunday) on which banks are open for general business in London, Madrid, New York, Amsterdam and Mexico City (in the case of Mexico City, if applicable, as specified by a governmental authority), and:

(a) (in relation to any date for payment or lending or purchase of, or the determination of an interest rate or rate of exchange in relation to, a currency other than euro) the principal financial centre of the country of that currency; or

(b) (in relation to any date for payment or lending or purchase of, or the determination of an interest rate or rate of exchange in relation to, euro) any TARGET Day.

"**Business Plan**" means the five year business plan of the Group delivered in conjunction with the Financing Agreement.

"**Capital Expenditure**" means any expenditure or obligation in respect of expenditure which, in accordance with Applicable GAAP of the Company, is treated as capital expenditure (and including the capital element of any expenditure or obligation incurred in connection with a Capital Lease) (and, solely for the purposes of paragraph (c) of Clause 23.2 ( *Financial condition*) of the Financing Agreement, the maximum amount of Capital Expenditure of the Group permitted in the Financial Year ending on or about 31 December 2009 will be increased by an amount not exceeding $50,000,000 in aggregate to the extent necessary to take into account currency fluctuations or additional costs and expenses contemplated by (or that have occurred since the date of) the Business Plan).

"**Capital Lease**" means, as to any person, the obligations of such person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of the Company under Applicable GAAP and the amount of such obligations at any time shall be the capitalized amount thereof at such time determined in accordance with Applicable GAAP of the Company.

"**Capital Stock**" means any and all shares, interests, participations or other equivalents (however designed) of capital stock of a corporation, any and all equivalent ownership interests in a person (other than a corporation) and any and all warrants, rights or options to purchase any of the foregoing.

"**Cash Equivalent Investments**" means at any time:

(a) certificates of deposit maturing within one year after the relevant date of calculation and issued by an Acceptable Bank;

(b) any investment in marketable debt obligations issued or expressly guaranteed by the government of Mexico, the United States of America (or any state thereof (including any political subdivision of such state)), the United Kingdom, any member state of the European Economic Area or any Participating Member State or any member state of NAFTA (or any other jurisdiction in which a member of the Group conducts commercial operations if that member of the Group makes investments in such debt obligations in the ordinary course of its trading) or by an instrumentality or agency of any of them having an equivalent credit rating, maturing within one year after the relevant date of calculation and not convertible or exchangeable to any other security;

(c) commercial paper not convertible into or exchangeable for any other security:

(i) for which a recognised trading market exists;

(ii) issued by an issuer incorporated in Mexico, the United States of America (or any state thereof (including any political subdivision of such state)), the United Kingdom, any member state of the European Economic Area or any Participating Member State or any member state of NAFTA (or any other jurisdiction in which a member of the Group makes investments in such debt obligations in the ordinary course of trading);

(iii) which matures within one year after the relevant date of calculation; and

(iv) which has a credit rating of either A-1 or higher by S&P or F 1 or higher by Fitch or P-1 or higher by Moody's, or, if no rating is available in respect of the commercial paper, the issuer of which has, in respect of its long-term unsecured and non-credit enhanced debt obligations, an equivalent rating;

(d) sterling bills of exchange eligible for rediscount at the Bank of England and accepted by an Acceptable Bank (or their dematerialised equivalent);

(e) any investment in money market funds which (i) have a credit rating of either A-1 or higher by S&P or F1 or higher by Fitch or P-1 or higher by Moody's, (ii) which invest substantially all their assets in securities of the types described in paragraphs (a) to (d) above and (f) and (g) below and (iii) can be turned into cash on not more than 30 days' notice; or

(f) any deposit issued by any of Nacional Financiera, S.N.C., Banco Nacional de Comercio Exterior, S.N.C., Banco National de Obras y Sevicios Publicos, S.N.C. or any other development bank controlled by the Mexican government;

(g) any other debt instrument rated "investment grade" (or the local equivalent thereof according to local criteria in a country in which any member of the Group conducts commercial operations and in which local pensions are permitted by law to invest) with maturities of 12 months or less from the date of acquiring such investment;

(h) investments in mutual funds, managed by banks or financial institutions, with a local currency credit rating of at least MxAA by S&P or equivalent by any other reputable local rating agency, that invest principally in marketable direct obligations issued by the Mexican government, or issued by any agency or instrumentality thereof; and

(i) any other debt security, certificate of deposit, commercial paper, bill of exchange, investment in money market funds or material funds approved by the Majority Participating Creditors, in each case, to which any member of the Group is alone (or together with other members of the Group) beneficially entitled at that time and which is not issued or guaranteed by any member of the Group or subject to any Security (other than Security arising under the Transaction Security Documents).

"**CB Cash Replenishment Amount**" means, for a particular Relevant Prepayment Period, the amount of cash in hand of the Company on a consolidated basis to be applied by the Company to the CB Reserve pursuant to paragraph (b) of Clause 13.3 ( *Mandatory prepayments: Certificados Bursatiles Reserve*) of the Financing Agreement at any time during that Relevant Prepayment Period **provided that** such amount, together with the CB Disposal Proceeds Replenishment Amount applicable to that Relevant Prepayment Period, may not exceed the CB Reserve Shortfall at that time.

"**CB Disposal Proceeds Replenishment Amount**" means for a particular Relevant Prepayment Period, the amount of any Disposal Proceeds received by any member of the Group during that Relevant Prepayment Period to be applied by the Company to the CB Reserve pursuant to paragraph (b) of Clause 13.3 (*Mandatory prepayments: Certificados Bursatiles Reserve* ) of the Financing Agreement **provided that** such amount, together with the CB Cash Replenishment Amount applicable to that Relevant Prepayment Period, may not exceed the CB Reserve Shortfall at that time.

"**CB Reserve**" means the reserve created by the Company or any of its Subsidiaries for the purposes of holding the proceeds of any Permitted Fundraising that, as set out in the relevant CB Reserve Certificate, are to be applied in accordance with Clause 13.3 ( *Mandatory prepayments: Certificados Bursátiles Reserve*) of the Financing Agreement.

"**CB Reserve Certificate**" means a certificate signed by a Responsible Officer of the Company setting out, with respect to a Permitted Fundraising the net cash proceeds of which are to be applied in accordance with Clause 13.3 ( *Mandatory prepayments: Certificados Bursatiles Reserve* ) of the Financing Agreement:

(i) the amount of proceeds from the relevant Permitted Fundraising that the Company wishes to be applied to the CB Reserve (such amount to not exceed the aggregate amount of the Relevant Existing Financial Indebtedness that is due to mature within the Relevant Prepayment Period to which it applies); and

(ii) specific details of the Relevant Existing Financial Indebtedness to which any amounts are designated by the Company to be applied including the total aggregate amount of such Relevant Existing Financial Indebtedness and the date on which such Relevant Existing Financial Indebtedness matures.

"**CB Reserve Shortfall**" means at any time, for a particular Relevant Prepayment Period, an amount equal to the lower of:

(i) the aggregate amount of (A) any voluntary prepayments made to Participating Creditors pursuant to Clause 12.2 ( *Voluntary prepayment of Exposures*) of the Financing Agreement from proceeds standing to the credit of the CB Reserve in that Relevant Prepayment Period and (B) the 2012 CB Amount; and

(ii) the principal amount of any Relevant Existing Financial Indebtedness then outstanding in that Relevant Prepayment Period.

"**Change of Control**" means that the beneficial ownership (within the meaning of Rule 13d-3 promulgated by the SEC under the Securities Exchange Act of 1934, as amended) of 20 per cent. or more in voting power of the outstanding voting stock of the Company is acquired by any person, **provided that** the acquisition of beneficial ownership of capital stock of the Company by Lorenzo H. Zambrano or any member of his immediate family shall not constitute a Change of Control.

"**Charged Property**" means all of the assets of the Security Providers which from time to time are, or are expressed to be, the subject of the Transaction Security.

"**Compliance Certificate**" means a certificate substantially in the form set out in Schedule 5 ( *Form of Compliance Certificate* ) of the Financing Agreement.

"**Consolidated Coverage Ratio**" means, on any date of determination, the ratio of (a) EBITDA for the one (1) year period ending on such date to (b) Consolidated Interest Expense for the one (1) year period ending on such date.

"**Consolidated Debt**" means, at any date, the sum (without duplication) of (a) the aggregate amount of all Debt of the Company and its Subsidiaries at such date, which shall include the amount of any recourse in respect of Inventory Financing permitted under paragraph (e) of the definition of Permitted Financial Indebtedness, *plus* (b) to the extent not included in Debt, the aggregate net mark-to-market amount of all derivative financing in the form of equity swaps outstanding at such date (except to the extent such exposure is cash collateralized to the extent permitted under the Finance Documents).

"**Consolidated Funded Debt**" means, for any period, Consolidated Debt less the sum (without duplication) of (i) all obligations of such person to pay the deferred purchase price of property or services, (ii) all obligations of such person as lessee under Capital Leases, and (iii) all obligations of such person with respect to product invoices incurred in connection with export financing.

"**Consolidated Interest Expense**" means, for any period, the sum of the (1) total gross cash and non cash interest expense of the Company and its consolidated Subsidiaries relating to Consolidated Funded Debt of such persons, (2) any amortization or accretion of debt discount or any interest paid on Consolidated Funded Debt of such person and its Subsidiaries in the form of additional Financial Indebtedness (but excluding any amortization of deferred financing and debt issuance costs), (3) the net costs under Treasury Transactions in respect of interest rates (but excluding amortization of fees), (4) any amounts paid in cash on preferred stock, and (5) any interest paid or accrued in respect of Consolidated Funded Debt without a maturity date, regardless of whether considered interest expense under Applicable GAAP of the Company. For purposes of calculating Consolidated Interest Expense for the Reference Period ending 30 June 2010, $131,406,696.17 shall be deducted, constituting the amount of interest paid in respect of perpetual debentures on 1 July 2009 for the period ending 30 June 2009.

"**Consolidated Leverage Ratio**" means, on any date of determination, the ratio of (a) Consolidated Funded Debt on such date to (b) EBITDA for the one (1) year period ending on such date.

"**Core Bank Facilities**" means the Syndicated Bank Facilities, the Bilateral Bank Facilities and the Promissory Notes.

"**Creditor's Representative**" means:

(a) with respect to each of the Syndicated Bank Facilities, the person appointed as the agent of the creditors in relation to such Facility under the Existing Finance Documents relating to such Facility;

(b) with respect to each other Core Bank Facility, the Participating Creditor with an Exposure under that Facility; and

(c) with respect to each USPP Note, the Participating Creditor with an Exposure under that USPP Note.

"**Debt**" of any person means, without duplication, (i) all obligations of such person for borrowed money, (ii) all obligations of such person evidenced by bonds, debentures, notes or other similar instruments, including the perpetual bonds, (iii) the aggregate net mark-to-market of Treasury Transactions (except to the extent such exposure is cash collateralized to the extent permitted under the Finance Documents) of such person but excluding Treasury Transactions relating to the rate or price of energy or any commodity, (iv) all obligations of such person to pay the deferred purchase price of property or services, except trade accounts payable arising in the ordinary course of trading, (v) all obligations of such person as lessee under Capital Leases, (vi) all Debt of others secured by Security on any asset of such person, up to the value of such asset, (vii) all obligations of such person with respect to product invoices incurred in connection with export financing, (viii) all obligations of such person under repurchase agreements for the stock issued by such person or another person, (ix) all obligations of such person in respect of Inventory Financing permitted under paragraph (e) of the definition of Permitted Financial Indebtedness and (x) all guarantees of such person in respect of any of the foregoing **provided, however**, that for the purposes of calculating the Consolidated Funded Debt element of the Consolidated Leverage Ratio, Relevant Convertible/Exchangeable Obligations shall be excluded from each of the foregoing paragraphs (i) to (x) inclusive (**provided that**, in the case of outstanding Financial Indebtedness under any Relevant Convertible/Exchangeable Obligations (1) only the principal amount thereof shall be excluded and (2) such exclusion shall apply only for so long as such amounts remain subordinated in accordance with the terms of that definition) and (b) amounts falling within paragraph (v) of the definition of Excluded Fundraising Proceeds, for the period in which they are held by the Company or any member of the Group pending application in accordance with the terms of the Financing

Agreement, shall be deducted from the aggregate Debt calculation resulting from this definition. For the avoidance of doubt, all letters of credit, banker's acceptances or similar credit transactions, including reimbursement obligations in respect thereof are not Debt until they are required to be funded.

"**Debt Documents**" means the Finance Documents, the "Refinancing Documents" (as defined in the Intercreditor Agreement) and the "Noteholder Documents" (as defined in the Intercreditor Agreement).

"**Debt Reduction Satisfaction Date**" means the first date following 30 September 2010 on which:

(a) the Base Currency Amount of the Exposures of Participating Creditors under the Facilities (calculated as at the date that any reduction of Exposures occurs and in accordance with the Financing Agreement) has been reduced by an aggregate amount equal to at least $1,000,000,000 compared to the Exposures of Participating Creditors under the Facilities as at 30 September 2010; and

(b) the amount of Consolidated Funded Debt is at least $1,000,000,000 (or its equivalent in any other currency) lower than the level of Consolidated Funded Debt as at 30 September 2010 (for the avoidance of doubt, when used in this sub-paragraph, Consolidated Funded Debt shall not include any Relevant Convertible/Exchangeable Obligations),

with notification of the occurrence of such date being provided by the Parent delivering a certificate to the Administrative Agent signed by an Authorised Signatory confirming that (a) and (b) above have been met.

"**Delegate**" means any delegate, agent, attorney or co-trustee appointed by the Security Agent.

"**Discontinued EBITDA**" means, for any period, the sum for Discontinued Operations of (a) operating income ( *utilidad de operación*), and (b) depreciation and amortization expense, in each case determined in accordance with Applicable GAAP of the Company consistently applied for such period.

"**Discontinued Operations**" means operations that are accounted for as discontinued operations pursuant to Applicable GAAP of the Company for which the Disposal of such assets has not yet occurred.

"**Disposal**" means a sale, lease, license, transfer, loan or other disposal by a person of any asset (including shares in any Subsidiary or other company), undertaking or business (whether by a voluntary or involuntary single transaction or series of transactions).

"**Disposal Proceeds**" means:

(i) the cash consideration received by any member of Group (including any amount received from a person who is not a member of the Group in repayment of intercompany debt save to the extent that the creditor in respect of the intercompany debt is obliged to repay that amount to the purchaser at or about completion of the Disposal) for any Disposal;

(ii) any proceeds of any Disposal received in the form of Marketable Securities that are required to be disposed of for cash (after deducting reasonable expenses incurred by the party disposing of those Marketable Securities to persons other than members of the Group) pursuant to the criteria set out at paragraph (h) of the definition of Permitted Disposal; and

(iii) any proceeds of any Disposal received in any other form to the extent disposed of or otherwise converted into cash within 90 days of receipt; and

(iv) any consideration falling within paragraphs (i) to (iii) above that is received by any member of the Group from the Disposal of assets of the Group in Venezuela prior to the date of the Financing Agreement,

but excluding any Excluded Disposal Proceeds and, in every case, after deducting:

(1) any reasonable expenses which are incurred by the disposing party of such assets with respect to that Disposal to persons who are not members of the Group;

(2) any Tax incurred and required to be paid by the disposing party in connection with that Disposal (as reasonably determined by the disposing party on the basis of rates existing at the time of the disposal and taking account of any available credit, deduction or allowance);

"**EBITDA**" means, for any period, the sum for the Company and its Subsidiaries, determined on a consolidated basis of (a) operating income ( *utilidad de operacion*), and (b) depreciation and amortization expense, in each case determined in accordance with Applicable GAAP of the Company, subject to the adjustments herein, consistently applied for such period and adjusted for Discontinued EBITDA as follows: if the amount of Discontinued EBITDA is a positive amount, then EBITDA shall increase by such amount, and if the amount of Discontinued EBITDA is a negative amount, then EBITDA shall decrease by the absolute value of such amount. For the purposes of calculating EBITDA for any applicable period pursuant to any determination of the Consolidated Leverage Ratio (but not the Consolidated Coverage Ratio): (A) (i) if at any time during such applicable period the Borrower or any of its Subsidiaries shall have made any Material Disposal, the EBITDA for such applicable period shall be reduced by an amount equal to the EBITDA (if positive) attributable to the property that is the subject of such Material Disposal for such applicable period (but when the Material Disposal is by way of lease, income received by the Company or any of its Subsidiaries under such lease shall be included in EBITDA) and (ii) if at any time during such applicable period the Company or any of its Subsidiaries shall have made any Material Acquisition, EBITDA for such applicable period shall be calculated after giving *pro forma* effect thereto as if such Material Acquisition had occurred on the first day of such applicable period. Additionally, if since the beginning of such applicable period any person that subsequently shall have become a Subsidiary or was merged or consolidated with the Company or any of its Subsidiaries as a result of a Material Acquisition occurring during such applicable period shall have made any Material Disposal or Material Acquisition of property that would have required an adjustment pursuant to clause (i) or (ii) above if made by the Company or any of its Subsidiaries during such applicable period, EBITDA for such period shall be calculated after giving *pro forma* effect thereto as if such Material Disposal or Material Acquisition had occurred on the first day of such applicable period; and (B) EBITDA will be recalculated by multiplying each month's EBITDA by the Ending Exchange Rate and dividing the amount obtained thereto by the exchange rate used by the Company in preparation of its monthly financial statements in accordance with Applicable GAAP of the Company to convert $ into Mexican pesos (such recalculated EBITDA being the " **Recalculated EBITDA**").

"**Ending Exchange Rate**" means the exchange rate at the end of a Reference Period for converting $ into Mexican pesos as used by the Company and its auditors in preparation of the Company's financial statements in accordance with Applicable GAAP of the Company.

"**Excluded Disposal Proceeds**" means any CB Disposal Proceeds Replenishment Amount and the proceeds of any Disposal of:

(i) inventory or trade receivables in the ordinary course of trading of the disposing entity;

(ii) assets pursuant to a Permitted Securitisation programme existing as at the date of the Financing Agreement (or any rollover or extension of such a Permitted Securitisation);

(iii) any asset from any member of the Group to another member of the Group on arm's length terms and for fair market or book value;

(iv) any assets the consideration for which (when aggregated with the consideration for any related Disposals) is less than $5,000,000 (or its equivalent in any other currency);

(v) assets leased or licensed to any director, officer or employee of any member of the Group in connection with and as part of the ordinary course of the service or employment arrangements of the Group;

(vi) Marketable Securities (other than Marketable Securities received as consideration for a Disposal as envisaged in paragraphs (ii) and (iii) of the definition of Disposal Proceeds); and

(vii) any cash or other assets arising out of or in connection with any Permitted Put/Call Transaction, including, but not limited to any settlement, disposal, transfer, assignment, closeout or other termination of such Permitted Put/Call Transaction.

"**Excluded Fundraising Proceeds**" means the proceeds of:

(i) a Permitted Fundraising falling within paragraph (f)(i) of the definition of Permitted Financial Indebtedness entered into for the purpose of refinancing or extending the maturity of Existing Financial Indebtedness falling within paragraph (a) of the definition thereof (or paragraph (b) of the definition thereof, to the extent that it relates to Short Term Certificados Bursatiles) (and, in the case of a refinancing, where the proceeds that would, but for this paragraph (i), constitute "Permitted Fundraising Proceeds," are actually applied for such purpose as soon as reasonably practicable (and in any event within 90 days) following receipt of those proceeds by any member of the Group);

(ii) a Permitted Fundraising falling within paragraph (f)(ii) of the definition of Permitted Financial Indebtedness entered into for the purpose of refinancing or extending the maturity of Existing Financial Indebtedness falling within paragraphs (a) to (e) of the definition thereof (and, in the case of a refinancing, where the proceeds that would, but for this paragraph (ii), constitute "Permitted Fundraising Proceeds," are actually applied for such purpose as soon as reasonably practicable (and in any event within 90 days) following receipt of those proceeds by any member of the Group).

(iii) any transaction between members of the Group;

(iv) Permitted Securitisations;

(v) prior to the Debt Reduction Satisfaction Date, a Permitted Fundraising falling within paragraph (c) of that definition or, after the Debt Reduction Satisfaction Date, a Permitted Fundraising falling within paragraphs (a), (b) or (c) of that definition **provided that** any Relevant Existing Financial Indebtedness due to

mature within the particular Relevant Prepayment Period and the proceeds of such Permitted Fundraising are to be applied in accordance with Clause 13.3 (*Mandatory prepayments: Certificados Bursatiles Reserve*) of the Financing Agreement;

(vi) subject to Clause 13.4(ii) of the Financing Agreement, a Permitted Fundraising falling within paragraph (c) of that definition and applied or to be applied in accordance with Clause 13.4 (*Mandatory prepayments: Relevant Convertible/Exchangeable Obligations*) of the Financing Agreement; and

(vii) a Permitted Fundraising arising out of or in connection with any Permitted Put/Call Transaction, including, but not limited to, any settlement, disposal, transfer, assignment, close-out or other termination of such Permitted Put/Call Transaction.

"**Executive Compensation Plan**" means any stock option plan, restricted stock plan or retirement plan which the Company or any other Obligor customarily provides to its employees, consultants and directors.

"**Existing Facility Agreements**" means the facility agreements and other documents described in Part II, Schedule 1 ( *The Original Participating Creditors*) of the Financing Agreement.

"**Existing Finance Documents**" means each Existing Facility Agreement, the USPP Note Guarantee, the "Finance Documents" as defined in any Existing Facility Agreement and the "Facility Transaction Documents" as defined in Exhibit H to the NY Law Amendment Agreement (but in each case excluding any document that is designated a "**Finance Document**" or "**Facility Transaction Document**" by an Obligor and the relevant Creditor's Representative under an Existing Facility Agreement after the date of the Financing Agreement).

"**Existing Financial Indebtedness**" means:

(a) the Financial Indebtedness described in Part I of Schedule 10 ( *Existing Financial Indebtedness*) of the Financing Agreement **provided that** the principal amount of such Financial Indebtedness does not increase above the principal amount outstanding as at the date of the Financing Agreement (except by the amount of any capitalised interest under any facility or instrument that provided for capitalisation of interest on those terms as at the date of the Financing Agreement) less the amount of any repayments and prepayments made in respect of such Financial Indebtedness;

(b) the Financial Indebtedness described in Part II of Schedule 10 ( *Existing Financial Indebtedness*) of the Financing Agreement and any Short-Term Certificados Bursatiles, working capital or other operating facilities that replace or refinance such Financial Indebtedness;

(c) the Financial Indebtedness described in Part III of Schedule 10 ( *Existing Financial Indebtedness*) of the Financing Agreement and any Capital Leases that replace (and relate to the same or similar assets as) such Financial Indebtedness;

(d) the Financial Indebtedness described in Part IV of Schedule 10 ( *Existing Financial Indebtedness*) of the Financing Agreement and any Inventory Financing or factoring arrangements that replace (and relate to the same or similar assets as) such Financial Indebtedness; and

(e) the Banobras Facility and any other facility that replaces or refinances such facility **provided that** any such replacement or refinancing facility is (i) with a development bank controlled by the Mexican Government or (ii) with any other financial institution to finance public works or infrastructure assets,

**provided that** (i) the aggregate principal amount of such Existing Financial Indebtedness falling under each of paragraphs (b) to (e) of this definition shall not be increased above the principal amount of Financial Indebtedness committed or capable of being drawn down under the Financial Indebtedness referred to in that paragraph of this definition as at the date of the Financing Agreement (except by the amount of any capitalised interest under any facility or instrument that provided for capitalisation of interest on those terms as at the date of the Financing Agreement) and (ii), for the avoidance of doubt, any refinancing or replacement of Existing Financial Indebtedness falling within paragraphs (b) to (d) above need not satisfy the requirements of paragraph (f) of the definition of Permitted Financial Indebtedness.

"**Exposure**" means, at any time:

(a) in relation to a Participating Creditor and a Syndicated Bank Facility or Bilateral Bank Facility, that Participating Creditor's participation in Loans made under the relevant Facility at that time;

(b) in relation to Participating Creditor and a Promissory Note, the principal amount owed to that Participating Creditor under that Promissory Note at that time; and

(c) in relation to a Participating Creditor and a USPP Note, the principal amount owed to that Participating Creditor under that USPP Note at that time.

"**Facility**" means a Core Bank Facility and each USPP Note.

"**Fee Letter**" means any letter or agreement between the Administrative Agent or Security Agent and the Company setting out (i) the upfront fee and (ii) the level of fees payable in respect of the services and obligations performed by those agents under the relevant New Finance Documents.

"**Finance Document**" means each New Finance Document and each Existing Finance Document.

"**Finance Party**" means the Administrative Agent, the Security Agent, each Creditor's Representative or a Participating Creditor.

"**Financial Indebtedness**" means any indebtedness for or in respect of:

(a) moneys borrowed and debit balances at banks or other financial institutions;

(b) any acceptance under any acceptance credit or bill discounting facility (or dematerialised equivalent);

(c) any amount raised pursuant to a note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument (including, without limitation, any perpetual bonds);

(d) the amount of any liability in respect of any lease or hire purchase contract which would (in accordance with Applicable GAAP of the Company) be treated as a finance or capital lease;

(e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis and meet any requirement for de-recognition under Applicable GAAP of the Company);

(f) any Treasury Transaction (and, when calculating the value of that Treasury Transaction, only the mark-to-market value (or, if any actual amount is due as a result of the termination or close-out of that Treasury Transaction, that amount) shall be taken into account);

(g) any counter-indemnity obligation in respect of a guarantee, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution;

(h) any amount raised by the issue of redeemable shares which are redeemable (other than at the option of the issuer) before the Termination Date or are otherwise classified as borrowings under Applicable GAAP of the Company;

(i) any amount of any liability under an advance or deferred purchase agreement if (i) one of the primary reasons behind entering into the agreement is to raise finance or to finance the acquisition or construction of the asset or service in question or (ii) the agreement is in respect of the supply of assets or services and payment is due more than 60 days after the date of supply;

(j) any arrangement pursuant to which an asset sold or otherwise disposed of by that person may be re-acquired by a member of the Group (whether following the exercise of an option or otherwise) and any Inventory Financing;

(k) any amount raised under any other transaction (including any forward sale or purchase, sale and sale back or sale and leaseback agreement) having the commercial effect of a borrowing or otherwise classified as borrowings under Applicable GAAP of the Company; and

(l) the amount of any liability in respect of any guarantee for any of the items referred to in paragraphs (a) to (k) above.

"**Financial Quarter**" means the period commencing on the day after one Quarter Date and ending on the next Quarter Date.

"**Financial Year**" means the annual accounting period of the Company ending on or about 31 December in each year.

"**Fitch**" means Fitch Ratings Limited or any successor thereto from time to time.

"**Group**" means the Company and each of its Subsidiaries for the time being.

"**Guarantors**" means the Original Guarantors and any Additional Guarantor other than any Original Guarantor or Additional Guarantor which has ceased to be a Guarantor pursuant to Clause 28.4 ( *Resignation of Guarantor)* of the Financing Agreement and has not subsequently become an Additional Guarantor pursuant to Clause 28.3 ( *Additional Guarantors and Additional Security Providers* ) of the Financing Agreement and "**Guarantor**" means any of them.

"**Holding Company**" means, in relation to a company or corporation, any other company or corporation in respect of which it is a Subsidiary.

"**IFRS**" means international accounting standards within the meaning of IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements.

"**Intellectual Property**" means:

(a) any patents, trademarks, service marks, designs, business names, copyrights, design rights, data-base rights, inventions, knowhow and other intellectual property rights and interests, whether registered or unregistered; and

(b) the benefit of all applications and rights to use such assets of each member of the Group.

"**Intercreditor Agreement**" means the intercreditor agreement dated on or about the date of the Financing Agreement and made between, among others, the Company, Wilmington Trust (London) Limited as Security Agent, Citibank International PLC as Administrative Agent, the Participating Creditors and any other creditors of the Group that may accede to it from time to time in accordance with its terms, as such agreement may be amended from time to time.

"**Inventory Financing**" means a financing arrangement pursuant to which a member of the Group sells inventory to a bank or other institution (or a special purpose vehicle or partnership incorporated or established by or on behalf of such bank or other institution or an Affiliate of such bank or other institution) and has an obligation to repurchase such inventory to the extent that it is not sold to a third party within a specified period.

"**Joint Venture**" means any joint venture entity, whether a company, unincorporated firm, undertaking, association, joint venture or partnership or any other entity.

"**Joint Venture Investment**" has the meaning given to such term in sub-paragraph (b) (ii) of the definition of Permitted Joint Venture.

"**Loan**" means:

(a) in relation to a Syndicated Bank Facility or Bilateral Bank Facility, a loan made or to be made under such Facility or the principal amount outstanding for the time being of that loan; and

(b) in relation to a Promissory Note, the Exposure of the Participating Creditors for the time being under that Promissory Note.

"**Majority Participating Creditors**" means, at any time, a Participating Creditor or Participating Creditors the Base Currency Amount of whose Exposures under the Facilities at that time aggregate 66.67 per cent. or more of the Base Currency Amount of all the Exposures of the Participating Creditors under all of the Facilities at that time.

"**Marketable Securities**" means securities (whether equity, debt or other securities) which are listed on a stock exchange or for which a trading market exists (whether on market or over the counter) but excluding: (A) shares in any member of the Group, and (B) any shares in Axtel, S.A.B. de C.V.

"**Material Acquisition**" means any (a) acquisition of property or series of related acquisitions of property that constitutes assets comprising all or substantially all of an operating unit, division or line of business or (b) acquisition of or other investment in the Capital Stock of any Subsidiary or any person which becomes a Subsidiary or is merged or consolidated with the Borrower or any of its Subsidiaries, in each case, which involves the payment of consideration by the Borrower and its Subsidiaries in excess of $100,000,000 (or the equivalent in other currencies).

"**Material Disposal**" means any Disposal of property or series of related Disposals of property that yields gross proceeds to the Company or any of its Subsidiaries in excess of $100,000,000 (or the equivalent in other currencies).

"**Mexican FRS**" means Mexican Financial Reporting Standards ( *Normas de Información Financiera* ) as in effect from time to time and consistent with those used in the preparation of the most recent audited financial statements referred to in Clause 22.1 (Financial Statements).

"**Mexican pesos**," "**Mex$**," "**MXN**" and "**pesos**" means the lawful currency of Mexico.

"**Mexico**" means the United Mexican States.

"**Moody's**" means Moody's Investor Services Limited or any successor to its ratings business.

**"NAFTA"** means the North American Free Trade Agreement.

"**New Finance Document**" means the Financing Agreement, the NY Law Amendment Agreement, the Intercreditor Agreement, each Transaction Security Document, any Accession Letter, any Fee Letter, any Resignation Letter and any other document designated as a " **New Finance Document**" by the Administrative Agent and the Company.

"**New Equity Securities**" means

(i) The $977.5 million aggregate principal amount of 3.25% convertible subordinated notes due 2016, including $177.5 million notes issued pursuant to an over-allotment option in connection with those subordinated notes due 2016; and

(ii) $690 million aggregate principal amount of 3.75% convertible subordinated notes due 2018, including $90 million notes issued pursuant to an over-allotment option in connection with those subordinated notes due 2018.

in each case, issued on 15 March 2011 by the Company.

"**NY Law Amendment Agreement**" means the omnibus amendment agreement dated on or about the date of the Financing Agreement between, among others, the Company and the Participating Creditors with Exposures under those Existing Facility Agreements (other than the USPP Note Agreement) that are governed by the laws of the State of New York, as such agreement may be amended from time to time.

"**Obligors**" means the Borrowers, the Guarantors and the Security Providers and " **Obligor**" means any of them.

"**Original Borrowers**" means, together with the Company, the Subsidiaries of the Company listed in Part I of Schedule 1 ( *The Original Parties*) of the Financing Agreement as borrowers or issuers.

"**Original Financial Statements**" means (a) in relation to the Company, its audited unconsolidated and consolidated financial statements for its Financial Year ended 31 December 2008 accompanied by an audit opinion of KPMG Cardenas Dosal, S.C.; (b) in relation to CEMEX España, its audited consolidated financial statements for its financial year ended 31 December 2008; and (c) in relation to any other borrower or guarantor under the Financing Agreement, its most recent annual financial statements (audited, if available).

"**Original Guarantors**" means the Subsidiaries of the Company listed in Part I of Schedule 1 ( *The Original Parties*) of the Financing Agreement as guarantors, together with the Company.

"**Original Participating Creditors**" means the financial institutions and noteholders listed in Part II of Schedule 1 ( *The Original Participating Creditors*) of the Financing Agreement as creditors.

"**Original Security Providers**" means the Subsidiaries of the Company listed in Part I of Schedule 1 ( *The Original Parties*) of the Financing Agreement as security providers.

"**Participating Creditor**" means:

(a) any Original Participating Creditor; and

(b) any person which has become a Party in accordance with Clause 27 ( *Changes to the Participating Creditors*), of the Financing Agreement,

which in each case has not ceased to be a Party in accordance with the terms of the Financing Agreement.

"**Participating Member State**" means any member state of the European Union that adopts or has adopted the euro as its lawful currency in accordance with legislation of the European Union relating to Economic and Monetary Union.

"**Party**" means a party to the Financing Agreement.

"**Permitted Acquisition**" means:

(a) an acquisition by a member of the Group of an asset sold, leased, transferred or otherwise disposed of by another member of the Group in circumstances constituting a Permitted Disposal;

(b) an acquisition of shares or securities pursuant to a Permitted Share Issue;

(c) an acquisition of cash or securities which are Cash Equivalent Investments;

(d) an acquisition to which a member of the Group is contractually committed as at the date of the Financing Agreement, with the material terms of those acquisitions requiring consideration payable in excess of $10,000,000 described in the list delivered to the Administrative Agent under paragraph 4(f) of Part I (Initial Conditions Precedent) of Schedule 2 of the Financing Agreement ( **provided that** there has been or is no material change to the terms of such acquisition subsequent to the date of the Financing Agreement);

(e) the incorporation of a company which on incorporation becomes a member of the Group or which is a special purpose vehicle, whether a member of the Group or not;

(f) an acquisition that constitutes a Permitted Joint Venture;

(g) an acquisition of assets and, if applicable, cash, in exchange for other assets and, if applicable, cash, of equal or higher value **provided that**: (i) the cash element of any such acquisition must not be more than 20 per cent. of the aggregate consideration for the acquisition; and (ii) the maximum aggregate market value of the assets acquired pursuant to all such transactions must not be more than $100,000,000 (or its equivalent in any other currency) in any Financial Year;

(h) any acquisition of shares of the Company pursuant to an obligation in respect of any Executive Compensation Plan;

(i) any other acquisition consented to by the Administrative Agent acting on the instructions of the Majority Participating Creditors;

(j) an acquisition of shares in the Company to the extent that a member of the Group has an obligation to deliver such shares to any holder(s) of convertible securities falling within paragraph (f)(i) of the definition of Permitted Financial Indebtedness pursuant to the terms of such convertible securities; and

(k) any other acquisition of a company, of shares, securities or a business or undertaking (or, in each case, any interest in any of them) **provided that** the aggregate amount of the consideration for such acquisitions (when aggregated with the aggregate amount of Joint Venture Investment falling within paragraph (b)(iii)(1) of the definition of Permitted Joint Venture in that Financial Year) does not exceed $100,000,000 (or its equivalent in any other currencies) in any Financial Year.

"**Permitted Disposal**" means any sale, lease, licence, transfer or other disposal which, except in the case of Disposals as between members of the Group, is on arm's length terms:

(a) of trading stock or cash made by any member of the Group in the ordinary course of trading of the disposing entity;

(b) of any asset by a member of the Group (the "**Disposing Company**") to another member of the Group (the "**Acquiring Company**"), but if:

(i) the Disposing Company is an Obligor, the Acquiring Company must also be an Obligor;

(ii) the Disposing Company had given Transaction Security over the asset, the Acquiring Company must give equivalent Transaction Security over that asset; and

(iii) the Disposing Company is a Guarantor, the Acquiring Company must be a Guarantor guaranteeing at all times an amount no less than that guaranteed by the Disposing Company,

**provided that** the conditions set out in paragraphs (i), (ii) and (iii) above shall only apply if the applicable assets are shares or if all or substantially all of the assets of the Disposing Company are being disposed of;

(c) of obsolete or redundant vehicles, machinery, parts and equipment in the ordinary course of trading;

(d) of cash or Cash Equivalent Investments for cash or in exchange for other Cash Equivalent Investments;

(e) constituted by a licence of Intellectual Property in the ordinary course of trading;

(f) to a Joint Venture, to the extent permitted by Clause 24.17 (*Joint ventures*) of the Financing Agreement;

(g) arising as a result of any Permitted Security;

(h) of any shares in a member of the Group ( **provided that** all such shares in that entity owned by a member of the Group are the subject of the Disposal) or of any other asset, in each case on arm's length terms and for full market value where:

(i) no less than 85 per cent. of the consideration for the Disposal is payable to the Group in cash or Marketable Securities paid or received by a member of the Group at completion of the Disposal ( **provided that** where a portion of

that 85 per cent. is comprised of Marketable Securities, those Marketable Securities must be disposed of for cash to a person that is not a member of the Group within 90 days of completion);

(ii) if the aggregate consideration for the Disposal (when aggregated with the consideration for any related Disposals) is equal to 5 per cent. or more of the value of consolidated assets of the Group, the Company has delivered to the Administrative Agent a certificate signed by an Authorised Signatory confirming that, on a *pro forma* basis, assuming that the Disposal had been completed and the proceeds had been applied in accordance with Clause 13 ( *Mandatory Prepayment*) of the Financing Agreement immediately prior to the first day of the most recent Reference Period for which a Compliance Certificate has been or is required to have been delivered under the Financing Agreement, the Company would have been in compliance with the financial covenants in paragraphs (a) and (b) of Clause 23.2 (*Financial condition*) of the Financing Agreement as at the last day of the most recent Reference Period for which a Compliance Certificate has been or is required to have been delivered under the Financing Agreement; and

(iii) the Disposal Proceeds received by members of the Group are applied (to the extent required) in accordance with Clause 13 (*Mandatory prepayment*) of the Financing Agreement;

(i) of any asset compulsorily acquired by a governmental authority **provided that** the Disposal Proceeds received by members of the Group are applied (to the extent required) in accordance with Clause 13 ( *Mandatory prepayment*) of the Financing Agreement;

(j) of any receivables disposed of pursuant to a factoring or similar receivables financing arrangement that is otherwise permitted under the Financing Agreement (including, for the avoidance of doubt, the Banobras Facility);

(k) of any inventory disposed of pursuant to an Inventory Financing or similar arrangement that is otherwise permitted under the Financing Agreement;

(l) of any plant or equipment disposed of pursuant to a sale and lease-back arrangement that is otherwise permitted under the Financing Agreement;

(m) of any asset to which a member of the Group was contractually committed as at the date of the Financing Agreement, with all material terms of those disposals which relate to the disposal of assets with a value of at least $10,000,000 being described in Schedule 14 *(Disposals)* of the Financing Agreement ( **provided that** there has been or is no material change to the terms of such Disposal subsequent to the date of the Financing Agreement);

(n) of receivables disposed of pursuant to a Permitted Securitisation;

(o) of land or buildings arising as a result of lease or licence in the ordinary course of its trading;

(p) of any shares of the Company pursuant to an obligation in respect of any Executive Compensation Plan;

(q) of shares, common equity securities in the Company or reference property in connection with the same to the extent that a member of the Group has an obligation to deliver such shares, common equity securities or reference property to any holder(s) of convertible or exchangeable securities falling within paragraph (f)(i) of the definition of Permitted Financial Indebtedness pursuant to the terms of such convertible or exchangeable securities or to any counterparty pursuant to the terms of any Permitted Put/Call Transaction;

(r) of assets and, if applicable, cash in exchange for other assets and, if applicable, cash, of equal or higher value **provided that**: (i) the cash element of any such Disposal must not be more than 20 per cent. of the aggregate consideration for the Disposal; and (ii) the maximum aggregate market value of all assets disposed of in such transactions must not be more than $100,000,000 (or its equivalent in any other currencies) in any Financial Year; or

(s) otherwise approved by the Administrative Agent acting on the instructions of the Majority Participating Creditors.

"**Permitted Financial Indebtedness**" means Financial Indebtedness:

(a) incurred or arising under the Finance Documents;

(b) that is Existing Financial Indebtedness;

(c) owed to a member of the Group;

(d) that constitutes a Permitted Securitisation;

(e) arising under Capital Leases, factoring arrangements, Inventory Financing arrangements or export credit facilities for the purchase of equipment (**provided that** any Security granted in relation to any such facility relates solely to equipment, the purchase of which was financed under such Facility) or pursuant to sale and lease-back transactions **provided that** the maximum aggregate Financial Indebtedness of members of the Group under such transactions (excluding any Existing Financial Indebtedness) does not exceed $350,000,000 at any time;

(f) arising:

(i) pursuant to an issuance of bonds, notes or other debt securities, or of convertible or exchangeable securities by:

(A) in the case of bonds, notes or other debt securities or convertible or exchangeable securities issued to refinance or replace Existing Financial Indebtedness falling within Part I of Schedule 10 (Existing Financial Indebtedness) of the Financing Agreement, one or more Obligors (other than CEMEX Materials LLC and CEMEX, Inc.) or the same member of the Group (including, where applicable, CEMEX Materials LLC and CEMEX, Inc.) that issued the relevant Existing Financial Indebtedness that is being refinanced or replaced (whether acting as co-issuers or otherwise but, for the avoidance of doubt, with several liability only); or

(B) in the case of bonds, notes or other debt securities or convertible or exchangeable securities issued so as to be applied in repayment or prepayment of the Exposures of the Participating Creditors under the Facilities, one or more Obligors (other than CEMEX Materials LLC and CEMEX, Inc.) whether acting as co-issuers or otherwise, (and, for the avoidance of doubt, such securities may be issued with an original issue discount) on the capital markets in each case subscribed or paid for in full in cash on issue (unless such securities are exchanged on issue for other securities that constitute Existing Financial Indebtedness falling within paragraph (a) of the definition thereof on issue) **provided that** (other than any conversion into common equity securities of the Company) no principal repayments are scheduled (and no call options can be exercised) in respect thereof until after the Termination Date;

(ii) under a loan facility in respect of which the only borrowers are:

(A) in the case of loan facilities entered into to refinance or replace Existing Financial Indebtedness falling within Part I of Schedule 10 (*Existing Financial Indebtedness*) of the Financing Agreement one or more Obligors (other than CEMEX Materials LLC and CEMEX, Inc.) or the same member of the Group (including, where applicable, CEMEX Materials LLC and CEMEX, Inc.) that borrowed the relevant Existing Financial Indebtedness that is being refinanced or replaced, (whether acting as joint or multiple borrowers but for the avoidance of doubt, with several liability only); or

(B) in the case of loan facilities entered into so as to refinance or replace the Exposures of the Participating Creditors under the Facilities, one or more Obligors (other than CEMEX Materials LLC and CEMEX, Inc.) whether acting as joint or multiple borrowers,

**provided that** no principal repayments are scheduled (and no mandatory prepayment obligations arise save as a result of unlawfulness affecting a creditor in respect of such loan facility) in respect thereof until after the Termination Date,

and further **provided that** (1) the terms applicable to such issuance under paragraph (f)(i) (excluding pricing, but including, without limitation, as to prepayments, representations, covenants, events of default, guarantees and security) taken as a whole are no more restrictive or onerous than the terms applicable to the Facilities, and the terms applicable to such incurrence under paragraph (f)(ii) (excluding pricing, but including, without limitation, as to prepayments, representations, covenants, events of default, guarantees and security) are no more restrictive or onerous than the terms applicable to the Facilities; (2) the proceeds of such issuance or incurrence are applied (to the extent required) in accordance with Clause 13 (*Mandatory prepayment*) of the Financing Agreement; (3) if proceeds of such issuance or incurrence are, to the extent required under the Financing Agreement, being used to replace or refinance (x) Financial Indebtedness which shares in

the Transaction Security or (y) the CEMEX España Euro Notes, such Financial Indebtedness issued or incurred shall be entitled to share in the Transaction Security in accordance with (and on the terms of) the Intercreditor Agreement, **provided that** in the case of Financial Indebtedness issued or incurred to replace or refinance the CEMEX España Euro Notes, such Financial Indebtedness shall only be entitled to share in the Transaction Security if, prior to the first replacement or refinancing of the CEMEX España Euro Notes, the Debt Reduction Satisfaction Date has occurred; and (4) for the avoidance of doubt, any refinancing or replacement of Existing Financial Indebtedness falling within paragraphs (b) to (d) of the definition of Existing Financial Indebtedness need not satisfy the requirements of this paragraph (f);

(g) that constitutes a Permitted Liquidity Facility;

(h) that becomes Financial Indebtedness solely as a result of any change in Applicable GAAP of the Company after the date of the Financing Agreement and that existed prior to the date of such change in Applicable GAAP of the Company (or that replaces, and is on substantially the same terms as, such Financial Indebtedness);

(i) of any person acquired by a member of the Group pursuant to an acquisition falling within paragraphs (d) or (f) of the definition of Permitted Acquisition **provided that**: (i) such Financial Indebtedness existed prior to the date of the acquisition and was not incurred, increased or extended in contemplation of, or since, the acquisition; and (ii) the aggregate amount of any such Financial Indebtedness of members of the Group does not exceed $100,000,000 at any time;

(j) under Treasury Transactions entered into in accordance with Clause 24.26 ( *Treasury Transactions*) of the Financing Agreement;

(k) incurred pursuant to or in connection with any cash pooling or other cash management agreements in place with a bank or financial institution, but only to the extent of offsetting credit balances of the Company or its Subsidiaries pursuant to such cash pooling or other cash management arrangement;

(l) constituting Financial Indebtedness for taxes levied, assessments due and other governmental charges required to be paid as a matter of law or regulation in the ordinary course of trading;

(m) that constitutes a Permitted Joint Venture;

(n) approved by the Administrative Agent acting on the instructions of the Majority Participating Creditors; and

(o) that, when aggregated with the principal amount of any other Financial Indebtedness not falling within paragraphs (a) to (n) above, does not exceed $200,000,000 (or its equivalent in other currencies) in aggregate at any time.

"**Permitted Fundraising**" means:

(a) any issuance of equity securities by the Company paid for in full in cash on issue (and, for the avoidance of doubt, such securities may be issued with an original issue discount) and not redeemable on or prior to the Termination Date and where such issue does not lead to a Change of Control;

(b) any issuance of equity-linked securities issued by any member of the Group that are linked solely to, and result only in the issuance of, equity securities of the Company otherwise entitled to be issued under this definition (and that do not, for the avoidance of doubt, result in the issuance of any equity securities by such member of the Group) and that are paid for in full in cash on issue (and, for the avoidance of doubt, such securities may be issued with an original issue discount) and where such issue does not lead to a Change of Control (**provided that** such securities do not provide for the payment of interest in cash and are not redeemable on or prior to the Termination Date); and

(c) any incurrence of Financial Indebtedness falling within paragraph (f) of the definition of Permitted Financial Indebtedness.

"**Permitted Fundraising Proceeds**" means the cash proceeds received by any member of the Group from a Permitted Fundraising other than Excluded Fundraising Proceeds after deducting:

(i) any reasonable expenses which are incurred by the relevant member(s) of the Group with respect to that Permitted Fundraising owing to persons who are not members of the Group; and

(ii) any Tax incurred and required to be paid by the relevant member(s) of the Group with respect to that Permitted Fundraising (as reasonably determined by the relevant member(s) of the Group on the basis of rates existing at the time and taking account of any available credit, deduction or allowance).

"**Permitted Joint Venture**" means any investment in any Joint Venture where:

(a) such investment exists or a member of the Group is contractually committed to such investment at the date of the Financing Agreement and, if the value of the Group's investment in such Joint Venture is $50,000,000 or greater (as shown in the Original Financial Statements of the Company) is detailed in Schedule 12 (Permitted Joint Ventures) of the Financing Agreement; or

(b) such investment is made after the date of the Financing Agreement and:

(i) either the investment has been consented to by the Administrative Agent acting on the instructions of the Majority Participating Creditors or the Joint Venture is engaged in a business substantially the same as that carried on by the Group; and

(ii) in any Financial Year of the Company, the aggregate of:

(1) all amounts subscribed for shares in, lent to, or invested in all such Joint Ventures by any member of the Group;

(2) the contingent liabilities of any member of the Group under any guarantee given in respect of the liabilities of any such Joint Venture; and

(3) the market value of any assets transferred by any member of the Group to any such Joint Venture,

minus

(4) from and including 1 January 2010, an amount up to, but not exceeding, $100,000,000 (or its equivalent in other currencies) in any Financial Year that represents all cash amounts received by any member of the Group (i) relating to dividends, repayment of loans or distributions of any other nature in respect of any such Joint Ventures in that Financial Year and (ii) as a result of or in relation to any disposals of shares, interests or participations, divestments, capital reductions or any similar decreases of interest in any such Joint Ventures in that Financial Year, does not exceed $100,000,000 (or its equivalent in other currencies) or such greater amount as the Administrative Agent (acting on the instructions of the Majority Participating Creditors) may agree (such amount being the "Joint Venture Investment"); and

(iii) the Company has (by written notice to the Administrative Agent prior to the end of the Financial Year in which the investment is made) designated the Joint Venture Investment as counting against:

(1) paragraph (k) of the definition of Permitted Acquisition; or

(2) the maximum amount of Capital Expenditure permitted in that Financial Year under paragraph (c) of Clause 23.2 ( *Financial condition*) of the Financing Agreement.

"**Permitted Liquidity Facilities**" means a loan facility or facilities made available to one or more members of the Group by one or more Participating Creditors (or their respective Affiliates) **provided that** the aggregate principal amount of utilised and unutilised commitments under such facilities must not exceed $1,000,000,000 (or its equivalent in any other currency) at any time.

"**Permitted Put/Call Transaction**" means any call option, call spread, capped call transaction, put option, put spread, capped put transaction or any combination of the foregoing and/or any other Treasury Transaction or transactions having a similar effect to any of the foregoing, in each case entered into, sold or purchased not for speculative purposes but for the purposes of managing specific risks or exposures associated with any issuance of Relevant Convertible Securities/Exchangeable Obligations.

"**Permitted Securitisations**" means a transaction or series of related transactions providing for the securitisation of receivables and related assets by the Company or its Subsidiaries, including a sale at a discount, **provided that** (i) such receivables have been transferred, directly or indirectly, by the originator thereof to a person that is not a member of the Group in a manner that satisfies the requirements for an absolute conveyance (or, where the originator is organised in Mexico, a true sale), and not merely a pledge, under the laws and regulations of the jurisdiction in which such originator is organised; and (ii) except for customary representations, warranties, covenants and indemnities, such sale, transfer or other securitisation is carried out on a non-recourse basis or on a basis where recovery is limited solely to the collection of the relevant receivables.

"**Permitted Security**" means:

(A) Security for taxes, assessments and other governmental charges the payment of which is being contested in good faith by appropriate proceedings promptly initiated and diligently conducted and for which such reserves or other appropriate provision, if any, as shall be required by Applicable GAAP of the Company shall have been made;

(B) Security granted pursuant to or in connection with any netting or set-off arrangements entered into in the ordinary course of trading (including, for the avoidance of doubt, any cash pooling or cash management arrangements in place with a bank or financial institution falling within paragraph (k) of the definition of Permitted Financial Indebtedness);

(C) statutory liens of landlords and liens of carriers, warehousemen, mechanics and materialment incurred in the ordinary course of business for sums not yet due or the payment of which is being contested in good faith by appropriate proceedings promptly initiated and diligently conducted and for which such reserves or other appropriate provision, if any, as shall be required by Applicable GAAP of the Company shall have been made;

(D) liens incurred or deposits made in the ordinary course of business in connection with (1) workers' compensation, unemployment insurance and other types of social security, or (2) other insurance maintained by the Group in accordance with Clause 24.9 ( *Insurance*) of the Financing Agreement;

(E) any attachment or judgment lien, unless the judgment it secures shall not, within 60 days after the entry thereof, have been discharged or execution thereof stayed pending appeal, or shall not have been discharged within 60 days after the expiration of any such stay;

(F) Security and Quasi-Security existing on the date of the Financing Agreement as described in Schedule 6 ( *Existing Security and Quasi-Security*) of the Financing Agreement (or any replacement of Security or Quasi-Security in accordance with paragraph 3 of Schedule 15 (*Hedging Parameters*) of the Financing Agreement or any equivalent Security or Quasi-Security for Existing Financial Indebtedness that is a refinancing or replacement of Existing Financial Indebtedness) **provided that** the principal amount secured thereby is not increased (save that principal amounts secured by Security or Quasi-Security in respect of:

(1) Treasury Transactions where there are fluctuations in the mark-to-market exposures of those Treasury Transactions;

(2) Existing Financial Indebtedness under paragraph (a) of the definition where principal may increase by virtue of capitalisation of interest; and,

(3) the Banobras Facility, where further drawings may be made **provided that** the maximum amount outstanding under such facility does not exceed Mex$5,000,000,000 at any time,

may be increased by the amount of such fluctuations or capitalisations, as the case may be);

(G) any Security or Quasi-Security permitted by the Administrative Agent, acting on the instructions of the Majority Participating Creditors;

(H) any Security created or deemed created pursuant to a Permitted Securitisation;

(I) any Security granted by any member of the Group to secure Financial Indebtedness under a Permitted Liquidity Facility **provided that**: (1) such Security is not granted in respect of assets that are the subject of the Transaction Security; and (2) the maximum aggregate amount of the Financial Indebtedness secured by such Security does not exceed $500,000,000 at any time;

(J) any Security granted by the Company or any member of the Group incorporated in Mexico in favour of a Mexican development bank (sociedad *nacional de crédito*) controlled by the government of Mexico (including Banco Nacional de Comercio Exterior, S.N.C., and Banco Nacional de Obras y Sevicios Publicos, S.N.C.) securing indebtedness of the members of the Group in an aggregate additional amount of such indebtedness not exceeding $250,000,000 (or its equivalent in any other currency);

(K) any Security or Quasi-Security granted in connection with any Treasury Transaction, excluding any Treasury Transaction described in Schedule 6 (*Existing Security and Quasi-Security*) of the Financing Agreement, that constitutes Permitted Financial Indebtedness **provided that** the aggregate value of the assets that are the subject of such Security or Quasi-Security does not exceed $200,000,000 (or its equivalent in other currencies) at any time;

(L) Security or Quasi-Security granted or arising over receivables, inventory, plant or equipment that are the subject of an arrangement falling within paragraph (e) of the definition of Permitted Financial Indebtedness;

(M) the Transaction Security including, for the avoidance of doubt, any sharing in the Transaction Security referred to in paragraph (f) of the definition of Permitted Financial Indebtedness;

(N) any Quasi-Security that is created or deemed created on shares of the Company under paragraph (q) of the definition of Permitted Disposals by virtue of such shares being held on trust for the holders of the convertible securities pending exercise of any conversion option, where such Quasi-Security is customary for such transaction;

(O) in addition to the Security and Quasi-Security permitted by the foregoing paragraphs (A) to (N), Security or Quasi-Security securing indebtedness of the Company and its Subsidiaries (taken as a whole) not in excess of $500,000,000.

"**Permitted Share Issue**" means:

(a) a Permitted Fundraising falling within paragraphs (a) or (b) of the definition thereof;

(b) an issue of shares by a member of the Group which is a Subsidiary of the Company to another member of the Group or the Company (and, where the member of the Group has a minority shareholder, to that minority shareholder on a pro rata basis) where (if the existing shares of the Subsidiary are the subject of the Transaction Security) the newly-issued shares also become subject to the Transaction Security on the same terms;

(c) an issue of shares by the Company to comply with an obligation in respect of any Executive Compensation Plan; or

(d) an issue of common equity securities of the Company either (i) by the Company or (ii) to any member of the Group where the Company or that member of the Group has an obligation to deliver such shares to a counterparty pursuant to the terms of a Permitted Put/Call Transaction or an obligation to deliver such shares to the holder(s) of convertible or exchangeable securities falling within paragraph (f)(i) of the definition of Permitted Financial Indebtedness pursuant to the terms of such convertible or exchangeable securities.

"**Promissory Notes**" means the promissory notes described in Part II of Schedule 1 ( *The Original Participating Creditors*) of the Financing Agreement.

"**Quarter Date**" means each of 31 March, 30 June, 30 September and 31 December.

"**Quasi Security**" means an arrangement or transaction in which the Company or any Subsidiary:

(i) sells, transfers or otherwise disposes of any of its assets on terms whereby they are or may be leased to or re-acquired by an Obligor or any other member of the Group;

(ii) sells, transfers or otherwise disposes of any of its receivables on recourse terms;

(iii) enters into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or

(iv) enters into any other preferential arrangement having a similar effect,

in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.

"**Receiver**" means a receiver or receiver and manager or administrative receiver of the whole or any part of the Charged Properties.

"**Reference Period**" means a period of four consecutive Financial Quarters.

"**Relevant Convertible/Exchangeable Obligations**" means: (a) any Financial Indebtedness incurred by any person the terms of which provide that satisfaction of the principal amount owing under such Financial Indebtedness (whether on or prior to its maturity and whether as a result of bankruptcy, liquidation or other default by such person or otherwise) shall occur solely by delivery of shares or common equity securities in the Company; and (b) any Financial Indebtedness under any Subordinated Optional Convertible Securities.

"**Relevant Existing Financial Indebtedness**" means any Existing Financial Indebtedness set out in:

(i) paragraph (a) of the definition of Existing Financial Indebtedness to the extent that it relates to Part I.C ( *Mexican Public Debt Instruments*) of Schedule 10 (*Existing Financial Indebtedness*) of the Financing Agreement; and/or

(ii) paragraph (b) of the definition of Existing Financial Indebtedness to the extent it relates to Part II.A ( *Short Term Certificados Bursatiles*) of Schedule 10 (*Existing Financial Indebtedness*) of the Financing Agreement and any Short-Term Certificados Bursatiles that replace or refinance such Existing Financial Indebtedness.

"**Relevant Prepayment Period**" means the period commencing on the date of receipt of the proceeds of a Permitted Fundraising by a member of the Group and ending on the later of:

(a) the date falling 364 days thereafter; and

(b) the 2012 CB Maturity Date.

"**Resignation Letter**" means a document substantially in the form set out in Part I of Schedule 11 ( *Form of Resignation Letter*) of the Financing Agreement.

"**Responsible Officer**" means the Chief Financial Officer and/or Chief Controlling Officer of the Company or a person holding equivalent status (or higher).

"**S&P**" means Standard & Poor's Rating Services, a division of The McGraw-Hill Companies, Inc., or any successor thereto from time to time.

"**SEC**" means the U.S. Securities Exchange Commission and any successor thereto.

"**Secured Parties**" means each Finance Party from time to time to the Financing Agreement and any Receiver or Delegate.

"**Security** " means a mortgage, charge, pledge, lien, security trust or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

"**Security Agent**" means Wilmington Trust (London) Limited as security agent of the Secured Parties.

"**Security Providers**" means the Original Security Providers and any Additional Security Provider other than any Original Security Provider or Additional Security Provider which has ceased to be a Security Provider pursuant to Clause 28.6 ( *Resignation of a Security Provider*) of the Financing Agreement and has not subsequently become an Additional Security Provider pursuant to Clause 28.3 ( *Additional Guarantors and Additional Security Providers*) of the Financing Agreement, and "**Security Provider**" means any of them.

"**Short-Term Certificados Bursatiles**" means any securities with a term of not more than 12 months issued by the Company in the Mexican capital markets with the approval of the Mexican National Banking and Securities Banking and Securities Commission and listed on the Mexican Stock Exchange.

"**Spanish GAAP**" means the Spanish General Accounting Plan ( *Plan general Contable*) approved by Royal Decree 1514/2007 as in effect from time to time and consistent with those used in the preparation of the most recent audited financial statements referred to in Clause 22.1 ( *Financial Statements*) of the Financing Agreement.

"**Subordinated Optional Convertible Securities**" means any Financial Indebtedness incurred by any member of the Group meeting the requirements of paragraph (f)(i) of the definition of Permitted Financial Indebtedness (including that no principal repayments are scheduled (and no call options can be exercised) until after the Termination Date) (which may, for the avoidance of doubt, include a fundraising the proceeds of which are applied in accordance with Clause 13.4 (*Mandatory prepayments: Relevant Convertible/Exchangeable Obligations* ) of the Financing Agreement)) the terms of which provide that such indebtedness is capable of optional conversion into equity securities of the Company and that repayment of principal and accrued but unpaid interest thereon is subordinated (under terms customary for an issuance of such Financial Indebtedness) to all senior Financial Indebtedness of the Company (including, but not limited to, all Exposures of Participating Creditors) except for: (i) indebtedness that states, or is issued under a deed, indenture, agreement or other instrument that states, that it is subordinated to or ranks equally with any Subordinated Optional Convertible Securities and (ii) indebtedness between or among members of the Group.

"**Subsidiary**" means in relation to any company or corporation, a company or corporation:

(a) which is controlled, directly or indirectly, by the first mentioned company or corporation;

(b) more than half the issued share capital of which is beneficially owned, directly or indirectly by the first mentioned company or corporation; or

(c) which is a Subsidiary of another Subsidiary of the first mentioned company or corporation,

and for this purpose, a company or corporation shall be treated as being controlled by another if that other company or corporation is able to direct its affairs and/or to control the composition of its board of directors or equivalent body.

"**Syndicated Bank Facilities**" means the facilities described in Part IA of Part II of Schedule 1 ( *The Original Participating Creditors*) of the Financing Agreement.

"**TARGET2**" means the Trans-European Automated Real-time Gross Settlement Express Transfer payment system, which utilizes a single shared platform and which was launched on 19 November 2007.

"**TARGET Day**" means any day on which TARGET2 is open for the settlement of payments in euro.

"**Tax**" means any tax, levy, impost, duty or other charge, deduction or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

"**Termination Date**" means 14 February 2014.

"**Transaction Security**" means the Security created or expressed to be created in favour of the Security Agent pursuant to the Transaction Security Documents.

"**Transaction Security Documents**" means each of the documents listed as being a Transaction Security Document in paragraph 2(e) of Part I of Schedule 2 (*Conditions Precedent*) of the Financing Agreement and any document required to be delivered to the Administrative Agent under paragraph 3(d) of Part II of Schedule 2 (*Conditions Precedent*) of the Financing Agreement together with any other document entered into by any Obligor creating or expressed to create any Security over all or any part of its assets in respect of the obligations of any of the Obligors under any of the Finance Documents (and any other Debt Documents).

"**Treasury Transactions**" means any derivatives transaction (i) that is a rate swap transaction, swap option, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, credit protection transaction, credit swap, credit default swap, credit default option, total return swap, credit spread transaction, repurchase transaction, reverse repurchase transaction, buy/sell-back transaction, securities lending transaction, weather index transaction or forward purchase or sale of a security, commodity or other financial instrument or interest (including any option with respect to any of these transactions), (ii) that is a type of transaction that is similar to any transaction referred to in clause (i) above that is currently, or in the future becomes, recurrently entered into in the financial markets and that is a forward, swap, future, option or other derivative (including one or more spot transactions that are equivalent to any of the foregoing) on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, economic indices or measures of economic risk or value, or other benchmarks against which payments or deliveries are to be made or (iii) that is a combination of these transactions, it being understood that any Executive Compensation Plan permitted by the Financing Agreement is not a Treasury Transaction.

"**USPP Note**" means a note issued under the USPP Note Agreement.

"**USPP Note Agreement**" means the consolidated, amended and restated note purchase agreement described in Part II of Schedule 1 ( *Original Participating Creditors)* of the Financing Agreement.

"**USPP Note Guarantee**" means the consolidated, amended and restated note guarantee granted in favour of the USPP Noteholders.

"**USPP Noteholders**" means the holders from time to time of the notes issued pursuant to the USPP Note Agreement.

**Exhibit 4.44**

EXECUTION VERSION

**CEMEX LATAM HOLDINGS, S.A.**

147,634,465 Shares*
Common Stock (€1.00 par value)

Purchase Agreement

November 6, 2012

Banco Bilbao Vizcaya Argentaria, S.A.
Vía de los Poblados s/n
Madrid, 28033 Spain

Citigroup Global Markets Inc.
388 Greenwich Street
New York, New York 10013

Merrill Lynch, Pierce, Fenner & Smith
Incorporated
One Bryant Park, 27th Floor
New York, NY 10036

Santander Investment Securities Inc.
45 East 53rd Street
New York, NY 10022

As Representatives of the Initial Purchasers
c/o Citigroup Global Markets Inc.
388 Greenwich Street
New York, New York 10013

Ladies and Gentlemen:

CEMEX LATAM HOLDINGS, S.A., a corporation organized under the laws of Spain (the "Company") and a subsidiary of CEMEX España, S.A. ("CEMEX España"), which is an indirect subsidiary of CEMEX, S.A.B. de C.V. ("CEMEX"), proposes to sell to the several parties named in Schedule I hereto (the "Initial Purchasers"), for whom you (the "Representatives") are acting as representatives, 147,634,465 shares of its common stock, €1.00 par value ("Common Stock"), of the Company (such shares of Common Stock to be sold by the Company, the "International Securities"). The Company also proposes to grant the Initial Purchasers the right to sell to the Company, and to require the Company to purchase (the "Put

* Including the Put Option Securities.

Option"), up to 22,224,000 shares (the "Put Option Securities") by the delivery of a Put Option Notice (as defined herein) within 30 days after the closing of the purchase of the International Securities pursuant to the terms hereof. To the extent there are no additional parties listed on Schedule I other than you, the term Representatives as used herein shall mean you as the Initial Purchasers, and the terms Representatives and Initial Purchasers shall mean either the singular or plural as the context requires. The use of the neuter in this Agreement shall include the feminine and masculine wherever appropriate. Certain terms used herein are defined in Section 24 hereof.

The sale of the International Securities to the Initial Purchasers will be made without registration of the Securities under the Act in reliance upon exemptions from the registration requirements of the Act.

It is understood that the Company is concurrently entering into several *Contratos de Colocación al Mejor Esfuerzo* (the "Leading Colombian Placement Agreements") whereby it appoints BBVA Valores Colombia S.A. and Citivalores S.A. Comisionista de Bolsa (the "Leading Colombian Placement Agents") as their agents for the placement of its Common Stock, to be offered and sold in Colombia by the Company pursuant to the Colombian Placement Agreements (the "Colombian Securities" and, together with the International Securities, the "Securities"). The Colombian Placement Agents will in turn enter into several placement agreements with other Colombian stockbrokers (the "Additional Colombian Placement Agents" and, together with the Leading Colombian Placement Agents, the "Colombian Placement Agents") for the placement of the Colombian Securities (the "Additional Colombian Placement Agreements" and, together with the Leading Colombian Placement Agreements, the "Colombian Placement Agreements"). The Colombian Securities are equal to an aggregate of 22,753,535 shares of the Company's Common Stock.

In connection with the sale of the Colombian Securities in Colombia, the Company has prepared (i) a preliminary information prospectus in Spanish, filed on September 10, 2012 (as amended or supplemented at the date hereof, including any and all exhibits thereto and any information incorporated by reference, the "First Colombian Preliminary Prospectus") with the *Superintendencia Financiera de Colombia* (Colombian Financial Superintendency) (the "SFC") and the *Bolsa de Valores de Colombia* (Colombian Stock Exchange) (the "Colombian Stock Exchange"), (ii) a preliminary information prospectus in Spanish, filed on October 5, 2012 (as amended or supplemented at the date hereof, including any and all exhibits thereto and any information incorporated by reference, the "Second Colombian Preliminary Prospectus") with the SFC and the Colombian Stock Exchange, (iii) a preliminary information prospectus in Spanish, filed on October 12, 2012 (as amended or supplemented at the date hereof, including any and all exhibits thereto and any information incorporated by reference, the "Final Colombian Preliminary Prospectus" and, together with the First Colombian Preliminary Prospectus and the Second Colombian Preliminary Prospectus, the "Colombian Preliminary Prospectus") with the SFC and the Colombian Stock Exchange, (iv) a final prospectus in Spanish, to be filed on November 7, 2012 (as amended or supplemented as of the Time of Sale, including any and all exhibits thereto and any information incorporated by reference, the "Colombian Final Prospectus") with the SFC and the Colombian Stock Exchange, and (v) a notice announcing the opening of the book-building period (*Aviso de Apertura del Libro de Ofertas*) in Spanish (as amended or supplemented at the date hereof, including any and all exhibits thereto, the "Colombian Offering Notice"), dated October 29, 2012, which has been published in "La República" newspaper and the "Boletín Informativo" of the Colombian Stock Exchange.

In connection with the sale of the International Securities outside Colombia, the Company has prepared (i) a preliminary offering memorandum, dated October 19, 2012 (as amended or supplemented at the date hereof, including any and all exhibits thereto, the "Preliminary Memorandum"), and (ii) a final offering memorandum, dated November 6, 2012 (as amended or supplemented at the Time of Sale, including any and all exhibits thereto, the "Final Memorandum"). Each of the Colombian Preliminary Prospectus, the Colombian Final Prospectus, the Colombian Offering Notice, the Preliminary Memorandum and the Final Memorandum sets forth certain information concerning the Company and the Securities. The Company hereby confirms that it has authorized the use of the Disclosure Package, the Preliminary Memorandum and the Final Memorandum, and any amendment or supplement thereto, in connection with the offer and sale of the International Securities by the Initial Purchasers.

1. Representations and Warranties.

(a) The Company and CEMEX, jointly and severally, represent and warrant to, and agree with, each Initial Purchaser as set forth below in this Section 1.

(i) The Preliminary Memorandum, at the date thereof, did not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading. As of the date of the Final Memorandum, the Final Memorandum did not, and on the Closing Date, will not (and together with any amendment or supplement thereto, at the date thereof and at the Closing Date, will not) contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided, however, that the Company and CEMEX make no representation or warranty as to the information contained in or omitted from the Preliminary Memorandum or the Final Memorandum, or any amendment or supplement thereto, in reliance upon and in conformity with information furnished in writing to the Company by or on behalf of the Initial Purchasers through the Representatives specifically for inclusion therein, it being understood and agreed that the only such information furnished by or on behalf of any Initial Purchaser consists of the information described as such in Section 8(b) hereof. Except for certain additional information required to be included in the Colombian Preliminary Prospectus and the Colombian Final Prospectus under Colombian securities laws, there are no material differences between the disclosure included in each of (A) the Preliminary Memorandum and the Final Colombian Preliminary Prospectus and (B) the Final Memorandum and the Colombian Final Prospectus.

(ii) The Disclosure Package, as of the Time of Sale, does not contain any untrue statement of a material fact or omits to state any material fact necessary in order to make the statements therein, in the light of the circumstances

under which they were made, not misleading. The preceding sentence does not apply to statements in or omissions from the Disclosure Package based upon and in conformity with written information furnished to the Company by any Initial Purchaser through the Representatives specifically for use therein, it being understood and agreed that the only such information furnished by or on behalf of any Initial Purchaser consists of the information described as such in Section 8(b) hereof.

(iii) The Company has not distributed any offering material in connection with this offering of the International Securities other than the Disclosure Package and the Final Memorandum.

(iv) None of the Company, its Affiliates, or any person acting on its or their behalf (other than the Initial Purchasers and their respective Affiliates or the Colombian Placement Agents, as to which no representation is made) has, directly or indirectly, made offers or sales of any security, or solicited offers to buy, any security under circumstances that would require the registration of the Securities under the Act.

(v) None of the Company, its Affiliates, or any person acting on its or their behalf (other than the Initial Purchasers and their respective Affiliates, as to which no representation is made) has: (i) engaged in any form of general solicitation or general advertising (within the meaning of Regulation D) in connection with any offer or sale of the Securities in the United States or (ii) engaged in any directed selling efforts in the United States (within the meaning of Regulation S) with respect to the Securities.

(vi) The International Securities satisfy the eligibility requirements of Rule 144A(d)(3) under the Act.

(vii) The Company is a “foreign issuer” (as defined in Regulation S).

(viii) The Company is exempt from reporting pursuant to Rule 12g3-2(b) under the Exchange Act.

(ix) The Company reasonably believes that there is no substantial U.S. market interest (as defined in Regulation S) in its Common Stock.

(x) No registration under the Act of the Securities is required for the offer and sale of the International Securities to or by the Initial Purchasers in the manner contemplated herein, in the Disclosure Package and in the Final Memorandum.

(xi) The Company is not, and after giving effect to the offering and sale of the International Securities and the application of the proceeds thereof as described in the Disclosure Package and the Final Memorandum will not be, an “investment company” as defined in the Investment Company Act.

(xii) The Company is not and does not currently expect to become a "passive foreign investment company" as defined in Section 1297 of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

(xiii) The Company has not paid or agreed to pay to any person any compensation for soliciting another to purchase any securities of the Company (except as contemplated in this Agreement and the Leading Colombian Placement Agreements).

(xiv) The Company has not taken, directly or indirectly, any action designed to or that has constituted or that might reasonably be expected to cause or result, under the Exchange Act, Colombian Law or otherwise, in stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Securities.

(xv) Each of the Company and its Significant Subsidiaries has been duly incorporated and is validly existing as a corporation ( *sociedad anónima*) or limited liability company (*sociedad limitada*), as applicable, in good standing under the laws of the jurisdiction in which it is chartered or organized with full power and authority (corporate and other) to own or lease, as the case may be, and to operate its properties and conduct its business as described in the Disclosure Package and the Final Memorandum, and, if applicable, is duly qualified to do business as a foreign corporation and is in good standing under the laws of each jurisdiction that requires such qualification.

(xvi) All the outstanding shares of capital stock of each Significant Subsidiary of the Company have been duly authorized and validly issued and are fully paid and nonassessable, and, except as otherwise set forth in the Disclosure Package and the Final Memorandum, all outstanding shares of capital stock of such Significant Subsidiaries are owned by the Company either directly or through wholly owned subsidiaries free and clear of any security interest, claim, lien or encumbrance.

(xvii) The Company's issued share capital (*capital social suscrito y desembolsado*) is as set forth in the Disclosure Package and the Final Memorandum; the capital stock of the Company conforms to the description thereof contained in the Disclosure Package and the Final Memorandum; the outstanding shares of Common Stock have been duly authorized and validly issued and are fully paid and nonassessable; the International Securities have been duly authorized and, when issued and delivered to and paid for by the Initial Purchasers pursuant to this Agreement, will be fully paid and nonassessable; and the holders of outstanding shares of capital stock of the Company have validly and irrevocably waived their preemptive or other rights to subscribe for the Securities; and, except as set forth in the Disclosure Package and the Final Memorandum, no options, warrants or other rights to purchase, agreements or other obligations to issue, or rights to convert any obligations into or exchange any securities for, shares of capital stock of or ownership interests in the Company, are outstanding.

(xviii) The "pre-offering reorganization transaction" described under the heading "Arrangements Between Our Company and Related Parties" in the Disclosure Package and the Final Memorandum have been completed as described therein, and have not been modified in any material respect. Except as are disclosed in the Disclosure Package and the Final Memorandum, there are no agreements, undertakings or other arrangements between the Company and its subsidiaries on the one hand, and CEMEX or any of its Affiliates (other than the Company or any of its subsidiaries) on the other hand, that would impose any material obligation on, or could reasonably be expected to result in any material liability for, the Company or any of its Significant Subsidiaries.

(xix) The statements in the Disclosure Package and the Final Memorandum under the headings "Description of our Shares", "Arrangements Between Our Company and Related Parties", and "Taxation" fairly summarize the matters therein described in all material respects.

(xx) This Agreement has been duly authorized, executed and delivered by the Company.

(xxi) No consent, approval, authorization, filing with or order of any court or governmental agency or body is required in connection with the transactions contemplated by this Agreement, except (A) such as may be required under the blue sky laws of any jurisdiction in which the International Securities are offered and sold, (B) a request for the registration of the Common Stock in the National Registry of Securities and Issuers, which was filed with the SFC and (C) compliance with the formalities provided by Spanish law for the Company to issue the Securities, which are as follows: (w) the formalization by the Company of the capital increase by means of a public deed granted before a Spanish notary public, (x) the filing thereof with the competent Spanish tax authorities as tax exempt of transfer tax ( *Impuesto de Transmisiones Patrimoniales y Actos Jurídicos Documentados*), (y) the registration of such public deed with the Mercantile Registry of Madrid and (z) the filing of such public deed together with the document provided in Article 6 of the Company's bylaws with DECEVAL for purposes of depositing the Securities therewith. The SFC has authorized the public offering of the Colombian Securities within Colombia. Such SFC authorization is in full force and effect as of the date hereof and will be in full force and effect at the Closing Date. Registration of the Common Stock has been made with the National Registry of Securities and Issuers and is in full force and effect as of the date hereof and will be in full force and effect at the Closing Date. An application for the listing of the Common Stock was filed with the Colombian Stock Exchange, and the Colombian Stock Exchange has approved the listing of the Common Stock for trading on such exchange. Such Colombian Stock Exchange approval is in full force and effect as of the date hereof and will be in full force and effect at the Closing Date.

(xxii) Except as disclosed in the Disclosure Package and the Final Memorandum, no governmental approvals are currently required in Spain in order for the Company to pay dividends, interest attributable to shareholders' equity or other distributions declared by the Company to the holders of the Securities, and, under the current laws and regulations of Spain and any political subdivision thereof, any amounts payable with respect to the Securities (i) upon liquidation of the Company or upon redemption thereof and (ii) in the form of dividends or interest attributable to shareholders' equity declared and payable on the Securities shall be declared in euros and paid by the Company in Colombian *pesos* that may be converted into foreign currency and freely transferred out of Colombia, as long as the transfer is made in accordance with applicable foreign exchange regulations. No such payments made to holders thereof or therein who are non-residents of Spain are subject to income, withholding or other taxes under laws and regulations of Spain or any political subdivision or taxing authority thereof or therein, and such payments will otherwise be free and clear of any other tax, duty, withholding or deduction in Spain or any political subdivision or taxing authority thereof or therein and without the necessity of obtaining any governmental authorization in Spain or any political subdivision or taxing authority thereof or therein as long as the transfer is made in accordance with applicable foreign exchange regulations, except as disclosed in the Disclosure Package and the Final Memorandum.

(xxiii) No Significant Subsidiary is currently prohibited, directly or indirectly, from paying any dividends to the Company, from making any other distribution on such Significant Subsidiary's capital stock, or from repaying to the Company any loans or advances to such Significant Subsidiary from the Company, except as disclosed in the Disclosure Package and the Final Memorandum.

(xxiv) None of the execution and delivery of this Agreement and the documents executed and delivered in connection with Section 6(n) of this Agreement (together, the "Transaction Documents"), the issuance, offering and sale of the Securities, or the consummation of any other of the transactions contemplated in the Transaction Documents or in the Disclosure Package or the Final Memorandum, or the fulfillment of the terms of the Transactions Documents will conflict with, result in a breach or violation of or imposition of any lien, charge or encumbrance upon any property or assets of the Company or any of its subsidiaries pursuant to, (i) the charter or by-laws or comparable constituting documents of the Company or any of its subsidiaries; (ii) the terms of any indenture, contract, lease, mortgage, deed of trust, note agreement, loan agreement or other agreement, obligation, condition, covenant or instrument to which the Company or any of its subsidiaries is a party or bound or to which its or their property is subject; or (iii) any statute, law, rule, regulation, judgment, order or decree of any court, regulatory body, administrative agency, governmental body, arbitrator or other authority having jurisdiction over the Company or any of its subsidiaries or any of its or their properties, which conflict, breach, violation or imposition would, in the case of clauses (ii) and (iii) above, either individually or

in the aggregate with all other conflicts, breaches, violations and impositions referred to in this paragraph (xxiv) (if any), have (a) a Material Adverse Effect (as defined herein) or (b) a material adverse effect upon the transactions contemplated herein.

(xxv) The combined historical financial statements and schedules of CEMEX Colombia and its subsidiaries, Cemento Bayano, S.A., CEMEX El Salvador, S.A. de C.V, Global Cement, S.A. and its subsidiaries, Equipos para Uso en Guatemala, S.A. and its subsidiaries and Cimento Vencemos do Amazonas, Ltda. (collectively, the "combined entities") included in the Disclosure Package and the Final Memorandum present fairly in all material respects the financial condition, results of operations and cash flows of such entities on a combined basis as of the dates and for the periods indicated and have been prepared in conformity with International Financial Reporting Standards ("IFRS") applied on a consistent basis throughout the periods involved (except as otherwise noted therein); the selected financial data set forth under the caption "Selected Combined Financial Information" in the Disclosure Package and the Final Memorandum fairly present, on the basis stated in the Disclosure Package and the Final Memorandum, the information included therein.

(xxvi) No action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its subsidiaries or its or their property is pending or, to the best knowledge of the Company, threatened that (i) could reasonably be expected to have a material adverse effect on the performance of the Transaction Documents or the consummation of any of the transactions contemplated thereby or (ii) could reasonably be expected to have a material adverse effect on the condition (financial or otherwise), prospects, earnings, business or properties of the Company and its subsidiaries, taken as a whole, whether or not arising from transactions in the ordinary course of business (collectively the events described in (i) and (ii) above, a "Material Adverse Effect"), except as set forth in or contemplated in the Disclosure Package and the Final Memorandum (exclusive of any amendment or supplement thereto after the Time of Sale).

(xxvii) Each of the Company and its subsidiaries owns or leases all such properties as are necessary to the conduct of its operations as presently conducted, except (a) for such properties the loss of which, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect and (b) as set forth in or contemplated in the Disclosure Package and the Final Memorandum (exclusive of any amendment or supplement thereto after the Time of Sale).

(xxviii) Neither the Company nor any of its subsidiaries is in violation or default of (i) any provision of its charter or bylaws ( *estatutos sociales*) or comparable constituting documents; (ii) the terms of any indenture, contract, lease, mortgage, deed of trust, note agreement, loan agreement or other agreement, obligation, condition, covenant or instrument to which it is a party or bound or to which its property is subject; or (iii) any statute, law, rule, regulation,

judgment, order or decree applicable to the Company or any of its subsidiaries of any court, regulatory body, administrative agency, governmental body, arbitrator or other authority having jurisdiction over the Company or such subsidiary or any of its or their properties, as applicable, except in the case of clauses (ii) and (iii) above, (a) for such violations or defaults which, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect and (b) as set forth in or contemplated in the Disclosure Package and the Final Memorandum (exclusive of any amendment or supplement thereto after the Time of Sale).

(xxix) KPMG Cárdenas Dosal, S.C., who have audited the combined financial statements of the combined entities and delivered their report with respect thereto included in the Disclosure Package and the Final Memorandum, are independent public accountants with respect to the Company and its subsidiaries within the meaning of the Code of Ethics for Professional Accountants issued by the International Ethics Standards Board for Accountants (IESBA).

(xxx) There are no stamp or other issuance or transfer taxes or duties or other similar fees or charges required to be paid in connection with the execution and delivery of this Agreement or the issuance by the Company or sale of the International Securities to and by the Initial Purchasers.

(xxxi) The Company has filed all applicable tax returns that are required to be filed or has requested extensions thereof (except in any case in which the failure so to file would not have a Material Adverse Effect and except as set forth in or contemplated in the Disclosure Package and the Final Memorandum (exclusive of any amendment or supplement thereto after the Time of Sale)) and has paid all taxes required to be paid by it and any other assessment, fine or penalty levied against it, to the extent that any of the foregoing is due and payable, except for any such assessment, fine or penalty that is currently being contested in good faith or as would not have a Material Adverse Effect and except as set forth in or contemplated in the Disclosure Package and the Final Memorandum (exclusive of any amendment or supplement thereto after the Time of Sale).

(xxxii) No labor problem or dispute with the employees of the Company or any of its subsidiaries exists or, to the Company's knowledge, is threatened or imminent, and the Company and CEMEX are not aware of any existing or imminent labor disturbance by the employees of any of the Company's or its subsidiaries' principal suppliers, contractors or customers, except as would not have a Material Adverse Effect and except as set forth in or contemplated in the Disclosure Package and the Final Memorandum (exclusive of any amendment or supplement thereto after the Time of Sale).

(xxxiii) The Company and each of its subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are prudent and customary in the businesses in which they are

engaged; all policies of insurance and fidelity or surety bonds insuring the Company or any of its subsidiaries or any of their respective businesses, assets, employees, officers and directors are in full force and effect as part of either group-wide or country specific insurance policies; the Company and its subsidiaries are in compliance in all material respects with the terms of such policies and instruments; there are no material claims by the Company or any of its subsidiaries under any such policy or instrument as to which any insurance company is denying liability or defending under a reservation of rights clause; neither the Company nor any of its subsidiaries has been refused any material insurance coverage sought or applied for; and neither the Company nor any of its subsidiaries has any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that would not have a Material Adverse Effect except as set forth in or contemplated in the Disclosure Package and the Final Memorandum (exclusive of any amendment or supplement thereto after the Time of Sale).

(xxxiv) The Company and its subsidiaries possess all licenses, certificates, permits and other authorizations issued by all applicable regulatory authorities necessary to conduct their respective businesses, except (a) to the extent that the failure to possess such license, certificate, permit or authorization would not reasonably be expected to have a Material Adverse Effect and (b) as set forth in or contemplated in the Disclosure Package and the Final Memorandum (exclusive of any amendment or supplement after the Time of Sale), and neither the Company nor any of its subsidiaries has received any notice of proceedings relating to the revocation or modification of any such certificate, authorization or permit which, singly or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would have a Material Adverse Effect, except as set forth in or contemplated in the Disclosure Package and the Final Memorandum (exclusive of any amendment or supplement thereto after the Time of Sale).

(xxxv) The Company and each of its subsidiaries maintain a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorizations; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with IFRS and to maintain asset accountability; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. The Company and its subsidiaries' internal controls over financial reporting are effective and the Company and its subsidiaries are not aware of any material weakness in their internal control over financial reporting.

(xxxvi) The Company and its subsidiaries (i) are in compliance with any and all applicable laws and regulations relating to the protection of human health and safety, the environment or hazardous or toxic substances or wastes, pollutants

or contaminants ("Environmental Laws"); (ii) have received and are in compliance with all permits, licenses or other approvals required of them under applicable Environmental Laws to conduct their respective businesses; and (iii) have not received notice of any actual or potential liability under any Environmental Law, except where such non-compliance with Environmental Laws, failure to receive required permits, licenses or other approvals, or liability would not, individually or in the aggregate, have a Material Adverse Effect, except as set forth in or contemplated in the Disclosure Package and the Final Memorandum (exclusive of any amendment or supplement thereto after the Time of Sale).

(xxxvii) In the ordinary course of its business, the Company periodically reviews the effect of Environmental Laws on the business, operations and properties of the Company and its subsidiaries, in the course of which it identifies and evaluates associated costs and liabilities (including, without limitation, any capital or operating expenditures required for clean-up, closure of properties or compliance with Environmental Laws, or any permit, license or approval, any related constraints on operating activities and any potential liabilities to third parties); on the basis of such review, the Company has reasonably concluded that such associated costs and liabilities would not, singly or in the aggregate, have a Material Adverse Effect, except as set forth in or contemplated in the Disclosure Package and the Final Memorandum (exclusive of any amendment or supplement thereto after the Time of Sale).

(xxxviii) All of the Significant Subsidiaries of the Company are listed on Annex A attached hereto.

(xxxix) The operations of the Company and each of its subsidiaries are and have been conducted at all times in compliance with applicable financial recordkeeping and reporting requirements and money laundering statutes and the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the "Money Laundering Laws") and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its subsidiaries with respect to the Money Laundering Laws is pending or, to the best knowledge of the Company, threatened.

(xl) None of the Company, any of its subsidiaries or, to the knowledge of the Company, any director, officer, agent, employee or Affiliate of the Company or any of its subsidiaries is currently subject to any sanctions administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury ("OFAC"); and the Company will not directly or indirectly use the proceeds of the offering of the International Securities hereunder, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person or entity, for the purpose of financing the activities of any person currently subject to any U.S. sanctions administered by OFAC.

(xli) Neither the Company nor any of its subsidiaries nor, to the knowledge of the Company, any director, officer, agent, employee or Affiliate of the Company is aware of or has taken any action, directly or indirectly, that would result in a violation by such persons of the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (the "FCPA"), including, without limitation, making use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay or authorization of the payment of any money, or other property, gift, promise to give, or authorization of the giving of anything of value to any "foreign official" (as such term is defined in the FCPA) or any foreign political party or official thereof or any candidate for foreign political office, in contravention of the FCPA; and the Company, its subsidiaries and, to the knowledge of the Company, its Affiliates have conducted their respective businesses in compliance with the FCPA and have instituted and maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith.

Any certificate signed by any officer of the Company and delivered to the Representatives or counsel for the Initial Purchasers in connection with the offering of the Securities shall be deemed a representation and warranty by the Company and CEMEX, as to matters covered thereby, to each Initial Purchaser.

2. Purchase and Sale.

(a) Subject to the terms and conditions and in reliance upon the representations and warranties herein set forth, the Company agrees to sell to each Initial Purchaser, and each Initial Purchaser agrees, severally and not jointly, to purchase from the Company, at a purchase price of U.S.$6.75 per International Security (equivalent to Col$12,250 per International Security based on the Representative Market Exchange Rate of Col$1,814.99 per U.S. dollar published on November 6, 2012 by the Colombian Financial Superintendency), the number of International Securities set forth opposite such Initial Purchaser's name in Schedule I hereto.

(b) Subject to the terms and conditions and in reliance upon the representations and warranties herein set forth, the Company hereby grants to the several Initial Purchasers the right to sell to the Company, and to require the Company to purchase (at the Initial Purchasers' discretion) the Put Option Securities at a purchase price equal to the U.S. dollar equivalent of Col$12,250 based on the Representative Market Exchange Rate of Colombian pesos per U.S. dollar published on the date of the Put Option Notice by the Colombian Financial Superintendency) (the "Put Option Price"). The option may be exercised in whole or in part at any time on or before the 30th day after the closing of the purchase of the International Securities pursuant to the terms hereof (the "Put Option Period") upon written or telegraphic notice by the Representatives to the Company setting forth the number of Put Option Securities upon which the several Initial Purchasers are exercising the put option and the settlement date (the "Put Option Notice"). The number of Put Option Securities to be purchased by the Company from each Initial Purchaser shall be the same percentage of the total number of Put Option Securities to be purchased by the Company as such Initial Purchaser is purchasing of the International Securities, subject to such adjustments as the Representatives in their absolute discretion shall make to eliminate any fractional Put Option Securities.

3. Delivery and Payment.

(a) Delivery of and payment for the International Securities shall be made at 11:00 A.M., New York City time, on November 15, 2012, or at such time on such later date not more than three Business Days after the foregoing date as the Representatives shall designate, which date and time may be postponed by agreement among the Representatives, the Company or as provided in Section 9 hereof (such date and time of delivery and payment for the International Securities being herein called the "Closing Date"). Delivery of the International Securities shall be made for the benefit of the several Initial Purchasers through the facilities of the *Depósito Centralizado de Valores* in Colombia ("DECEVAL") for the respective accounts of the individual investors purchasing International Securities against payment by or on behalf of the several Initial Purchasers of the purchase price of the International Securities, as set forth in Section 2(a) above (the "Purchase Price"), being sold by the Company to or upon the order of the Company by wire transfer payable in same-day funds to the account specified by the Company, which shall be the Company's U.S. dollar account.

Citigroup Global Markets Inc. ("CGMI"), in representation of the Initial Purchasers, is concurrently entering into (i) a *Contrato de Encargo Fiduciario Irrevocable de Administración* with the Company and Cititrust Colombia S.A. ("Cititrust"), whereby Cititrust is appointed as settlement agent to instruct DECEVAL to deliver the International Securities, upon confirmation by the Company of receipt of the Purchase Price; and (ii) *Contratos de Encargo Fiduciario* with each of Cititrust and Corpbanca Investment Trust Colombia Sociedad Fiduciaria S.A., to receive payments of the Purchase Price from the Initial Purchasers on behalf of investors purchasing the International Securities and transferring such amounts immediately upon receipt on the Closing Date to the Company. Each of the other initial purchasers acknowledges that CGMI will execute the foregoing agreements in its capacity as billing and delivery agent in order to consummate the transaction contemplated by this agreement.

The respective Initial Purchasers will pay any additional stock transfer taxes involved in further transfers.

(b) Delivery of and payment for the Put Option Securities shall be made at such date and time as indicated in the Put Option Notice or on such later date not more than three Business Days after the date indicated in the Put Option Notice as the Representatives shall designate, which date and time may be postponed by agreement among the Representatives and the Company (such date and time of delivery and payment for the Put Option Securities being herein called the "Put Option Closing Date"). Delivery of the Put Option Securities shall be made to the Company through the facilities of DECEVAL against payment by the Company of the Put Option Price per Put Option Security being sold by the Initial Purchasers to or upon the order of the Initial Purchasers by wire transfer payable, in accordance with instructions in the Put Option Notice, to the accounts specified by the Initial Purchasers.

4. Offering by Initial Purchasers.

(a) Each Initial Purchaser acknowledges that the Securities have not been and will not be registered under the Act and may not be offered or sold within the United States except pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Act.

(b) Each Initial Purchaser, severally and not jointly, represents and warrants to and agrees with the Company that:

(i) it has not offered or sold, and will not offer or sell, any Securities within the United States as part of its distribution at any time except:

(A) to those it reasonably believes to be "qualified institutional buyers" (as defined in Rule 144A under the Act) or

(B) in accordance with Rule 903 of Regulation S;

(ii) neither it nor any person acting on its behalf has made or will make offers or sales of the Securities in the United States by means of any form of general solicitation or general advertising (within the meaning of Regulation D);

(iii) in connection with each sale pursuant to Section 4(b)(i)(A), it has taken or will take reasonable steps to ensure that the purchaser of such Securities is aware that such sale may be made in reliance on Rule 144A;

(iv) neither it, nor any of its Affiliates nor any person acting on its or their behalf has engaged or will engage in any directed selling efforts (within the meaning of Regulation S) with respect to the Securities;

(v) it is an "accredited investor" (as defined in Rule 501(a) of Regulation D);

(vi) it has only communicated or caused to be communicated and will only communicate or cause to be communicated any invitation or inducement to engage in investment activity (within the meaning of Section 21 of the Financial Services and Markets Act 2000 (the "FSMA")) received by it in connection with the issue or sale of any Securities, in circumstances in which Section 21(1) of the FSMA does not apply to the Company;

(vii) it has complied and will comply with all applicable provisions of the FSMA with respect to anything done by it in relation to the Securities in, from or otherwise involving the United Kingdom; and

(viii) any Put Option Securities will be limited to only those shares of Common Stock purchased by it on the Colombian Stock Exchange in connection with its stabilization activities (as described in the "Plan of Distribution" section of the Disclosure Package and the Final Memorandum).

5. Agreements.

(a) The Company and CEMEX agree with each Initial Purchaser that:

(i) The Company will furnish to each Initial Purchaser and to counsel for the Initial Purchasers, without charge, during the period referred to in Section 5(a)(iii) below, as many copies of the materials contained in the Disclosure Package and the Final Memorandum and any amendments and supplements thereto as they may reasonably request.

(ii) The Company will not amend or supplement the Disclosure Package or the Final Memorandum without the prior written consent of the Representatives, which consent may not be unreasonably withheld.

(iii) If at any time prior to the earlier of (a) the completion of the sale of the International Securities by the Initial Purchasers (as determined by the Representatives and communicated to the Company) and (b) twelve months after the date of the Final Memorandum, any event occurs as a result of which the Disclosure Package or the Final Memorandum, as then amended or supplemented, would include any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made or the circumstances then prevailing, not misleading, or if it should be necessary to amend or supplement the Disclosure Package or the Final Memorandum to comply with applicable law, the Company will promptly (i) notify the Representatives of any such event; (ii) subject to the requirements of Section 5(a)(ii), prepare an amendment or supplement that will correct such statement or omission or effect such compliance; and (iii) supply any supplemented or amended Disclosure Package or Final Memorandum to the several Initial Purchasers and counsel for the Initial Purchasers without charge in such quantities as they may reasonably request.

(iv) Without the prior written consent of the Representatives, neither the Company nor CEMEX have given and will not give to any prospective purchaser of the International Securities any written information concerning the offering of the International Securities other than materials contained in the Disclosure Package, the Final Memorandum or any other offering materials prepared and distributed by or with the prior written consent of the Representatives.

(v) The Company will arrange, if necessary, for the qualification of the International Securities for sale by the Initial Purchasers under the securities or blue sky laws of the several states and the laws of such other jurisdictions as the Representatives may designate (including Japan and certain provinces of Canada) and will maintain such qualifications in effect so long as required for the sale of the International Securities; provided that in no event shall the Company be obligated to qualify to do business in any jurisdiction where it is not now so qualified or to take any action that would subject it to service of process in suits,

other than those arising out of the offering or sale of the International Securities, in any jurisdiction where it is not now so subject. The Company will promptly advise the Representatives of the receipt by the Company of any notification with respect to the suspension of the qualification of the International Securities for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose.

(vi) The Company will not, and will not permit any of its Affiliates to, resell any Securities that have been acquired by any of them, except (a) in a transaction registered under the Act or (b) in a transaction exempt from the registration requirements under the Act if such transaction does not cause the holding periods under Rule 144 under the Act to be extended for other holders of Securities.

(vii) None of the Company, its Affiliates, or any person acting on its or their behalf will, directly or indirectly, make offers or sales of any security, or solicit offers to buy any security, under circumstances that would require the registration of the Securities under the Act.

(viii) None of the Company, its Affiliates, or any person acting on its or their behalf will engage in any directed selling efforts (within the meaning of Regulation S) with respect to the Securities.

(ix) None of the Company, its Affiliates, or any person acting on its or their behalf will engage in any form of general solicitation or general advertising (within the meaning of Regulation D) in connection with any offer or sale of the Securities in the United States.

(x) For so long as any of the Securities are outstanding and are "restricted securities" within the meaning of Rule 144(a)(3) under the Act, the Company, during any period in which it is not subject to and in compliance with Section 13 or 15(d) of the Exchange Act or it is not exempt from such reporting requirements pursuant to and in compliance with Rule 12g3-2(b) under the Exchange Act, will provide to each holder of such restricted securities and to each prospective purchaser (as designated by such holder) of such restricted securities, upon the request of such holder or prospective purchaser, any information required to be provided by Rule 144A(d)(4) under the Act. This covenant is intended to be for the benefit of the holders, and the prospective purchasers designated by such holders, from time to time of such restricted securities.

(xi) Prior to the Closing Date, the Company will have complied with the formalities provided by Spanish law for the Company to issue the Securities, which are as follows: (a) the formalization by the Company of the capital increase by means of a public deed granted before a Spanish notary public, (b) the filing thereof with the competent Spanish tax authorities as tax exempt of transfer tax ( *Impuesto de Transmisiones Patrimoniales y Actos Jurídicos Documentados* ), (c) the registration of such public deed with the Mercantile Registry and (d) the filing

of such public deed together with the document provided in Article 6 of the Company's bylaws with DECEVAL for purposes of depositing the Securities therewith.

(xii) The Company will cooperate with the Representatives and use its best efforts to permit the Securities to be eligible for clearance and settlement through DECEVAL.

(xiii) The Company and its subsidiaries will not for a period of 180 days following the Time of Sale, without the prior written consent of the Representatives (which consent shall not be unreasonably withheld), directly or indirectly, offer, sell, contract to sell, pledge, otherwise dispose of, enter into any transaction which is designed to, or might reasonably be expected to, result in the disposition (whether by actual disposition or effective economic disposition due to cash settlement or otherwise) by the Company or any subsidiary of the Company or any person in privity with the Company or any subsidiary of the Company of, file (or participate in the filing of) a registration statement with the Commission in respect of, or establish or increase a put equivalent position or liquidate or decrease a call equivalent position within the meaning of Section 16 of the Exchange Act in respect of, any shares of capital stock of the Company or any securities convertible into, or exercisable or exchangeable for, shares of capital stock of the Company (other than the Securities), or publicly announce an intention to effect any such transaction; provided, however, that the Company may issue and sell Common Stock pursuant to any employee stock option plan, stock ownership plan or dividend reinvestment plan of the Company described in the Disclosure Package and the Final Memorandum and in effect at the Time of Sale, and the Company may issue Common Stock issuable upon the conversion of securities or the exercise of warrants outstanding at the Time of Sale and described in the Disclosure Package and the Final Memorandum.

(xiv) The Company will not take, directly or indirectly, any action designed to, or that has constituted or that might reasonably be expected to, cause or result, under the Exchange Act or otherwise, in stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Securities.

(xv) The Company will, for a period of twelve months following the Time of Sale, furnish to the Representatives (i) all reports or other communications (financial or other) generally made available to its shareholders, and deliver such reports and communications to the Representatives as soon as they are available, unless such documents are furnished to or filed with the Commission, the SFC or the Colombian Stock Exchange or any securities exchange on which any class of securities of the Company is listed and generally made available to the public and (ii) such additional information concerning the business and financial condition of the Company as the Representatives may from time to time reasonably request (such statements to be on a consolidated basis to the extent the accounts of the Company and its subsidiaries are consolidated in reports furnished to its shareholders).

(xvi) The Company will deposit in a segregated account with one of the Initial Purchasers, and maintain in such account, through the earlier of (a) the settlement of the Put Option if any Put Option Notices are given or (b) the expiration of the Put Option Period; provided, however, that if a Put Option Notice is given prior to the expiration of the Put Option Period, then the Company shall maintain such account through the settlement of such Put Option, proceeds from the sale of the International Securities in an amount in U.S. dollars (equivalent to Col$12,250 per International Security based on the Representative Market Exchange Rate of Col$1,814.99 per U.S. dollar published on November 6, 2012 by the Colombian Financial Superintendency) multiplied by the number of Put Option Securities to fund the acquisition of the Put Option Securities upon exercise, if any, of the Put Option.

(b) The Company agrees to pay the costs and expenses relating to the following matters: (i) the preparation, printing or reproduction of the materials contained in the Disclosure Package and the Final Memorandum and each amendment or supplement to either of them; (ii) the printing (or reproduction) and delivery (including postage, air freight charges and charges for counting and packaging) of such copies of the materials contained in the Disclosure Package and the Final Memorandum, and all amendments or supplements to either of them, as may, in each case, be reasonably requested for use in connection with the offering and sale of the International Securities; (iii) any stamp or transfer taxes in connection with the original issuance and sale of the International Securities; (iv) the printing (or reproduction) and delivery of this Agreement, any blue sky memorandum and all other agreements or documents printed (or reproduced) and delivered in connection with the offering of the International Securities; (v) any registration or qualification of the International Securities for offer and sale under the securities or blue sky laws of the several states, Japan, the Netherlands, the provinces of Canada and any other jurisdictions specified pursuant to Section 5(a)(v) (including filing fees and the reasonable and documented fees and expenses of counsel for the Initial Purchasers relating to such registration and qualification); (vi) the transportation and other expenses incurred by or on behalf of Company representatives in connection with presentations to prospective purchasers of the International Securities; (vii) the fees and expenses of the Company's accountants and the fees and expenses of counsel (including local and special counsel) for the Company; and (viii) all other costs and expenses incident to the performance by the Company of its obligations hereunder; provided, however, that any costs and expenses related to the settlement agent described in Section 3(a) above shall be paid by the Initial Purchasers.

(c) The Company agrees to reimburse the Representatives, on behalf of the Initial Purchasers, for all their reasonable and documented expenses incurred in connection with the sale of the Securities provided for herein (including, without limitation, reasonable and documented fees, disbursements and expenses of legal advisors for the Initial Purchasers, provided that such fees, disbursements and expenses of legal advisors for the Initial Purchasers shall not exceed the amount of U.S.$1.0 million).

(d) Each Initial Purchaser that is not a tax resident in Spain hereby agrees to provide the Company prior to the Closing Date with a certificate of tax residence within the meaning of the double taxation treaty entered into between their jurisdiction of tax residence and Spain, issued by the competent tax authority within the year prior to the Closing Date.

6. Conditions to the Obligations of the Initial Purchasers. The obligations of the Initial Purchasers to purchase the International Securities shall be subject to the accuracy of the representations and warranties of the Company contained herein at the Time of Sale, and the Closing Date, to the accuracy of the statements of the Company made in any certificates pursuant to the provisions hereof, to the performance by the Company of its obligations hereunder and to the following additional conditions:

(a) The Company shall have requested and caused Skadden, Arps, Slate, Meagher & Flom LLP, U.S. counsel for the Company, to furnish to the Representatives its opinion, tax opinion and negative assurance letter, each dated as of the Closing Date and addressed to the Representatives, substantially in the forms of Exhibit B-1, Exhibit B-2 and Exhibit B-3 hereto.

(b) The Company shall have requested and caused Gómez Pinzón Zuleta Abogados S.A., Colombian counsel for the Company, to furnish to the Representatives its opinion and negative assurance letter, each dated as of the Closing Date and addressed to the Representatives, substantially in the forms of Exhibit C-1 and Exhibit C-2 hereto.

(c) The Company shall have requested and caused Uría Menéndez Abogados S.L.P., Spanish counsel for the Company, to furnish to the Representatives its opinion dated as of the Closing Date and addressed to the Representatives, substantially in the form of Exhibit D hereto.

(d) The Company shall have requested and caused Mr. Camilo González, General Counsel for the Company, to furnish to the Representatives its opinion, subject to certain applicable exceptions, qualifications and conditions acceptable to the Representatives, dated as of the Closing Date and addressed to the Representatives, substantially in the form of Exhibit E attached hereto.

(e) The Company shall have requested and caused Skadden, Arps, Slate, Meagher & Flom (UK) LLP, special English counsel for the Company, to furnish to the Representatives its opinion, dated as of the Closing Date and addressed to the Representatives, substantially in the form of Exhibit F hereto.

(f) The Representatives shall have received from Cleary Gottlieb Steen & Hamilton LLP, U.S. counsel for the Initial Purchasers, such opinion or opinions and negative assurance letter, each dated as of the Closing Date and addressed to the Representatives, with respect to the issuance and sale of the Securities, the Disclosure Package, the Final Memorandum (as amended or supplemented as of the Closing Date) and other related matters as the Representatives may reasonably require, and the Company shall have furnished to such counsel such documents as they request for the purpose of enabling them to pass upon such matters.

(g) The Representatives shall have received from Posse, Herrera & Ruiz Abogados S.A., Colombian counsel for the Initial Purchasers, such opinion or opinions and negative assurance letter, each dated as of the Closing Date and addressed to the Representatives, with respect to the issuance and sale of the Securities, the Disclosure Package, the Final Memorandum (as amended or supplemented as of the Closing Date) and other related matters as the Representatives may reasonably require, and the Company shall have furnished to such counsel such documents as they request for the purpose of enabling them to pass upon such matters.

(h) The Company shall have furnished to the Representatives a certificate of the Company, signed by (x) the President of the Board or the Chief Executive Officer and (y) the principal financial or accounting officer of the Company, dated the Closing Date, to the effect that the signers of such certificate have carefully examined the Disclosure Package, the Final Memorandum and any supplements or amendments thereto, and this Agreement and that:

(i) the representations and warranties of the Company in this Agreement are true and correct on and as of the Closing Date with the same effect as if made on the Closing Date, and the Company has complied with all the agreements and satisfied all the conditions on its part to be performed or satisfied hereunder at or prior to the Closing Date; and

(ii) since the date of the most recent financial statements included in the Disclosure Package and the Final Memorandum (exclusive of any amendment or supplement thereto after the Time of Sale), there has been no material adverse change in the condition (financial or otherwise), prospects, earnings, business or properties of the Company and its subsidiaries, taken as a whole, whether or not arising from transactions in the ordinary course of business, except as set forth in or contemplated in the Disclosure Package and the Final Memorandum (exclusive of any amendment or supplement thereto after the Time of Sale).

(i) The Company shall have furnished to the Representatives, at the date hereof and at the Closing Date, a certificate of the Company, signed by the Chief Executive Officer or principal financial or accounting officer of the Company, dated respectively as of the Time of Sale and as of the Closing Date, to the effect that the signers of such certificate have carefully examined the Disclosure Package, the Final Memorandum and any supplements or amendments thereto and that:

(i) the signer has compared the amounts identified in exhibit A to said certificate with the corresponding amounts included in or derived from the information of the Company as of and for the years ended December 31, 2010 and 2011, as of and for the six-month periods ended June 30, 2011 and 2012 and as of and for the three-months periods ended June 30, 2012 and 2011 and found them to be in agreement.

(ii) the signer has reviewed the amounts identified in exhibit B to said certificate and certifies that said amounts were prepared on a reasonable basis and in good faith based on the books and records of the Company and otherwise consistent with the audited combined financial statements of the Company as of and for the years ended December 31, 2011 and 2010, and as of and for the six-months periods ended June 30, 2012 and 2011.

(j) At the date hereof and at the Closing Date , the Company shall have requested and caused KPMG Cárdenas Dosal, S.C. to furnish to the Representatives letters, dated respectively as of the date hereof and as of the Closing Date, in form and substance satisfactory to the Representatives, substantially in the form of Exhibit G hereto

(k) Subsequent to the Time of Sale or, if earlier, the dates as of which information is given in the Disclosure Package (exclusive of any amendment or supplement thereto after the Time of Sale) and the Final Memorandum (exclusive of any amendment or supplement thereto after the Time of Sale), there shall not have been (i) any change or decrease specified in the letter or letters referred to in paragraph (i) and (j) of this Section 6; or (ii) any change, or any development involving a prospective change, in or affecting the condition (financial or otherwise), prospects, earnings, business or properties of the Company and its subsidiaries taken as a whole, whether or not arising from transactions in the ordinary course of business, except as set forth in or contemplated in the Disclosure Package and the Final Memorandum (exclusive of any amendment or supplement thereto after the Time of Sale), the effect of which, in any case referred to in clause (i) or (ii) above, is, in the sole judgment of the Representatives, so material and adverse as to make it impractical or inadvisable to proceed with the offering or delivery of the International Securities as contemplated in the Disclosure Package and the Final Memorandum (exclusive of any amendment or supplement thereto after the Time of Sale).

(l) The Securities shall be eligible for clearance and settlement through DECEVAL.

(m) Prior to the Time of Sale, the Company shall have furnished to the Representatives a Lock-up Agreement substantially in the form of Exhibit A hereto from each director and member of senior management of the Company as disclosed in the Disclosure Package and the Final Memorandum and CEMEX España addressed to the Representatives.

(n) Prior to the Closing Date, the Company and CEMEX shall have furnished to the Representatives such further information, certificates and documents as the Representatives may reasonably request.

(o) The closing of the offering and sale of the Colombian Securities sold by the Company pursuant to the Colombian Offering Notice shall occur concurrently with the closing of the International Securities to be issued and sold by the Company pursuant to this Agreement.

(p) The Company shall have furnished or caused to be furnished to the Representatives certificates reasonably satisfactory to the Representatives evidencing the deposit with DECEVAL of the document provided by Article 6(3) of the Company's bylaws.

(q) The Securities shall have been approved for listing on the Colombian Stock Exchange, subject only to notice of issuance at or prior to the Time of Sale.

(r) The Representatives shall have received from the Company evidence that (i) the Common Stock has been registered in the National Registry of Securities and Issuer (*Registro Nacional de Valores y Emisores*) administered by the SFC, (ii) the SFC has authorized the public offering of the Colombian Securities and (iii) the Securities have been listed on the Colombian Stock Exchange.

(s) At the date hereof, all the pre-offering reorganization transactions described in the Disclosure Package and the Final Memorandum shall have been completed.

If any of the conditions specified in this Section 6 shall not have been fulfilled when and as provided in this Agreement, or if any of the opinions and certificates mentioned above or elsewhere in this Agreement shall not be reasonably satisfactory in form and substance to the Representatives and counsel for the Initial Purchasers, this Agreement and all obligations of the Initial Purchasers hereunder may be cancelled at, or at any time prior to, the Closing Date by the Representatives. Notice of such cancellation shall be given to the Company in writing or by telephone or facsimile confirmed in writing.

The documents required to be delivered by this Section 6 will be delivered at the office of counsel for the Initial Purchasers, at Cleary Gottlieb Steen & Hamilton LLP, One Liberty Plaza, New York, New York, 10006, Attention: Duane McLaughlin, Esq., on the Closing Date.

7. Reimbursement of Expenses. If the sale of the International Securities provided for herein is not consummated because any condition to the obligations of the Initial Purchasers set forth in Section 6 hereof is not satisfied, because of any termination pursuant to Section 10 hereof or because of any refusal, inability or failure on the part of the Company to perform any agreement herein or comply with any provision hereof other than by reason of a default by any of the Initial Purchasers, the Company will reimburse the Initial Purchasers severally through CGMI on demand for all expenses (including reasonable fees and disbursements of counsel) that shall have been incurred by them in connection with the proposed purchase and sale of the International Securities.

8. Indemnification and Contribution. (a) The Company and CEMEX, jointly and severally, agree to indemnify and hold harmless each Initial Purchaser, the directors, officers, employees, Affiliates and agents of each Initial Purchaser and each person who controls any Initial Purchaser within the meaning of either the Act or the Exchange Act against any and all losses, claims, damages or liabilities, joint or several, to which they or any of them may become subject under the Act, the Exchange Act or other U.S. federal or state statutory law or regulation, at common law or otherwise, or the laws, rules or regulations of Colombia and Spain, insofar as such losses, claims, damages or liabilities or actions in respect thereof arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in the Preliminary Memorandum, the Final Memorandum, any Issuer Written Information, or any other written information used by or on behalf of the Company in connection with the offer or sale of the International Securities, or in any amendment or supplement thereto, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, and agree to reimburse each such indemnified party, as

incurred, for any legal or other expenses reasonably incurred by it in connection with investigating or defending any such loss, claim, damage, liability or action; provided, however, that neither the Company nor CEMEX will be liable in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon any such untrue statement or alleged untrue statement or omission or alleged omission made in the Preliminary Memorandum or the Final Memorandum, or in any amendment thereof or supplement thereto, in reliance upon and in conformity with written information furnished to the Company by or on behalf of any Initial Purchaser through the Representatives specifically for inclusion therein; it being agreed that the only such information furnished by or on behalf of the Initial Purchasers consists of the information described as such in Section 8(b). This indemnity agreement will be in addition to any liability that the Company or CEMEX may otherwise have.

(b) Each Initial Purchaser severally, and not jointly, agrees to indemnify and hold harmless the Company, each of its directors, each of its officers, and each person who controls the Company within the meaning of either the Act or the Exchange Act, to the same extent as the foregoing indemnity to each Initial Purchaser, but only with reference to written information relating to such Initial Purchaser furnished to the Company by or on behalf of such Initial Purchaser through the Representatives specifically for inclusion in the Preliminary Memorandum or the Final Memorandum, or in any amendment or supplement thereto. This indemnity agreement will be in addition to any liability that any Initial Purchaser may otherwise have. The Company acknowledges that (i) the statements set forth in the last paragraph of the cover page regarding delivery of the International Securities and (ii) under the heading "Plan of Distribution", (A) the 12th paragraph related to short sales and stabilization transactions and (B) the 4th sentence of the 13th paragraph related to derivative transactions in the Disclosure Package and the Final Memorandum constitute the only information furnished in writing by or on behalf of the Initial Purchasers for inclusion in the Disclosure Package and the Final Memorandum or in any amendment or supplement thereto.

(c) Promptly after receipt by an indemnified party under this Section 8 of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against the indemnifying party under this Section 8, notify the indemnifying party in writing of the commencement thereof; but the failure so to notify the indemnifying party (i) will not relieve it from liability under paragraph (a) or (b) above unless and to the extent it did not otherwise learn of such action and such failure results in the forfeiture by the indemnifying party of substantial rights and defenses and (ii) will not, in any event, relieve the indemnifying party from any obligations to any indemnified party other than the indemnification obligation provided in paragraph (a) or (b) above. The indemnifying party shall be entitled to appoint counsel (including local counsel) of the indemnifying party's choice at the indemnifying party's expense to represent the indemnified party in any action for which indemnification is sought (in which case the indemnifying party shall not thereafter be responsible for the fees and expenses of any separate counsel, other than local counsel if not appointed by the indemnifying party, retained by the indemnified party or parties except as set forth below); provided, however, that such counsel shall be satisfactory to the indemnified party. Notwithstanding the indemnifying party's election to appoint counsel (including local counsel) to represent the indemnified party in an action, the indemnified party shall have the right to employ separate counsel (including local counsel), and the indemnifying party shall bear the reasonable fees, costs and expenses of such separate counsel if (i) the use of counsel chosen by

the indemnifying party to represent the indemnified party would present such counsel with a conflict of interest; (ii) the actual or potential defendants in, or targets of, any such action include both the indemnified party and the indemnifying party and the indemnified party shall have reasonably concluded that there may be legal defenses available to it that are different from or additional to those available to the indemnifying party and/or other indemnified parties; (iii) the indemnifying party shall not have employed counsel satisfactory to the indemnified party to represent the indemnified party within a reasonable time after notice of the institution of such action; or (iv) the indemnifying party shall authorize the indemnified party to employ separate counsel at the expense of the indemnifying party. If none of the conditions in clauses (i) through (iv) in the preceding sentence are satisfied as to any indemnified party, it is understood that the indemnifying party shall, in connection with any one such action be liable for the reasonable fees and expenses of only one separate firm of attorneys in each jurisdiction (and in addition to any local counsel) at any time (other than reasonable overlapping of engagements) for all such indemnified parties. An indemnifying party will not, without the prior written consent of the indemnified parties, settle or compromise or consent to the entry of any judgment with respect to any pending or threatened claim, action, suit or proceeding in respect of which indemnification or contribution may be sought hereunder (whether or not the indemnified parties are actual or potential parties to such claim or action) unless such settlement, compromise or consent includes an unconditional release of each indemnified party from all liability arising out of such claim, action, suit or proceeding and does not include any statement as to an admission of fault, culpability or a failure to act by or on behalf of any indemnified party.

(d) In the event that the indemnity provided in paragraph (a) or (b) of this Section 8 is unavailable to, or insufficient to hold harmless, an indemnified party for any reason, the Company and CEMEX, jointly and severally, and the Initial Purchasers severally agree to contribute to the aggregate losses, claims, damages and liabilities (including legal or other expenses reasonably incurred in connection with investigating or defending any loss, claim, damage, liability or action) (collectively "Losses") to which the Company and one or more of the Initial Purchasers may be subject in such proportion as is appropriate to reflect the relative benefits received by the Company on the one hand, and by the Initial Purchasers on the other, from the offering of the International Securities. If the allocation provided by the immediately preceding sentence is unavailable for any reason, the Company and CEMEX, jointly and severally, and the Initial Purchasers, severally, shall contribute in such proportion as is appropriate to reflect not only such relative benefits but also the relative fault of the Company or any of its Affiliates on the one hand, and the Initial Purchasers on the other, in connection with the statements or omissions that resulted in such Losses, as well as any other relevant equitable considerations. Benefits received by the Company shall be deemed to be equal to the total net proceeds from the offering (before deducting expenses) received by it, and benefits received by the Initial Purchasers shall be deemed to be equal to the total purchase discounts and commissions. Relative fault shall be determined by reference to, among other things, whether any untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information provided by or on behalf of the Company on the one hand, or the Initial Purchasers on the other, the intent of the parties and their relative knowledge, access to information and opportunity to correct or prevent such untrue statement or omission. The Company and the Initial Purchasers agree that it would not be just and equitable if contribution were determined by pro rata allocation or any other method of allocation that does not take account of the equitable considerations referred to above. Notwithstanding the

provisions of this paragraph (d), in no case shall any Initial Purchaser be responsible for any amount in excess of the purchase discount or commission actually received by such Initial Purchaser in respect of the International Securities purchased by such Initial Purchaser hereunder and no person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. For purposes of this Section 8, each person who controls an Initial Purchaser within the meaning of either the Act or the Exchange Act and each director, officer, employee, Affiliate and agent of an Initial Purchaser shall have the same rights to contribution as such Initial Purchaser, and each person who controls the Company within the meaning of either the Act or the Exchange Act and each officer and director of the Company shall have the same rights to contribution as the Company, subject in each case to the applicable terms and conditions of this paragraph (d).

9. Default by an Initial Purchaser. If any one or more Initial Purchasers shall fail to purchase and pay for any of the International Securities agreed to be purchased by such Initial Purchaser hereunder and such failure to purchase shall constitute a default in the performance of its or their obligations under this Agreement, the remaining Initial Purchasers shall be obligated severally to take up and pay for (in the respective proportions which the number of International Securities set forth opposite their names in Schedule I hereto bears to the aggregate number of International Securities set forth opposite the names of all the remaining Initial Purchasers) the International Securities which the defaulting Initial Purchaser or Initial Purchasers agreed but failed to purchase; provided, however, that in the event that the aggregate number of International Securities which the defaulting Initial Purchaser or Initial Purchasers agreed but failed to purchase shall exceed 10% of the aggregate number of Securities set forth in Schedule I hereto, the remaining Initial Purchasers shall have the right to purchase all, but shall not be under any obligation to purchase any, of the International Securities, and if such nondefaulting Initial Purchasers do not purchase all the International Securities, this Agreement will terminate without liability to any nondefaulting Initial Purchaser or the Company. In the event of a default by any Initial Purchaser as set forth in this Section 9, the Closing Date shall be postponed for such period, not exceeding five Business Days, as the Representatives and the Company shall determine in order that the required changes in the Final Memorandum or in any other documents or arrangements may be effected. Nothing contained in this Agreement shall relieve any defaulting Initial Purchaser of its liability, if any, to the Company or any nondefaulting Initial Purchaser for damages occasioned by its default hereunder. Notwithstanding the foregoing, Banco Bilbao Vizcaya Argentaria S.A. shall not be required to purchase any International Securities pursuant to this Section 9 other than those sold pursuant to Regulation S.

10. Termination. This Agreement shall be subject to termination in the absolute discretion of the Representatives, by notice given to the Company prior to delivery of, and payment for, the International Securities, if at any time prior to such delivery and payment (i) trading in securities generally on the New York Stock Exchange or the Colombian Stock Exchange shall have been suspended or limited or minimum prices shall have been established on any such exchange; (ii) a banking moratorium shall have been declared either by U.S. federal or New York State authorities or by the authorities of Spain or Colombia; or (iii) there shall have occurred any outbreak or escalation of hostilities, declaration by the United States, Spain or Colombia of a national emergency or war or other calamity or crisis the effect of which on financial markets is such as to make it, in the sole judgment of the Representatives, impractical

or inadvisable to proceed with the offering or delivery of the International Securities as contemplated in the Disclosure Package and the Final Memorandum (exclusive of any amendment or supplement thereto).

11. Representations and Indemnities to Survive. The respective agreements, representations, warranties, indemnities and other statements of the Company, CEMEX or their respective officers and of the Initial Purchasers set forth in or made pursuant to this Agreement will remain in full force and effect, regardless of any investigation made by or on behalf of the Initial Purchasers or the Company or CEMEX or any of the indemnified persons referred to in Section 8 hereof, and will survive delivery of and payment for the International Securities. The provisions of Sections 7 and 8 hereof shall survive the termination or cancellation of this Agreement.

12. Notices. All communications hereunder will be in writing and effective only on receipt, and, if sent to the Representatives, will be mailed, delivered or telefaxed to the Citigroup General Counsel (fax no.: (212) 816-7912) and confirmed to Citigroup at 388 Greenwich Street, New York, New York 10013, Attention: General Counsel; if sent to the Company, will be mailed, delivered or telefaxed to +(34-91) 377-9648 and confirmed to it at Calle Hernández de Tejada 1, Madrid 28027, Spain, attention of the Legal Department.

13. Successors. This Agreement will inure to the benefit of and be binding upon the parties hereto and their respective successors and the indemnified persons referred to in Section 8 hereof and their respective successors, and, except as expressly set forth in Section 5(a)(x) hereof, no other person will have any right or obligation hereunder.

14. Jurisdiction. Each of the parties hereto agrees that any suit, action or proceeding arising out of or based upon this Agreement or the transactions contemplated hereby shall be instituted in any State or U.S. federal court in The City of New York and County of New York or in the courts of its own domicile in respect of actions brought against such party as a defendant, and waives any objection which it may now or hereafter have to the laying of venue of any such proceeding, and irrevocably submits to the jurisdiction of such courts in any suit, action or proceeding and waives the right to any other jurisdiction that it may be entitled to by reason of its present or future domicile or other reason. Each of the Company and CEMEX hereby appoints CEMEX NY Corporation, 590 Madison Avenue, 41st Floor, New York, NY 10022, as its authorized agent (the "Authorized Agent") upon whom process may be served in any suit, action or proceeding arising out of or based upon this Agreement or the transactions contemplated herein that may be instituted in any of such courts. The Company and CEMEX hereby represent and warrant that the Authorized Agent has accepted such appointment and has agreed to act as said agent for service of process, and the Company and CEMEX agree to take any and all action, including the execution and filing of any and all documents that may be necessary to continue such appointment in full force and effect as aforesaid. Service of process upon the Authorized Agent shall be deemed, in every respect, effective service of process upon each of the Company and CEMEX.

15. Integration. This Agreement supersedes all prior agreements and understandings (whether written or oral) between the Company or CEMEX and the Initial Purchasers, or any of them, with respect to the subject matter hereof.

16. Applicable Law. This Agreement, and any claim, controversy or dispute relating to or arising out of this Agreement, will be governed by and construed in accordance with the laws of the State of New York applicable to contracts made and to be performed within the State of New York.

17. Waiver of Jury Trial. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.

18. No Fiduciary Duty. The Company and CEMEX hereby acknowledge that (a) the purchase and sale of the International Securities pursuant to this Agreement is an arm's-length commercial transaction between the Company, on the one hand, and the Initial Purchasers and any Affiliate through which they may be acting, on the other, (b) the Initial Purchasers are acting as principal and not as an agent or fiduciary of the Company or CEMEX and (c) the Company's engagement of the Initial Purchasers in connection with the offering and the process leading up to the offering is as independent contractors and not in any other capacity. Furthermore, the Company and CEMEX agree that they are solely responsible for making their own judgments in connection with the offering (irrespective of whether any of the Initial Purchasers has advised or is currently advising the Company and CEMEX on related or other matters). The Company and CEMEX agree that they will not claim that the Initial Purchasers have rendered advisory services of any nature or respect, or owe an agency, fiduciary or similar duty to the Company or CEMEX in connection with such transaction or the process leading thereto.

19. Currency. Each reference in this Agreement to U.S. dollars (the "relevant currency"), including by use of the symbol "U.S.$", is of the essence. To the fullest extent permitted by law, the obligation of the parties hereto in respect of any amount due under this Agreement will, notwithstanding any payment in any other currency (whether pursuant to a judgment or otherwise), be discharged only to the extent of the amount in the relevant currency that the party entitled to receive such payment may, in accordance with its normal procedures, purchase with the sum paid in such other currency (after any premium and costs of exchange) on the Business Day immediately following the day on which such party receives such payment. If the amount in the relevant currency that may be so purchased for any reason falls short of the amount originally due, the obligated party will pay such additional amounts, in the relevant currency, as may be necessary to compensate for the shortfall. Any obligation of the obligated party not discharged by such payment will, to the fullest extent permitted by applicable law, be due as a separate and independent obligation and, until discharged as provided herein, will continue in full force and effect.

20. Waiver of Immunity. To the extent that the Company has or hereafter may acquire any immunity (sovereign or otherwise) from any legal action, suit or proceeding, from jurisdiction of any court or from set-off or any legal process (whether service or notice, attachment in aid or otherwise) with respect to itself or any of its property, the Company hereby irrevocably waives and agrees not to plead or claim such immunity in respect of its obligations under this Agreement.

21. Waiver of Tax Confidentiality. Notwithstanding anything herein to the contrary, purchasers of the International Securities (and each employee, representative or other agent of a purchaser) may disclose to any and all persons, without limitation of any kind, the U.S. tax treatment and U.S. tax structure of any transaction contemplated herein and all materials of any kind (including opinions or other tax analyses) that are provided to the purchasers of the International Securities relating to such U.S. tax treatment and U.S tax structure, other than any information for which nondisclosure is reasonably necessary in order to comply with applicable securities laws.

22. Taxes. Each payment of fees or expenses due to the Initial Purchasers under this Agreement shall, except as required by applicable law, be made without withholding or deduction for or on account of any taxes imposed by any jurisdiction. If any taxes are required to be withheld or deducted from any such payment, the Company shall pay such additional amounts as may be necessary to ensure that the net amount actually received by the Initial Purchasers after such withholding or deduction is equal to the amount that the Initial Purchasers would have received had no such withholding or deduction been required. At the reasonable request of the Initial Purchasers, the Company shall provide evidence of payment of taxes when due. Notwithstanding the above, the Company shall not pay any additional amounts with respect to any taxes that are withheld or deducted by reason of (i) the Initial Purchasers having any present or former connection with Spain other than its mere intervention in the offering of the Securities or (ii) the failure by the Initial Purchasers that are not tax resident in Spain to provide the Company, in advance of the Closing Date, with an original certificate of tax residence within the meaning of the double taxation treaty entered into between their jurisdiction of tax residence and Spain within the year prior to the Closing Date, as required under Section 5(d) above.

23. Counterparts. This Agreement may be signed in one or more counterparts, each of which shall constitute an original and all of which together shall constitute one and the same agreement.

24. Headings. The section headings used herein are for convenience only and shall not affect the construction hereof.

25. Definitions. The terms that follow, when used in this Agreement, shall have the meanings indicated.

"Act" shall mean the U.S. Securities Act of 1933, as amended, and the rules and regulations of the Commission promulgated thereunder.

"Affiliate" shall have the meaning specified in Rule 501(b) of Regulation D.

"Business Day" shall mean any day other than a Saturday, a Sunday or a legal holiday or a day on which banking institutions or trust companies are authorized or obligated by law to close in The City of New York, United States; Madrid, Spain or Bogotá, Colombia.

"Citigroup" shall mean Citigroup Global Markets Inc.

"Commission" shall mean the Securities and Exchange Commission.

"Disclosure Package" shall mean (i) the Preliminary Memorandum, as amended or supplemented at the Time of Sale, (ii) the number and the price to initial investors of the Securities on the front cover of the Final Memorandum and (iii) any Issuer Written Information that the parties expressly agree in writing to treat as part of the Disclosure Package.

"Exchange Act" shall mean the U.S. Securities Exchange Act of 1934, as amended, and the rules and regulations of the Commission promulgated thereunder.

"Investment Company Act" shall mean the U.S. Investment Company Act of 1940, as amended, and the rules and regulations of the Commission promulgated thereunder.

"Issuer Written Information" shall mean (i) any writings in addition to the Preliminary Memorandum that the parties expressly agree in writing to treat as part of the Disclosure Package, (ii) any "road show" that is a "written communication" within the meaning of the Act, (iii) any electronic road show or other written communication, in each case, of which a copy shall be furnished to the Representatives and counsel for the Initial Purchasers for review, and which shall not be made, prepared, used, authorized, approved or referred to if the Representatives reasonably object.

"Regulation D" shall mean Regulation D under the Act.

"Regulation S" shall mean Regulation S under the Act.

"Regulation S-X" shall mean Regulation S-X under the Act.

"Significant Subsidiary" means a subsidiary of the Company constituting a "Significant Subsidiary" of the Company in accordance with Rule 1-02(w) of Regulation S-X under the Act in effect on the date hereof.

"Time of Sale" shall mean 8:30pm EST, on November 6, 2012.

If the foregoing is in accordance with your understanding of our agreement, please sign and return to us the enclosed duplicate hereof, whereupon this letter and your acceptance shall represent a binding agreement between the Company and the several Initial Purchasers.

Very truly yours,

**CEMEX LATAM HOLDINGS S.A.**

By: /s/ Carlos Jacks
Name: Carlos Jacks
Title: CEO

**CEMEX S.A.B DE C.V.**

By: /s/ Jaime Elizondo
Name: Jaime Elizondo
Title: Attorney-In-Fact

The foregoing Agreement is hereby confirmed and accepted as of the date first above written.

Banco Bilbao Vizcaya Argentaria S.A.
Citigroup Global Markets Inc.
Merrill Lynch Pierce, Fenner & Smith
Incorporated
Santander Investment Securities Inc.

By: Banco Bilbao Vizcaya Argentaria S.A.

By: /s/ Miguel Ángel Prieto
Name: Miguel Ángel Prieto
Title: Executive Director

By: /s/ Elena Rúa
Name: Elena Rúa
Title: Vice President

Citigroup Global Markets Inc.

By: /s/ J. Richard Blackett
Name: J. Richard Blackett
Title: Managing Director

Merrill Lynch Pierce, Fenner & Smith
Incorporated.

By: /s/ Laurent Massart
Name: Laurent Massart
Title: Managing Director

Santander Investment Securities Inc.

By: /s/ Marcio Souza
Name: Marcio Souza
Title: Managing Director

By: /s/ Elias Ehrlich
Name: Elias Ehrlich
Title: Managing Director

For itself and the other several Initial Purchasers named in Schedule I to the foregoing Agreement.

SCHEDULE I

| Initial Purchasers | Number of International Securities to be Purchased |
|---|---|
| Banco Bilbao Vizcaya Argentaria S.A.* | 41,337,650 |
| Citigroup Global Markets Inc. | 41,337,650 |
| Santander Investment Securities Inc. | 41,337,650 |
| Merrill Lynch Pierce, Fenner & Smith Incorporated | 23,621,515 |
| Total | 147,634,465 |

* Includes only Regulation S International Securities.

**EXHIBIT A**

[Letterhead of CEMEX España or Company member of senior management or director ]

November [•], 2012

Banco Bilbao Vizcaya Argentaria, S.A.
Via de los Poblados s/n
Madrid, 28033 Spain

Citigroup Global Markets Inc.
388 Greenwich Street
New York, New York 10013

Merrill Lynch, Pierce, Fenner & Smith
Incorporated
One Bryant Park, 27th Floor
New York, NY 10036

Santander Investment Securities Inc.
45 East 53rd Street
New York, NY 10022

As Representatives of the Initial Purchasers
c/o Citigroup Global Markets Inc.
388 Greenwich Street
New York, New York 10013

Ladies and Gentlemen:

This letter is being delivered to you in connection with a proposed Purchase Agreement (the "Purchase Agreement") between CEMEX LATAM HOLDINGS, S.A., organized under the laws of Spain (the "Company") and each of you as representatives of a group of Initial Purchasers named therein, relating to an offering of shares of common stock, €1.00 par value (the "Common Stock"), of the Company.

In order to induce you and the other Initial Purchasers to enter into the Purchase Agreement, the undersigned will not, without the prior written consent of Banco Bilbao Vizcaya Argentaria S.A., Citigroup Global Markets Inc., Santander Investment Securities Inc. and Merrill Lynch, Pierce, Fenner & Smith Incorporated, directly or indirectly, offer, sell, contract to sell, pledge or otherwise dispose of, enter into any transaction which is designed to, or might reasonably be expected to, result in the disposition (whether by actual disposition or effective economic disposition due to cash settlement or otherwise) by the undersigned or any affiliate of the undersigned or any person in privity with the undersigned or any affiliate of the undersigned of, file (or participate in the filing of) a registration statement with the U.S. Securities and Exchange Commission in respect of, or establish or increase a put equivalent position or liquidate or decrease a call equivalent position within the meaning of Section 16 of the Securities

Exchange Act of 1934, as amended, and the rules and regulations of the U.S. Securities and Exchange Commission promulgated thereunder in respect of, any shares of capital stock of the Company or any securities convertible into, or exercisable or exchangeable for such capital stock, or publicly announce an intention to effect any such transaction, for a period of 180 days after the date of the Purchase Agreement, other than shares of Common Stock disposed of as bona fide gifts approved by Citigroup Global Markets Inc.

If for any reason the Purchase Agreement shall be terminated prior to the Closing Date (as defined in the Purchase Agreement), the agreement set forth above shall likewise be terminated.

Very truly yours,

By: _____

Name:
Title:

**EXHIBIT B-1, B-2 and B-3**

[Opinion, tax and 10b-5 of Skadden, Arps, Slate, Meagher & Flom LLP, U.S. counsel for the Company]

**EXHIBIT C-1 & C-2**

[Gómez Pinzón Zuleta Abogados S.A., Colombian counsel for the Company]

**EXHIBIT D**

[Uría Menéndez Abogados S.L.P., Spanish counsel for the Company]

**EXHIBIT E**

[Mr. Camilo González, General Counsel for the Company]

**EXHIBIT F**

[Opinion of Skadden, Arps, Slate, Meagher & Flom (UK) LLP, special English counsel for the Company]

**EXHIBIT G**

[Comfort Letter from KPMG**]**

**ANNEX A**

Significant Subsidiaries

1. CORPORACION CEMENTERA LATINOAMERICANA, S.L.
2. CEMEX BOGOTA INVESTMENTS B.V.
3. CEMEX CARIBE II INVESTMENTS B.V.
4. CEMEX CARTAGENA INVESTMENTS B.V.
5. CEMEX COLOMBIA S.A.
6. CEMEX CONSTRUCCIONES S.A.S.
7. CENTRAL DE MEZCLAS S.A.
8. CEMEX TRANSPORTES DE COLOMBIA S.A.
9. DIAMANTE TRANSPORTES LIMITADA (being liquidated)
10. CEMEX ADMINISTRACIONES LIMITADA
11. LOMAS DEL TEMPISQUE, S.R.L.
12. CEMEX (COSTA RICA), S.A.
13. DISTRIBUIDORA DE MATERIALES DIMACO, S.A.
14. PAVIMENTOS ESPECIALIZADOS, S.A.
15. CEMEX NICARAGUA, S.A.
16. CEMEX EL SALVADOR, S.A. DE C.V.
17. CEMENTO BAYANO, S.A.
18. TECAS SIGLO XXI, S.A.
19. GLOBAL CEMENT, S.A.
20. EQUIPOS PARA USO DE GUATEMALA, S.A.
21. GLOBAL CONCRETE, S.A.
22. CEMENTOS DE CENTROAMERICA, S.A.
23. GESTION INTEGRAL DE PROYECTOS, S.A.
24. LINE, S.A. (being merged with and into EQUIPOS PARA ESO DE GUATEMALA, S.A.)
25. CIMENTO VENCEMOS DO AMAZONAS, LTDA.

**Exhibit 4.45**

Dated March 14, 2013

**CEMEX, S.A.B. de C.V.**

and

**MERRILL LYNCH INTERNATIONAL**

and

**CITIGROUP GLOBAL MARKETS LIMITED**

and

**HSBC BANK PLC**

and

**BANCO SANTANDER, S.A.**

# DEALER MANAGER AGREEMENT

## Table of Contents

**This Agreement** is made on March 14, 2013 **between**:

**(1)** **CEMEX, S.A.B. de C.V.** (the "**Offeror**"); and

**(2)** **MERRILL LYNCH INTERNATIONAL, CITIGROUP GLOBAL MARKETS LIMITED, HSBC BANK PLC and BANCO SANTANDER, S.A.** (each, a "**Joint Dealer Manager**" and together, the "**Joint Dealer Managers**" which expression shall, for the purposes of this Agreement, include any affiliate of each Joint Dealer Manager).

The Offeror has, in the Tender Offer Memorandum dated March 14, 2013 (the "**Tender Offer Memorandum**"), invited holders (the "**Noteholders**") to offer to sell, on the terms and conditions set out in the Tender Offer Memorandum certain of the outstanding 4.75 per cent. Notes due 2014 (the " **Notes**") issued by CEMEX Finance Europe B.V., a subsidiary of the Offeror (the "**Issuer**") (such invitation being referred to herein as the "**Invitation**"). The Offeror will purchase the Notes on the terms and subject to the conditions set out in the Tender Offer Memorandum.

## 1 Interpretation

In this Agreement, unless the contrary is stated, terms and expressions defined in the Tender Offer Memorandum shall have the same meanings in this Agreement. Any reference in this Agreement to a Clause, sub-clause or Schedule is, unless otherwise stated, to a clause or sub-clause hereof or schedule hereto.

## 2 Definitions

The terms which follow, when used in this Agreement, shall have the meanings indicated.

"**Additional Materials**" means the documentation which the Offeror has prepared or approved in connection with the Invitation, comprising:

(a) the Tender Offer Memorandum and any amendments or supplements thereto;

(b) any announcement relating to the Invitation (i) made by the issue of a press release to a Notifying News Service, (ii) made by the delivery of a notice to the Clearing Systems for communication to Direct Participants (including any Clearing System Notice), (iii) made by publication on the Regulatory News Service of the London Stock Exchange, (iv) made on the relevant Reuters Insider Screen, and/or (v) obtainable from the Tender Agent; and

(c) such other announcements, press releases, notices, newspaper advertisements, information and/or written material as may be prepared or approved by the Offeror for distribution and/or use in connection with the Invitation;

but, for the avoidance of doubt, any reference to " **Additional Materials**" in Clause 7 is to each of (i) the Additional Materials (including the Tender Offer Memorandum) as at the date of this Agreement but not including any subsequent revision, supplement or amendment to, or subsequent incorporation of information in, such Additional Materials and (ii) if amended or supplemented at the relevant date, the Additional Materials (including the Tender Offer Memorandum) as so amended or supplemented at that date;

"**affiliate**" means, in respect of a specified person at any particular time, any other person who directly or indirectly (through one or more intermediaries) controls, is controlled by or is under common control with such specified person;

"**control**" means the possession, direct or indirect, of the power to direct or cause the direction of the management of policies of another person, whether by ownership of share capital, contract, the power to appoint or remove members of the governing body of such other person or otherwise;

"**Loss**" means any liability, damages, demand, cost, loss, claim or expense (including, without limitation, costs of investigation and defending the same, and legal fees, costs and expenses incurred and any value added tax thereon);

"**person**" means any individual, company, corporation, firm, partnership, joint venture, association, organisation, state or agency of a state or other entity, whether or not having separate legal personality;

"**Purchase Price**" means the purchase price as defined in the Tender Offer Memorandum;

"**Related Party**" means, in respect of any person, any affiliate of that person or any officer, director, employee or agent of, or person controlling, that person or any such affiliate;

"**Sanctions**" means any sanctions administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury (OFAC);

"**Settlement Date**" means the Tender Offer Settlement Date as defined in the Tender Offer Memorandum, subject to the Offeror's right pursuant to the Tender Offer Memorandum to extend, reopen, amend and/or to terminate the Invitation;

**"subsidiary"** means in relation to a person, any other person:

(a) which is under the control of the first named person;

(b) more than half the issued share capital of which is beneficially owned, directly or indirectly, by the first named person; or

(c) which is a subsidiary of another subsidiary of the first named person;

"**Tender Agent**" means Lucid Issuer Services Limited; and

"**Tender Agent Engagement Letter**" means the tender agent engagement letter between the Offeror and the Tender Agent dated March 14, 2013.

## 3 Authorisation

The Offeror confirms that it has prepared, approved and authorised the use of the Tender Offer Memorandum and any amendments or supplements thereto, and authorises the Joint Dealer Managers to use the Tender Offer Memorandum and any Additional Materials, in each case in connection with the Invitation. In addition, the Offeror confirms that it has authorised each of the Joint Dealer Managers to act on its behalf in connection with the Invitation in accordance with this Agreement.

## 4 Scope of Appointment

The Offeror acknowledges that the Joint Dealer Managers' appointment hereunder is not an agreement by the Joint Dealer Managers to underwrite, place or purchase any securities or otherwise provide any financing.

## 5 Appointment as Joint Dealer Managers

**5.1** **Appointment:** The Offeror agrees to appoint each of the Joint Dealer Managers as exclusive joint dealer managers in connection with the Invitation in accordance with this Agreement and the terms of the Invitation as set forth in the Tender Offer Memorandum and agrees that it will not appoint any other person in connection with the Invitation to carry out the services specified in this Agreement. Each Joint Dealer Manager accepts its appointment as exclusive joint dealer manager in connection with the Invitation and each Joint Dealer Manager agrees severally and not jointly (to the extent permitted by applicable law) to perform, in accordance with its customary practices, the following services in connection with the Invitation:

**5.1.1** use its reasonable endeavours subject to applicable law to identify and contact Noteholders, present the Invitation to them on behalf of the Offeror (including making copies of the Tender Offer Memorandum and any Additional Materials available to such Noteholders). It is agreed that the Offeror has given full authority to each Joint Dealer Manager to identify and contact, by such means as the relevant Joint Dealer Manager considers necessary or desirable acting reasonably (but subject to applicable law), Noteholders including, without limitation, communicating with the Tender Agent;

**5.1.2** make such employees as the Joint Dealer Managers consider reasonably necessary available at all reasonable times during working hours in the relevant country to answer queries from, and provide additional information to, Noteholders in connection with the Invitation;

**5.1.3** provide assistance as and when requested by the Offeror in relation to any decision to re-open, amend, terminate, shorten or extend the Invitation;

**5.1.4** make or arrange for the making of such announcements as are agreed between the parties on behalf of the Offeror in connection with the Invitation; and

**5.1.5** provide such other assistance and undertake such other duties as are customarily performed by financial institutions in connection with tender offers of a like nature in connection with the Invitation as the Offeror may reasonably request and is agreed to in writing by the Joint Dealer Managers provided however, that the Joint Dealer Managers' services shall not include the giving of tax, legal, investment, regulatory, accountancy or other specialist or technical advice.

**5.2** **Offer Restrictions**: Each Joint Dealer Manager severally agrees that all actions taken by it as Joint Dealer Manager have complied and will comply in all material respects with (a) the restrictions contained in the section headed "Offer and Distribution Restrictions" in the Tender Offer Memorandum and (b) the applicable laws in Germany, Austria, Ireland and Denmark based on advice from local counsel engaged by the Joint Dealer Managers, provided however, that the Offeror agrees to reimburse the reasonable fees and disbursements of such local counsel.

**5.3** **Beneficial Ownership**: Each Joint Dealer Manager, in its sole discretion, may continue to own or dispose of, in any manner it may elect, any Notes it may beneficially own at the date hereof or hereafter acquire, in any such case subject to applicable law and, in particular, each Joint Dealer Manager has no obligation to the Offeror pursuant to this Agreement, or otherwise, to offer to sell or refrain from offering to sell, Notes beneficially owned by it in connection with the Invitation.

**5.4** **Publicity**: From and including the date hereof, the Offeror agrees that it will not file or publish any material (including any notice, advertisement, press release or similar information) in connection with the Invitation that uses the name "Merrill Lynch International", "Bank of America Merrill Lynch", "BofA Merrill Lynch", "Citigroup Global Markets Limited", "Citi", "HSBC Bank plc", "HSBC", "Banco Santander, S.A.", "Santander" or otherwise refers to any of the Joint Dealer Managers or their respective relationships with the Offeror, without such Joint Dealer Manager's prior written consent to the form of such reference (such consent not to be unreasonably withheld or delayed). Each Joint Dealer Manager agrees severally and not jointly that prior to the Settlement Date it shall not issue any press release or cause any notice, advertisement or similar information relating to the Invitation to be published without the prior written consent of the Offeror (such consent not to be unreasonably withheld or delayed) and shall notify the Offeror prior to its taking any such action on or after the Settlement Date.

**5.5** **Outcome of Invitation**: The Offeror agrees that the Joint Dealer Managers will have no responsibility to it for the results or outcome of any discussions relating to the Invitation.

**5.6** **Services by Third Parties**: No Joint Dealer Manager has any liability in respect of any services or advice provided to the Offeror by persons other than itself. However, each Joint Dealer Manager will be entitled to rely upon any information which is made publicly available by the Offeror or the Issuer without having any responsibility to verify such information.

## 6 Compensation

**6.1** **Fee**: The Offeror will pay to the Joint Dealer Managers on the Settlement Date a fee of €1 for each €1,000 nominal amount of Notes purchased pursuant to the Invitation in respect of the services provided by the Joint Dealer Managers hereunder, such fee to be divided equally between the Joint Dealer Managers.

**6.2** **General Expenses**: Whether or not Notes are offered for sale by Noteholders, the Offeror shall pay or cause to be paid to the Joint Dealer Managers:

**6.2.1** all expenses reasonably incurred in the preparation, printing, mailing and publishing of the Tender Offer Memorandum, any Additional Materials, this Agreement and any other materials and information relating to the Invitation;

**6.2.2** all advertising charges reasonably incurred in connection with the Invitation;

**6.2.3** all costs reasonably incurred in the publication of notices and other communications with Noteholders reasonably necessary in connection with the Invitation; and

**6.2.4** all other expenses reasonably incurred by the Joint Dealer Managers in connection with the performance of their obligations hereunder in connection with the Invitation, including, without limitation, their reasonable out of pocket expenses and fees and disbursements of Cleary Gottlieb Steen & Hamilton LLP, their legal counsel; *provided, however*, that the fees of such counsel shall not exceed $90,000 in the aggregate in connection with the Invitation, plus value added tax (" **VAT**"), if any, and all other costs and expenses incidental to the performance of their obligations hereunder and in connection with the Invitation, including those related to marketing conducted in connection therewith.

**6.3** **Offeror's Expenses**: The Offeror shall be responsible for all of its own fees, expenses and other costs incurred in connection with the Invitation including, without limitation, its own legal fees plus VAT, any accounting and auditors' fees and expenses and any of the items referred to in Clause 6.2.

**6.4** **Payment**: All payments under this Agreement shall be made in accordance with the payment instructions of the Joint Dealer Managers on the due date for payment or within 10 calendar days of the invoice, as the case may be; provided that, subject to making such payment in accordance with the relevant payment instructions, the Offeror shall not be obliged to check the application of such payment as between the Joint Dealer Managers.

**6.5** **Taxes**: All amounts payable under this Agreement are exclusive of VAT, sales and any similar taxes which may be payable on those payments, which will be invoiced to, or otherwise payable by, the Offeror. All payments under this Agreement shall be made in full without set-off, condition, restriction, counterclaim, deduction or withholding, save as required by applicable law. If the Offeror shall be required by applicable law to make any set-off, condition, restriction, counterclaim, deduction or withholding from any payment under this Clause 6, it shall increase any payment due hereunder to such amount as may be necessary to ensure that the Joint Dealer Managers receive and retain (free from any liability in respect of such set-off, condition, restriction, counterclaim, deduction or withholding) a net amount equal to the full amount which it would have received and retained had payment not been made subject to such set-off, condition, restriction, counterclaim, deduction or withholding.

## 7 Representations and Warranties

The Offeror (in respect of itself and the Invitation only) represents, warrants and (where applicable) agrees with each Joint Dealer Manager, on each of the date hereof and the Settlement Date and each day falling between the date hereof and the Settlement Date, as follows:

**7.1** **Incorporation**: The Offeror is duly incorporated and validly existing under the laws of Mexico with full power, capacity and authority to own or lease its property and assets, to conduct its business in those jurisdictions in which business is conducted by it, to enter into this Agreement, to perform its obligations under the Invitation, to undertake all actions contemplated in the Tender Offer Memorandum and Additional Materials and this Agreement to be taken by the Offeror and is lawfully qualified to do business in those jurisdictions in which business is conducted by it, save where failure to do so would not have a material adverse effect on the Invitation or the enforceability of this Agreement by the Dealer Managers.

**7.2** **Validity of Contracts**: This Agreement, the Tender Agent Engagement Letter, the Invitation, and the performance of the Offeror's obligations hereunder and thereunder have been duly authorised by all necessary corporate action on the part of the Offeror, and each of this Agreement and the Tender Agent Engagement Letter has been duly executed and delivered by the Offeror, and creates legal, valid and binding obligations of the Offeror enforceable against it in accordance with their respective terms, subject to the laws of bankruptcy and other laws affecting the rights of creditors generally.

**7.3** **Invitation Materials**: The Tender Offer Memorandum and any Additional Materials prepared by the Offeror:

**7.3.1** comply in all material respects with all applicable requirements of the laws of those jurisdictions in which solicitations of offers to sell are or will be made pursuant to the Invitation;

**7.3.2** contain all information which is material in the context of the Invitation and such information is true and accurate in all material respects and not misleading;

**7.3.3** do not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading;

**7.3.4** do not contain any material information which is not available to the public; and

**7.3.5** contain opinions and intentions which are honestly held and have been reached after considering all relevant circumstances, based on reasonable assumptions and are not misleading in any material respect,

and all reasonable enquiries have been made to ascertain or verify the foregoing.

**7.4** **No Compensation**: None of the Offeror, its subsidiaries or affiliates has paid or agreed to pay to any person (other than the Joint Dealer Managers and the Tender Agent) any compensation for the solicitation of offers to sell the Notes from Noteholders pursuant to the Invitation (except as contemplated by this Agreement).

**7.5** **Stabilisation**: None of the Offeror, its subsidiaries or affiliates has taken (other than as envisaged by, and disclosed in, the Tender Offer Memorandum), directly or indirectly, any action designed to cause or to result in, or that has constituted or that might reasonably be expected to constitute the manipulation of the price of any security of the Issuer to facilitate the Invitation or encourage offers to sell by Noteholders.

**7.6** **Consents**: No consent, approval or authorisation of, or registration, filing or declaration with, any court, regulatory authority, governmental agency or stock exchange or any other person is required in connection with the execution, delivery or performance by the Offeror of this Agreement, the Tender Agent Engagement Letter or in connection with the conduct and consummation of the Invitation (including, without limitation, the distribution of the Tender Offer Memorandum and any Additional Materials), except such as have been received or, as the case may be, will be received prior to the date hereof in accordance with sub-clause 9.1.1 below.

**7.7** **Compliance**: The execution, delivery and performance by the Offeror of this Agreement and the Tender Agent Engagement Letter, the making and consummation of the Invitation and any other transactions relating to the Invitation, and the compliance by the Offeror with the terms of the Invitation and this Agreement and the Tender Agent Engagement Letter do not and will not:

**7.7.1** contravene, result in any breach of, or constitute a default under, any indenture, mortgage, constitutional documents, deed of trust, loan, purchase or credit agreement, lease, corporate charter or by-laws, or any other material agreement or instrument to which the Offeror or Issuer is bound or by which it or any of its properties may be bound;

**7.7.2** conflict with or result in a breach of any of the terms, conditions or provisions of any order, judgment, decree, or ruling of any domestic or foreign court, arbitrator or governmental authority having jurisdiction over the Offeror or Issuer or their property; or

**7.7.3** violate any provision of any statute or other rule or regulation of any governmental authority applicable to the Offeror or Issuer,

save where it would not have a material adverse effect on the Company, the Invitation or the enforceability of this Agreement by the Dealer Managers.

**7.8** **Taxes**: There are no stamp or other issuance or transfer taxes or duties or other similar fees or charges required to be paid in connection with the execution and delivery of this Agreement or the Tender Agent Engagement Letter or the conduct and consummation of the Invitation.

**7.9** **Information**: The Offeror is not aware of any fact or circumstance (other than as envisaged by, and disclosed in, the Tender Offer Memorandum) which, if made public, might reasonably be expected to have a significant effect on the price or value of the Notes.

**7.10** **Litigation**: Except as has been publicly disclosed by the Offeror at or prior to the execution time of this Agreement, neither the Offeror or Issuer (i) is engaged (whether as defendant or otherwise) in, nor does the Offeror have knowledge of the existence of, any legal, arbitration, administrative, government or other proceedings or any such proceedings which are pending, threatened or contemplated the result of which might have or have had a material adverse effect on the Offeror's or Issuer's unconsolidated or, if applicable, consolidated financial condition, results of operations or business and (ii) has not taken any action nor have, to the best of the Offeror's knowledge and belief, any steps been taken or legal proceedings commenced for the Offeror's or Issuer's winding up or dissolution, nor are such steps pending or contemplated.

**7.11** **No Material Change**: Except as has been publicly disclosed by the Offeror at or prior to the execution time of this Agreement, since the date of the last audited consolidated financial statements of the Offeror or Issuer, there has been no material adverse change, and no development or event involving a prospective material adverse change of which the Offeror is aware, or might reasonably be expected to be aware, after making all reasonable enquiries, in the financial or trading condition or prospects, results of operations, business or general affairs of the Offeror and its subsidiaries, whether or not arising in the ordinary course of business.

**7.12** **Events of Default**: No event has occurred or circumstance arisen (other than as envisaged by, and disclosed in, the Tender Offer Memorandum) which might (whether or not with the giving of notice and/or the passage of time and/or the fulfilment of any other requirement) constitute an event described under "Events of Default" in the terms and conditions of the Notes.

**7.13** **Sufficient Funds**: The Offeror will have, at the time it becomes obliged pursuant to the terms of the Invitation to purchase Notes offered for sale pursuant to the Invitation, sufficient funds to enable it to pay, and the Offeror hereby agrees that it will pay promptly, in accordance with the terms and conditions set out in the Tender Offer Memorandum, the Tender Agent Engagement Letter and this Agreement, the relevant purchase price including any accrued and unpaid interest up to, but excluding, the Settlement Date for all Notes in respect of which the Offeror has accepted offers to sell Notes, and that the Offeror may be required to purchase and pay for pursuant to the Invitation, and the fees and expenses payable hereunder and thereunder.

**7.14** **Sanctions**: Neither the Offeror nor any of its subsidiaries nor, to the knowledge of the Offeror, any director, officer, agent, employee or affiliate of the Offeror or any of its subsidiaries are currently subject to any Sanctions.

**7.15** **Bribery**: Neither the Offeror nor any of its subsidiaries nor, to the knowledge of the Company, any director, officer, agent, employee or affiliate of the Offeror, has used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity; made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds; violated or is in violation of any provision of the U.S. Foreign Corrupt Practices Act of 1977 or the UK Bribery Act 2010; or made, offered or promised to make, or authorised the payment or giving of any bribe, rebate, payoff, influence payment, facilitation payment, kickback or other unlawful payment or gift of money or anything of value prohibited under the U.S. Foreign Corrupt Practices Act of 1977 or the UK Bribery Act 2010.

**7.16** **Money Laundering**: The operations of the Offeror and its subsidiaries are and have been conducted at all times in compliance with applicable financial record keeping and reporting requirements and money laundering statutes in England and of all jurisdictions in which the Offeror and its subsidiaries conduct business, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, "**Money Laundering Laws**") and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Offeror or any of its subsidiaries with respect to Money Laundering Laws is pending and, to the best of the Offeror's knowledge, no such actions, suits or proceedings are threatened.

## 8 Undertakings by the Offeror

**8.1** The Offeror undertakes with the Joint Dealer Managers as follows:

**8.1.1** the Offeror will take full responsibility for the accuracy and the completeness of any information disseminated to the Noteholders by the Joint Dealer Managers with the prior consent of the Offeror and acknowledges that none of the Joint Dealer Managers, the Tender Agent or any of their respective directors, employees or affiliates assumes any responsibility for the accuracy or completeness of the information concerning the Invitation or the Issuer or any of its affiliates contained in the Additional Materials or for any failure by the Offeror to disclose events that may have occurred and may affect the significance or accuracy of the information in the Additional Materials;

**8.1.2** the Offeror will, if necessary, produce such amendments and/or supplements to the Tender Offer Memorandum and any Additional Materials as may be required to ensure compliance with its obligations under this Agreement and (if required) will file any such amendments or supplements with the appropriate authority in accordance with any timeframes prescribed by such authority;

**8.1.3** the Offeror and Issuer will provide or give access to the Joint Dealer Managers to all information which the Offeror reasonably considers to be material to discussions the Joint Dealer Managers may have with the Noteholders in accordance with the performance of the services hereunder;

**8.1.4** the Offeror and Issuer will provide the Joint Dealer Managers with such access to the directors and management of the Offeror and Issuer for the purposes of the discussions with Noteholders as the Joint Dealer Managers may reasonably require;

**8.1.5** the Offeror will furnish to the Joint Dealer Managers, without charge, during the period beginning on and including the date hereof and continuing to, and including, the Settlement Date, the Tender Offer Memorandum, any Additional Materials and any amendments and supplements thereto in electronic form as the Joint Dealer Managers may reasonably request (or in such other form as may be agreed between the Issuer and the Joint Dealer Managers from time to time);

**8.1.6** the Offeror will not amend or supplement the Tender Offer Memorandum or any Additional Materials without giving prior notice thereof to and consulting with the Joint Dealer Managers;

**8.1.7** the Offeror will not withdraw, rescind or modify the terms of the Invitation without giving prior notice thereof to and consulting with the Joint Dealer Managers;

**8.1.8** the Offeror will, as any such taxes or duties become due and payable, pay all stamp, registration and other taxes and duties which may be payable upon or in connection with the Invitation or the execution of this Agreement or the Tender Agent Engagement Letter;

**8.1.9** the Offeror will deliver, or procure the delivery of, a notice of the Invitation to Noteholders on the date hereof and a copy of the Tender Offer Memorandum to Noteholders upon their request during the period beginning on and including the date hereof and continuing to, and including, the Settlement Date, subject always to the restrictions set out in the section headed "Offer and Distribution Restrictions" in the Tender Offer Memorandum;

**8.1.10** the Offeror will comply in all material respects with all applicable laws and regulations in connection with the Invitation and the transactions contemplated hereby and thereby;

**8.1.11** the Offeror will obtain all consents and approvals required for the Invitation and conduct and consummation of the transactions contemplated thereby;

**8.1.12** the Offeror will not, and will procure that its subsidiaries and affiliates will not, purchase any Notes in the open market or otherwise during the period beginning on and including the date hereof and continuing to, and including, the Settlement Date;

**8.1.13** the Offeror will promptly inform the Joint Dealer Managers of any litigation or administrative action involving it or the Issuer, and relating to or involving the Invitation, of which it is aware and which might be material in the context of the Invitation;

**8.1.14** the Offeror will promptly upon becoming aware of the occurrence thereof, notify each Joint Dealer Manager of any breach of the representations and warranties, undertakings, agreements and indemnities given by it in this Agreement;

**8.1.15** if at any time the Offeror or Issuer is in possession of any price-sensitive information that is not publicly available and that is material to Noteholders in the context of the Invitation, the Offeror will promptly ensure that such price-sensitive information is disclosed publicly in accordance with and within any time limits of any applicable law or regulation; and

**8.1.16** it will notify the Joint Dealer Managers (i) promptly of the occurrence of any event, or the discovery of any fact, the occurrence or existence of which would require the making of any change in or supplement to any of the Additional Materials then being used or would cause any representation or warranty contained in this Agreement to be untrue or inaccurate or could cause the Offeror to wish to extend, re-open, amend, waive any condition of or terminate the Invitation, (ii) of the issuance by any governmental or regulatory authority of any comment or order or the taking of any other action concerning the Invitation promptly after having become aware thereof or (iii) of any material developments in connection with the Invitation, including, without limitation, the commencement of any legal proceedings concerning the Invitation, promptly after having become aware thereof.

**8.2** The Offeror acknowledges and agrees that (i) each Joint Dealer Manager has been retained solely to provide the services set forth herein, and in rendering such services each Joint Dealer Manager shall act as an independent contractor and any duties arising out of its engagement hereunder shall be owed solely to the Offeror; (ii) each of the Joint Dealer Managers is a securities firm engaged in securities trading and brokerage activities and providing investment banking and financial advisory services and, in the ordinary course of business, each Joint Dealer Manager may at any time hold long or short positions, trade or otherwise effect transactions, for its own account or the accounts of customers, in debt or equity securities of the Offeror, its affiliates or other entities that may be involved in the transactions contemplated hereby and continue to pursue any of its business interests and activities without any specific prior disclosure to the Offeror and shall not be required to account for or disclose to the Offeror any profit, charge, commission or other remuneration arising in respect of such transactions; (iii) the Joint Dealer Managers may from time to time perform various investment banking, commercial banking, financial advisory and fiduciary services for other clients and customers who may have conflicting interests with respect to the Offeror and its affiliates or the Invitation; (iv) none of the Joint Dealer Managers is an adviser as to legal, tax, investment, accounting or regulatory matters in any jurisdiction and the Offeror must consult with its own advisers concerning such matters and will be responsible for making its own independent investigation and appraisal of the transactions contemplated hereby, and none of the Joint Dealer Managers shall have any responsibility or liability to the Offeror with respect to any advice given as to legal, tax, investment, accounting or regulatory matters; (v) each Joint Dealer Manager is acting solely pursuant to a contractual relationship with the Offeror on an arm's length basis with respect to the Invitation (including in connection with determining the terms of the Invitation and not as a financial adviser or as an agent of the Offeror or a fiduciary to the Offeror or any other person; (vi) the obligations of the Joint Dealer Managers under this Agreement are several and not joint; and (vii) the Offeror is acting for its own account in connection with the Invitation, and is capable of assessing the merits of, understanding (on its own behalf or through independent professional advice) and assuming the risks of, the Invitation and the transactions contemplated hereby and thereby.

## 9 Conditions Precedent

**9.1** The obligations of the Joint Dealer Managers under this Agreement are at all times conditional upon:

**9.1.1** **Consents**: prior to the date hereof, all relevant consents, approvals or authorisations of, or registrations, filings or declarations with, any court, regulatory

authority, governmental agency or stock exchange or any other person required in connection with the execution, delivery or performance by the Offeror of its obligations under this Agreement or in connection with the conduct and consummation of the Invitation (including, without limitation, the distribution of the Tender Offer Memorandum and any Additional Materials) shall have been obtained by the Offeror and remain in full force and effect;

**9.1.2** **Further Information**: prior to the Settlement Date, the Offeror shall have delivered to the Joint Dealer Managers such further information, certificates and documents as the Joint Dealer Managers may reasonably request relating to the Invitation or otherwise relating to the matters contemplated hereby;

**9.1.3** **No Event of Default**: prior to the Settlement Date, no event shall have occurred or circumstances shall have arisen that might (whether or not with the giving of notice, passage of time and/or fulfilment of any other requirement) constitute an Event of Default, as such term is defined in the terms and conditions of the Notes;

**9.1.4** **Legal Opinions**: prior to the date hereof and the Settlement Date, as the case may be, the Offeror shall have delivered to the Joint Dealer Managers a legal opinion in such form and with such content as the Dealer Managers may reasonably require, as to the laws of Mexico;

**9.1.5** **Documentation**: prior to the date hereof and the Settlement Date, the Tender Agent Engagement Letter shall have been duly executed by all parties thereto and the Offeror shall have delivered to the Joint Dealer Managers a copy of each of the executed Tender Agency Agreement, the final Tender Offer Memorandum and any other Additional Materials;

**9.1.6** **Process Agent Acceptance and Power of Attorney** : confirmation that the agent appointed to receive service of process on behalf of the Offeror pursuant to this Agreement has accepted its appointment (pursuant to an appointment and acceptance letter) and that an irrevocable power of attorney executed before a Mexican notary public, appointing such agent as its agent for service of process, has been granted; and

**9.1.7** **Internal Authorisations of the Offeror** : certified copies of constitutive documents of the Offeror and internal authorisations of the Offeror authorising the Invitation, the distribution of the Invitation Memorandum and any Additional Materials and the execution of this Agreement and the Tender Agent Engagement Letter.

**9.2** **Compliance**: If:

**9.2.1** any of the conditions specified in this Clause 9 shall not have been fulfilled in all material respects when and as provided in this Agreement; or

**9.2.2** any of the representations, warranties undertakings or agreements given or made by the Offeror set forth herein is untrue or is breached,

this Agreement and all obligations of the Joint Dealer Managers hereunder may be cancelled at, or at any time prior to, the Settlement Date by the Joint Dealer Managers.

**10** **Indemnification**

The Offeror undertakes and agrees with each of the Joint Dealer Managers that, if any of the Joint Dealer Managers or any Related Party of that Joint Dealer Manager, or all of

them as the case may be, incurs any Loss arising out of, in connection with or based upon (i) any actual or alleged breach of any of the terms of, or any of the representations, warranties and/or undertakings given pursuant to, this Agreement, the Invitation, or any untrue or misleading or allegedly untrue or misleading statement or any omission or alleged omission from the Tender Offer Memorandum or any Additional Materials or (ii) otherwise as a result of or in relation to or alleged to arise out of or, as a result of, in relation to, in connection with or based upon, the Invitation, the transactions contemplated by this Agreement or the engagement of, and services performed by, the Joint Dealer Managers under this Agreement, the Offeror shall pay to such Joint Dealer Manager on demand an amount equal to such Loss on an after tax basis. None of the Joint Dealer Managers shall settle any claim against it involving the incurrence of any such Loss without the prior written consent of the Offeror (such consent not to be unreasonably withheld or delayed). None of the Joint Dealer Managers shall have any duty or other obligation, whether as fiduciary or trustee, for any of its Related Parties or otherwise, to recover such payment or to account to any other person (other than the Offeror) for any amounts paid to it under this Clause 10 except as required by law or a court of competent jurisdiction.

**11 Non-disclosure**

No party to this Agreement shall disclose the provisions of this Agreement to any other person (other than its professional advisers) without the prior written consent of each other party (such consent not to be unreasonably withheld or delayed), unless a party reasonably determines that the failure to make such disclosure would violate applicable law or regulation or is required to be disclosed by applicable law or regulation (including pursuant to any securities laws or listing requirements) in which case that party shall, as soon as reasonably practicable in advance thereof, notify each other party of the proposed disclosure and the reasons therefor.

**12 Termination**

This Agreement shall terminate (i) on the Settlement Date or (ii) upon written notice by the Offeror to the Joint Dealer Managers to terminate this Agreement at any time in the event that they decide not to proceed with the Invitation or (iii) upon withdrawal by the Joint Dealer Managers as a result of the failure of any of the conditions to the obligations of the Joint Dealer Managers set out in Clause 9 or (iv) (subject to the right of the Joint Dealer Managers in their discretion to waive any such breach), upon breach of any of the Offeror's representations, warranties, agreements or covenants herein or (v) if since the date of this Agreement, there has been, in the opinion of the Joint Dealer Managers, a change in national, international, financial, political or economic conditions as would in their view (acting together) be likely to prejudice materially the success of the Invitation, in each case subject to Clause 13.

**13 Survival of Representations and Obligations**

The respective agreements, representations, warranties and indemnities of the Offeror, or its officers, and of the Joint Dealer Managers set forth in or made pursuant to this Agreement shall continue in full force and effect notwithstanding the constructive knowledge of any Joint Dealer Manager with respect to any of the matters referred to in the respective agreements, representations, warranties and indemnities set out above and shall survive any termination of this Agreement and the completion of the Invitation, regardless of any investigation made by or on behalf of the Offeror or the Joint Dealer

Managers or any of them. Without prejudice to the generality of the foregoing, the obligations of the Offeror pursuant to Clauses 6, 7, 8, 10 and 11 shall survive any termination or cancellation of this Agreement.

**14 Communications**

**14.1** **Communications**: All communications shall be by fax, in writing delivered by hand or by telephone (to be promptly confirmed by fax, provided that any failure so to confirm shall not invalidate the original communication). Each communication shall be made to the relevant person at the fax number, address or telephone number, in the case of a communication by fax or in writing, marked for the attention of, and in the case of a communication by telephone made to, the person from time to time designated by that party to the others for the purpose. The initial email address, telephone number, fax number, address and person so designated by the Offeror and each Joint Dealer Manager are set out below.

**14.2** **Confirmations**: A communication shall be deemed received (if by fax or email) when good receipt is confirmed by the recipient following enquiry by the sender, (if by telephone) when made and (if in writing) when delivered, in each case in the manner required by this Clause; provided that any communication that is received outside business hours or on a non-business day in the place of receipt shall be deemed received at the opening of business on the next following business day in such place. Each communication from the Offeror may only be revoked if the Joint Dealer Managers have not acted on it.

**14.3** **Addresses**: All communications hereunder will be in writing and effective only on receipt and will be mailed, delivered or faxed:

If to the Offeror:

CEMEX, S.A.B. de C.V.
Av. Ricardo Margáin Zozaya #325
Colonia Valle del Campestre
Garza García, Nuevo León, México 66265
Fax: +5281-8888-4399
E-mail: roger.saldana@cemex.com
Attention: Legal Department

If to the Joint Dealer Managers:

Merrill Lynch International
2 King Edward Street
London EC1A 1HQ
United Kingdom
Fax: +44 20 7995 8582
Attention: Liability Management/John M. Cavanagh

Citigroup Global Markets Limited
Citigroup Centre
Canada Square
London E14 5LB
United Kingdom
Fax: +44 207 508 9090
Attention: European General Counsel

HSBC Bank plc
8 Canada Square
London E14 5HQ
United Kingdom
Fax: +44 207 992 4908
Attention: Liability Management Group

Banco Santander, S.A.
Ciudad Grupo Santander
Edificio Encinar,
Avenida de Cantabria s/n
28660, Boadilla del Monte,
Madrid, Spain
Fax: +34 91 257 13 76
Attention: Head of Debt Capital Markets

**15 Successors**

This Agreement will inure to the benefit of and be binding upon the parties hereto and their respective successors and no other person will have any right or obligation hereunder.

**16 Assignment**

The Offeror may not assign its rights or transfer its obligations under this Agreement, in whole or in part, without the prior written consent of the Joint Dealer Managers (such consent not to be unreasonably withheld or delayed). In the absence of such written consent, any purported assignment or transfer shall be void.

**17 Counterparts**

This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which together shall constitute one and the same instrument.

**18 Contracts (Rights of Third Parties) Act 1999**

A person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement.

**19 Governing Law and Jurisdiction**

**19.1** **Governing law:** This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with English law.

**19.2** **Jurisdiction:**

**19.2.1** The courts of England are to have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement and accordingly any legal action or proceedings arising out of or in connection with this Agreement (" **Proceedings**") may be brought in such courts. Each

of the parties hereto expressly and irrevocably submits to the jurisdiction of such courts and waives any objection to Proceedings in such courts whether on the ground of venue or on the ground that the Proceedings have been brought in an inappropriate forum and wavies any right to which it may be entitled on account of place of residence or domicile.

**19.2.2** The Offeror irrevocably appoints CEMEX UK at CEMEX House, Coldharbour Lane, Thorpe Egham, Surrey, TW20 8TD, United Kingdom as its authorised agent for service of process in England. If for any reason such agent shall cease to be such agent for service of process, the Offeror shall forthwith, on request of the Joint Dealer Managers, appoint a new agent for service of process in England and deliver to the Joint Dealer Managers a copy of the new agent's acceptance of that appointment and an irrevocable power of attorney granted before a Mexican notary public as provided in Clause 9.1.6 above, within 30 days. Nothing in this Agreement shall affect the right to serve process in any other manner permitted by law.

**19.2.3** To the extent that the Offeror has or hereafter may acquire any immunity (sovereign or otherwise) from jurisdiction of any court or from any legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution, or otherwise) with respect to itself or its property, the Offeror hereby irrevocably waives such immunity in respect of the transactions contemplated hereunder to the extent permitted by applicable law including, without limitation, (a) any immunity from jurisdiction it may have in any Proceedings in the courts of England, and (b) any immunity from attachment or execution to which its assets or property might otherwise be entitled in any Proceedings in the courts of England, and agrees that it will not claim any such immunity in any such Proceedings.

## 20 Miscellaneous

**20.1** Time shall be the essence of this Agreement.

This Agreement has been entered into on the date signed at the beginning.

**CEMEX, S.A.B. de C.V.**

By: /s/ José Antonio González Flores
José Antonio González Flores
Attorney-In-Fact

**MERRILL LYNCH INTERNATIONAL**

By: /s/ John Cavanagh
John Cavanagh
Managing Director

**CITIGROUP GLOBAL MARKETS LIMITED**

By: /s/ Jennifer Page
Jennifer Page
Delegated Signatory

**HSBC BANK PLC**

By: /s/ Karl JS Allen
Karl JS Allen
Director

**BANCO SANTANDER, S.A.**

By: /s/ Alberto Ramon
Alberto Ramon
Executive Director

By: /s/ Luis Ordonez
Luis Ordonez
Managing Director

**Exhibit 4.46**

**CEMEX, S.A.B. de C.V.**

**U.S.$600,000,000**
**5.875% SENIOR SECURED NOTES DUE 2019**

**PURCHASE AGREEMENT**

March 14, 2013

CITIGROUP GLOBAL MARKETS INC.
HSBC SECURITIES (USA) INC.
MERRILL LYNCH, PIERCE, FENNER & SMITH
INCORPORATED
SANTANDER INVESTMENT SECURITIES INC.

c/o CITIGROUP GLOBAL MARKETS INC.
388 Greenwich Street
New York, New York 10013

As Representatives of the Initial Purchasers

Ladies and Gentlemen:

CEMEX, S.A.B. de C.V., a publicly traded stock corporation with variable capital (*sociedad anónima bursátil de capital variable*) organized under the laws of Mexico (the "Company"), proposes to issue and sell to the several parties named in Schedule I hereto (the "Initial Purchasers"), for whom you (the "Representatives") are acting as representatives, U.S.$600,000,000 principal amount of its 5.875% Senior Secured Notes due 2019 (the "Securities"). The Securities will be unconditionally guaranteed (the "Guarantees") by each of (i) CEMEX México, S.A. de C.V. ("CEMEX México"), (ii) CEMEX España, S.A. ("CEMEX España"), (iii) Cemex Research Group AG ("CEMEX Research"), (iv) New Sunward Holding B.V. ("New Sunward"), (v) Cemex Shipping B.V. ("CEMEX Shipping"), (vi) Cemex Asia B.V. ("CEMEX Asia"), (vii) Cemex Egyptian Investments B.V. ("CEMEX Egypt," and together with the companies in (iv) to (vii) above, the "Dutch Note Guarantors"), (viii) CEMEX UK, (ix) CEMEX France Gestion (S.A.S.) ("CEMEX France"), (x) CEMEX Corp., (xi) CEMEX Concretos, S.A. de C.V. ("CEMEX Concretos"), and (xii) Empresas Tolteca de México, S.A. de C.V. ("Tolteca" and together with the companies named in (i) to (xii) above, the "Note Guarantors"), and are to be issued under an indenture to be dated as of the Closing Date (as defined below) (the "Indenture"), among the Company, the Note Guarantors and The Bank of New York Mellon, a New York banking corporation, as trustee (the "Trustee"). To the extent there are no additional parties listed on Schedule I other than you, the term Representatives as used herein shall mean you as the Initial Purchasers, and the terms Representative and Initial Purchaser shall mean either the singular or plural as the context requires. The use of the neuter in this Agreement shall include the feminine and masculine wherever appropriate. Certain terms used herein are defined in Section 25 hereof.

The Securities will be secured in accordance with the terms of the New Intercreditor Agreement, by a first-priority security interest in the Collateral, but holding a Security will not grant its holders the right to direct the foreclosure or the right to foreclose on the Collateral.

The sale of the Securities to the Initial Purchasers will be made without registration of the Securities under the Act in reliance upon exemptions from the registration requirements of the Act.

In connection with the sale of the Securities, the Company has prepared a preliminary offering memorandum, dated March 14, 2013 (as amended or supplemented at the date hereof, including any and all exhibits thereto and any information incorporated by reference therein, collectively, the "Preliminary Memorandum"), and a final offering memorandum, dated March 14, 2013 (as amended or supplemented at the Execution Time, including any and all exhibits thereto and any information incorporated by reference therein, collectively, the "Final Memorandum"). Each of the Preliminary Memorandum and the Final Memorandum sets forth certain information concerning the Company and its subsidiaries and the Securities. The Company hereby confirms that it has authorized the use of the Disclosure Package, the Preliminary Memorandum and the Final Memorandum, and any amendment or supplement thereto, in connection with the offer and sale of the Securities by the Initial Purchasers. Unless stated to the contrary, any references herein to the terms "amend," "amendment" or "supplement" with respect to the Disclosure Package, the Preliminary Memorandum and the Final Memorandum shall be deemed to refer to and include any information filed under the Exchange Act subsequent to the Execution Time that is incorporated by reference therein.

1. Representations and Warranties. The Company and each of the Note Guarantors, jointly and severally, represent and warrant to each Initial Purchaser as set forth below in this Section 1:

(a) The Preliminary Memorandum, at the date thereof, did not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading. As of the date of the Final Memorandum, the Final Memorandum did not, and on the Closing Date, will not (and together with any amendment or supplement thereto, at the date thereof and at the Closing Date, will not) contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided, however, that the Company makes no representation or warranty as to the information contained in or omitted from the Preliminary Memorandum or the Final Memorandum, or any amendment or supplement thereto, in reliance upon and in conformity with information furnished in writing to the Company by or on behalf of the Initial Purchasers through the Representatives specifically for inclusion therein, it being understood and agreed that the only such information furnished by or on behalf of any Initial Purchaser consists of the information described as such in Section 8(b) hereof.

(b) The Disclosure Package, as of the Execution Time, does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not

misleading. The preceding sentence does not apply to statements in or omissions from the Disclosure Package based upon and in conformity with written information furnished to the Company by any Initial Purchaser through the Representatives specifically for use therein, it being understood and agreed that the only such information furnished by or on behalf of any Initial Purchaser consists of the information described as such in Section 8(b) hereof.

(c) None of the Company, any of the Note Guarantors or any person acting on its or their behalf has, directly or indirectly, (i) made offers or sales of any security, or solicited offers to buy, any security under circumstances that would require the registration of the Securities under the Act; or (ii) gave to any prospective purchaser of the Securities any written information concerning the offering of the Securities other than materials contained in the Disclosure Package, the Final Memorandum or any other offering materials prepared by or with the prior written consent of the Representatives.

(d) None of the Company, any of the Note Guarantors or any person acting on its or their behalf has: (i) engaged in any form of general solicitation or general advertising (within the meaning of Regulation D) in connection with any offer or sale of the Securities or (ii) engaged in any directed selling efforts (within the meaning of Regulation S) with respect to the Securities; and each of the Company, the Note Guarantors and each person acting on its or their behalf has complied with the offering restrictions requirement of Regulation S.

(e) The Securities satisfy the eligibility requirements of Rule 144A(d)(3) under the Act.

(f) No registration of the Securities under the Act is required for the offer and sale of the Securities to or by the Initial Purchasers in the manner contemplated herein, in the Disclosure Package and the Final Memorandum.

(g) Neither the Company nor any of the Note Guarantors is, and after giving effect to the offering and sale of the Securities and the application of the proceeds thereof as described in the Disclosure Package and the Final Memorandum, will not be, an “investment company” as defined in the Investment Company Act.

(h) Neither the Company nor any of the Note Guarantors has paid or agreed to pay to any person any compensation for soliciting another to purchase any securities of the Company or such Note Guarantor (except as contemplated in this Agreement).

(i) Neither the Company nor any of the Note Guarantors has taken, directly or indirectly, any action designed to or that has constituted or that might reasonably be expected to cause or result, under the Exchange Act or otherwise, in stabilization or manipulation of the price of any security of the Company or such Note Guarantor to facilitate the sale or resale of the Securities.

(j) The Company and each of the Note Guarantors have been duly organized and are validly existing and, if applicable, in good standing under the laws of the jurisdiction in which they are chartered or organized with power and authority to own or lease, as the case may be, and to operate their properties and conduct their businesses as described in the Disclosure Package and the Final Memorandum, and, if applicable, are duly qualified to do business as

foreign corporations and are in good standing under the laws of each jurisdiction that requires such qualification or such person is subject to no material liability or disability by reason of the failure to be so qualified.

(k) All the outstanding shares of capital stock or other equity interests of the Company have been duly authorized and validly issued and are fully paid and nonassessable, and, except as otherwise set forth in the Disclosure Package and the Final Memorandum, all outstanding shares of capital stock or other equity interests of the Company's significant subsidiaries are owned by the Company either directly or through wholly-owned and majority-owned subsidiaries, free and clear of any security interest, claim, lien or encumbrance, except for the security interest created under the Transaction Security Documents.

(l) (i) The statements in the Disclosure Package and the Final Memorandum under the headings "Important Federal Tax Considerations" and "Description of Notes;" and (ii) the statements in the Disclosure Package and the Final Memorandum under the heading "Regulatory Matters and Legal Proceedings"; insofar as they purport to describe the provisions of the laws and documents referred to therein, fairly summarize the matters therein described in all material respects.

(m) This Agreement has been duly authorized, executed and delivered by the Company and each of the Note Guarantors; the Indenture, including the Guarantees provided for therein by each Note Guarantor, has been duly authorized by the Company and each of the Note Guarantors and, assuming due authorization, execution and delivery thereof by the Trustee, when executed and delivered by the Company and each of the Note Guarantors, will constitute a legal, valid, binding instrument enforceable against the Company and each of the Note Guarantors in accordance with its terms (subject, as to the enforcement of remedies, to applicable bankruptcy, reorganization, insolvency, moratorium or other laws affecting creditors' rights generally from time to time in effect and to general principles of equity); and the Securities have been duly authorized by the Company, and, when executed, authenticated and issued in accordance with the provisions of the Indenture and delivered to and paid for by the Initial Purchasers, will have been duly executed and delivered by the Company and will constitute the legal, valid and binding obligations of the Company entitled to the benefits of the Indenture (subject, as to the enforcement of remedies, to applicable bankruptcy, reorganization, insolvency, moratorium or other laws affecting creditors' rights generally from time to time in effect and to general principles of equity).

(n) As of the Closing Date, the Securities are duly secured by a first-priority security interest in the Collateral on an equal and ratable basis with such indebtedness and securities as are described in the Disclosure Package and the Final Memorandum as being secured by a first-priority security interest in the Collateral; but holding a Security will not grant its holders the right to direct the foreclosure or the right to foreclose on the Collateral.

(o) The shares that constitute the Collateral are fully paid and non assessable and not subject to any option to purchase or similar rights and are free and clear of any lien, pledge, security interest or encumbrance, except for the security interest created or to be created under the Transaction Security Documents or as provided in the New Facilities Agreement. The constitutional documents of the companies whose shares are subject to the Collateral do not and

could not restrict or inhibit any transfer of those shares on creation or enforcement of the Collateral. There are no agreements in force which provide for the issue or allotment of, any share or loan capital of the Company or any of its subsidiaries (including any option or right of pre-emption or conversion) other than (i) pre-emptive rights arising under applicable law in favor of shareholders generally; and (ii) similar rights arising under any obligation in respect of any stock option plan, restricted stock plan or retirement plan which the Company or any of its subsidiaries customarily provides to its employees, consultants and directors.

(p) Under the Transaction Security Documents, the Collateral is granted over all the issued share capital in each of the Company and its subsidiaries whose shares are subject to the Collateral except:

(i) in the case of CEMEX Trademarks Holding Ltd., 0.4326% of the issued share capital, comprised of shares owned by CEMEX, Inc.;

(ii) in the case of each Mexican company whose shares are subject to the Collateral (except in the case of CEMEX México), the single share held by a minority shareholder that is either the Company or any of its subsidiaries;

(iii) in the case of CEMEX México, 0.1200% of the issued share capital, comprised of shares owned by CEMEX, Inc; and

(iv) in the case of CEMEX España:

(A) 0.2444% of the issued share capital, being shares owned by CEMEX España; and

(B) 0.1164% of the issued share capital, being shares owned by Persons that are not subsidiaries or officers of the Company.

(q) No consent, approval, authorization, filing with or order of any court or governmental agency or body is required in connection with the transactions contemplated herein or in the Indenture, except (i) such as may be required under the blue sky laws or any other state or foreign securities laws of any jurisdiction in which the Securities are offered and sold; (ii) for the approval of the Securities for listing on the Irish Stock Exchange; and (iii) for the notice to be given to the Mexican National Banking and Securities Commission ( *Comisión Nacional Bancaria y de Valores*) under Article 7 of the Securities Market Law, in respect of the issuance of the Securities.

(r) None of the execution and delivery of this Agreement, the Indenture, the issuance and sale of the Securities and the Transaction Security Documents or the consummation of any other of the transactions herein or therein contemplated, or the fulfillment of the terms hereof or thereof will conflict with, or result in a breach or violation or imposition of any lien, charge or encumbrance upon any property or assets of the Company or any of its subsidiaries (other than the Collateral), pursuant to (i) the charter or by-laws or comparable constituting documents of the Company or any of its subsidiaries; (ii) the terms of any indenture, contract, lease, mortgage, deed of trust, note agreement, loan agreement or other agreement, obligation, condition, covenant or instrument to which the Company or any of its subsidiaries is a party or

bound or to which its or their property is subject (including the New Facilities Agreement, the Transaction Security Documents and the New Intercreditor Agreement); or (iii) any statute, law, rule, regulation, judgment, order or decree of any court, regulatory body, administrative agency, governmental body, arbitrator or other authority having jurisdiction over the Company or any of its subsidiaries or any of its or their properties, which conflict, breach, violation or imposition would, in the case of clauses (ii) and (iii) above, either individually or in the aggregate with all other conflicts, breaches, violations and impositions referred to in this paragraph (r) (if any), have (x) a Material Adverse Effect (as defined below) or (y) a material adverse effect upon the transactions contemplated herein.

(s) The consolidated historical financial statements and schedules of the Company and its consolidated subsidiaries included or incorporated by reference in the Disclosure Package and the Final Memorandum present fairly in all material respects the financial condition, results of operations and cash flows of the Company and its consolidated subsidiaries as of the dates and for the periods indicated and have been prepared in conformity with IFRS applied on a consistent basis throughout the periods involved (except as otherwise noted therein); the selected financial data set forth under the caption "Selected Consolidated Financial Information" in the Disclosure Package and the Final Memorandum fairly present, on the basis stated in the Disclosure Package and the Final Memorandum, the information included therein.

(t) No action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its subsidiaries or their respective property is pending or, to the best knowledge of the Company, threatened that (i) could reasonably be expected to have a material adverse effect on the performance of this Agreement, the Indenture and the Transaction Security Documents, or the consummation of any of the transactions contemplated hereby or thereby or (ii) could reasonably be expected to have a material adverse effect on the condition (financial or otherwise), prospects, earnings, business or properties of the Company and its subsidiaries, taken as a whole, whether or not arising from transactions in the ordinary course of business (collectively the events described in (i) and (ii) above, a "Material Adverse Effect"), except as set forth in or contemplated in the Disclosure Package and the Final Memorandum (exclusive of any amendment or supplement thereto after the Execution Time).

(u) Each of the Company and its subsidiaries owns or leases all such properties as are necessary to the conduct of its operations as presently conducted except (i) for such properties the loss of which would not reasonably be expected to result in a Material Adverse Effect and (ii) as set forth in or contemplated in the Disclosure Package and the Final Memorandum (exclusive of any amendment or supplement after the Execution Time).

(v) Neither the Company nor any of its subsidiaries is in violation or default of (i) any provision of its charter or by-laws or comparable constituting documents; (ii) the terms of any indenture, contract, lease, mortgage, deed of trust, note agreement, loan agreement or other agreement, obligation, condition, covenant or instrument to which it is a party or bound or to which its property is subject (including the New Facilities Agreement, the Transaction Security Documents and the New Intercreditor Agreement); or (iii) any statute, law, rule, regulation, judgment, order or decree applicable to the Company or any of its subsidiaries of any court,

regulatory body, administrative agency, governmental body, arbitrator or other authority having jurisdiction over the Company or any of its subsidiaries or any of their respective properties, as applicable, except for such violations or defaults which, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect, and except as set forth in or contemplated in the Disclosure Package and the Final Memorandum (exclusive of any amendment or supplement thereto after the Execution Time).

(w) KPMG Cárdenas Dosal, S.C., which has audited certain financial statements of the Company and its consolidated subsidiaries and delivered its report with respect to the audited consolidated financial statements incorporated by reference in the Disclosure Package and the Final Memorandum, are independent auditors with respect to the Company in accordance with local auditing standards, which are substantially the same as those contemplated by Rule 10A of the Code of Professional Conduct of the American Institute of Certified Public Accountants.

(x) There are no stamp or other issuance or transfer taxes or duties or other similar fees or charges required to be paid in connection with the execution and delivery of this Agreement or the issuance or sale by the Company of the Securities.

(y) The Company and each of its subsidiaries have filed all applicable tax returns that are required to be filed by them or have requested extensions of the period applicable for the filing of such returns (except in any case in which the failure so to file would not have a Material Adverse Effect and except as set forth in or contemplated in the Disclosure Package and the Final Memorandum (exclusive of any amendment or supplement thereto after the Execution Time)) and have paid all taxes required to be paid by them and any other assessment, fine or penalty levied against them, to the extent that any of the foregoing is due and payable, except for any such tax, assessment, fine or penalty that is currently being contested in good faith or as would not have a Material Adverse Effect and except as set forth in or contemplated in the Disclosure Package and the Final Memorandum (exclusive of any amendment or supplement thereto after the Execution Time).

(z) No labor problem or dispute with the employees of the Company or any of its subsidiaries exists or is threatened or imminent, and the Company is not aware of any existing or imminent labor disturbance by the employees of any of its subsidiaries' principal suppliers, contractors or customers, except as would not have a Material Adverse Effect and except as set forth in or contemplated in the Disclosure Package and the Final Memorandum (exclusive of any amendment or supplement thereto after the Execution Time).

(aa) No subsidiary of the Company is currently prohibited, directly or indirectly, from paying any dividends to the Company, from making any other distribution on such subsidiary's capital stock or ownership interest, from repaying to the Company any loans or advances to such subsidiary from the Company or from transferring any of such subsidiary's property or assets to the Company or any other subsidiary of the Company, except for contractual prohibitions provided in joint venture or shareholders' agreements to which the Company is a party (none of which prohibitions are material individually or in the aggregate), and except as described in or contemplated in the Disclosure Package or the Final Memorandum (in each case, exclusive of any amendment or supplement thereto after the Execution Time).

(bb) The Company and each of its subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are prudent and customary in the businesses in which they are engaged; all policies of insurance and fidelity or surety bonds insuring the Company or any of its subsidiaries or any of their respective businesses, assets, employees, officers and directors are in full force and effect; the Company and its subsidiaries are in compliance in all material respects with the terms of such policies and instruments; there are no material claims by the Company or any of its subsidiaries under any such policy or instrument as to which any insurance company is denying liability or defending under a reservation of rights clause; neither the Company nor any of its subsidiaries has been refused any material insurance coverage sought or applied for; and neither the Company nor any of its subsidiaries has reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that would not have a Material Adverse Effect except as set forth in or contemplated in the Disclosure Package and the Final Memorandum (exclusive of any amendment or supplement thereto after the Execution Time).

(cc) The Company and each of its subsidiaries possess all licenses, certificates, permits and other authorizations issued by all applicable authorities necessary to conduct their respective businesses, except to the extent that the failure to have such license, certificate, permit or authorization would not reasonably be expected to have a Material Adverse Effect and except, as described in or contemplated in the Disclosure Package or the Final Memorandum (exclusive of any amendment or supplement thereto after the Execution Time), and neither the Company nor any of its subsidiaries have received any notice of proceedings relating to the revocation or modification of any such certificate, authorization or permit which, singly or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would have a Material Adverse Effect, except as set forth in or contemplated in the Disclosure Package and the Final Memorandum (exclusive of any amendment or supplement thereto after the Execution Time).

(dd) The Company and each of its subsidiaries maintain a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorizations; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with IFRS and to maintain asset accountability; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. The Company and each of its subsidiaries' internal controls over financial reporting are effective, and neither the Company nor any of its subsidiaries is aware of any material weakness in its internal control over financial reporting. The Company and each of its subsidiaries maintains "disclosure controls and procedures" (as such term is defined in Rule 13a-15(e) under the Exchange Act) and such disclosure controls and procedures are effective.

(ee) Each of the Company and its subsidiaries (i) is in compliance with any and all applicable laws and regulations relating to the protection of human health and safety, the environment or hazardous or toxic substances or wastes, pollutants or contaminants ("Environmental Laws"); (ii) has received and is in compliance with all permits, licenses or other approvals required under applicable Environmental Laws to conduct its businesses; and (iii) has not received notice of any actual or potential liability under any Environmental Law, except

where such non-compliance with Environmental Laws, failure to receive required permits, licenses or other approvals, or liability would not, individually or in the aggregate, have a Material Adverse Effect, except as set forth in or contemplated in the Disclosure Package and the Final Memorandum (exclusive of any amendment or supplement thereto after the Execution Time). Except as set forth in the Disclosure Package and the Final Memorandum, neither the Company nor any of its subsidiaries has been named as a "potentially responsible party" under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

(ff) In the ordinary course of its business, the Company periodically reviews the effect of Environmental Laws on the business, operations and properties of the Company and its subsidiaries, in the course of which it identifies and evaluates associated costs and liabilities (including, without limitation, any capital or operating expenditures required for clean-up, closure of properties or compliance with Environmental Laws, or any permit, license or approval, any related constraints on operating activities and any potential liabilities to third parties); on the basis of such review, the Company has reasonably concluded that such associated costs and liabilities would not, singly or in the aggregate, have a Material Adverse Effect, except as set forth in or contemplated in the Disclosure Package and the Final Memorandum (exclusive of any amendment or supplement thereto after the Execution Time).

(gg) The operations of the Company and each of its subsidiaries are and have been conducted at all times in compliance with applicable financial recordkeeping and reporting requirements and the money laundering statutes and the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the "Money Laundering Laws") and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its subsidiaries with respect to the Money Laundering Laws is pending or, to the best knowledge of the Company, threatened.

(hh) None of the Company, any of its subsidiaries or, to the knowledge of the Company, any director, officer, agent, employee or Affiliate of the Company or any of its subsidiaries is currently the subject of any sanctions administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury ("OFAC"); and the Company will not directly or indirectly use the proceeds of the offering of the Securities hereunder, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person or entity, for the purpose of financing the activities of any person currently the subject of any U.S. sanctions administered by OFAC. There is and has been no failure on the part of the Company and or of the Company's directors or officers, in their capacities as such, to comply with any provision of the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated in connection therewith (the "Sarbanes-Oxley Act"), including Section 402 relating to loans and Sections 302 and 906 relating to certifications.

(ii) None of the Company, any of its subsidiaries nor, to the knowledge of the Company, any director, officer, agent, employee or Affiliate of the Company is aware of or has taken any action, directly or indirectly, that would result in a violation by such persons of the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (the "FCPA"), including, without limitation, making use of the mails or any means or instrumentality

of interstate commerce corruptly in furtherance of an offer, payment, promise to pay or authorization of the payment of any money, or other property, gift, promise to give, or authorization of the giving of anything of value to any "foreign official" (as such term is defined in the FCPA) or any foreign political party or official thereof or any candidate for foreign political office, in contravention of the FCPA; and the Company, its subsidiaries and, to the knowledge of the Company, its Affiliates have conducted their respective businesses in compliance with the FCPA and have instituted and maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith.

(jj) On the Closing Date, after giving effect to the offering of the Securities, the Company and its subsidiaries, on a consolidated basis, will be Solvent.

(kk) Any certificate signed by any officer of the Company or the Note Guarantors and delivered to the Representatives or counsel for the Initial Purchasers in connection with the offering of the Securities shall be deemed a representation and warranty by the Company and each of the Note Guarantors, as to matters covered thereby, to each Initial Purchaser.

2. Purchase and Sale. Subject to the terms and conditions and in reliance upon the representations and warranties herein set forth, the Company agrees to sell to each Initial Purchaser, and each Initial Purchaser agrees, severally and not jointly, to purchase from the Company, at a purchase price of 99.40% of the principal amount thereof, plus accrued interest, if any, from March 25, 2013 to the Closing Date, the principal amount of Securities set forth opposite such Initial Purchaser's name in Schedule I hereto. The Initial Purchasers may acquire the Securities through any of their Affiliates.

3. Delivery and Payment. Delivery of and payment for the Securities shall be made at 10:00 A.M., New York City time, on March 25, 2013, or at such time on such later date not more than three Business Days after the foregoing date as the Representatives shall designate, which date and time may be postponed by agreement between the Representatives and the Company or as provided in Section 9 hereof (such date and time of delivery and payment for the Securities being herein called the "Closing Date"). Delivery of the Securities shall be made to the Representatives for the respective accounts of the several Initial Purchasers against payment by the several Initial Purchasers through the Representatives of the purchase price thereof to or upon the order of the Company by wire transfer payable in same-day funds to the account specified by the Company. Delivery of the Securities shall be made through the facilities of The Depository Trust Company ("DTC") and any other relevant clearing system unless the Representatives shall otherwise instruct.

4. Offering by Initial Purchasers. (a) Each Initial Purchaser acknowledges that the Securities have not been and will not be registered under the Act and may not be offered or sold within the United States or to, or for the account or benefit of, U.S. persons, except pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Act.

(b) Each Initial Purchaser, severally and not jointly, represents and warrants to and agrees with the Company that:

(i) it has not offered or sold, and will not offer or sell, any Securities within the United States or to, or for the account or benefit of, U.S. persons (x) as part of their distribution at any time or (y) otherwise until 40 days after the later of the commencement of the offering and the date of the closing of the offering except:

(A) to those it reasonably believes to be "qualified institutional buyers" (as defined in Rule 144A under the Act) or

(B) in accordance with Rule 903 of Regulation S;

(ii) neither it nor any person acting on its behalf has made or will make offers or sales of the Securities in the United States by means of any form of general solicitation or general advertising (within the meaning of Regulation D);

(iii) in connection with each sale pursuant to Section 4(b)(i)(A), it has taken or will take reasonable steps to ensure that the purchaser of such Securities is aware that such sale may be made in reliance on Rule 144A;

(iv) neither it, nor any of its Affiliates nor any person acting on its or their behalf has engaged or will engage in any directed selling efforts (within the meaning of Regulation S) with respect to the Securities;

(v) it is an "accredited investor" (as defined in Rule 501(a) of Regulation D);

(vi) it has not entered and will not enter into any contractual arrangement with any distributor (within the meaning of Regulation S) with respect to the distribution of the Securities, except with its Affiliates or with the prior written consent of the Company;

(vii) it has complied and will comply with the offering restrictions requirement of Regulation S;

(viii) at or prior to the confirmation of sale of Securities (other than a sale of Securities pursuant to Section 4(b)(i)(A) of this Agreement), it shall have sent to each distributor, dealer or person receiving a selling concession, fee or other remuneration that purchases Securities from it during the distribution compliance period (within the meaning of Regulation S) a confirmation or notice to substantially the following effect:

> "The Securities covered hereby have not been registered under the U.S. Securities Act of 1933 (the "Act") and may not be offered or sold within the United States or to, or for the account or benefit of, U.S. persons (i) as part of their distribution at any time or (ii) otherwise until 40 days after the later of the commencement of the offering and the date of closing of the offering, except in either case in accordance with Regulation S or Rule 144A under the Act. Terms used in this paragraph have the meanings given to them by Regulation S.";

(ix) it has only communicated or caused to be communicated and will only communicate or cause to be communicated any invitation or inducement to engage in investment activity (within the meaning of Section 21 of the Financial Services and Markets Act 2000 (the "FSMA")) received by it in connection with the issue or sale of any Securities, in circumstances in which Section 21(1) of the FSMA does not apply to the Company or the Note Guarantors;

(x) it has complied and will comply with all applicable provisions of the FSMA with respect to anything done by it in relation to the Securities in, from or otherwise involving the United Kingdom; and

(xi) in relation to each Member State of the European Economic Area which has implemented the Prospectus Directive (each, a "Relevant Member State"), with effect from and including the date on which the Prospectus Directive is implemented in that Relevant Member State it has not made and will not make an offer to the public of any Securities which are the subject of the offering contemplated by this Agreement in that Relevant Member State, except that it may make an offer to the public in that Relevant Member State of any Securities at any time under the following exemptions under the Prospectus Directive, if they have been implemented in that Relevant Member State:

(A) to any legal entity which is a qualified investor as defined in the Prospectus Directive;

(B) to fewer than 100 or, if the Relevant Member State has implemented the relevant provision of the 2010 PD Amending Directive, 150 natural or legal persons (other than qualified investors as defined in the Prospectus Directive), as permitted under the Prospectus Directive, subject to obtaining the prior consent of the Representatives for any such offer; or

(C) in any other circumstances falling within Article 3(2) of the Prospectus Directive;

provided that no such offer of Securities shall result in a requirement for the publication by the Company or any Initial Purchaser of a prospectus pursuant to Article 3 of the Prospectus Directive.

For the purposes of this provision, the expression "an offer to the public" in relation to any Securities in any Relevant Member State means the communication in any form and by any means of sufficient information on the terms of the offer and the Securities to be offered so as to enable an investor to decide to purchase or subscribe for any Securities, as the same may be varied in that Relevant Member State by any measure implementing the Prospectus

Directive in that Relevant Member State; and the expression "Prospectus Directive" means Directive 2003/71/EC (and amendments thereto, including the 2010 PD Amending Directive, to the extent implemented in the Relevant Member State) and includes any relevant implementing measure in each Relevant Member State; and the expression "2010 PD Amending Directive" means Directive 2010/73/EU.

5. Agreements. The Company and the Note Guarantors agree, jointly and severally, in each case with each Initial Purchaser that:

(a) The Company will furnish to each Initial Purchaser and to counsel for the Initial Purchasers, without charge, during the Distribution Period (as defined in Section 5(c) below), as many copies of the materials contained in the Disclosure Package and the Final Memorandum and any amendments and supplements thereto as they may reasonably request.

(b) The Company will prepare a final term sheet, containing solely a description of final terms of the Securities and the offering thereof, in the form approved by you attached as Schedule II hereto (the "Final Term Sheet").

(c) The Company will not amend or supplement the Disclosure Package or the Final Memorandum other than by filing documents under the Exchange Act that are incorporated by reference therein, without the prior written consent of the Representatives, which consent, following the Closing Date, may not be unreasonably withheld; provided, however, that prior to the earlier of (i) the completion of the distribution of the Securities by the Initial Purchasers (as determined by the Representatives and communicated to the Company) and (ii) twelve (12) months after the date of the Final Memorandum (the "Distribution Period"), the Company will not file any document under the Exchange Act that is incorporated by reference in the Disclosure Package or the Final Memorandum unless, prior to such proposed filing, the Company has furnished the Representatives with a copy of such document for their review and the Representatives have not reasonably objected to the filing of such document. The Company will promptly advise the Representatives when any document filed under the Exchange Act that is incorporated by reference in the Disclosure Package or the Final Memorandum shall have been filed with the Commission.

(d) If at any time during the Distribution Period, any event occurs as a result of which the Disclosure Package or the Final Memorandum, as then amended or supplemented, would include any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made or the circumstances then prevailing, not misleading, or if it should be necessary to amend or supplement the Disclosure Package or the Final Memorandum to comply with applicable law, the Company will promptly (i) notify the Representatives of any such event; (ii) subject to the requirements of Section 5(c), prepare an amendment or supplement that will correct such statement or omission or effect such compliance; and (iii) supply any supplemented or amended Disclosure Package or Final Memorandum to the several Initial Purchasers and counsel for the Initial Purchasers without charge in such quantities as they may reasonably request.

(e) Without the prior written consent of the Representatives, the Company and each of the Note Guarantors will not give to any prospective purchaser of the Securities any written information concerning the offering of the Securities other than materials contained in the Disclosure Package, the Final Memorandum or any other offering materials prepared by or with the prior written consent of the Representatives.

(f) The Company will arrange, if necessary, for the qualification of the Securities for sale by the Initial Purchasers under the laws of such jurisdictions as the Representatives may designate (including Japan and certain provinces of Canada) and will maintain such qualifications in effect so long as required for the sale of the Securities; provided that in no event shall the Company be obligated to qualify to do business in any jurisdiction where it is not now so qualified or to take any action that would subject it to service of process in suits, other than those arising out of the offering or sale of the Securities, in any jurisdiction where it is not now so subject. The Company and each of the Note Guarantors will promptly advise the Representatives of the receipt by any of them of any notification with respect to the suspension of the qualification of the Securities for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose.

(g) As required under Article 7 of the Mexican Securities Market Law ( *Ley del Mercado de Valores*), the Company will, no later than one Business Day after the Closing Date, notify the Mexican National Banking and Securities Commission ( *Comisión Nacional Bancaria y de Valores*) of the offering of the Securities as described herein and in the Disclosure Package and in the Final Memorandum.

(h) The Company will not, and will not permit any of its Affiliates to, resell any Securities that have been acquired by any of them, except (i) in a transaction registered under the Act or (ii) in a transaction exempt from the registration requirements under the Act if such transaction does not cause the holding periods under Rule 144 under the Act to be extended for other holders of Securities.

(i) None of the Company, its Affiliates, or any person acting on its or their behalf will, directly or indirectly, make offers or sales of any security, or solicit offers to buy any security, under circumstances that would require the registration of the Securities under the Act.

(j) None of the Company, its Affiliates, or any person acting on its or their behalf will engage in any directed selling efforts (within the meaning of Regulation S) with respect to the Securities; and each of them will comply with the offering restrictions requirement of Regulation S.

(k) None of the Company, its Affiliates, or any person acting on its or their behalf will engage in any form of general solicitation or general advertising (within the meaning of Regulation D) in connection with any offer or sale of the Securities in the United States.

(l) For so long as any of the Securities are outstanding and are “restricted securities” within the meaning of Rule 144(a)(3) under the Act, the Company, during any period in which it is not subject to and in compliance with Section 13 or 15(d) of the Exchange Act or it is not exempt from such reporting requirements pursuant to and in compliance with Rule

12g3-2(b) under the Exchange Act, will provide to each holder of such restricted securities and to each prospective purchaser (as designated by such holder) of such restricted securities, upon the request of such holder or prospective purchaser, any information required to be provided by Rule 144A(d)(4) under the Act. This covenant is intended to be for the benefit of the holders, and the prospective purchasers designated by such holders, from time to time of such restricted securities.

(m) The Company will cooperate with the Representatives and use its best efforts to permit the Securities to be eligible for clearance and settlement through DTC, Euroclear Bank S.A./N.V. ("Euroclear") and Clearstream Banking, S.A. ("Clearstream"), as applicable, and any other relevant clearing system.

(n) Each of the Securities will bear, to the extent applicable, the legend contained in "Transfer Restrictions" in the Disclosure Package and the Final Offering Memorandum for the time period and upon the other terms stated therein.

(o) Neither the Company nor any of the Note Guarantors will, for a period of 30 days following the Execution Time, without the prior written consent of the Representatives, which consent shall not be unreasonably withheld, offer, sell, contract to sell, pledge or otherwise dispose of or enter into any transaction which is designed to, or might reasonably be expected to, result in the disposition (whether by actual disposition or effective economic disposition due to cash settlement or otherwise) by the Company or any of the Note Guarantors or any person in privity with the Company or any of the Note Guarantors, directly or indirectly, or announce the offering of, any debt securities in the international capital markets that are issued or guaranteed by the Company or any of the Note Guarantors (other than the Securities); provided, however, that the foregoing will not restrict the ability of the Company or any of the Note Guarantors to offer, sell, contract to sell, pledge or otherwise dispose of or announce an offering of securities, the proceeds of which are used to fund the repurchase or retirement of the CEMEX España Euro Notes, an offer to exchange new securities for the CEMEX España Euro Notes, an offering of *certificados bursátiles* in the local Mexican market and to enter into securitization transactions.

(p) The Company will not take, directly or indirectly, any action designed to, or that has constituted or that might reasonably be expected to, cause or result, under the Exchange Act or otherwise, in stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Securities.

(q) The Company will, for a period of twelve months following the Execution Time, furnish to the Representatives (i) all reports or other communications (financial or other) generally made available to its shareholders, and deliver such reports and communications to the Representatives as soon as they are available, unless such documents are furnished to or filed with the Commission or any securities exchange on which any class of securities of the Company is listed and generally made available to the public and (ii) such additional information concerning the business and financial condition of the Company as the Representatives may from time to time reasonably request (such statements to be on a consolidated basis to the extent the accounts of the Company and its subsidiaries are consolidated in reports furnished to its shareholders).

(r) The Company will comply with all applicable securities and other laws, rules and regulations, including, without limitation, the Sarbanes-Oxley Act, and use its best efforts to cause the Company's directors and officers, in their capacities as such, to comply with such laws, rules and regulations, including, without limitation, the provisions of the Sarbanes-Oxley Act.

(s) The Company and the Note Guarantors agree, jointly and severally, to pay the costs and expenses relating to the following matters: (i) the preparation of the Indenture and the issuance of the Securities and the fees of the Trustee; (ii) the preparation, printing or reproduction of the materials contained in the Disclosure Package and the Final Memorandum and each amendment or supplement to either of them; (iii) the printing (or reproduction) and delivery (including postage, air freight charges and charges for counting and packaging) of such copies of the materials contained in the Disclosure Package and the Final Memorandum, and all amendments or supplements to either of them, as may, in each case, be reasonably requested for use in connection with the offering and sale of the Securities; (iv) the preparation, printing, authentication, issuance and delivery of the Securities; (v) any stamp or transfer taxes in connection with the original issuance and sale of the Securities; (vi) the printing (or reproduction) and delivery of this Agreement, any blue sky memorandum and all other agreements or documents printed (or reproduced) and delivered in connection with the offering of the Securities; (vii) any registration or qualification of the Securities for offer and sale under the securities or blue sky laws of the several states, Japan, the provinces of Canada and any other jurisdictions specified pursuant to Section 5(f) (including filing fees and the reasonable fees and expenses of counsel for the Initial Purchasers relating to such registration and qualification); (viii) the transportation and other expenses incurred by or on behalf of each of the Company's representatives in connection with presentations to prospective purchasers of the Securities; (ix) the fees and expenses of the Company's accountants and the fees and expenses of counsel (including local and special counsel) for the Company and the Note Guarantors; (x) fees and expenses incurred in connection with listing the Securities on the Irish Stock Exchange; (xi) the fees and expenses incurred in connection with the rating of the Securities by Standard & Poor's and Fitch Ratings; and (xii) all other costs and expenses incident to the performance by the Company and the Note Guarantors of their obligations hereunder.

(t) The Company and the Note Guarantors agree, jointly and severally, to reimburse the Representatives, on behalf of the Initial Purchasers, for all their reasonable expenses incurred in connection with the sale of the Securities provided for herein (including, without limitation, reasonable fees, disbursements and expenses of legal advisors as to U.S. and Mexican law for the Initial Purchasers). The reimbursement obligations of the Company and the Note Guarantors in respect of the legal advisors for the Initial Purchasers pursuant to this Section 5(s) and Section 7 hereof will be limited to U.S.$250,000 (excluding reimbursements in respect of disbursements and expenses of such legal advisors).

(u) The Company will apply the aggregate net proceeds from the offering of the Securities in the manner specified in the Disclosure Package and the Final Memorandum under the heading "Use of Proceeds".

6. Conditions to the Obligations of the Initial Purchasers. The obligations of the Initial Purchasers to purchase the Securities shall be subject to the accuracy of the representations and warranties of the Company and the Note Guarantors contained herein at the

Execution Time and the Closing Date, to the accuracy of the statements of the Company and the Note Guarantors made in any certificates pursuant to the provisions hereof, to the performance by the Company and the Note Guarantors to their respective obligations hereunder and to the following additional conditions:

(a) The Company shall have requested and caused Skadden, Arps, Slate, Meagher & Flom LLP, special U.S. counsel for the Company, to furnish to the Representatives its opinion, tax opinion and negative assurance letter, each dated as of the Closing Date and addressed to the Representatives, substantially in the form of Schedule III attached hereto.

(b) The Company shall have requested and caused Mr. Ramiro G. Villarreal, General Counsel for the Company, to furnish to the Representatives his opinion, subject to certain applicable exceptions, qualifications and conditions acceptable to the Representatives, dated as of the Closing Date and addressed to the Representatives, substantially in the form of Schedule IV attached hereto.

(c) The Company shall have requested and caused Mr. Juan Pelegrí y Girón, General Counsel for CEMEX España, to furnish to the Representatives its opinion, subject to certain applicable exceptions, qualifications and conditions acceptable to the Representatives, dated as of the Closing Date and addressed to the Representatives, substantially in the form of Schedule V attached hereto

(d) The Company shall have requested and caused Warendorf, special Dutch counsel to the Company and the Dutch Note Guarantors, to furnish to the Representatives its opinion, subject to certain applicable exceptions, qualifications and conditions acceptable to the Representatives, dated as of the Closing Date and addressed to the Representatives, substantially in the form of Schedule VI attached hereto.

(e) The Company shall have requested and caused GHR Rechtsanwälte AG, special Swiss counsel to the Company and CEMEX Research, to furnish to the Representatives its opinion, subject to certain applicable exceptions, qualifications and conditions acceptable to the Representatives, dated as of the Closing Date and addressed to the Representatives, substantially in the form of Schedule VII attached hereto.

(f) The Company shall have requested and caused Skadden, Arps, Slate, Meagher & Flom, LLP, special French counsel to the Company and CEMEX France, to furnish to the Representatives its opinion, subject to certain applicable exceptions, qualifications and conditions acceptable to the Representatives, dated as of the Closing Date and addressed to the Representatives, substantially in the form of Schedule VIII attached hereto.

(g) The Company shall have requested and caused Skadden, Arps, Slate, Meagher & Flom, LLP, special English counsel to the Company and CEMEX UK, to furnish to the Representatives its opinion, subject to certain applicable exceptions, qualifications and conditions acceptable to the Representatives, dated as of the Closing Date and addressed to the Representatives, substantially in the form of Schedule IX attached hereto.

(h) The Company shall have requested and caused Arthur Cox, special Irish counsel for the Company, to furnish such opinion or opinions, dated the Closing Date, providing,

among other related matters as the Representatives may reasonably require, that the issuance and sale of the Securities as provided in the Disclosure Package and the Final Memorandum, constitutes a public offering under the laws of the Republic of Ireland, and the Company shall have furnished to such counsel such documents as they request for the purpose of enabling them to pass upon such matters; provided, however, that prior to the delivery of such opinion on the Closing Date, the Representatives agree that one of them shall furnish a representation letter to Arthur Cox to the effect that it has offered the Securities to a number of investors in the Republic of Ireland.

(i) The Representatives shall have received from Cleary Gottlieb Steen & Hamilton LLP and Ritch Mueller, S.C., counsel for the Initial Purchasers, such opinion or opinions, dated the Closing Date and addressed to the Representatives, with respect to the issuance and sale of the Securities, the Indenture, the Disclosure Package, the Final Memorandum (as amended or supplemented as of the Closing Date) and other related matters as the Representatives may reasonably require, and the Company and the Note Guarantors shall have furnished to such counsel such documents as they request for the purpose of enabling them to pass upon such matters.

(j) The Company and each Note Guarantor shall have furnished to the Representatives a certificate, signed by an executive officer of each of the Company and the Note Guarantors, dated as of the Closing Date, substantially in the form of Schedule X attached hereto.

(k) At the Execution Time and at the Closing Date, the Company shall have requested and caused KPMG Cárdenas Dosal, S.C. to furnish to the Representatives, letters, dated respectively as of the Execution Time and as of the Closing Date, substantially in the form of Schedule XI attached hereto.

(l) Any and all applicable amendments, supplements or modifications to the New Facilities Agreement, any of the Transaction Security Documents, the New Intercreditor Agreement and any other documents derived therefrom and in connection therewith, as applicable, shall have been made and shall constitute legal, valid and binding obligations to each party thereof.

(m) The Trustee shall be entitled to all rights and benefits provided in the New Intercreditor Agreement as an Additional Notes Trustee (as such term is defined in the New Intercreditor Agreement) and the Initial Purchasers, and/or each of the subsequent holders of the Securities, shall be entitled to all rights and benefits provided therein as Additional Notes Creditors (as such term is defined in the New Intercreditor Agreement).

(n) Subsequent to the Execution Time or, if earlier, the dates as of which information is given in the Disclosure Package (exclusive of any amendment or supplement thereto after the Execution Time) and the Final Memorandum (exclusive of any amendment or supplement thereto after the Execution Time), there shall not have been (i) any change, increase or decrease specified in the letter or letters referred to in paragraph (k) of this Section 6; or (ii) any change, or any development involving a prospective change, in or affecting the condition (financial or otherwise), prospects, earnings, business or properties

of the Company and its subsidiaries taken as a whole, whether or not arising from transactions in the ordinary course of business, except as set forth in or contemplated in the Disclosure Package and the Final Memorandum (exclusive of any amendment or supplement thereto after the Execution Time), the effect of which, in any case referred to in clause (i) or (ii) above, is, in the sole judgment of the Representatives, so material and adverse as to make it impractical or inadvisable to proceed with the offering or delivery of the Securities as contemplated in the Disclosure Package and the Final Memorandum (exclusive of any amendment or supplement thereto after the Execution Time).

(o) The Securities shall be eligible for clearance and settlement through DTC, Euroclear and Clearstream, as applicable, and any other relevant clearing system.

(p) Subsequent to the Execution Time, there shall not have been any decrease in the rating of any of the Company's or any of its subsidiaries' debt securities by Standard & Poor's and Fitch Ratings or any notice given of any intended or potential decrease in any such rating. For the avoidance of doubt, any reiteration or reissuance of the outlook of a rating agency that was in place at the Execution Time shall not be considered a notice of an intended or potential decrease in a rating.

(q) Prior to the Closing Date, the Company and the Note Guarantors shall have furnished to the Representatives such further information, certificates and documents as the Representatives may reasonably request.

If any of the conditions specified in this Section 6 shall not have been fulfilled when and as provided in this Agreement, or if any of the opinions and certificates mentioned above or elsewhere in this Agreement shall not be reasonably satisfactory in form and substance to the Representatives and counsel for the Initial Purchasers, this Agreement and all obligations of the Initial Purchasers hereunder may be cancelled at, or at any time prior to, the Closing Date by the Representatives. Notice of such cancellation shall be given to the Company in writing or by telephone or facsimile confirmed in writing.

The documents required to be delivered under this Section 6 will be delivered at the office of counsel for the Initial Purchasers, at Cleary Gottlieb Steen & Hamilton LLP, One Liberty Plaza, New York, New York, 10006, Attention: Duane McLaughlin, Esq., on the Closing Date.

7. Reimbursement of Expenses. If the sale of the Securities provided for herein is not consummated because any condition to the obligations of the Initial Purchasers set forth in Section 6 hereof is not satisfied, because of any termination pursuant to Section 10 hereof or because of any refusal, inability or failure on the part of the Company or the Note Guarantors to perform any agreement herein or comply with any provision hereof other than by reason of a default by any of the Initial Purchasers, the Company and the Note Guarantors, jointly and severally, agree to reimburse the Initial Purchasers through the Representatives on demand for all expenses (including reasonable fees and disbursements of counsel) that shall have been incurred by them in connection with the proposed purchase and sale of the Securities.

8. Indemnification and Contribution. (a) The Company and the Note Guarantors, jointly and severally, agree to indemnify and hold harmless each Initial Purchaser, the directors, officers, employees, Affiliates and agents of each Initial Purchaser and each person who controls any Initial Purchaser within the meaning of either the Act or the Exchange Act against any and all losses, claims, damages or liabilities, joint or several, to which they or any of them may become subject under the Act, the Exchange Act or other U.S. federal or state statutory law or regulation, at common law or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in the Preliminary Memorandum, the Final Term Sheet, the Final Memorandum, any Issuer Written Information, or any other written information, including any non-deal and deal road show presentations (electronic or otherwise) used by or on behalf of the Company in connection with the offer or sale of the Securities, or in any amendment or supplement thereto, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, and agrees to reimburse each such indemnified party, as incurred, for any legal or other expenses reasonably incurred by it in connection with investigating or defending any such loss, claim, damage, liability or action; provided, however, that neither the Company nor any of the Note Guarantors will be liable in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon any such untrue statement or alleged untrue statement or omission or alleged omission made in the Preliminary Memorandum, the Final Term Sheet or the Final Memorandum, or in any amendment thereof or supplement thereto, in reliance upon and in conformity with the written information provided in section 8(b) hereof furnished to the Company by or on behalf of any Initial Purchaser through the Representatives specifically for inclusion therein. This indemnity agreement will be in addition to any liability that the Company or any of the Note Guarantors may otherwise have.

(b) Each Initial Purchaser severally, and not jointly, agrees to indemnify and hold harmless the Company, each of its directors, each of its officers, and each person who controls the Company within the meaning of either the Act or the Exchange Act, to the same extent as the foregoing indemnity to each Initial Purchaser, but only with reference to written information relating to such Initial Purchaser furnished to the Company by or on behalf of such Initial Purchaser through the Representatives specifically for inclusion in the Preliminary Memorandum or the Final Memorandum (or in any amendment or supplement thereto). This indemnity agreement will be in addition to any liability that any Initial Purchaser may otherwise have. The Company acknowledges that (i) the statements set forth in the last paragraph of the cover page regarding delivery of the Securities and (ii) under the heading “Plan of Distribution,” (A) the table of Initial Purchasers, and (B) the ninth and tenth paragraphs in the Disclosure Package and the Final Memorandum constitute the only information furnished in writing by or on behalf of the Initial Purchasers for inclusion in the Disclosure Package or the Final Memorandum or in any amendment or supplement thereto.

(c) Promptly after receipt by an indemnified party under this Section 8 of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against the indemnifying party under this Section 8, notify the indemnifying party in writing of the commencement thereof; but the failure so to notify the indemnifying party (i) will not relieve it from liability under paragraph (a) or (b) above unless and to the extent it did not

otherwise learn of such action and such failure results in the forfeiture by the indemnifying party of substantial rights and defenses and (ii) will not, in any event, relieve the indemnifying party from any obligations to any indemnified party other than the indemnification obligation provided in paragraph (a) or (b) above. The indemnifying party shall be entitled to appoint counsel (including local counsel) of the indemnifying party's choice at the indemnifying party's expense to represent the indemnified party in any action for which indemnification is sought (in which case the indemnifying party shall not thereafter be responsible for the fees and expenses of any separate counsel, other than local counsel if not appointed by the indemnifying party, retained by the indemnified party or parties except as set forth below); provided, however, that such counsel shall be satisfactory to the indemnified party. Notwithstanding the indemnifying party's election to appoint counsel (including local counsel) to represent the indemnified party in an action, the indemnified party shall have the right to employ separate counsel (including local counsel), and the indemnifying party shall bear the reasonable fees, costs and expenses of such separate counsel if (i) the use of counsel chosen by the indemnifying party to represent the indemnified party would present such counsel with a conflict of interest; (ii) the actual or potential defendants in, or targets of, any such action include both the indemnified party and the indemnifying party and the indemnified party shall have reasonably concluded that there may be legal defenses available to it that are different from or additional to those available to the indemnifying party and/or other indemnified parties; (iii) the indemnifying party shall not have employed counsel satisfactory to the indemnified party to represent the indemnified party within a reasonable time after notice of the institution of such action; or (iv) the indemnifying party shall authorize the indemnified party to employ separate counsel at the expense of the indemnifying party. If none of the conditions in clauses (i) through (iv) in the preceding sentence are satisfied as to any indemnified party, it is understood that the indemnifying party shall, in connection with any one such action be liable for the reasonable fees and expenses of only one separate firm of attorneys in each jurisdiction (and in addition to any local counsel) at any time (other than reasonable overlapping of engagements) for all such indemnified parties. An indemnifying party will not, without the prior written consent of the indemnified parties, settle or compromise or consent to the entry of any judgment with respect to any pending or threatened claim, action, suit or proceeding in respect of which indemnification or contribution may be sought hereunder (whether or not the indemnified parties are actual or potential parties to such claim or action) unless such settlement, compromise or consent includes an unconditional release of each indemnified party from all liability arising out of such claim, action, suit or proceeding and does not include any statement as to any admission of fault, culpability or a failure to act by or on behalf of any indemnified party.

(d) In the event that the indemnity provided in paragraph (a) or (b) of this Section 8 is unavailable to, or insufficient to hold harmless, an indemnified party for any reason, the Company and each Note Guarantor, severally and jointly, and the Initial Purchasers, severally, agree to contribute to the aggregate losses, claims, damages and liabilities (including legal or other expenses reasonably incurred in connection with investigating or defending any loss, claim, damage, liability or action) (collectively "Losses") to which the Company, the Note Guarantors and one or more of the Initial Purchasers may be subject in such proportion as is appropriate to reflect the relative benefits received by the Company and the Note Guarantors on the one hand and by the Initial Purchasers on the other from the offering of the Securities; provided, however, that in no case under this paragraph (d) shall any Initial Purchaser be responsible for any amount in excess of the purchase discount or commission applicable to the

Securities purchased by such Initial Purchaser hereunder. If the allocation provided by the immediately preceding sentence is unavailable for any reason, the Company and the Note Guarantors, jointly and severally, and the Initial Purchasers, severally, shall contribute in such proportion as is appropriate to reflect not only such relative benefits but also the relative fault of the Company and the Note Guarantors on the one hand and the Initial Purchasers on the other in connection with the statements or omissions that resulted in such Losses, as well as any other relevant equitable considerations. Benefits received by the Company and the Note Guarantors shall be deemed to be equal to the total net proceeds from the offering (before deducting expenses) received by it, and benefits received by the Initial Purchasers shall be deemed to be equal to the total purchase discounts and commissions. Relative fault shall be determined by reference to, among other things, whether any untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information provided by the Company and the Note Guarantors on the one hand or the Initial Purchasers on the other, the intent of the parties and their relative knowledge, access to information and opportunity to correct or prevent such untrue statement or omission. The Company, the Note Guarantors and the Initial Purchasers agree that it would not be just and equitable if contribution were determined by pro rata allocation or any other method of allocation that does not take account of the equitable considerations referred to above. Notwithstanding the provisions of this paragraph (d), no person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. For purposes of this Section 8, each person who controls an Initial Purchaser within the meaning of either the Act or the Exchange Act and each director, officer, employee, Affiliate and agent of an Initial Purchaser shall have the same rights to contribution as such Initial Purchaser, and each person who controls the Company and the Note Guarantors within the meaning of either the Act or the Exchange Act and each officer and director of the Company and the Note Guarantors shall have the same rights to contribution as the Company and the Note Guarantors, subject in each case to the applicable terms and conditions of this paragraph (d).

9. Default by an Initial Purchaser. If any one or more Initial Purchasers shall fail to purchase and pay for any of the Securities agreed to be purchased by such Initial Purchaser hereunder and such failure to purchase shall constitute a default in the performance of its or their obligations under this Agreement, the remaining Initial Purchasers shall be obligated severally to take up and pay for (in the respective proportions which the principal amount of Securities set forth opposite their names in Schedule I hereto bears to the aggregate principal amount of Securities set forth opposite the names of all the remaining Initial Purchasers) the Securities which the defaulting Initial Purchaser or Initial Purchasers agreed but failed to purchase; provided, however, that in the event that the aggregate principal amount of Securities which the defaulting Initial Purchaser or Initial Purchasers agreed but failed to purchase shall exceed 10% of the aggregate principal amount of Securities set forth in Schedule I hereto, the remaining Initial Purchasers shall have the right to purchase all, but shall not be under any obligation to purchase any, of the Securities, and if such non-defaulting Initial Purchasers do not purchase all the Securities, this Agreement will terminate without liability to any non-defaulting Initial Purchaser or the Company. In the event of a default by any Initial Purchaser as set forth in this Section 9, the Closing Date shall be postponed for such period, not exceeding five Business Days, as the Representatives and the Company shall determine in order that the required changes in the Final Memorandum or in any other documents or arrangements may be effected. Nothing

contained in this Agreement shall relieve any defaulting Initial Purchaser of its liability, if any, to the Company or any non-defaulting Initial Purchaser for damages occasioned by its default hereunder.

10. Termination. This Agreement shall be subject to termination in the absolute discretion of the Representatives, by notice given to the Company prior to the time of delivery of, and payment for, the Securities, if at any time prior to such time (i) trading in securities generally on the Mexican Stock Exchange (*Bolsa Mexicana de Valores, S.A.B. de C.V.*) or the New York Stock Exchange shall have been suspended or limited or minimum prices shall have been established on either such exchange; (ii) a banking moratorium shall have been declared either by Mexican, U.S. federal or New York State authorities; or (iii) there shall have occurred any outbreak or escalation of hostilities, declaration by Mexico or the United States of a national emergency or war or other calamity or crisis the effect of which on financial markets is such as to make it, in the sole judgment of the Representatives, impractical or inadvisable to proceed with the offering or delivery of the Securities as contemplated in the Disclosure Package and the Final Memorandum (exclusive of any amendment or supplement thereto after the Execution Time).

11. Representations and Indemnities to Survive. The respective agreements, representations, warranties, indemnities and other statements of the Company, the Note Guarantors or their respective officers and of the Initial Purchasers set forth in or made pursuant to this Agreement will remain in full force and effect, regardless of any investigation made by or on behalf of the Initial Purchasers or the Company or the Note Guarantors or any of the indemnified persons referred to in Section 8 hereof, and will survive delivery of and payment for the Securities. The provisions of Sections 7 and 8 hereof shall survive the termination or cancellation of this Agreement.

12. Notices. All communications hereunder shall be in writing and will be effective only upon receipt, and shall be mailed, hand delivered, couriered or facsimiled and confirmed to the parties hereto as follows:

If to the Representatives:

c/o Citigroup Global Markets Inc.
388 Greenwich Street
New York, New York 10013
Facsimile: 212-816-7912
Attention: General Counsel

with a copy to:

Cleary Gottlieb Steen & Hamilton LLP
One Liberty Plaza
New York, New York 10006
Facsimile: 212-225-3999
Attention: Duane McLaughlin

If to the Company or the Note Guarantors:

CEMEX, S.A.B. de C.V.
Av. Ricardo Margáin, Zozaya #325
Colonia Valle del Campestre
Garza García, Nuevo León, México 66265
Facsimile: +5281-8888-4399
E-mail: roger.saldana@cemex.com
Attention: Legal Department

13. Successors. This Agreement will inure to the benefit of and be binding upon the parties hereto and their respective successors and the indemnified persons referred to in Section 8 hereof and their respective successors, and, except as expressly set forth in Section 5(k) hereof, no other person will have any right or obligation hereunder.

14. Jurisdiction. Each of the parties hereto agrees that any suit, action or proceeding arising out of or based upon this Agreement or the transactions contemplated hereby shall be instituted in any State or U.S. federal court in The City of New York and County of New York or in the courts of its own domicile in respect of actions brought against such party as a defendant, and waives any objection which it may now or hereafter have to the laying of venue of any such proceeding, and irrevocably submits to the jurisdiction of such courts in any suit, action or proceeding and waives the right to any other jurisdiction that it may be entitled to by reason of its present or future domicile or other reason. Each of the Company and the Note Guarantors (other than CEMEX Corp.) hereby appoints CEMEX NY Corporation, 590 Madison Avenue, 41st Floor, New York, NY 10022, as its authorized agent (the "Authorized Agent") upon whom process may be served in any suit, action or proceeding arising out of or based upon this Agreement or the transactions contemplated herein that may be instituted in any of such courts. Each of the parties appointing the Authorized Agent as provided herein hereby represents and warrants that the Authorized Agent has accepted such appointment and has agreed to act as said agent for service of process, and the Company agrees to take, and have each of the Note Guarantors (other than CEMEX Corp.) take, any and all action, including the execution and filing of any and all documents that may be necessary to continue such appointment in full force and effect as aforesaid. Service of process upon the Authorized Agent shall be deemed, in every respect, effective service of process upon each of the Note Guarantors (other than CEMEX Corp.).

15. Integration. This Agreement supersedes all prior agreements and understandings (whether written or oral) between the Company and the Initial Purchasers, or any of them, with respect to the subject matter hereof.

16. Applicable Law. This Agreement, and any claim, controversy or dispute relating to or arising out of this Agreement, will be governed by and construed in accordance with the laws of the State of New York applicable to contracts made and to be performed within the State of New York.

17. Waiver of Jury Trial. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.

18. No Fiduciary Duty. Each of the Company and the Note Guarantors hereby acknowledges that (a) the purchase and sale of the Securities pursuant to this Agreement is an arm's-length commercial transaction between the Company and the Note Guarantors, on the one hand, and the Initial Purchasers and any Affiliates through which they may be acting, on the other, (b) the Initial Purchasers are acting as principal and not as an agent or fiduciary of the Company or the Note Guarantors and (c) each of the Company's and the Note Guarantors' engagement of the Initial Purchasers in connection with the offering and the process leading up to the offering is as independent contractors and not in any other capacity. Furthermore, each of the Company and the Note Guarantors agrees that it is solely responsible for making its own judgments in connection with the offering (irrespective of whether any of the Initial Purchasers has advised or is currently advising the Company or the Note Guarantors on related or other matters). Each of the Company and the Note Guarantors agrees that it will not claim that the Initial Purchasers have rendered advisory services of any nature or respect, or owe an agency, fiduciary or similar duty to the Company or the Note Guarantors, in connection with such transaction or the process leading thereto.

19. Currency. Each reference in this Agreement to U.S. dollars (the "relevant currency"), including by use of the symbol "U.S.$", is of the essence. To the fullest extent permitted by law, the obligation of the parties in respect of any amount due under this Agreement will, notwithstanding any payment in any other currency (whether pursuant to a judgment or otherwise), be discharged only to the extent of the amount in the relevant currency that the party entitled to receive such payment may, in accordance with its normal procedures, purchase with the sum paid in such other currency (after any premium and costs of exchange) on the Business Day immediately following the day on which such party receives such payment. If the amount in the relevant currency that may be so purchased for any reason falls short of the amount originally due, the obligated party will pay such additional amounts, in the relevant currency, as may be necessary to compensate for the shortfall. Any obligation of the obligated party not discharged by such payment will, to the fullest extent permitted by applicable law, be due as a separate and independent obligation and, until discharged as provided herein, will continue in full force and effect.

20. Waiver of Immunity. To the extent that the Company or any of the Note Guarantors has or hereafter may acquire any immunity (sovereign or otherwise) from any legal action, suit or proceeding, from jurisdiction of any court or from set-off or any legal process (whether service or notice, attachment in aid or otherwise) with respect to itself or any of its property, the Company and each of the Note Guarantors hereby irrevocably waives and agrees not to plead or claim such immunity in respect of its obligations under this Agreement.

21. Waiver of Tax Confidentiality. Notwithstanding anything herein to the contrary, purchasers of the Securities (and each employee, representative or other agent of a purchaser) may disclose to any and all persons, without limitation of any kind, the U.S. tax treatment and U.S. tax structure of any transaction contemplated herein and all materials of any kind (including opinions or other tax analyses) that are provided to the purchasers of the

Securities relating to such U.S. tax treatment and U.S tax structure, other than any information for which nondisclosure is reasonably necessary in order to comply with applicable securities laws.

22. Taxes. Each payment of fees or other amounts due to the Initial Purchasers under this Agreement shall, except as required by applicable law, be made without withholding or deduction for or on account of any taxes imposed by any jurisdiction. If any taxes are required to be withheld or deducted from any such payment, the Company and the Note Guarantors shall, jointly and severally, pay such additional amounts as may be necessary to ensure that the net amount actually received by the Initial Purchasers after such withholding or deduction is equal to the amount that the Initial Purchasers would have received had no such withholding or deduction been required. At the reasonable request of the Initial Purchasers, the Company shall provide evidence of payment of taxes when due.

23. Counterparts. This Agreement may be signed in one or more counterparts, each of which shall constitute an original and all of which together shall constitute one and the same agreement.

24. Headings. The section headings used herein are for convenience only and shall not affect the construction hereof.

25. Definitions. The terms that follow, when used in this Agreement, shall have the meanings indicated.

"Act" shall mean the U.S. Securities Act of 1933, as amended, and the rules and regulations of the Commission promulgated thereunder.

"Affiliate" shall have the meaning specified in Rule 501(b) of Regulation D.

"Business Day" shall mean any day other than a Saturday, a Sunday or a legal holiday or a day on which banking institutions or trust companies are authorized or obligated by law to close in The City of New York, Mexico City, Madrid or Amsterdam.

"CEMEX España Euro Notes" shall mean the 4.75% Eurobonds issued by CEMEX Finance Europe B.V.

"Code" shall mean the Internal Revenue Code of 1986, as amended.

"Collateral" shall mean the security created or expressed to be created in favor of the New Security Agent pursuant to the Transaction Security Documents that consists of (i) shares of the following entities: CEMEX México; Centro Distribuidor de Cemento, S.A. de C.V.; Mexcement Holdings, S.A. de C.V.; Corporación Gouda, S.A. de C.V.; New Sunward; CEMEX Trademarks Holding Ltd and CEMEX España; and (ii) all proceeds thereof.

"Commission" shall mean the Securities and Exchange Commission.

"Disclosure Package" shall mean (i) the Preliminary Memorandum, as amended or supplemented at the Execution Time, (ii) the Final Term Sheet, and (iii) any Issuer Written Information.

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended, and the rules and regulations of the Commission promulgated thereunder.

"Execution Time" shall mean 7:14 p.m. (New York time) on March 14, 2013.

"IFRS" shall mean International Financial Reporting Standards as issued by the International Accounting Standards Board.

"Investment Company Act" shall mean the U.S. Investment Company Act of 1940, as amended, and the rules and regulations of the Commission promulgated thereunder.

"Issuer Written Information" shall mean any writings in addition to the Preliminary Memorandum and the Final Term Sheet that the parties expressly agree in writing to treat as part of the Disclosure Package and which are identified on Schedule XII hereto.

"New Facilities Agreement" means the facilities agreement, dated as of September 17, 2012, entered into among CEMEX and certain of its subsidiaries, the financial institutions and noteholders party thereto, Citibank International PLC, as new administrative agent, and the New Security Agent, as such agreement may be amended, modified or waived from time to time.

"New Intercreditor Agreement" shall mean the intercreditor agreement, dated as of September 17, 2012, entered into among CEMEX and certain of its subsidiaries, the financial institutions and noteholders party thereto, Citibank International PLC, as new administrative agent, and the New Security Agent, as such agreement may be amended, modified or waived from time to time.

"New Security Agent" shall mean Wilmington Trust (London) Limited, as security agent under the New Facilities Agreement.

"Regulation D" shall mean Regulation D under the Act.

"Regulation S" shall mean Regulation S under the Act.

"Solvent" shall mean, with respect to any person on any date of determination, that on such date, the value of the property of such person is greater than the total amount of liabilities, including contingent liabilities, of such person.

"Transaction Security Documents" shall mean any document, as amended from time to time, entered by any of the Company or its subsidiaries creating or expressed to create any security over all or any part of its assets in respect of their obligations under the New Facilities Agreement or any other document derived therefrom, or in connection therewith.

*[Signature pages follow]*

If the foregoing is in accordance with your understanding of our agreement, please sign and return to us the enclosed duplicate hereof, whereupon this letter and your acceptance shall represent a binding agreement between the Company, the Note Guarantors and the several Initial Purchasers.

Very truly yours,

**CEMEX, S.A.B. DE C.V.**

By: /s/ Jose A. Gonzalez
Name: Jose A. Gonzalez
Title: Attorney-in-Fact

**EACH OF THE NOTE GUARANTORS LISTED BELOW**

**CEMEX MÉXICO, S.A. DE C.V.**

By: /s/ Jose A. Gonzalez
Name: Jose A. Gonzalez
Title: Attorney-in-Fact

**NEW SUNWARD HOLDING B.V.**

By: /s/ Jose A. Gonzalez
Name: Jose A. Gonzalez
Title: Attorney-in-Fact

**CEMEX ESPAÑA, S.A.**

By: /s/ Jose A. Gonzalez
Name: Jose A. Gonzalez
Title: Attorney-in-Fact

**CEMEX RESEARCH GROUP AG.**

By: /s/ Jose A. Gonzalez
Name: Jose A. Gonzalez
Title: Attorney-in-Fact

**CEMEX SHIPPING B.V.**

By: /s/ Jose A. Gonzalez
Name: Jose A. Gonzalez
Title: Attorney-in-Fact

**CEMEX ASIA B.V.**

By: /s/ Jose A. Gonzalez
Name: Jose A. Gonzalez
Title: Attorney-in-Fact

**CEMEX FRANCE GESTION (S.A.S.)**

By: /s/ Jose A. Gonzalez
Name: Jose A. Gonzalez
Title: Attorney-in-Fact

**CEMEX UK**

By: /s/ Jose A. Gonzalez
Name: Jose A. Gonzalez
Title: Attorney-in-Fact

By: /s/ Roger Saldaña
Name: Roger Saldaña
Title: Attorney-in-Fact

**CEMEX EGYPTIAN INVESTMENTS B.V.**

By: /s/ Jose A. Gonzalez
Name: Jose A. Gonzalez
Title: Attorney-in-Fact

**CEMEX CORP.**

By: /s/ Jose A. Gonzalez
Name: Jose A. Gonzalez
Title: Attorney-in-Fact

**CEMEX CONCRETOS, S.A. DE C.V.**

By: /s/ Jose A. Gonzalez
Name: Jose A. Gonzalez
Title: Attorney-in-Fact

**EMPRESAS TOLTECA DE MÉXICO, S.A. DE C.V.**

By: /s/ Jose A. Gonzalez
Name: Jose A. Gonzalez
Title: Attorney-in-Fact

The foregoing Agreement is hereby confirmed and accepted as of the date first above written.

**CITIGROUP GLOBAL MARKETS INC.**

By: /s/ Blake D. Haider

Name: Blake D. Haider
Title: Managing DirectorLatin America Credit Markets

For itself and the other several Initial Purchasers named in Schedule I to the foregoing Agreement.

**HSBC SECURITES (USA) INC.**

By: /s/ Diane M. Kenna
Name: Diane M. Kenna
Title: Senior Vice President

For itself and the other several Initial Purchasers named in Schedule I to the foregoing Agreement.

**MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED**

By: /s/ Augusto Urmeneta
Name: Augusto Urmeneta
Title: Managing Director

For itself and the other several Initial Purchasers named in Schedule I to the foregoing Agreement.

**SANTANDER INVESTMENT SECURITIES INC.**

By: /s/ Javier Warra
Name: Javier Warra
Title: Sr. Vice President

By: /s/ Richard N. Zobkiw, Jr.
Name: Richard N. Zobkiw, Jr.
Title: Vice President

For itself and the other several Initial Purchasers named in Schedule I to the foregoing Agreement.

**SCHEDULE I**

| Initial Purchasers | Principal Amount of Securities to be Purchased |
|---|---|
| Citigroup Global Markets Inc. | U.S.$150,000,000 |
| HSBC Securities (USA) Inc. | U.S.$150,000,000 |
| Merrill Lynch, Pierce, Fenner & Smith Incorporated | U.S.$150,000,000 |
| Santander Investment Securities Inc. | U.S.$150,000,000 |
| Total | U.S.$600,000,000 |

**SCHEDULE II**

**Form Pricing Term Sheet**

**Pricing Term Sheet**
**March 14, 2013**

**CEMEX, S.A.B. de C.V.**
**U.S.$[500,000,000] % Senior Secured Notes due 2019 (the "Notes")**

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| **Issuer** | CEMEX, S.A.B. de C.V. |
| **Security description** | % Senior Secured Notes due 2019 |
| **Note Guarantors** | CEMEX México, S.A. de C.V.<br>CEMEX Concretos, S.A. de C.V.<br>Empresas Tolteca de México, S.A. de C.V.<br>New Sunward Holding B.V.<br>CEMEX España, S.A.<br>Cemex Asia B.V.<br>CEMEX Corp.<br>Cemex Egyptian Investments B.V.<br>CEMEX France Gestion (S.A.S.)<br>Cemex Research Group AG<br>Cemex Shipping B.V.<br>CEMEX UK<br><br>Other than excluding the Issuer as a Guarantor, these are the same as the Note Guarantors for the 9.375% Senior Secured Notes due 2022 issued by CEMEX Finance LLC. |
| **Security** | First-priority security interest over (i) substantially all the shares of CEMEX México, S.A. de C.V., Centro Distribuidor de Cemento, S.A. de C.V., Mexcement Holdings, S.A. de C.V., Corporación Gouda, S.A. de C.V., CEMEX Trademarks Holding Ltd., New Sunward Holding B.V., and CEMEX España, S.A., or together, the Collateral, and (ii) all proceeds of such Collateral. Holders will not be entitled to direct the foreclosure on, or foreclose on, the Collateral. The Notes will cease to be secured in accordance with the provisions of the New Intercreditor Agreement. |
| **Format** | 144A Notes / Regulation S Notes. |
| **Joint Bookrunners** | Citigroup Global Markets Inc.<br>HSBC Securities (USA) Inc.<br>Merrill Lynch, Pierce, Fenner & Smith Incorporated<br>Santander Investment Securities Inc. |
| **Identifiers (144 A Notes)** | CUSIP: 151290 BH5 |

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| | ISIN: US151290BH59 |
| **Identifiers (Reg S Notes)** | CUSIP: P2253T JC4 ISIN: USP2253TJC47 |
| **Issue amount** | U.S.$ [500,000,000] |
| **Settlement date** | , 2013 (T+7) |
| **Final maturity** | , 2019 |
| **Interest payment** | and , beginning on , 2013 |
| **Day count convention** | 360-day year consisting of twelve 30-day months. |
| **Coupon** | % |
| **Issue price** | % |
| **Issue yield to maturity** | % |
| **Optional Redemption** | • Make-whole call prior to , 20 , in whole or in part, at greater of (1) 100% of principal amount of the Notes, and (2) the sum of the present value of each remaining scheduled payment of principal and interest thereon (exclusive of interest accrued to the date of redemption) discounted to the redemption date on a semi-annual basis (assuming a 360-day year consisting of twelve 30-day months) at the Treasury Rate plus basis points, plus, in each case, any accrued and unpaid interest to the date of redemption.<br>• On or after , 20 , in whole at any time or in part from time to time, at the redemption prices listed below, expressed as percentages of the principal amount thereof, if redeemed during the twelve-month period commencing on of any year set forth below, plus any accrued and unpaid interest to the date of redemption.<br>20 %<br>20 %<br>20 and thereafter 100.00%<br>• On or prior to , 20 , redemption of up to 35% of the aggregate principal amount of the Notes at % of principal amount of the Notes plus any accrued and unpaid interest to the date of redemption, with proceeds from equity offerings.<br>• In the event of certain changes in the withholding tax treatment relating to payments on the Notes, at 100% of their principal amount, plus any accrued and unpaid interest to the date of redemption , as described under “Description of Notes — Optional Redemption” in the Preliminary Memorandum (as defined below). |

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| | The Issuer shall not have the right to exercise any optional redemption at any time when CEMEX, S.A.B. de C.V. is prohibited from exercising such an option under the New Facilities Agreement. |
| **Use of Proceeds** | The estimated net proceeds from the offering of the Notes, after deducting the Initial Purchasers' fees and commissions and the estimated expenses, will be approximately U.S.$ million. The Issuer intends to use approximately U.S.$55 million of the net proceeds from the offering for the repayment in full of the remaining indebtedness under the 2009 Financing Agreement and the remainder for general corporate purposes, including the purchase of Eurobonds in the Eurobond Tender Offer and the repayment of other indebtedness, all in accordance with the Facilities Agreement. |
| **Denominations** | The Notes will initially be issued only in denominations of U.S.$200,000 and integral multiples of U.S.$1,000 in excess thereof. |
| **Governing law** | New York |
| **Intended Listing** | Global Exchange Market of the Irish Stock Exchange |
| **Clearing** | The Depositary Trust Company, Euroclear and Clearstream |

* * *

This communication is intended for the sole use of the person to whom it is provided by the sender.

This notice shall not constitute an offer to sell or a solicitation of an offer to buy, nor shall there be any sale of the Notes in any state or jurisdiction in which such offer, solicitation or sale would be unlawful. The Notes will be offered to qualified institutional buyers in reliance on Rule 144A under the Securities Act of 1933, as amended, and to non-U.S. persons in offshore transactions outside the United States in accordance with Regulation S thereunder. The Notes have not been registered under the Securities Act or any state securities laws, and may not be offered or sold in the United States or to U.S. persons absent registration or an applicable exemption from the registration requirements.

The information in this term sheet supplements the Issuer's preliminary offering memorandum, dated March 14, 2013 (the "Preliminary Memorandum") and supersedes the information in the Preliminary Memorandum to the extent inconsistent with the information in the Preliminary Memorandum. This term sheet is qualified in its entirety by reference to the Preliminary Memorandum, except for information in the Preliminary Memorandum superseded by information included herein. Terms used herein but not defined herein shall have the respective meanings as set forth in the Preliminary Memorandum.

**SCHEDULE III**

**Form of Legal Opinion**
**Skadden, Arps, Slate, Meagher & Flom LLP**

**SCHEDULE IV**

**Form of Legal Opinion**
**Mr. Ramiro G. Villarreal**

**SCHEDULE VI**

**Form of Legal Opinion**
**Warendorf**

**SCHEDULE VII**

**Form of Legal Opinion**
**GHR Rechtsanwälte AG**

**SCHEDULE VIII**

**Form of Legal Opinion**
**Skadden, Arps, Slate, Meagher & Flom, LLP (French Counsel)**

**SCHEDULE IX**

**Form of Legal Opinion**
**Skadden, Arps, Slate, Meagher & Flom, LLP (UK Counsel)**

**SCHEDULE X**

**Form of Officer's Certificate**
**OFFICER'S CERTIFICATE**

**, 2013**

I, , solely in my capacity as of , a organized under the laws of (the "Company"), and not in an individual capacity, hereby certify as follows on behalf of the Company pursuant to Section 6(j) of the Purchase Agreement, dated as of , 2013, executed in connection with the offering by the Company of U.S.$ aggregate principal amount of its % Senior Secured Notes due 20 (the "Purchase Agreement"). Capitalized terms used but not defined herein have the meaning assigned to them in the Purchase Agreement:

1. I have carefully examined the Disclosure Package, the Final Memorandum and any supplements or amendments thereto, and the Purchase Agreement;

2. To the best of my knowledge, the representations and warranties of the Company in the Purchase Agreement are true and correct on and as of the Closing Date with the same effect as if made on the Closing Date, and the Company has complied with all the agreements and satisfied all the conditions on its part to be performed or satisfied hereunder at or prior to the Closing Date; and

3. To the best of my knowledge, since the date of the most recent financial statements included or incorporated by reference in the Disclosure Package and the Final Memorandum (exclusive of any amendment or supplement thereto), there has been no material adverse change in the condition (financial or otherwise), prospects, earnings, business or properties of the Company and its subsidiaries, taken as a whole, whether or not arising from transactions in the ordinary course of business, except as set forth in or contemplated in the Disclosure Package and the Final Memorandum (exclusive of any amendment or supplement thereto).

**SCHEDULE XI**

**Form of Comfort Letter by KPMG Cárdenas Dosal, S.C.**

**SCHEDULE XII**

1. Issuer Written Information (included in the Disclosure Package)

   None.

2. Other Information Included in the Disclosure Package

   (a) The following information is also included in the Disclosure Package:

   None.

**Exhibit 4.47**

CEMEX, S.A.B. de C.V.

THE NOTE GUARANTORS PARTY HERETO

AND

THE BANK OF NEW YORK MELLON,

AS TRUSTEE

5.875% SENIOR SECURED NOTES DUE 2019

INDENTURE

Dated as of March 25, 2013

**TABLE OF CONTENTS**

**TABLE OF CONTENTS**
(continued)

**TABLE OF CONTENTS**
(continued)

INDENTURE, dated as of March 25, 2013, among CEMEX S.A.B. de C.V., a s*ociedad anónima bursátil de capital variable* organized under the laws of the United Mexican States (the "Issuer"), the guarantors listed on Schedule I hereto, as guarantors of the Issuer's obligations under this Indenture and the Notes, and The Bank of New York Mellon, as trustee (the "Trustee").

Each party agrees as follows for the benefit of the other parties and for the equal and ratable benefit of the Holders of the Issuer's 5.875% Senior Secured Notes due 2019 issued hereunder.

## ARTICLE I

## DEFINITIONS AND INCORPORATION BY REFERENCE

Section 1.1 Definitions.

"2009 Financing Agreement" means the financing agreement, dated as of August 14, 2009, entered into among the Issuer and certain of its Subsidiaries, the financial institutions and noteholders party thereto, Citibank International PLC, as administrative agent, and Wilmington Trust (London) Limited, as security agent, as such agreement may be amended, modified or waived from time to time.

"Acquired Indebtedness" means Indebtedness of a Person or any of its Subsidiaries existing at the time such Person becomes a Restricted Subsidiary or at the time it merges or consolidates with the Issuer or any of its Restricted Subsidiaries or is assumed in connection with the acquisition of assets from such Person. Such Indebtedness will be deemed to have been Incurred at the time such Person becomes a Restricted Subsidiary or at the time it merges or consolidates with the Issuer or a Restricted Subsidiary or at the time such Indebtedness is assumed in connection with the acquisition of assets from such Person.

"Acquired Subsidiary" means any Subsidiary acquired by the Issuer or any other Subsidiary after the Issue Date in an Acquisition, and any Subsidiaries of such Acquired Subsidiary on the date of such Acquisition.

"Acquiring Subsidiary" means any Subsidiary formed by the Issuer or one of its Subsidiaries solely for the purpose of participating as the acquiring party in any Acquisition, and any Subsidiaries of such Acquiring Subsidiary acquired in such Acquisition.

"Acquisition" means any merger, consolidation, acquisition or lease of assets, acquisition of securities or business combination or acquisition, or any two or more of such transactions, if, upon the completion of such transaction or transactions, the Issuer or any Restricted Subsidiary thereof has acquired an interest in any Person who would be deemed to be a Restricted Subsidiary under this Indenture and was not a Restricted Subsidiary prior thereto.

"Additional Amounts" has the meaning assigned to it in Section 3.21(b).

"Additional Note Certificate" has the meaning assigned to it in Section 2.14(b).

"Additional Note Guarantors" means New Sunward Holding B.V., CEMEX Concretos, S.A. de C.V. and Empresas Tolteca de México, S.A. de C.V.

"Additional Note Supplemental Indenture" means a supplement to this Indenture duly executed and delivered by the Issuer, each Note Guarantor and the Trustee pursuant to Article IX providing for the issuance of Additional Notes.

"Additional Notes" has the meaning assigned to it in Section 2.14(a).

"Affiliate" means, with respect to any specified Person, any other Person who directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, such specified Person. The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise. For purposes of this definition, the terms "controlling," "controlled by" and "under common control with" have correlative meanings.

"Affiliate Transaction" has the meaning assigned to it in Section 3.18(a).

"Agent Members" has the meaning assigned to it in Section 2.7(b).

"Agents" means, collectively, the Registrar, any co-Registrar, the Paying Agents, the Transfer Agent and any other agent appointed by the Issuer hereunder.

"Applicable Procedures" means, with respect to any transfer or exchange of or for beneficial interests in a Global Note, the rules and procedures of DTC, Euroclear and Clearstream, as the case may be, that apply to such transfer or exchange, including the "Operating Procedures of the Euroclear System" and "Terms and Conditions Governing Use of Euroclear" of Euroclear and the "General Terms and Conditions of Clearstream Banking" and "Customer Handbook" of Clearstream.

"Asset Sale" means any direct or indirect sale, disposition, issuance, conveyance, transfer, lease (other than an operating lease entered into in the ordinary course of business), assignment or other transfer, including a Sale and Leaseback Transaction (each, a "disposition") by the Issuer or any Restricted Subsidiary of:

(a) any Capital Stock other than Capital Stock of the Issuer; or

(b) any property or assets (other than cash, Cash Equivalents or Capital Stock) of the Issuer or any Restricted Subsidiary;

Notwithstanding the preceding, the following will not be deemed to be Asset Sales:

(1) the disposition of all or substantially all of the assets of the Issuer and its Restricted Subsidiaries as permitted under Section 3.12;

(2) any disposition of equipment that is not usable or is obsolete or worn out equipment in the ordinary course of business or any disposition of inventory or goods (or other assets) held for sale or no longer used in the ordinary course of business;

(3) dispositions of assets in any fiscal year with a Fair Market Value not to exceed U.S.$25 million in the aggregate;

(4) for purposes of Section 3.12 only, the making or disposition of a Permitted Investment or Restricted Payment permitted under Section 3.11;

(5) a disposition to the Issuer or a Restricted Subsidiary, including a Person that is or will become a Restricted Subsidiary immediately after the disposition;

(6) the creation of a Lien permitted under this Indenture (other than a deemed Lien in connection with a Sale and Leaseback Transaction);

(7) (i) the disposition of Receivables Assets pursuant to a Qualified Receivables Transaction and (ii) the disposition of other accounts receivable in the ordinary course of business;

(8) the disposition of any asset constituted by a license of intellectual property in the ordinary course of business;

(9) the disposition of inventory pursuant to an Inventory Financing or similar arrangement that is otherwise permitted under this Indenture;

(10) the disposition of any asset compulsorily acquired by a governmental authority; and

(11) sales, transfers and other dispositions of Investments in joint ventures to the extent required by, or made pursuant to, customary buy/sell arrangements between the joint venture parties set forth in joint venture arrangements and similar binding arrangements.

"Asset Sale Offer" has the meaning assigned to it in Section 3.12(c).

"Asset Sale Offer Amount" has the meaning assigned to it in Section 3.12(c).

"Asset Sale Offer Notice" means notice of an Asset Sale Offer made pursuant to Section 3.12, which shall be mailed first class, postage prepaid, to each record Holder as shown on the Note Register within 20 days following the 365th day after the receipt of Net Cash Proceeds of any Asset Sale, with a copy to the Trustee, which notice shall govern the terms of the Asset Sale Offer, and shall state:

(1) the circumstances of the Asset Sale or Sales, the Net Cash Proceeds of which are included in the Asset Sale Offer, that an Asset Sale Offer is being made pursuant to Section 3.12(c), and that all Notes that are timely tendered will be accepted for payment;

(2) the Asset Sale Offer Amount and the Asset Sale Offer Payment Date, which date shall be a Business Day no earlier than 30 days nor later than 60 days from the date the Asset Sale Offer Notice is mailed (other than as may be required by law);

(3) that any Notes or portions thereof not tendered or accepted for payment will continue to accrue interest;

(4) that, unless the Issuer defaults in the payment of the Asset Sale Offer Amount with respect thereto, all Notes or portions thereof accepted for payment pursuant to the Asset Sale Offer shall cease to accrue interest from and after the Asset Sale Offer Payment Date;

(5) that any Holder electing to have any Notes or portions thereof purchased pursuant to the Asset Sale Offer will be required to surrender such Notes, with the form entitled "Option of Holder to Elect Purchase" on the reverse of such Notes completed, to the Paying Agent at the address specified in the notice prior to the close of business on the third Business Day preceding the Asset Sale Offer Payment Date;

(6) that any Holder shall be entitled to withdraw such election if the Paying Agent receives, not later than the close of business on the second Business Day preceding the Asset Sale Offer Payment Date, a facsimile transmission or letter, setting forth the name of the Holder, the principal amount of Notes delivered for purchase, and a statement that such Holder is withdrawing such Holder's election to have such Notes or portions thereof purchased pursuant to the Asset Sale Offer;

(7) that any Holder electing to have Notes purchased pursuant to the Asset Sale Offer must specify the principal amount that is being tendered for purchase, which principal amount must be U.S.$200,000 and in integral multiples of U.S.$1,000 in excess thereof;

(8) that any Holder of Certificated Notes whose Certificated Notes are being purchased only in part will be issued new Certificated Notes equal in principal amount to the unpurchased portion of the Certificated Note or Notes surrendered, which unpurchased portion will be equal in principal amount to U.S.$200,000 and in integral multiples of U.S.$1,000 in excess thereof;

(9) that the Trustee will return to the Holder of a Global Note that is being purchased in part, such Global Note with a notation on the schedule of increases or decreases thereof adjusting the principal amount thereof to be equal to the unpurchased portion of such Global Note; and

(10) any other information necessary to enable any Holder to tender Notes and to have such Notes purchased pursuant to Section 3.12.

"Asset Sale Offer Payment Date" has the meaning assigned to it in Section 3.12(f).

"Authenticating Agent" has the meaning assigned to it in Section 2.2(b).

"Authorized Agent" has the meaning assigned to it in Section 12.7(c).

"Axtel Share Forward Transaction" means the Axtel share forward transaction that is governed by a long form confirmation originally dated January 22, 2009, as replaced by a long form confirmation dated September 28, 2010, and as further replaced by a long form confirmation dated March 19, 2012, between Credit Suisse International and Centro Distribuidor de Cemento, S.A. de C.V. (References: External ID: 16059563R4-Risk ID: 10008383) and any replacements, amendments or renewals thereof that are entered into on then prevailing market terms with the underlying amounts not greater than the original underlying amounts.

"Bancomext Facility" means the U.S.$250,000,000 credit agreement ( *Crédito Simple*), dated October 14, 2008, as amended from time to time (*provided*, that the principal amount thereof does not increase above the principal amount outstanding as of August 14, 2009 (except by the amount of any capitalized interest if so provided by such facility and on those terms as of August 14, 2009) less the amount of any repayments and prepayments made in respect of such facility), among the Issuer, as borrower, Banco Nacional de Comercio Exterior, S.N.C., as lender, and CEMEX México, as guarantor, and secured by a mortgage of cement plants in Mérida, Yucatán, Mexico and Ensenada, Baja California, Mexico.

"Bankruptcy Event of Default" means:

(1) the entry by a court of competent jurisdiction of: (i) a decree or order for relief in respect of any Bankruptcy Party in an involuntary case or proceeding under any Bankruptcy Law or (ii) a decree or order (A) adjudging any Bankruptcy Party a bankrupt or insolvent, in *concurso mercantil* or *quiebra*, (B) approving as properly filed a petition seeking reorganization, *concurso mercantil*, arrangement, adjustment or composition of, or in respect of, any Bankruptcy Party under any Bankruptcy Law, (C) appointing a Custodian of any Bankruptcy Party or of any substantial part of the property of any Bankruptcy Party, or (D) ordering the winding-up or liquidation of the affairs of any Bankruptcy Party, and in each case, the continuance of any such decree or order for relief or any such other decree or order unstayed and in effect for a period of 60 consecutive calendar days; or

(2) (i) the commencement by any Bankruptcy Party of a voluntary case or proceeding under any Bankruptcy Law or of any other case or proceeding to be adjudicated a bankrupt or insolvent, in *concurso mercantil* or *quiebra*, (ii) the consent by any Bankruptcy Party to the entry of a decree or order for relief in respect of such Bankruptcy Party in an involuntary

case or proceeding under any Bankruptcy Law or to the commencement of any bankruptcy or insolvency case or proceeding against any Bankruptcy Party, (iii) the filing by any Bankruptcy Party of a petition or answer or consent seeking reorganization, *concurso mercantil*, or relief under any Bankruptcy Law, (iv) the consent by any Bankruptcy Party to the filing of such petition or to the appointment of or taking possession by a Custodian of any Bankruptcy Party or of any substantial part of the property of any Bankruptcy Party, (v) the making by any Bankruptcy Party of an assignment for the benefit of creditors, (vi) the admission by any Bankruptcy Party in writing of its inability to pay its debts generally as they become due, or (vii) the approval by stockholders of any Bankruptcy Party of any plan or proposal for the liquidation or dissolution of such Bankruptcy Party, or (viii) the taking of corporate action by any Bankruptcy Party in furtherance of any action referred to in clauses (i) – (vii) above.

"Bankruptcy Law" means Title 11, U.S. Code or any similar Federal, state or non-U.S. law for the relief of debtors, including the Mexican *Ley de Concursos Mercantiles and* Spanish Law 22/2003 of 9 July (*Ley 22/2003 de 9 de julio*, *Concursal*), as amended.

"Bankruptcy Party" means the Issuer and any Significant Subsidiary of the Issuer or group of Subsidiaries that, taken together would constitute a Significant Subsidiary of the Issuer.

"Banobras Facility" means a revolving loan agreement (*Contrato de Apertura de Crédito en Cuenta Corriente*), dated April 22, 2009, among CEMEX Concretos, S.A. de C.V., as borrower and Banco Nacional de Obras y Servicios Públicos, S.N.C., as lender, as in effect on the Issue Date and as amended from time to time, and secured by a mortgage of Planta Yaqui in Hermosillo, Sonora, Mexico.

"Board of Directors" means, as to any Person, the board of directors, management committee or similar governing body of such Person or any duly authorized committee thereof.

"Business Day" means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City, Mexico City, Madrid, Amsterdam, London, Paris or Zurich are authorized or required by law, regulation or other governmental action to remain closed.

"Capital Stock" means:

(1) with respect to any Person that is a corporation, any and all shares, interests, participations or other equivalents (however designated and whether or not voting) of corporate stock, including each class of Common Stock and Preferred Stock of such Person;

(2) with respect to any Person that is not a corporation, any and all partnership or other equity or ownership interests of such Person; and

(3) any warrants, rights or options to purchase any of the instruments or interests referred to in clause (1) or (2) above, but excluding any Indebtedness exchangeable into such equity interest in existence on the Issue Date or Incurred pursuant to Section 3.9.

"Capitalized Lease Obligations" means, as to any Person, the obligations of such Person under a lease that are required to be classified and accounted for as capital lease obligations under GAAP. For purposes of the definition, the amount of such obligations at any date will be the capitalized amount of such obligations at such date, determined in accordance with GAAP.

"Cash Equivalents" means:

(1) marketable direct obligations issued by, or unconditionally guaranteed by, the United States government, the United Kingdom or any member nation of the European Union or issued by any agency thereof and backed by the full faith and credit of the United States, the United Kingdom, such member nation of the European Union or any European Union central bank, in each case maturing within one year from the date of acquisition thereof;

(2) marketable direct obligations issued by the Mexican government, or issued by any agency thereof, including but not limited to, *Certificados de la Tesorería de la Federación* (Cetes) or *Bonos de Desarrollo del Gobierno Federal* (Bondes), in each case, issued by the government of Mexico and maturing not later than one year after the acquisition thereof;

(3) marketable direct obligations issued by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof maturing within one year from the date of acquisition thereof and, at the time of acquisition, having one of the two highest ratings obtainable from either S&P or Fitch or any successor thereto;

(4) commercial paper or corporate debt obligations maturing no more than one year from the date of creation thereof and, at the time of acquisition, having a rating of at least A-1 or AAA from S&P, at least F-1 or AAA from Fitch or P-1 or Aaa from Moody's;

(5) demand deposits, certificates of deposit, time deposits or bankers' acceptances or other short-term unsecured debt obligations (and any cash or deposits in transit in any of the foregoing) maturing within one year from the date of acquisition thereof issued by (a) any bank organized under the laws of the United States of America or any state thereof or the District of Columbia, the United Kingdom or any country of the European Union, (b) any U.S. branch of a non-U.S. bank having at the date of acquisition thereof combined capital and surplus of not less than U.S.$500

million, or (c) in the case of Mexican peso deposits, any financial institution in good standing with Banco de México organized under the laws of Mexico;

(6) repurchase obligations with a term of not more than seven days for underlying securities of the types described in clause (1) and (2) above entered into with any bank meeting the qualifications specified in clause (5) above;

(7) investments in money market funds which invest substantially all of their assets in securities of the types described in clauses (1) through (6), (8) and (9);

(8) certificates of deposit issued by any of Nacional Financiera, S.N.C., Banco Nacional de Comercio Exterior, S.N.C., Banco Nacional de Obras y Servicios Públicos, S.N.C. or any other development bank controlled by the Mexican government;

(9) any other debt instrument rated "investment grade" (or the local equivalent thereof according to local criteria in a country in which the Issuer or a Restricted Subsidiary operates and in which local pensions are permitted by law to invest) with maturities of 12 months or less from the date of acquisition; and

(10) Investments in mutual funds, managed by banks, with a local currency credit rating of at least MxAA by S&P or other equally reputable local rating agency, that invest principally in marketable direct obligations issued by the Mexican Government, or issued by any agency or instrumentality thereof.

In the case of Investments by any Restricted Subsidiary, Cash Equivalents will also include (a) investments of the type and maturity described in clauses (1) through (10) of any Restricted Subsidiary outside of Mexico in the country in which such Restricted Subsidiary operates, which Investments or obligors (or the parents of such obligors) have ratings described in such clauses or equivalents ratings from comparable foreign rating agencies, (b) local currencies and other short-term investments utilized by Restricted Subsidiaries in accordance with normal investment practices for cash management in investments analogous to the foregoing investments in clauses (1) through (10) and in this paragraph and (c) investments of the type described in clauses (1) through (9) maturing within one year of the Issue Date.

"Certificados Bursátiles" means debt securities issued by the Issuer guaranteed (por aval) by CEMEX México, S.A. de C.V. and Empresas Tolteca de México, S.A. de C.V., wholly owned subsidiaries of the Issuer, in the Mexican capital markets with the approval of the Mexican National Banking and Securities Commission (*Comisión Nacional Bancaria y de Valores*) and listed on the Mexican Stock Exchange (*Bolsa Mexicana de Valores, S.A.B. de C.V.*).

"Certificated Note" means any Note issued in fully registered form, other than a Global Note, which shall be substantially in the form of Exhibit A hereto, with appropriate legends as specified in Section 2.8 and Exhibit A.

"Change of Control" means the beneficial ownership (within the meaning of Rule 13d-3 promulgated by the Commission under the Exchange Act) of twenty percent (20%) or more in voting power of the outstanding Voting Stock of the Issuer is acquired by any Person; *provided*, that the acquisition of beneficial ownership of Capital Stock of the Issuer by Lorenzo H. Zambrano or any member of his immediate family shall not constitute a Change of Control.

"Change of Control Notice" means notice of a Change of Control Offer made pursuant to Section 3.8, which shall be mailed first-class, postage prepaid, to each record Holder as shown on the Note Register within 30 days following the date upon which a Change of Control occurred, with a copy to the Trustee, which notice shall govern the terms of the Change of Control Offer and shall state:

(1) that a Change of Control has occurred, the circumstances or events causing such Change of Control and that a Change of Control Offer is being made pursuant to Section 3.8, and that all Notes that are timely tendered will be accepted for payment;

(2) the Change of Control Payment, and the Change of Control Payment Date, which date shall be a Business Day no earlier than 30 calendar days nor later than 60 calendar days subsequent to the date such notice is mailed (other than as may be required by law);

(3) that any Notes or portions thereof not tendered or accepted for payment will continue to accrue interest;

(4) that, unless the Issuer defaults in the payment of the Change of Control Payment with respect thereto, all Notes or portions thereof accepted for payment pursuant to the Change of Control Offer shall cease to accrue interest from and after the Change of Control Payment Date;

(5) that any Holder electing to have any Notes or portions thereof purchased pursuant to a Change of Control Offer will be required to tender such Notes, with the form entitled "Option of Holder to Elect Purchase" on the reverse of such Notes completed, to the Paying Agent at the address specified in the notice prior to the close of business on the third Business Day preceding the Change of Control Payment Date;

(6) that any Holder shall be entitled to withdraw such election if the Paying Agent receives, not later than the close of business on the second Business Day preceding the Change of Control Payment Date, a facsimile transmission or letter, setting forth the name of the Holder, the principal amount of Notes delivered for purchase, and a statement that such Holder is withdrawing such Holder's election to have such Notes or portions thereof purchased pursuant to the Change of Control Offer;

(7) that any Holder electing to have Notes purchased pursuant to the Change of Control Offer must specify the principal amount that is being tendered for purchase, which principal amount must be U.S.$200,000 and in integral multiples of U.S.$1,000 in excess thereof;

(8) that any Holder of Certificated Notes whose Certificated Notes are being purchased only in part will be issued new Certificated Notes equal in principal amount to the unpurchased portion of the Certificated Note or Notes surrendered, which unpurchased portion will be equal in principal amount to U.S.$200,000 and in integral multiples of U.S.$1,000 in excess thereof;

(9) that the Trustee will return to the Holder of a Global Note that is being purchased in part, such Global Note with a notation on Schedule A thereof adjusting the principal amount thereof to be equal to the unpurchased portion of such Global Note; and

(10) any other information necessary to enable any Holder to tender Notes and to have such Notes purchased pursuant to Section 3.8(b).

"Change of Control Offer" has the meaning assigned to it in Section 3.8(b).

"Change of Control Payment" has the meaning assigned to it in Section 3.8(a).

"Change of Control Payment Date" has the meaning assigned to it in Section 3.8(b).

"Clearstream" means Clearstream Banking, *société anonyme*, or the successor to its securities clearance and settlement operations.

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

"Collateral" means "Transaction Security" as defined in the Intercreditor Agreement from time to time.

"Commission" means the U.S. Securities and Exchange Commission.

"Commodity Price Purchase Agreement" means, in respect of any Person, any forward contract, commodity swap agreement, commodity option agreement or other similar agreement or arrangement designed to protect such Person from fluctuations in commodity prices.

"Common Stock" of any Person means any and all shares, interests or other participations in, and other equivalents (however designated and whether voting or non-voting) of such Person's common equity interests, whether outstanding on the Issue Date or issued after the Issue Date, and includes, without limitation, all series and classes of such common equity interests.

"Compensation Related Hedging Obligations" means (i) the obligations of any Person pursuant to any equity option contract, equity forward contract, equity swap, warrant, rights or other similar agreement designed to hedge risks or obligations relating to employee, director or consultant compensation, pension, benefits or similar activities of the Issuer and/or any of its Subsidiaries and (ii) the obligations of any Person pursuant to any agreement that requires another Person to make payments or deliveries that are otherwise required to be made by the first Person relating to employee, director or consultant compensation, pension, benefits or similar activities of the Issuer and/or any of its Subsidiaries, in each case in the ordinary course of business.

"Consolidated EBITDA" means, for any Person for any period, Consolidated Net Income for such Person for such period, plus the following, without duplication, to the extent deducted or added in calculating such Consolidated Net Income:

(1) Consolidated Income Tax Expense for such Person for such period;

(2) Consolidated Interest Expense for such Person for such period net of consolidated interest income for such period;

(3) Consolidated Non-cash Charges for such Person for such period;

(4) the amount of any nonrecurring restructuring charge or reserve deducted in such period in computing Consolidated Net Income;

(5) the net effect on income or loss in respect of Hedging Obligations or other derivative instruments, which shall include, for the avoidance of doubt, all amounts not excluded from Consolidated Net Income pursuant to the proviso in clause (9) thereof; and

(6) net income of such Person attributable to minority interests in Subsidiaries of such Person.

*less* (x) all non-cash credits and gains increasing Consolidated Net Income for such Person for such period and (y) all cash payments made by such Person and its Restricted Subsidiaries during such period relating to Consolidated Non-cash Charges that were added back in determining Consolidated EBITDA in any prior period.

"Consolidated Fixed Charge Coverage Ratio" means, for any Person as of any date of determination (the "Fixed Charge Calculation Date"), the ratio of the aggregate amount of Consolidated EBITDA of such Person for the four most recent full fiscal quarters for which financial statements are available ending prior to the date of such determination (the "Four Quarter Period") to Consolidated Fixed Charges for such Person for such Four Quarter Period. For purposes of making the computation referred to above, Material Acquisitions and Material Dispositions (as determined in accordance with GAAP) that have been made by the Issuer or any of its Restricted Subsidiaries during the Four Quarter Period or subsequent to such Four Quarter

Period and on or prior to or simultaneously with the Fixed Charge Calculation Date shall be calculated on a *pro forma* basis assuming that all such Material Acquisitions and Material Dispositions (and the change in any associated fixed charge obligations and the change in Consolidated EBITDA resulting therefrom) had occurred on the first day of the Four Quarter Period. If since the beginning of such period any Person that subsequently became a Restricted Subsidiary or was merged with or into the Issuer or any of its Restricted Subsidiaries since the beginning of such period shall have made any Material Acquisition or Material Disposition that would have required adjustment pursuant to this definition, then the Consolidated Fixed Charge Coverage Ratio shall be calculated giving *pro forma* effect thereto.

For purposes of this definition, whenever *pro forma* effect is to be given to a Material Acquisition or Material Disposition and the amount of income or earnings relating thereto or with respect to other *pro forma* calculations under this definition, such *pro forma* calculations shall be made in good faith by a responsible financial or accounting officer of the Issuer. If any Indebtedness bears a floating rate of interest and is being given *pro forma* effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the Fixed Charge Calculation Date had been the applicable rate for the entire period (taking into account any Hedging Obligations applicable to such Indebtedness). Interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by a responsible financial or accounting officer of the Issuer to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP. For purposes of making the computation referred to above, interest on any Indebtedness under a revolving credit facility computed on a *pro forma* basis shall be computed based upon the average daily balance of such Indebtedness during the applicable period except as set forth in the first paragraph of this definition. Interest on Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a eurocurrency interbank offered rate, or other rate, shall be deemed to have been based upon the rate actually chosen, or, if none, then based upon such optional rate chosen as the Issuer may designate.

Furthermore, in calculating "Consolidated Fixed Charges" for purposes of determining the denominator (but not the numerator) of this "Consolidated Fixed Charge Coverage Ratio,"

(a) interest on outstanding Indebtedness determined on a fluctuating basis as of the date of determination and which will continue to be so determined thereafter will be deemed to have accrued at a fixed rate per annum equal to the rate of interest on such Indebtedness in effect on such date of determination;

(b) if interest on any Indebtedness actually Incurred on such date of determination may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a eurocurrency interbank offered rate, or other rates, then the interest rate in effect on such date of determination will be deemed to have been in effect during the Four Quarter Period; and

(c) notwithstanding clause (a) above, interest on Indebtedness determined on a fluctuating basis, to the extent such interest is covered by Hedging Obligations, will be deemed to accrue at the rate per annum resulting after giving effect to the operation of such agreements.

"Consolidated Fixed Charges" means, for any Person for any period, the sum, without duplication, of:

(1) Consolidated Interest Expense for such Person for such period, plus

(2) to the extent not included in (1) above, payments during such period in respect of the financing costs of financial derivatives in the form of equity swaps, plus

(3) the product of:

(a) the amount of all cash and non-cash dividend payments on any series of Preferred Stock or Disqualified Capital Stock of such Person (other than dividends paid in Qualified Capital Stock) or any Subsidiary of such Person (Restricted Subsidiary in the case of the Issuer) paid, accrued or scheduled to be paid or accrued during such period, excluding dividend payments on Preferred Stock or Disqualified Capital Stock paid, accrued or scheduled to be paid to such Person or another Subsidiary (Restricted Subsidiary in the case of the Issuer), times

(b) a fraction, the numerator of which is one and the denominator of which is one minus the then current effective tax rate of such Person in its principal taxpaying jurisdiction (Mexico, in the case of the Issuer), expressed as a decimal.

"Consolidated Income Tax Expense" means, with respect to any Person for any period, the provision for federal, state and local income and asset taxes payable, including current and deferred taxes, by such Person and its Subsidiaries (Restricted Subsidiaries in the case of the Issuer) for such period as determined on a consolidated basis in accordance with GAAP.

"Consolidated Interest Expense" means, for any Person for any period, the sum of, without duplication determined on a consolidated basis in accordance with GAAP:

(1) the aggregate of cash and non-cash interest expense of such Person and its Subsidiaries (Restricted Subsidiaries in the case of the Issuer) for such period determined on a consolidated basis in accordance with GAAP, including, without limitation the following for such Person and its Subsidiaries (Restricted Subsidiaries in the case of the Issuer) whether or not interest expense in accordance with GAAP:

(a) any amortization or accretion of debt discount or any interest paid on Indebtedness of such Person and its Subsidiaries (Restricted Subsidiaries in the case of the Issuer) in the form of additional Indebtedness,

(b) any amortization of deferred financing costs; *provided*, that any such amortization resulting from costs incurred prior to the Issue Date shall be excluded for the calculation of Consolidated Interest Expense,

(c) the net costs under Hedging Obligations relating to Indebtedness (including amortization of fees but excluding foreign exchange adjustments on the notional amounts of the Hedging Obligations),

(d) all capitalized interest,

(e) the interest portion of any deferred payment obligation,

(f) commissions, discounts and other fees and charges Incurred in respect of letters of credit or bankers' acceptances or in connection with sales or other dispositions of accounts receivable and related assets,

(g) any interest expense on Indebtedness of another Person that is Guaranteed by such Person or one of its Subsidiaries (Restricted Subsidiary in the case of the Issuer) or secured by a Lien on the assets of such Person or one of its Subsidiaries (Restricted Subsidiaries in the case of the Issuer), whether or not such Guarantee or Lien is called upon, and

(h) any interest accrued in respect of Indebtedness without a maturity date; and

(2) the interest component of Capitalized Lease Obligations paid, accrued and/or scheduled to be paid or accrued by such Person and its Subsidiaries (Restricted Subsidiaries in the case of the Issuer) during such period.

"Consolidated Net Income" means, with respect to any Person for any period, the aggregate net income (or loss) of such Person and its Subsidiaries for such period on a consolidated basis (after deducting (i) the portion of such net income attributable to minority interests in Subsidiaries of such Person and (ii) any interest paid or accrued in respect of Indebtedness without a maturity date), determined in accordance with GAAP; *provided*, that there shall be excluded therefrom:

(1) net after-tax gains and losses from Asset Sale transactions or abandonments or reserves relating thereto;

(2) net after-tax items classified as extraordinary gains or losses;

(3) the net income (but not loss) of any Subsidiary of such Person (non-Note Guarantor Subsidiary in the case of the Issuer) to the extent that a corresponding amount could not be distributed to such Person at the date of determination as a result of any restriction pursuant to the constituent documents of such Subsidiary (non-Note Guarantor Subsidiary in the case of the Issuer) or any law, regulation, agreement or judgment applicable to any such distribution;

(4) any net income (loss) of any Person (other than the Issuer) if such Person is not a Restricted Subsidiary, except that the Issuer's equity in the net income of any such Person for such period shall be included in such Consolidated Net Income up to the aggregate amount of cash distributed by such Person during such period to the Issuer or a Restricted Subsidiary as a dividend or other distribution (subject, in the case of a dividend or other distribution to a Restricted Subsidiary, to the limitations contained in this clause);

(5) [Reserved];

(6) any restoration to income of any contingency reserve, except to the extent that provision for such reserve was made out of Consolidated Net Income accrued at any time following the Issue Date;

(7) any gain (or loss) from foreign exchange translation or change in net monetary position;

(8) any gain (or loss) from the cumulative effect of changes in accounting principles; and

(9) any net gain or loss (after any offset) resulting in such period from Hedging Obligations or other derivative instruments; *provided*, that the net effect on income or loss (including in any prior periods) shall be included upon any termination or early extinguishment of such Hedging Obligations or other derivative instrument, other than any Hedging Obligations with respect to Indebtedness (that is not itself a Hedging Obligation) and that are extinguished concurrently with the termination or other prepayment of such Indebtedness.

"Consolidated Non-cash Charges" means, for any Person for any period, the aggregate depreciation, amortization (including amortization of goodwill and other Intangible Assets) and other non-cash expenses or losses of such Person and its Subsidiaries (Restricted Subsidiaries in the case of the Issuer) for such period, determined on a consolidated basis in accordance with GAAP (excluding any such charge which constitutes an accrual of or a reserve for cash charges for any future period or the amortization of a prepaid cash expense paid in a prior period).

"Consolidated Tangible Assets" means, for any Person at any time, the total consolidated assets of such Person and its Subsidiaries (Restricted Subsidiaries in the case of the Issuer) as set forth on the balance sheet as of the most recent fiscal quarter of such Person, prepared in accordance with GAAP, less Intangible Assets.

"Corporate Trust Office" means the principal office of the Trustee at which at any time its corporate trust business shall be administered, which office at the date hereof is located at 101 Barclay Street, 4E, New York, New York 10286, Attention: International Corporate Trust, or such other address as the Trustee may designate from time to time by notice to the Holders and the Issuer.

"Covenant Defeasance" has the meaning assigned to it in Section 8.1(c).

"Covenant Suspension Event" has the meaning assigned to it in Section 3.22(b).

"Currency Agreement" means, in respect of any Person, any foreign exchange contract, currency swap agreement or other similar agreement as to which such Person is a party designed to hedge foreign currency risk of such Person.

"Custodian" means any receiver, trustee, *conciliador*, assignee, liquidator, sequestrator or similar official under any Bankruptcy Law.

"Default" means an event or condition the occurrence of which is, or with the lapse of time or the giving of notice or both would be, an Event of Default.

"Defaulted Interest" has the meaning assigned to it in Section 2.13 and Section 1, paragraph 2 of the Form of Reverse Side of Note contained in Exhibit A hereto.

"Designated Non-cash Consideration" means the Fair Market Value of non-cash consideration received by the Issuer or a Restricted Subsidiary in connection with an Asset Sale that is so designated as Designated Non-cash Consideration pursuant to an Officer's Certificate setting forth the basis of such valuation.

"Designation" has the meaning assigned to it in Section 3.14(a).

"Designation Amount" has the meaning assigned to it in clause (iii) of Section 3.14(a).

"Disposition" means, with respect to any property, any sale, lease, Sale and Leaseback Transaction, assignment, conveyance, transfer or other disposition thereof.

"Disqualified Capital Stock" means that portion of any Capital Stock which, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable at the option of the Holder thereof), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is redeemable at the sole option of the Holder thereof, in any case, on or prior to the 91st day after the final maturity date of the Notes, but excluding with respect to Mexican companies, any shares of such Mexican company that are part of the variable portion of its Capital Stock and that are redeemable under the Mexican General Law of Business Corporations ( *Ley General de Sociedades Mercantiles* ).

"Distribution Compliance Period" means, in respect of any Regulation S Global Note (or Certificated Note issued in respect thereof pursuant to Section 2.7(c)), the 40 consecutive days beginning on and including the later of (a) the day on which any Notes represented thereby are offered to persons other than distributors (as defined in Regulation S) pursuant to Regulation S or (b) the issue date for such Notes.

"DTC" means The Depository Trust Company, its nominees and their respective successors and assigns, or such other depositary institution hereinafter appointed by the Issuer that is a clearing agency registered under the Exchange Act.

"Equity Offering" has the meaning assigned to it in Section 5 of the Form of Reverse Side of Note contained in Exhibit A hereto.

"Euroclear" means Euroclear Bank S.A./N.V., as operator of the Euroclear System, N.V., or its successor in such capacity.

"Event of Default" has the meaning assigned to it in Section 6.1.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, or any successor statute or statutes thereto.

"Existing Senior Notes" means the U.S. Dollar-denominated 9.50% Senior Secured Notes due 2016 guaranteed by the Issuer, the Euro-denominated 9.625% Senior Secured Notes due 2017 guaranteed by the Issuer, the U.S. Dollar-denominated 9.25% Senior Secured Notes due 2020 guaranteed by the Issuer, the Euro-denominated 8.875% Senior Secured Notes due 2017 guaranteed by the Issuer, the U.S. Dollar-denominated 9.000% Senior Secured Notes due 2018 issued by the Issuer, the U.S. Dollar-denominated Floating Rate Senior Secured Notes due 2015 issued by the Issuer, the U.S. Dollar-denominated 9.875% Senior Secured Notes due 2019 guaranteed by the Issuer, the Euro-denominated 9.875% Senior Secured Notes due 2019 guaranteed by the Issuer, the U.S. Dollar-denominated 9.50% Senior Secured Notes due 2018 issued by the Issuer and the U.S. Dollar-denominated 9.375% Senior Secured Notes due 2022 guaranteed by the Issuer.

"Facilities Agreement" means the facilities agreement, dated as of September 17, 2012, entered into among the Issuer and certain of its Subsidiaries, the financial institutions and noteholders party thereto, Citibank International PLC, as new administrative agent, and the Security Agent, as such agreement may be amended, modified or waived from time to time.

"Facilities Agreement Indebtedness" means the Indebtedness that is subject to and outstanding under the Facilities Agreement.

"Fair Market Value" means, with respect to any asset, the price (after taking into account any liabilities relating to such assets) which could be negotiated in an arm's-length free market transaction, for cash, between a willing seller and a willing and able buyer, neither of which is under any compulsion to complete the transaction. Fair Market Value shall be determined, except as otherwise provided, by the Issuer in good faith.

"Fitch" means Fitch Ratings and any successor to its rating agency business.

"Four Quarter Period" has the meaning assigned to it in the definition of "Consolidated Fixed Charge Coverage Ratio" above.

"Free Reserves Available for Distribution" has the meaning assigned to it in Section 10.6(c).

"French Note Guarantor" has the meaning assigned to it in Section 10.5(a).

"GAAP" means IFRS as in effect on March 25, 2013. At any time, and from time to time, after the Issue Date, the Issuer may elect to apply IFRS as in effect at such time in lieu of GAAP and, upon any such election, references herein to GAAP shall thereafter be construed to mean IFRS as in effect on the date of such election; *provided*, that any such election, once made, shall be irrevocable. The Issuer shall give notice of any such election to the Trustee.

"Global Note" means any Note issued in fully registered form to DTC (or its nominee), as depositary for the beneficial owners thereof, which shall be substantially in the form of Exhibit A, with appropriate legends as specified in Section 2.8 and Exhibit A hereto.

"Guarantee" means any obligation, contingent or otherwise, of any Person directly or indirectly guaranteeing any Indebtedness of any other Person:

(1) to purchase or pay, or advance or supply funds for the purchase or payment of, such Indebtedness of such other Person, whether arising by virtue of partnership arrangements, or by agreement to keep-well, to purchase assets, goods, securities or services, to take-or-pay, or to maintain financial statement conditions or otherwise, or

(2) entered into for purposes of assuring in any other manner the obligee of such Indebtedness of the payment thereof or to protect such obligee against loss in respect thereof, in whole or in part,

*provided*, that "Guarantee" will not include endorsements for collection or deposit in the ordinary course of business. "Guarantee" used as a verb has a corresponding meaning.

"Guaranteed Obligations" has the meaning assigned to it in Section 10.1(a).

"Hedging Obligations" means the obligations of any Person pursuant to any Interest Rate Agreement, Currency Agreement, Commodity Price Purchase Agreement or any Transportation Agreement, in each case, not entered into for speculative purposes.

"Holder" means the Person in whose name a Note is registered in the Note Register.

"IFRS" means the International Financial Reporting Standards as issued by the International Accounting Standards Board.

"Incur" means, with respect to any Indebtedness or other obligation of any Person, to create, issue, incur (including by conversion, exchange or otherwise), assume,

Guarantee or otherwise become liable in respect of such Indebtedness or other obligation on the balance sheet of such Person (and " Incurrence," "Incurred" and "Incurring" will have meanings correlative to the preceding).

"Indebtedness" means with respect to any Person, without duplication:

(1) the principal amount (or, if less, the accreted value) of all obligations of such Person for borrowed money;

(2) the principal amount (or, if less, the accreted value) of all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, including any perpetual bonds, debenture notes or similar instruments without regard to maturity date;

(3) all Capitalized Lease Obligations of such Person;

(4) all obligations of such Person issued or assumed as the deferred purchase price of property, all conditional sale obligations and all payment obligations under any title retention agreement (but excluding trade accounts payable and other accrued liabilities accounted for as current liabilities (in accordance with GAAP) arising in the ordinary course of business) to the extent of any reimbursement obligations in respect thereof;

(5) reimbursement obligations with respect to letters of credit, banker's acceptances or similar credit transactions;

(6) Guarantees and other contingent obligations of such Person in respect of Indebtedness referred to in clauses (1) through (5) above and clauses (8) through (10) below;

(7) all Indebtedness of any other Person of the type referred to in clauses (1) through (6) which is secured by any Lien on any property or asset of the first Person, the amount of such Indebtedness being deemed to be the lesser of the Fair Market Value of such property or asset or the amount of the Indebtedness so secured;

(8) all obligations under Hedging Obligations or other derivatives of such Person;

(9) all liabilities (contingent or otherwise) of such Person in connection with a sale or other disposition of accounts receivable and related assets (not including Qualified Receivables Transactions), irrespective of their treatment under GAAP or IFRS; and

(10) all Disqualified Capital Stock issued by such Person with the amount of Indebtedness represented by such Disqualified Capital Stock being equal to the greater of its voluntary or involuntary liquidation preference and its maximum fixed repurchase price, but excluding accrued dividends, if any; *provided*, that:

(a) if the Disqualified Capital Stock does not have a fixed repurchase price, such maximum fixed repurchase price will be calculated in accordance with the terms of the Disqualified Capital Stock as if the Disqualified Capital Stock were purchased on any date on which Indebtedness will be required to be determined pursuant to this Indenture, and

(b) if the maximum fixed repurchase price is based upon, or measured by, the fair market value of the Disqualified Capital Stock, the fair market value will be the Fair Market Value thereof.

"Indenture" means this Indenture as amended or supplemented from time to time, including the Schedule and Exhibits hereto.

"Intangible Assets" means with respect to any Person all unamortized debt discount and expense, unamortized deferred charges, goodwill, patents, trademarks, service marks, trade names, copyrights and all other items which would be treated as intangibles on the consolidated balance sheet of such Person prepared in accordance with GAAP.

"Intercreditor Agreement" means the intercreditor agreement, dated as of September 17, 2012, entered into among the Issuer and certain of its Subsidiaries, the financial institutions and noteholders party thereto, Citibank International PLC, as facility agent, and the Security Agent, as such agreement may be amended from time to time.

"Interest Payment Date" means the stated due date of an installment of interest on the Notes as specified in the Form of Face of Note contained in Exhibit A hereto.

"Interest Rate Agreement" of any Person means any interest rate protection agreement (including, without limitation, interest rate swaps, caps, floors, collars, derivative instruments and similar agreements) and/or other types of hedging agreements designed to hedge interest rate risk of such Person.

"Inventory Financing" means a financing arrangement pursuant to which the Issuer or any of its Restricted Subsidiaries sells inventory to a bank or other institution (or a special purpose vehicle or partnership incorporated or established by or on behalf of such bank or other institution or an Affiliate of such bank or other institution) and has an obligation to repurchase such inventory to the extent that it is not sold to a third party within a specified period.

"Investment" means, with respect to any Person, any (1) direct or indirect loan, advance or other extension of credit (including, without limitation, a Guarantee) to any other Person, (2) capital contribution (by means of any transfer of cash or other property to others or any payment for property or services for the account or use of others) to any other Person, or (3) purchase or acquisition by such Person of any Capital Stock, bonds, notes, debentures or other securities or evidences of Indebtedness issued by any other Person. "Investment" will exclude

accounts receivable, extensions of credit in connection with supplier or customer financings consistent with industry or past practice, advance payment of capital expenditures arising in the ordinary course of business, deposits arising in the ordinary course of business and transactions (other than (i) any sale, lease, license, transfer or other disposal and (ii) the granting or creation of a Lien or the Incurring or permitting to subsist of Indebtedness) conducted in the ordinary course of business on arm's-length terms.

For purposes of Section 3.11, the Issuer will be deemed to have made an "Investment" in an Unrestricted Subsidiary at the time of its Designation, which will be valued at the Fair Market Value of the sum of the net assets of such Unrestricted Subsidiary multiplied by the percentage equity ownership of the Issuer and its Restricted Subsidiaries in such designated Unrestricted Subsidiary at the time of its Designation and the amount of any Indebtedness of such Unrestricted Subsidiary or owed to the Issuer or any Restricted Subsidiary immediately following such Designation. Any property transferred to or from an Unrestricted Subsidiary will be valued at its Fair Market Value at the time of such transfer. If the Issuer or any Restricted Subsidiary sells or otherwise disposes of any Capital Stock of a Restricted Subsidiary (including any issuance and sale of Capital Stock by a Restricted Subsidiary) such that, after giving effect to any such sale or disposition, such Restricted Subsidiary would cease to be a Subsidiary of the Issuer, the Issuer will be deemed to have made an Investment on the date of any such sale or disposition equal to sum of the Fair Market Value of the Capital Stock of such former Restricted Subsidiary held by the Issuer or any Restricted Subsidiary immediately following such sale or other disposition and the amount of any Indebtedness of such former Restricted Subsidiary Guaranteed by the Issuer or any Restricted Subsidiary or owed to the Issuer or any other Restricted Subsidiary immediately following such sale or other disposition. The acquisition by the Issuer or any Restricted Subsidiary of the Issuer of a Person that holds an Investment in a third Person will be deemed to be an Investment by the Issuer or such Restricted Subsidiary in such third Person in an amount equal to the Fair Market Value of the Investments held by the acquired Person in such third Person. Except as otherwise provided in this Indenture, the amount of an Investment will be determined at the time the Investment is made without giving effect to subsequent changes in value.

"Investment Grade Rating" means a rating equal to or higher than BBB- (or the equivalent) by Fitch, Baa3 (or the equivalent) by Moody's and BBB- (or the equivalent) by S&P.

"Investment Return" means, in respect of any Investment (other than a Permitted Investment) made after the Issue Date by the Issuer or any Restricted Subsidiary:

(1) the cash proceeds received by the Issuer upon the sale, liquidation or repayment of such Investment or, in the case of a Guarantee, the amount of the Guarantee upon the unconditional release of the Issuer and its Restricted Subsidiaries in full, less any payments previously made by the Issuer or any Restricted Subsidiary in respect of such Guarantee;

(2) in the case of the Revocation of the Designation of an Unrestricted Subsidiary, an amount equal to the lesser of:

(a) the Issuer's Investment in such Unrestricted Subsidiary at the time of such Revocation;

(b) that portion of the Fair Market Value of the net assets of such Unrestricted Subsidiary at the time of Revocation that is proportionate to the Issuer's equity interest in such Unrestricted Subsidiary at the time of Revocation; and

(c) the Designation Amount with respect to such Unrestricted Subsidiary upon its Designation which was treated as a Restricted Payment;

(3) in the event the Issuer or any Restricted Subsidiary makes any Investment in a Person that, as a result of or in connection with such Investment, becomes a Restricted Subsidiary, the existing Investment of the Issuer and its Restricted Subsidiaries in such Person,

in the case of each of (1), (2) and (3), up to the amount of such Investment that was treated as a Restricted Payment under Section 3.11 less the amount of any previous Investment Return in respect of such Investment.

"Issue Date" means the first date of issuance of the Notes under this Indenture and following a Partial Covenant Suspension Event or a Covenant Suspension Event, except under "*Optional Redemption for Changes in Withholding Taxes*" under clause (5) in Exhibit A hereto, Section 3.22 and the definition of "Permitted Liens," the most recent Partial Covenant Reversion Date or Reversion Date, as applicable.

"Issue Date Notes" means the U.S.$600,000,000 aggregate principal amount of Notes originally issued on the Issue Date, and any replacement Notes issued therefor in accordance with this Indenture.

"Issuer" means the party named as such in the introductory paragraph to this Indenture and its successors and assigns.

"Issuer Order" has the meaning assigned to it in Section 2.2(c).

"Legal Defeasance" has the meaning assigned to it in Section 8.1(b).

"Legal Holiday" has the meaning assigned to it in Section 12.6.

"Lien" means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such asset. The Issuer or any Restricted Subsidiary shall be deemed to own, subject to a Lien, any asset that it has acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement, Capitalized Lease Obligations or other title retention lease relating to such asset, or any account receivable transferred by it with recourse (including any such transfer subject to a holdback or similar arrangement that effectively imposes the risk of collectability on the transferor).

"Material Acquisition" means:

(1) an Investment by the Issuer or any Restricted Subsidiary in any other Person pursuant to which such Person will become a Restricted Subsidiary, or will be merged with or into the Issuer or any Restricted Subsidiary;

(2) the acquisition by the Issuer or any Restricted Subsidiary of the assets of any Person (other than a Subsidiary of the Issuer) which constitute all or substantially all of the assets of such Person or comprises any division or line of business of such Person or any other properties or assets of such Person other than in the ordinary course of business; or

(3) any Revocation with respect to an Unrestricted Subsidiary;

in each case which involves an Investment, Designation or payment of consideration in excess of U.S.$25,000,000 (or the equivalent in other currencies).

"Material Disposition" means any Asset Sale and, whether or not constituting an Asset Sale, (1) any sale or other disposition of Capital Stock, (2) any Designation with respect to an Unrestricted Subsidiary and (3) any sale or other disposition of property or assets excluded from the definition of Asset Sale by clause (4) of that definition, in each case which involves an Investment, Designation or payment of consideration in excess of U.S.$25,000,000 (or the equivalent in other currencies).

"Maturity Date" means March 25, 2019.

"Moody's" means Moody's Investors Service, Inc. and any successor to its rating agency business.

"Net Cash Proceeds" means, with respect to any Asset Sale, the proceeds in the form of cash or Cash Equivalents, including payments in respect of deferred payment obligations when received in the form of cash or Cash Equivalents received by the Issuer or any of its Restricted Subsidiaries from such Asset Sale, net of:

(1) reasonable out-of-pocket expenses and fees relating to such Asset Sale (including, without limitation, legal, accounting and investment banking fees and sales commissions);

(2) taxes paid or payable in respect of such Asset Sale after taking into account any reduction in consolidated tax liability due to available tax credits or deductions and any tax sharing arrangements;

(3) repayment of Indebtedness secured by a Lien permitted under this Indenture that is required to be repaid in connection with such Asset Sale; and

(4) appropriate amounts to be provided by the Issuer or any Restricted Subsidiary, as the case may be, as a reserve, in accordance with GAAP, against any liabilities associated with such Asset Sale and retained by the Issuer or any Restricted Subsidiary, as the case may be, after such Asset Sale, including, without limitation, pension and other post-employment benefit liabilities, liabilities related to environmental matters and liabilities under any indemnification obligations associated with such Asset Sale, but excluding any reserves with respect to Indebtedness.

"Non-U.S. Person" means a person who is not a U.S. person, as defined in Regulation S.

"Note Custodian" means the custodian with respect to any Global Note appointed by DTC, or any successor Person thereto, and shall initially be the Trustee.

"Note Guarantee" means any guarantee of the Issuer's Obligations under this Indenture and the Notes by any Note Guarantor pursuant to Article X.

"Note Guarantors" means (i) each of the Issuer's Restricted Subsidiaries that executes this Indenture as a Note Guarantor or an Additional Note Guarantor and (ii) each of the Issuer's Restricted Subsidiaries that in the future executes a supplemental indenture in which such Restricted Subsidiary agrees to be bound by the terms of this Indenture as a Note Guarantor, and their respective successors and assigns; provided, that any Person constituting a Note Guarantor as described above shall cease to constitute a Note Guarantor when its respective Note Guarantee is released in accordance with the terms of this Indenture.

"Note Register" has the meaning assigned to it in Section 2.3(a).

"Notes" means any of the Issuer's 5.875% Senior Secured Notes due 2019 issued and authenticated pursuant to this Indenture.

"Obligations" means, with respect to any Indebtedness, any principal, interest (including, without limitation, Post-Petition Interest), penalties, fees, indemnifications, reimbursements, damages, and other liabilities payable under the documentation governing such Indebtedness, including, in the case of the Notes and the Note Guarantees, this Indenture.

"Officer" means, when used in connection with any action to be taken by the Issuer or a Note Guarantor, as the case may be, the Chairman of the Board, the Chief Executive Officer, the President, the Chief Financial Officer, any Vice President, the Treasurer, the Controller, the Secretary or an attorney-in-fact of the Issuer or such Note Guarantor, as the case may be.

"Officer's Certificate" means a certificate signed on behalf of a Person by an Officer of such Person, who must be the principal executive officer, the principal financial officer, the treasurer, the Vice President – Corporate Finance, the principal accounting officer or an attorney-in-fact of such Person, that meets the requirements set forth in this Indenture.

"Opinion of Counsel" means a written opinion of counsel, who, unless otherwise indicated in this Indenture, may be an employee of or counsel for the Issuer or any Note Guarantor, and who shall be reasonably acceptable to the Trustee.

"Outstanding" means, as of the date of determination, all Notes theretofore authenticated and delivered under this Indenture, *except*:

(1) Notes theretofore canceled by the Trustee or delivered to the Trustee for cancellation;

(2) Notes, or portions thereof, for the payment, redemption or, in the case of an Asset Sale Offer or Change of Control Offer, purchase of which, money in the necessary amount has been theretofore deposited with the Trustee or any Paying Agent (other than the Issuer or an Affiliate of the Issuer) in trust or set aside and segregated in trust by the Issuer or an Affiliate of the Issuer (if the Issuer or such Affiliate is acting as the Paying Agent) for the Holders of such Notes; *provided*, that if Notes (or portions thereof) are to be redeemed or purchased, notice of such redemption or purchase has been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee has been made;

(3) Notes which have been surrendered pursuant to Section 2.9 or Notes in exchange for which or in lieu of which other Notes have been authenticated and delivered pursuant to this Indenture, other than any such Notes in respect of which there shall have been presented to the Trustee proof satisfactory to it that such Notes are held by a protected purchaser in whose hands such Notes are valid obligations of the Issuer; and

(4) solely to the extent provided in Article VIII, Notes which are subject to Legal Defeasance or Covenant Defeasance as provided in Article VIII;

*provided*, *however*, that in determining whether the Holders of the requisite aggregate principal amount of the Outstanding Notes have given any request, demand, authorization, direction, notice, consent or waiver hereunder, Notes owned by the Issuer, a Note Guarantor or any other obligor upon the Notes or any Affiliate of the Issuer or of such other obligor shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Notes which a Trust Officer of the Trustee actually knows to be so owned shall be so disregarded. Notes so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Notes and that the pledgee is not the Issuer or any other obligor upon the Notes or any Affiliate of the Issuer or of such other obligor.

"Partial Covenant Reversion Date" has the meaning set forth under Section 3.22(e).

"Partial Covenant Suspension Date" has the meaning set forth under Section 3.22(c).

"Partial Covenant Suspension Event" has the meaning set forth under Section 3.22(a).

"Partial Suspended Covenants" has the meaning set forth under Section 3.22(a).

"Partial Suspension Period" has the meaning set forth under Section 3.22(e).

"Paying Agent" has the meaning assigned to it in Section 2.3(a).

"Permitted Asset Swap Transaction" means a transaction consisting substantially of the concurrent (i) disposition by the Issuer or any of its Restricted Subsidiaries of any asset, property or cash consideration (other than a Restricted Subsidiary) in exchange for assets, property or cash consideration transferred to the Issuer or a Restricted Subsidiary, to be used in a Permitted Business or (ii) disposition by the Issuer or any of its Restricted Subsidiaries of Capital Stock of a Restricted Subsidiary in exchange for Capital Stock of another Restricted Subsidiary or of Capital Stock of any Person that becomes a Restricted Subsidiary after giving effect to such transaction; *provided*, that any cash or Cash Equivalents received in such a transaction shall constitute Net Cash Proceeds to be applied in accordance with Section 3.12.

"Permitted Business" means the business or businesses conducted by the Issuer and its Restricted Subsidiaries as of the Issue Date and any business ancillary, complementary or related thereto or any other business that would not constitute a substantial change to the general nature of its business from that carried on as of the Issue Date.

"Permitted Indebtedness" has the meaning set forth in Section 3.9(b).

"Permitted Investments" means:

(1) Investments by the Issuer or any Restricted Subsidiary in any Person that is, or that result in any Person becoming, immediately after such Investment, a Restricted Subsidiary or constituting a merger or consolidation of such Person into the Issuer or with or into a Restricted Subsidiary;

(2) any Investment in the Issuer;

(3) Investments in cash and Cash Equivalents;

(4) any extension, modification or renewal of any Investments existing as of the Issue Date (but not Investments involving additional advances, contributions or other investments of cash or property or other increases thereof, other than as a result of the accrual or accretion of interest or original issue discount or payment-in-kind pursuant to the terms of such Investment as of the Issue Date);

(5) Investments permitted pursuant to clause (ii), (vi) or (vii) of Section 3.18(b);

(6) Investments received as a result of the bankruptcy or reorganization of any Person or taken in settlement of or other resolution of claims or disputes, and, in each case, extensions, modifications and renewals thereof;

(7) Investments made by the Issuer or its Restricted Subsidiaries as a result of non-cash consideration permitted to be received in connection with an Asset Sale made in compliance with Section 3.12;

(8) Investments in the form of Hedging Obligations or Compensation Related Hedging Obligations permitted under clause (iv) of Section 3.9(b);

(9) Investments in existence on the Issue Date or made pursuant to binding commitments in effect on the Issue Date or any Investment consisting of any extension, modification or renewal of any Investment existing on the Issue Date; *provided*, that the amount of any such Investment may be increased (a) as required by the terms of such Investment as in existence on the Issue Date or (b) as otherwise permitted by this Indenture;

(10) Investments by the Issuer or any Restricted Subsidiary in a Receivables Entity in connection with a Qualified Receivables Transaction which does not constitute an Asset Sale by virtue of clause (7) of the definition thereof; *provided*, *however*, that any such Investments are made only in the form of Receivables Assets;

(11) Investments in marketable securities or instruments, to fund the Issuer's or a Restricted Subsidiary's pension and other employee-related obligations in the ordinary course of business pursuant to compensation arrangements approved by the Board of Directors or senior management of the Issuer;

(12) any Investment that:

(a) when taken together with all other Investments made pursuant to this clause (12) that are at the time outstanding (net of cash benefits to the Issuer or a Restricted Subsidiary from Investments pursuant to this clause (12)), does not exceed the greater of U.S.$250 million and 3% of Consolidated Tangible Assets; or

(b) when taken together with all other Investments made pursuant to this clause (12) in any fiscal year that are at the time outstanding, does not exceed U.S.$100 million in any fiscal year;

(13) Investments in the Capital Stock of any Person other than a Restricted Subsidiary that are required to be held pursuant to an involuntary governmental order of condemnation, nationalization, seizure or expropriation or other similar order with respect to Capital Stock of such

Person (prior to which order such Person was a Restricted Subsidiary); *provided*, that such Person contests such order in good faith in appropriate proceedings;

(14) repurchases of Existing Senior Notes or the Notes;

(15) Investments in the SPV Perpetuals or the notes related thereto; *provided*, that any payment or other contribution to one of the special purpose vehicles issuing the SPV Perpetuals in connection with such Investment is promptly paid or contributed to the Issuer or a Restricted Subsidiary following receipt thereof;

(16) any Investment that constitutes Indebtedness permitted under clause (vii)(E) of Section 3.9(b); and

(17) (a) Investments to which the Issuer or any of its Restricted Subsidiaries is contractually committed as of the Issue Date in any Person other than a Subsidiary in which the Issuer or any of its Restricted Subsidiaries maintains an Investment in equity securities and
(b) Investments in any Person other than a Subsidiary in which the Issuer or any of its Restricted Subsidiaries maintains an Investment in equity securities up to U.S.$100 million in any calendar year minus the amount of any guarantees under clause (xviii) of Section 3.9(b).

"Permitted Liens" means any of the following:

(1) statutory Liens of landlords and Liens of carriers, warehousemen, mechanics and materialmen incurred in the ordinary course of business for sums not yet due or the payment of which is being contested in good faith by appropriate proceedings promptly initiated and diligently conducted and for which such reserves or other appropriate provision, if any, as shall be required by GAAP, shall have been made and any other Liens created by operation of law;

(2) Liens Incurred or deposits made in the ordinary course of business in connection with (i) workers' compensation, unemployment insurance and other types of social security or (ii) other insurance maintained by the Issuer and its Subsidiaries in compliance with the Facilities Agreement (or any refinancing thereof);

(3) Liens for taxes, assessments and other governmental charges the payment of which is being contested in good faith by appropriate proceedings promptly initiated and diligently conducted and for which such reserves or other appropriate provision, if any, as shall be required by GAAP shall have been made;

(4) any attachment or judgment Lien, unless the judgment it secures shall not, within 60 days after the entry thereof, have been discharged or execution thereof stayed pending appeal, or shall not have been discharged within 60 days after the expiration of any such stay;

(5) (i) Liens existing on the Issue Date other than in respect of the Collateral and (ii) Liens in respect of the Collateral to the extent equally and ratably securing the Notes and the Permitted Secured Obligations;

(6) any Lien on property acquired by the Issuer or its Restricted Subsidiaries after the Issue Date that was existing on the date of acquisition of such property; *provided*, that such Lien was not incurred in anticipation of such acquisition, and any Lien created to secure all or any part of the purchase price, or to secure Indebtedness incurred or assumed to pay all or any part of the purchase price, of property acquired by the Issuer or any of its Restricted Subsidiaries after the Issue Date; *provided further*, that (A) any such Lien permitted pursuant to this clause (6) shall be confined solely to the item or items of property so acquired (including, in the case of any Acquisition of a corporation through the acquisition of 51% or more of the Voting Stock of such corporation, the stock and assets of any Acquired Subsidiary or Acquiring Subsidiary) and, if required by the terms of the instrument originally creating such Lien, other property which is an improvement to, or is acquired for specific use with, such acquired property; and (B) if applicable, any such Lien shall be created within nine months after, in the case of property, its acquisition, or, in the case of improvements, their completion;

(7) any Liens renewing, extending or refunding any Lien permitted by clause (5)(i) above; *provided*, that such Lien is not extended to other property (or, instead, is only extended to equivalent property) and the principal amount of Indebtedness secured by such Lien immediately prior thereto is not increased or the maturity thereof reduced, except that the principal amount secured by any such Lien in respect of:

(a) hedging obligations or other derivatives where there are fluctuations in mark-to-market exposures of those hedging obligations or other derivatives,

(b) Indebtedness consisting of any "*Certificados Bursátiles de Largo Plazo*" or the Bancomext Facility, or any Refinancing thereof, where principal may increase by virtue of capitalization of interest, and

(c) the Banobras Facility to the extent additional amounts are drawn thereunder,

may be increased by the amount of such fluctuations, capitalizations or drawings, as the case may be;

(8) Liens on Receivables Assets or Capital Stock of a Receivables Subsidiary, in each case granted in connection with a Qualified Receivables Transaction;

(9) Liens granted pursuant to or in connection with any netting or set-off arrangements entered into in the ordinary course of business;

(10) any Lien permitted by the Trustee, acting pursuant to the instructions of at least 50% of the Holders;

(11) any Lien granted by the Issuer or any of its Restricted Subsidiaries to secure Indebtedness under a Permitted Liquidity Facility; *provided*, that: (i) such Lien is not granted in respect of the Collateral, and (ii) the maximum amount of such Indebtedness secured by such Lien does not exceed U.S.$500 million at any time; or

(12) in addition to the Liens permitted by the foregoing clauses (1) through (11), Liens securing obligations of the Issuer and its Restricted Subsidiaries that in the aggregate secure obligations in an amount not in excess of the greater of (i) 5% of Consolidated Tangible Assets and (ii) U.S.$700 million.

"Permitted Liquidity Facility" means a loan facility or facilities made available to the Issuer or any Restricted Subsidiary; *provided*, that the aggregate principal amount of utilized and unutilized commitments under such facilities must not exceed U.S.$1 billion (or its equivalent in another currency) at any time.

"Permitted Merger Jurisdiction" has the meaning set forth in Section 4.1(a).

"Permitted Secured Obligations" means (i) the Facilities Agreement Indebtedness and any refinancing thereof made in accordance with the Facilities Agreement that is secured by the Collateral, (ii) notes (or similar instruments, including *Certificados Bursátiles*) outstanding on the date of the Facilities Agreement required to be secured by the Collateral pursuant to their terms, or any refinancing thereof permitted by the Facilities Agreement, (iii) future Indebtedness secured by the Collateral to the extent permitted by the Facilities Agreement and (iv) the Existing Senior Notes.

"Person" means an individual, partnership, limited partnership, corporation, company, limited liability company, unincorporated organization, trust or joint venture, or a governmental agency or political subdivision thereof.

"Post-Petition Interest" means all interest accrued or accruing after the commencement of any insolvency or liquidation proceeding (and interest that would accrue but for the commencement of any insolvency or liquidation proceeding) in accordance with and at the contract rate (including, without limitation, any rate applicable upon default) specified in the agreement or instrument creating, evidencing or governing any Indebtedness, whether or not, pursuant to applicable law or otherwise, the claim for such interest is allowed as a claim in such insolvency or liquidation proceeding.

"Preferred Stock" of any Person means any Capital Stock of such Person that has preferential rights over any other Capital Stock of such Person with respect to dividends, distributions or redemptions or upon liquidation.

"Private Placement Legend" has the meaning assigned to it in Section 2.8(b).

"Purchase Money Indebtedness" means Indebtedness Incurred for the purpose of financing all or any part of the purchase price or cost of construction of any property other than Capital Stock; *provided*, that the aggregate principal amount of such Indebtedness does not exceed the lesser of the Fair Market Value of such property or such purchase price or cost, including any Refinancing of such Indebtedness that does not increase the aggregate principal amount (or accreted amount, if less) thereof as of the date of Refinancing.

"QIB" means a "qualified institutional buyer" as defined in Rule 144A.

"Qualified Capital Stock" means any Capital Stock that is not Disqualified Capital Stock and any warrants, rights or options to purchase or acquire Capital Stock that is not Disqualified Capital Stock that are not convertible into or exchangeable into Disqualified Capital Stock.

"Qualified Receivables Transaction" means any transaction or series of transactions that may be entered into by the Issuer or any Restricted Subsidiary pursuant to which the Issuer or any Restricted Subsidiary may sell, convey, assign or otherwise transfer to a Receivables Entity any Receivables Assets to obtain funding for the operations of the Issuer and its Restricted Subsidiaries:

(1) for which no term of any portion of the Indebtedness or any other obligations (contingent or otherwise) or securities Incurred or issued by any Person in connection therewith:

  (a) directly or indirectly provides for recourse to, or any obligation of, the Issuer or any Restricted Subsidiary in any way, whether pursuant to a Guarantee or otherwise, except for Standard Undertakings,

  (b) directly or indirectly subjects any property or asset of the Issuer or any Restricted Subsidiary (other than Capital Stock of a Receivables Subsidiary) to the satisfaction thereof, except for Standard Undertakings, or

  (c) results in such Indebtedness, other obligations or securities constituting Indebtedness of the Issuer or a Restricted Subsidiary, including following a default thereunder, and

(2) for which the terms of any Affiliate Transaction between the Issuer or any Restricted Subsidiary, on the one hand, and any Receivables Entity, on the other, other than Standard Undertakings and Permitted Investments, are no less favorable than those that could reasonably be expected to be obtained in a comparable transaction at such time on an arm's length basis from a Person that is not an Affiliate of the Issuer, and

(3) in connection with which, neither the Issuer nor any Restricted Subsidiary has any obligation to maintain or preserve a Receivable Entity's financial condition, cause a Receivables Entity to achieve certain levels of operating results, fund losses of a Receivables Entity, or except in connection with Standard Undertakings, purchase assets of a Receivables Entity.

"Rating Agencies" mean Fitch, Moody's and S&P. In the event that Fitch, Moody's or S&P is no longer in existence or issuing ratings, such organization may be replaced by a nationally recognized statistical rating organization (as defined in Rule 15c3-1(c)(2)(vi)(F) of the Exchange Act or any successor provision) designated by the Issuer with notice to the Trustee.

"Receivables Assets" means:

(1) accounts receivable, leases, conditional sale agreements, instruments, chattel paper, installment sale contracts, obligations, general intangibles, and other similar assets, in each case relating to goods, inventory or services of the Issuer and its Subsidiaries,

(2) equipment and equipment residuals relating to any of the foregoing,

(3) contractual rights, Guarantees, letters of credit, Liens, insurance proceeds, collections and other similar assets, in each case related to the foregoing, and

(4) proceeds of all of the foregoing.

"Receivables Entity" means a Receivables Subsidiary or any other Person not an Affiliate of the Issuer, in each case whose sole business activity is to engage in Qualified Receivables Transactions, including to issue securities or other interests in connection with a Qualified Receivables Transaction.

"Receivables Subsidiary" means an Unrestricted Subsidiary of the Issuer that engages in no activities other than Qualified Receivables Transactions and activities related thereto and that is designated by the Issuer as a Receivables Subsidiary. Any such designation by the Issuer will be evidenced to the Trustee by filing with the Trustee an Officer's Certificate of the Issuer.

"Record Date" has the meaning assigned to it in the Form of Face of Note contained in Exhibit A hereto.

"Redemption Date" means, with respect to any redemption of the Notes, the date fixed for such redemption pursuant to this Indenture and the Notes.

"Refinance" means, in respect of any Indebtedness, to issue any Indebtedness in exchange for or to refinance, repay, redeem, replace, defease or refund such Indebtedness in whole or in part. "Refinanced" and "Refinancing" will have correlative meanings.

"Refinancing Indebtedness" means Indebtedness of the Issuer or any Restricted Subsidiary issued to Refinance any other Indebtedness of the Issuer or a Restricted Subsidiary so long as:

(1) the aggregate principal amount (or initial accreted value, if applicable) of such new Indebtedness as of the date of such proposed Refinancing does not exceed the aggregate principal amount (or accreted value as of such date, if applicable) of the Indebtedness being Refinanced (plus the amount of any premium required to be paid under the terms of the instrument governing such Indebtedness and the amount of reasonable expenses incurred by the Issuer in connection with such Refinancing);

(2) such new Indebtedness has:

  (a) a Weighted Average Life to Maturity that is equal to or greater than the Weighted Average Life to Maturity of the Indebtedness being Refinanced, and

  (b) a final maturity that is equal to or later than the final maturity of the Indebtedness being Refinanced or, in the case of Indebtedness without a stated maturity, December 14, 2017; and

(3) if the Indebtedness being Refinanced is:

  (a) Indebtedness of the Issuer, then such Refinancing Indebtedness will be Indebtedness of the Issuer and/or any Note Guarantor,

  (b) Indebtedness of a Note Guarantor, then such Refinancing Indebtedness will be Indebtedness of the Issuer and/or any Note Guarantor,

  (c) Indebtedness of any of the Restricted Subsidiaries, then such Refinancing Indebtedness will be Indebtedness of such Restricted Subsidiary, the Issuer and/or any Note Guarantor, and

  (d) Subordinated Indebtedness, then such Refinancing Indebtedness shall be subordinate to the Notes or the relevant Note Guarantee, if applicable, at least to the same extent and in the same manner as the Indebtedness being Refinanced.

Notwithstanding the foregoing, with respect to any hedging obligations or derivatives outstanding on the Issue Date in respect of the Axtel Share Forward Transaction, "Refinancing Indebtedness" shall mean any replacements, amendments or renewals thereof that are entered into on then prevailing market terms with the underlying amounts not greater than the original underlying amounts.

"Registrar" has the meaning assigned to it in Section 2.3(a).

"Regulation S" means Regulation S under the Securities Act or any successor regulation.

"Regulation S Global Note" has the meaning assigned to it in Section 2.1(e).

"Resale Restriction Termination Date" means for any Restricted Note (or beneficial interest therein), that is (a) not a Regulation S Global Note, the date on which the Issuer instructs the Trustee in writing to remove the Private Placement Legend from the Restricted Notes in accordance with the procedures described in Section 2.9(h) (which instruction is expected to be given on or about the one year anniversary of the issuance of the Restricted Notes) or (b) a Regulation S Global Note (or Certificated Note issued in respect thereof pursuant to Section 2.7(c)), the date on which the Distribution Compliance Period therefor terminates.

"Restricted Note" means any Issue Date Note (or beneficial interest therein) or any Additional Note (or beneficial interest therein) not originally issued and sold pursuant to an effective registration statement under the Securities Act until such time as:

(i) the Resale Restriction Termination Date therefor has passed; or

(ii) the Private Placement Legend therefor has otherwise been removed pursuant to Section 2.9 or, in the case of a beneficial interest in a Global Note, such beneficial interest has been exchanged for an interest in a Global Note not bearing a Private Placement Legend.

"Restricted Obligations" has the meaning assigned to it in Section 10.6(b).

"Restricted Payment" has the meaning set forth in Section 3.11(a).

"Restricted Subsidiary" means any Subsidiary of the Issuer, which at the time of determination is not an Unrestricted Subsidiary.

"Reversion Date" has the meaning assigned to in Section 3.22(e).

"Revocation" has the meaning set forth in Section 3.14(c).

"Rule 144" means Rule 144 under the Securities Act (or any successor rule).

"Rule 144A" means Rule 144A under the Securities Act (or any successor rule).

"Rule 144A Global Note" has the meaning assigned to it in Section 2.1(d).

"S&P" means Standard & Poor's Ratings Group and any successor to its rating agency business.

"Sale and Leaseback Transaction" means any direct or indirect arrangement with any Person or to which any such Person is a party providing for the leasing to the Issuer or a Restricted Subsidiary of any property, whether owned by the Issuer or any Restricted Subsidiary at the Issue Date or later acquired, which has been or is to be sold or transferred by the Issuer or such Restricted Subsidiary to such Person or to any other Person by whom funds have been or are to be advanced on the security of such Property.

"Securities Act" means the Securities Act of 1933, as amended.

"Security Agent" means Wilmington Trust (London) Limited, as security agent under the Intercreditor Agreement.

"Security Documents" has the meaning assigned to it in Section 7.13.

"Senior Indebtedness" means (i) the Notes and any other Indebtedness of the Issuer or any Note Guarantor that ranks equal in right of payment with the Notes or the relevant Note Guarantee, as the case may be or (ii) Indebtedness for borrowed money or constituting Capitalized Lease Obligations of any Restricted Subsidiary other than a Note Guarantor.

"Significant Subsidiary" means a Subsidiary of the Issuer constituting a "Significant Subsidiary" of the Issuer in accordance with Rule 1-02(w) of Regulation S-X under the Securities Act in effect on the date hereof.

"Similar Business" means (1) any business engaged in by the Issuer or any Restricted Subsidiary on the Issue Date, and (2) any business or other activities, including non-profit or charitable activities, that are reasonably similar, ancillary, complementary or related to, or a reasonable extension, development or expansion of, the businesses and activities in which the Issuer or any Restricted Subsidiary is engaged on the Issue Date, including, but not limited to, infrastructure projects, public works programs and consumer or supplier financing.

"Special Record Date" has the meaning assigned to it in Section 2.13(a).

"SPV Perpetuals" means the perpetual debentures issued by special purpose vehicles in December 2006, February 2007 and March 2007, as amended or supplemented from time to time.

"Standard Undertakings" means representations, warranties, covenants, indemnities and similar obligations, including servicing obligations, entered into by the Issuer or any Subsidiary of the Issuer in connection with a Qualified Receivables Transaction, which are customary in similar non-recourse receivables securitization, purchase or financing transactions.

"Subordinated Indebtedness" means, with respect to the Issuer or any Note Guarantor, any Indebtedness of the Issuer or such Note Guarantor, as the case may be, which is expressly subordinated in right of payment to the Notes or the relevant Note Guarantee, as the case may be.

"Subsidiary" means with respect to any Person, any corporation, partnership, joint venture, limited liability company, trust, estate or other entity of which (or in which) more than

fifty percent (50%) of (a) in the case of a corporation, the issued and outstanding Capital Stock having ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether at the time Capital Stock of any other class or classes of such corporation shall or might have voting power upon the occurrence of any contingency that has not occurred and is not in the control of such Person), (b) in the case of a limited liability company, partnership or joint venture, the voting or other power to control the actions of such limited liability company, partnership or joint venture or (c) in the case of a trust or estate, the voting or other power to control the actions of such trust or estate, is at the time directly or indirectly owned or controlled by (X) such Person, (Y) such Person and one or more of its other Subsidiaries or (Z) one or more of such Person's other Subsidiaries. Unless the context otherwise requires, all references herein to a "Subsidiary" shall refer to a Subsidiary of the Issuer.

"Successor Issuer" has the meaning assigned to it in Section 4.1(a).

"Successor Note Guarantor" has the meaning assigned to it in Section 4.1(b).

"Suspended Covenants" has the meaning assigned to it in Section 3.22(b).

"Suspension Date" has the meaning assigned to it in Section 3.22(c).

"Suspension Period" has the meaning assigned to it in Section 3.22(e).

"Swiss Note Guarantor" has the meaning assigned to it in Section 10.6(a).

"Taxes" has the meaning assigned to it in Section 3.21(a).

"Taxing Jurisdiction" has the meaning assigned to it in Section 3.21(a).

"Transfer Agent" has the meaning assigned to it in Section 2.3(a).

"Transportation Agreements" means, in respect of any Person, any agreement or arrangement designed to protect such Person from fluctuations in prices related to transportation.

"Trust Officer" means, when used with respect to the Trustee, any officer within the corporate trust department of the Trustee, having direct responsibility for the administration of this Indenture, or any other officer of the Trustee to whom any corporate trust matter is referred because of such person's knowledge of and familiarity with the particular subject.

"Trustee" means the party named as such in the introductory paragraph to this Indenture until a successor replaces it in accordance with the terms of this Indenture and, thereafter, means the successor.

"Undervalued Asset" has the meaning assigned to it in Section 10.6(g).

"USA PATRIOT Act" has the meaning assigned to it in Section 12.16.

"U.S. Government Obligations" means direct obligations (or certificates representing an ownership interest in such obligations) of, or guaranteed by, the United States of America (including any agency or instrumentality thereof) for the payment of which the full faith and credit of the United States of America is pledged and which are not callable or redeemable at the issuer's option.

"U.S. Legal Tender" means such coin or currency of the United States of America, as at the time of payment shall be legal tender for the payment of public and private debts.

"U.S. Person" means a "U.S. person" as defined in Regulation S.

"Uniform Commercial Code" means the Uniform Commercial Code as in effect from time to time in the State of New York.

"Unrestricted Subsidiary" means any Subsidiary of the Issuer designated as such pursuant to Section 3.14. Any such Designation may be revoked by the Issuer, subject to the provisions of such covenant.

"Voting Stock" with respect to any Person, means securities of any class of Capital Stock of such Person entitling the holders thereof (whether at all times or only so long as no senior class of stock has voting power by reason of any contingency) to vote in the election of members of the Board of Directors (or equivalent governing body) of such Person.

"Weighted Average Life to Maturity" means, when applied to any Indebtedness at any date, the number of years (calculated to the nearest one-twelfth) obtained by dividing:

(1) the sum of the products obtained by multiplying:

(a) the amount of each then remaining installment, sinking fund, serial maturity or other required payment of principal or liquidation preference, as the case may be, including payment at final maturity, in respect thereof, by

(b) the number of years (calculated to the nearest one-twelfth) which will elapse between such date and the making of such payment; by

(2) the then outstanding aggregate principal amount or liquidation preference, as the case may be, of such Indebtedness.

"Wholly Owned Subsidiary" means, for any Person, any Subsidiary (Restricted Subsidiary in the case of the Issuer) of which at least 99.5% of the outstanding Capital Stock (other than, in the case of a Subsidiary not organized in the United States, directors' qualifying shares or an immaterial amount of shares required to be owned by other Persons pursuant to applicable law) is owned by such Person or any other Person that satisfies this definition in respect of such Person.

Section 1.2 [Reserved].

Section 1.3 Rules of Construction. Unless the context otherwise requires:

(1) a term has the meaning assigned to it;

(2) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;

(3) "or" is not exclusive;

(4) "including" means including without limitation;

(5) words in the singular include the plural and words in the plural include the singular; and

(6) references to the payment of principal of the Notes shall include applicable premium, if any.

## ARTICLE II

## THE NOTES

Section 2.1 Form and Dating.

(a) The Issue Date Notes are being originally offered and sold by the Issuer pursuant to a Purchase Agreement, dated as of March 14, 2013, among the Issuer, the Note Guarantors party thereto, Citigroup Global Markets Inc., HSBC Securities (USA) Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated and Santander Investment Securities Inc. as Initial Purchasers with respect to the Notes. The Notes will initially be issued as one or more Global Notes in fully registered form without interest coupons, and only in denominations of U.S.$200,000 and in integral multiples of U.S.$1,000 in excess thereof. Each such Global Note shall constitute a single Note for all purposes under this Indenture. Certificated Notes, if issued pursuant to the terms hereof, will be issued in fully registered certificated form without coupons. The Notes may only be issued in definitive fully registered form without coupons and only in denominations of U.S.$200,000 and in integral multiples of U.S.$1,000 in excess thereof. The Notes and the Trustee's certificate of authentication shall be substantially in the form of Exhibit A hereto.

(b) The terms and provisions of the Notes, the form of which is in Exhibit A hereto, shall constitute, and are hereby expressly made, a part of this Indenture, and, to the extent applicable, the Issuer, the Note Guarantors and the Trustee, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and to be bound thereby. Except as otherwise expressly permitted in this Indenture, all Notes (including Additional Notes) shall be identical in all respects. Notwithstanding any differences among them, all Notes issued under this Indenture shall vote and consent together on all matters as one class and are otherwise treated as a single issue of securities.

(c) The Notes may have notations, legends or endorsements as specified in Section 2.8 or as otherwise required by law, stock exchange rule or DTC, Euroclear or Clearstream rule or usage. The Issuer and the Trustee shall approve any changes to the form of the Notes attached to this Indenture and any additional notation, legend or endorsement required to be inserted on them. Each Note shall be dated the date of its authentication.

(d) Notes originally offered and sold to QIBs in reliance on Rule 144A will be issued in the form of one or more permanent Global Notes (each, a "Rule 144A Global Note"). Each Rule 144A Global Note shall be deposited on behalf of the purchasers of the Notes represented thereby with the Note Custodian and registered in the name of DTC or its nominee, for credit to the accounts maintained at DTC. In no event shall any Person hold an interest in a Rule 144A Global Note other than in or through accounts maintained at DTC.

(e) Notes originally offered and sold outside the United States in reliance on Regulation S will be issued in the form of one or more permanent Global Notes (each, a "Regulation S Global Note"). Each Regulation S Global Note shall be deposited on behalf of the purchasers of the Notes represented thereby with the Note Custodian and registered in the name of DTC or its nominee, for credit to the accounts maintained at DTC by or on behalf of Euroclear or Clearstream. In no event shall any Person hold an interest in a Regulation S Global Note other than in or through accounts maintained at DTC by or on behalf of Euroclear or Clearstream.

Section 2.2 Execution and Authentication.

(a) Any Officer of the Issuer may sign the Notes for the Issuer by manual or facsimile signature. If an Officer whose signature is on a Note no longer holds that office at the time the Trustee authenticates the Note, the Note shall be valid nevertheless.

(b) A Note shall not be valid until manually authenticated by an authorized signatory of the Trustee or an agent appointed by the Trustee (and reasonably acceptable to the Issuer) for such purpose (an " Authenticating Agent"). The signature of an authorized signatory of the Trustee or an Authenticating Agent on a Note shall be conclusive evidence that such Note has been duly and validly authenticated and issued under this Indenture. Unless limited by the terms of its appointment, an Authenticating Agent may authenticate Notes whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by an Authenticating Agent.

(c) At any time and from time to time after the execution and delivery of this Indenture, the Trustee shall authenticate and make available for delivery Notes upon a written order of the Issuer signed by an Officer of the Issuer (the " Issuer Order"). An Issuer Order shall specify the amount of the Notes to be authenticated and the date on which the original issue of Notes is to be authenticated.

(d) In case a Successor Issuer has executed an indenture supplemental hereto with the Trustee pursuant to Article IV, any of the Notes authenticated or delivered prior to such transaction may, from time to time, at the request of the Successor Issuer be exchanged for other

Notes executed in the name of the Successor Issuer with such changes in phraseology and form as may be appropriate, but otherwise identical to the Notes surrendered for such exchange and of like principal amount; and the Trustee, upon Issuer Order of the Successor Issuer, shall authenticate and deliver Notes as specified in such order for the purpose of such exchange. If Notes shall at any time be authenticated and delivered in any new name of a Successor Issuer pursuant to this Section 2.2 in exchange or substitution for or upon registration of transfer of any Notes, such Successor Issuer, at the option of the Holders but without expense to them, shall provide for the exchange of all Notes at the time Outstanding for Notes authenticated and delivered in such new name.

Section 2.3 Registrar, Paying Agent and Transfer Agent.

(a) The Issuer shall maintain an office or agency in the Borough of Manhattan, City of New York, that shall keep a register of the Notes (the "Note Register") and of their transfer and exchange (the "Registrar"), where Notes may be presented or surrendered for registration of transfer or for exchange (the "Transfer Agent"), where Notes may be presented for payment (the "Paying Agent") and for the service of notices and demands to or upon the Issuer in respect of the Notes and this Indenture. The Issuer may have one or more co-Registrars and one or more additional paying agents. The term "Paying Agent" includes any additional paying agent. In addition, the Issuer undertakes to the extent possible, to use reasonable efforts to maintain a Paying Agent in a member state of the European Union that is not obliged to withhold or deduct tax pursuant to European Council Directive 2003/48/EC regarding taxation of savings income.

(b) The Issuer shall enter into an appropriate agency agreement with any Registrar, Paying Agent or co-Registrar not a party to this Indenture. The agreement shall implement the provisions of this Indenture that relate to such agent. The Issuer shall notify the Trustee of the name and address of each such agent. If the Issuer fails to maintain a Registrar or Paying Agent, the Trustee shall act as such and shall be entitled to appropriate compensation therefor pursuant to Section 7.7. The Issuer or any Affiliate of the Issuer may act as Paying Agent, Registrar or co-Registrar, or transfer agent.

(c) The Issuer initially designates the Corporate Trust Office of the Trustee as such office or agency of the Issuer as required by Section 2.3(a) and appoints the Trustee as Registrar, Paying Agent, Transfer Agent and agent for service of demands and notices in connection with the Notes and this Indenture, until such time as another Person is appointed as such.

Section 2.4 Paying Agent to Hold Money in Trust. The Issuer shall require each Paying Agent (other than the Trustee) to agree in writing that such Paying Agent shall hold in trust for the benefit of Holders or the Trustee all money held by such Paying Agent for the payment of principal of or interest on the Notes and shall notify the Trustee in writing of any Default by the Issuer or any Note Guarantor in making any such payment. If the Issuer or an Affiliate of the Issuer acts as Paying Agent, it shall segregate the money held by it as Paying Agent and hold it as a separate trust fund. The Issuer at any time may require a Paying Agent (other than the Trustee) to pay all

money held by it to the Trustee and to account for any funds disbursed by such Paying Agent. Upon complying with this Section 2.4, the Paying Agent (if other than the Issuer or any Affiliate of the Issuer) shall have no further liability for the money delivered to the Trustee. Upon any proceeding under any Bankruptcy Law with respect to the Issuer or any Affiliate of the Issuer, if the Issuer or such Affiliate is then acting as Paying Agent, the Trustee shall replace the Issuer or such Affiliate as Paying Agent.

Section 2.5 Holder Lists. The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Holders. At any time that the Trustee is not the Registrar the Issuer shall furnish to the Trustee, in writing at least seven Business Days before each Interest Payment Date and at such other times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of Holders.

Section 2.6 CUSIP Numbers. The Issuer in issuing Notes may use "CUSIP" numbers, as applicable (if then generally in use), and, if so, the Trustee shall use for the Securities "CUSIP" number in notices to the Holders as a convenience to such Holders; *provided*, that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Notes or as contained in any notice and that reliance may be placed only on the other identification numbers printed on the Notes, and any such notice shall not be affected by any defect in or omission of such numbers. The Issuer will promptly notify the Trustee in writing of any changes in the "CUSIP" numbers.

Section 2.7 Global Note Provisions.

(a) Each Global Note initially shall: (i) be registered in the name of DTC or the nominee of DTC, (ii) be delivered to the Note Custodian and (iii) bear the appropriate legends as set forth in Section 2.8 and Exhibit A hereto. Any Global Note may be represented by one or more certificates. The aggregate principal amount of each Global Note may from time to time be increased or decreased by adjustments made on the records of the Note Custodian, as provided in this Indenture.

(b) Except as provided in clause (iii) of Section 2.7(c), members of, or participants in, DTC ("Agent Members") shall have no rights under this Indenture with respect to any Global Note held on their behalf by DTC or by the Note Custodian, and DTC may be treated by the Issuer, any Note Guarantor, the Trustee, the Paying Agent, the Transfer Agent, the Note Custodian, the Registrar and any of their respective agents as the absolute owner of such Global Note for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall (i) prevent the Issuer, the Trustee, the Paying Agent, the Transfer Agent, the Note Custodian, the Registrar or any of their respective agents from giving effect to any written certification, proxy or other authorization furnished by DTC or (ii) impair, as between DTC and its Agent Members, the operation of customary practices of DTC governing the exercise of the rights of an owner of a beneficial interest in any Global Note. The registered Holder of a Global Note may grant proxies and otherwise authorize any person, including DTC, or its nominee, Agent Members and persons that may hold interests through Agent Members, to take any action that a Holder is entitled to take under this Indenture or the Notes.

(c) Except as provided in this Section 2.7(c), owners of beneficial interests in Global Notes will not be entitled to receive Certificated Notes in exchange for such beneficial interests.

(i) Certificated Notes shall be issued to all owners of beneficial interests in a Global Note in exchange for such beneficial interests if (A) DTC notifies the Issuer that it is unwilling or unable to continue as depositary for such Global Note or (B) DTC ceases to be a clearing agency registered under the Exchange Act, at a time when DTC is required to be so registered in order to act as depositary, and in each case a successor depositary is not appointed by the Issuer within 90 days of such notice. In connection with the exchange of an entire Global Note for Certificated Notes pursuant to this clause (i) of this Section 2.7(c), such Global Note shall be deemed to be surrendered to the Trustee for cancellation, and the Issuer shall execute, and upon Issuer Order, the Trustee shall authenticate and deliver to each beneficial owner identified by DTC in exchange for its beneficial interest in such Global Note, an equal aggregate principal amount of Certificated Notes of authorized denominations, and the Registrar shall register such exchanges in the Note Register.

(ii) The owner of a beneficial interest in a Global Note will be entitled to receive Certificated Notes in exchange for such interest if an Event of Default has occurred and is continuing. If an Event of Default has occurred and is continuing, upon receipt by the Registrar of instructions from Agent Members through DTC on behalf of the owner of a beneficial interest in a Global Note directing the Registrar to exchange such beneficial owner's beneficial interest in such Global Note for Certificated Notes, subject to and in accordance with the Applicable Procedures, the Issuer shall promptly execute, and upon Issuer Order, the Trustee shall authenticate and make available for delivery to such beneficial owner, Certificated Notes in a principal amount equal to such beneficial interest in such Global Note.

(iii) If (A) an event described in clause (i) of Section 2.7(c) occurs and Certificated Notes are not issued promptly to all beneficial owners or (B) the Registrar receives from a beneficial owner the instructions described in clause (ii) of Section 2.7(c) and Certificated Notes are not issued promptly to any such beneficial owner, the Issuer expressly acknowledges, with respect to the right of any Holder to pursue a remedy pursuant to Section 6.6 hereof, the right of any beneficial owner of Notes to pursue such remedy with respect to the portion of the Global Note that represents such beneficial owner's Notes as if such Certificated Notes had been issued.

Section 2.8 Legends.

(a) Each Global Note shall bear the legend specified therefor in Exhibit A hereto on the face thereof.

(b) Each Restricted Note shall bear the private placement legend specified therefor in Exhibit A hereto on the face thereof (the "Private Placement Legend").

(c) Each Note shall bear the Mexican law legend specified therefor in Exhibit A hereto on the face thereof.

Section 2.9 Transfer and Exchange.

(a) Transfers of Beneficial Interests in a Rule 144A Global Note . If the owner of a beneficial interest in a Rule 144A Global Note that is a Restricted Note wishes to transfer such interest (or portion thereof) pursuant to Rule 144 (if available) or to a Non-U.S. Person pursuant to Regulation S:

(i) upon receipt by the Registrar of:

(A) instructions from an Agent Member given to DTC in accordance with the Applicable Procedures directing DTC to credit or cause to be credited a beneficial interest in the Regulation S Global Note in a principal amount equal to the principal amount of the beneficial interest to be transferred,

(B) instructions given in accordance with the Applicable Procedures containing information regarding the account to be credited with such increase, and

(C) a certificate in the form of Exhibit B or Exhibit C hereto, as applicable, duly executed by the transferor;

(ii) the Note Custodian shall increase the Regulation S Global Note and decrease the Rule 144A Global Note in accordance with the foregoing, and the Registrar shall register the transfer in the Note Register.

(b) Transfers of Beneficial Interests in a Regulation S Global Note . Subject to the Applicable Procedures, the following provisions shall apply with respect to any proposed transfer of an interest in a Regulation S Global Note that is a Restricted Note:

(i) If the owner of a beneficial interest in a Regulation S Global Note that is a Restricted Note wishes to transfer such interest (or a portion thereof) to a QIB pursuant to Rule 144A:

(A) upon receipt by the Registrar of:

(1) instructions from an Agent Member given to DTC in accordance with the Applicable Procedures directing DTC to

credit or cause to be credited a beneficial interest in the Rule 144A Global Note in a principal amount equal to the principal amount of the beneficial interest to be transferred,

(2) instructions given in accordance with the Applicable Procedures containing information regarding the account to be credited with such increase, and

(3) a certificate in the form of Exhibit D hereto, duly executed by the transferor;

(B) the Note Custodian shall increase the Rule 144A Global Note and decrease the Regulation S Global Note in accordance with the foregoing, and the Registrar shall register the transfer in the Note Register.

(c) Other Transfers. Any registration of transfer of Restricted Notes (including Certificated Notes) not described above (other than a transfer of a beneficial interest in a Global Note that does not involve an exchange of such interest for a Certificated Note or a beneficial interest in another Global Note, which must be effected in accordance with applicable law and the Applicable Procedures, but is not subject to any procedure required by this Indenture) shall be made only upon receipt by the Registrar of such Opinions of Counsel, certificates and such other evidence reasonably required by and satisfactory to it in order to ensure compliance with the Securities Act or in accordance with Section 2.9(d).

(d) Use and Removal of Private Placement Legends . Upon the registration of transfer, exchange or replacement of Notes (or beneficial interests in a Global Note) not bearing (or not required to bear upon such transfer, exchange or replacement) a Private Placement Legend, the Note Custodian and Registrar shall exchange such Notes (or beneficial interests) for beneficial interests in a Global Note or Certificated Notes if they have been issued pursuant to Section 2.7(c) that does not bear a Private Placement Legend. Upon the registration of transfer, exchange or replacement of Notes (or beneficial interests in a Global Note) bearing a Private Placement Legend, the Note Custodian and Registrar shall deliver only Notes (or beneficial interests in a Global Note) that bear a Private Placement Legend unless:

(i) such Notes (or beneficial interests) are transferred pursuant to Rule 144 upon delivery to the Registrar of a certificate of the transferor in the form of Exhibit C hereto, and an Opinion of Counsel reasonably satisfactory to the Registrar;

(ii) such Notes (or beneficial interests) are transferred, replaced or exchanged after the Resale Restriction Termination Date therefor and, in the case of any such Restricted Notes, the Issuer has complied with the applicable procedures for delegending in accordance with Section 2.9(h); or

(iii) in connection with such registration of transfer, exchange or replacement the Registrar shall have received an Opinion of Counsel,

certificates and such other evidence reasonably satisfactory to the Issuer and the Registrar to the effect that neither such Private Placement Legend nor the related restrictions on transfer are required in order to maintain compliance with the provisions of the Securities Act.

The Holder of a Global Note bearing a Private Placement Legend may exchange an interest therein for an equivalent interest in a Global Note not bearing a Private Placement Legend upon transfer of such interest pursuant to this Section 2.9(d).

(e) Consolidation of Global Notes and Exchange of Certificated Notes for Beneficial Interests in Global Notes . If a Global Note not bearing a Private Placement Legend is Outstanding at the time of a removal of legends pursuant to Section 2.9(h), any interests in a Global Note delegended pursuant to Section 2.9(h) shall be exchanged for interests in such Outstanding Global Note, subject to the proviso at the end of Section 2.14(a).

(f) Retention of Documents. The Registrar and the Trustee shall retain copies of all letters, notices and other written communications received pursuant to this Article II and in accordance with the Trustee's, or if different, the Registrar's, record retention procedures. The Issuer shall have the right to inspect and make copies of all such letters, notices or other written communications at any reasonable time upon the giving of reasonable written notice to the Registrar or the Trustee, as the case may be.

(g) General Provisions Relating to Transfers and Exchanges .

(i) Subject to the other provisions of this Section 2.9, when Notes are presented to the Registrar or a co-Registrar with a request to register the transfer of such Notes or to exchange such Notes for an equal principal amount of Notes of other authorized denominations, the Registrar or co-Registrar shall register the transfer or make the exchange as requested if its requirements for such transaction are met; *provided*, that any Notes presented or surrendered for registration of transfer or exchange shall be duly endorsed or accompanied by a written instrument of transfer in form satisfactory to the Registrar or co-Registrar, duly executed by the Holder thereof or his attorney duly authorized in writing.

(ii) To permit registrations of transfers and exchanges and subject to the other terms and conditions of this Article II, the Issuer will execute, and upon Issuer Order, the Trustee will authenticate and make available for delivery, Certificated Notes and Global Notes, as applicable, at the Registrar's or co-Registrar's request.

(iii) No service charge shall be made to a Holder for any registration of transfer or exchange, but the Issuer and the Trustee may require payment of a sum sufficient to cover any transfer tax, assessments, or similar governmental charge payable in connection therewith (other

than any such transfer taxes, assessments or similar governmental charges payable upon exchange or transfer pursuant to Section 3.8, Section 3.9, Section 5.1 or Section 9.5).

(iv) The Registrar or co-Registrar shall not be required to register the transfer of or exchange of (x) any Note for a period beginning (1) 15 days before the mailing of a notice of an offer to repurchase or redeem Notes and ending at the close of business on the day of such mailing or (2) 15 days before an Interest Payment Date and ending on such Interest Payment Date and (y) any Note selected for repurchase or redemption, except the unrepurchased or unredeemed portion thereof, if any.

(v) Prior to the due presentation for registration of transfer of any Note, the Issuer, the Trustee, the Paying Agent, the Transfer Agent, the Registrar or any co-Registrar may deem and treat the Person in whose name a Note is registered as the absolute owner of such Note for the purpose of receiving payment of principal of and interest on such Note and for all other purposes whatsoever, whether or not such Note is overdue, and none of the Issuer, the Trustee, the Paying Agent, the Transfer Agent, the Registrar or any co-Registrar or the Note Custodian shall be affected by notice to the contrary.

(vi) All Notes issued upon any transfer or exchange pursuant to the terms of this Indenture shall evidence the same debt and shall be entitled to the same benefits under this Indenture as the Notes surrendered upon such transfer or exchange.

(vii) Subject to Section 2.7 and this Section 2.9, in connection with the exchange of a portion of a Certificated Note for a beneficial interest in a Global Note, the Trustee shall cancel such Certificated Note, and the Issuer shall execute, and upon Issuer Order, the Trustee shall authenticate and make available for delivery to the exchanging Holder, a new Certificated Note representing the principal amount not so exchanged.

(h) Applicable Procedures for Delegending.

(i) Promptly after one year has elapsed following (A) the Issue Date or (B) if the Issuer has issued Additional Notes with the same terms and the same CUSIP number as the Issue Date Notes pursuant to this Indenture within one year following the Issue Date, the date of original issuances of such Additional Notes, if the relevant Notes are freely tradable pursuant to Rule 144 under the Securities Act by Holders who are not Affiliates of the Issuer where no conditions of Rule 144 are then applicable (other than the holding period requirement in paragraph (d)(1)(ii) of Rule 144 so long as such holding period requirement is satisfied), the Issuer shall:

(1) instruct the Trustee in writing to remove the Private Placement Legend from such Notes, and upon receipt of such instruction, the Private Placement Legend shall be deemed removed from any Global Notes representing such Notes without further action on the part of Holders;

(2) notify Holders of such Notes that the Private Placement Legend has been removed or deemed removed; and

(3) instruct DTC to change the CUSIP number for such Notes to the unrestricted CUSIP number for the Notes.

In no event will the failure of the Issuer to provide any notice set forth in this paragraph or of the Trustee to remove the Private Placement Legend constitute a failure by the Issuer to comply with any of its covenants or agreements set forth in Section 6.1 or otherwise. Any Restricted Note (or security issued in exchange or substitution therefor) as to which such restrictions on transfer shall have expired in accordance with their terms may, upon surrender of such Restricted Note for exchange to the Registrar in accordance with the provisions of Article II of this Indenture, be exchanged for a new Note or Notes, of like tenor and aggregate principal amount, which shall not bear the Private Placement Legend. The Issuer shall notify the Trustee in writing upon occurrence of the Resale Restriction Termination Date for any Note.

(ii) In the case of a Regulation S Global Note, after the Resale Restriction Termination Date of any such Regulation S Global Note, the Issuer may, at its sole option:

(1) instruct the Trustee in writing to remove the Private Placement Legend from such Regulation S Global Note (including setting forth the basis for such removal), and upon receipt of such instruction, the Private Placement Legend shall be deemed removed from such Regulation S Global Note without further action on the part of Holders; and

(2) instruct DTC to change the CUSIP number for such Notes to the unrestricted CUSIP number for the Notes.

(iii) Notwithstanding any provision herein to the contrary, in the event that Rule 144 as promulgated under the Securities Act (or any successor rule) is amended to change the one-year holding period thereunder (or the corresponding period under any successor rule), (A) each reference in this Section 2.9(h) to “one year” and in the Private Placement

Legend described in Section 2.8(b) and Exhibit A hereto to "ONE YEAR" shall be deemed for all purposes hereof to be references to such changed period, and (B) all corresponding references in this Indenture (including the definition of Resale Restriction Termination Date), the Notes and the Private Placement Legends thereon shall be deemed for all purposes hereof to be references to such changed period; *provided*, that such changes shall not become effective if they are otherwise prohibited by, or would otherwise cause a violation of, the then-applicable federal securities laws; *provided further* that if such change does not apply to existing Notes, all references to "one year" in this Indenture shall not be deemed for all purposes hereof to be references to such changed period. This Section 2.9(h) shall apply to successive amendments to Rule 144 (or any successor rule) changing the holding period thereunder.

(i) No Obligation of the Trustee.

(i) The Trustee shall have no responsibility or obligation to any beneficial owner of an interest in a Global Note, Agent Members or any other Persons with respect to the accuracy of the records of DTC or its nominee or of Agent Members, with respect to any ownership interest in the Notes or with respect to the delivery to any Agent Member, beneficial owner or other Person (other than DTC) of any notice (including any notice of redemption) or the payment of any amount or delivery of any Notes (or other security or property) under or with respect to such Notes. All notices and communications to be given to the Holders and all payments to be made to Holders in respect of the Notes shall be given or made only to or upon the order of the registered Holders (which shall be DTC or its nominee in the case of a Global Note). The rights of beneficial owners in any Global Note shall be exercised only through DTC, subject to the applicable rules and procedures of DTC. The Trustee may rely and shall be fully protected in relying upon information furnished by DTC with respect to its Agent Members and any beneficial owners.

(ii) The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Note (including any transfers between or among Agent Members or beneficial owners in any Global Note) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by, the terms of this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

Section 2.10 Mutilated, Destroyed, Lost or Stolen Notes.

(a) If a mutilated Note is surrendered to the Registrar or if the Holder of a Note claims that the Note has been lost, destroyed or wrongfully taken, the Issuer shall execute, and upon Issuer Order, the Trustee shall authenticate and make available for delivery, a replacement Note for such mutilated, lost or stolen Note, of like tenor and principal amount, bearing a number not contemporaneously Outstanding if:

(i) the requirements of Section 8-405 of the Uniform Commercial Code are met,

(ii) the Holder satisfies any other reasonable requirements of the Trustee, and

(iii) neither the Issuer nor the Trustee has received notice that such Note has been acquired by a protected purchaser (as defined in Section 8-303 of the Uniform Commercial Code).

If required by the Trustee or the Issuer, such Holder shall furnish an affidavit of loss and indemnity bond sufficient in the judgment of the Issuer and the Trustee to protect the Issuer, the Trustee, the Paying Agent, the Transfer Agent, the Registrar or any co-Registrar and the Note Custodian from any loss that any of them may suffer if a Note is replaced.

(b) Upon the issuance of any new Note under this Section 2.10, the Issuer may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) in connection therewith.

(c) Every new Note issued pursuant to this Section 2.10 in exchange for any mutilated Note, or in lieu of any destroyed, lost or stolen Note, shall constitute an original additional contractual obligation of the Issuer, any Note Guarantor and any other obligor upon the Notes, whether or not the mutilated, destroyed, lost or stolen Note shall be at any time enforceable by anyone, and shall be entitled to all benefits of this Indenture equally and proportionately with any and all other Notes duly issued hereunder.

Section 2.11 Temporary Notes. Until definitive Notes are ready for delivery, the Issuer may execute, and upon Issuer Order, the Trustee will authenticate and make available for delivery, temporary Notes. Temporary Notes will be substantially in the form of definitive Notes but may have variations that the Issuer considers appropriate for temporary Notes. Without unreasonable delay, the Issuer will prepare and execute, and upon Issuer Order, the Trustee will authenticate and make available for delivery, definitive Notes. After the preparation of definitive Notes, the temporary Notes will be exchangeable for definitive Notes upon surrender of the temporary Notes at the office or agency maintained by the Issuer pursuant to Section 2.3 for that purpose and such exchange shall be without charge to the Holder. Upon surrender for cancellation of any one or more temporary Notes, the Issuer will execute, and upon Issuer Order, the Trustee will authenticate and make available for delivery in exchange therefor, one or more definitive Notes representing an equal principal amount of Notes. Until so exchanged, the Holder of temporary Notes shall in all respects be entitled to the same benefits under this Indenture as a Holder of definitive Notes.

Section 2.12 Cancellation. The Issuer at any time may deliver Notes to the Trustee for cancellation. The Registrar, the Paying Agent and the Transfer Agent shall forward to the Trustee any Notes surrendered to them for registration of transfer, exchange or payment. The Trustee and no one else shall cancel and dispose of cancelled Notes in accordance with its policy of disposal or upon written request of the Issuer, return to the Issuer all Notes surrendered for registration of transfer, exchange, payment or cancellation. The Issuer may not issue new Notes to replace Notes it has paid or delivered to the Trustee for cancellation for any reason other than in connection with a registration of transfer or exchange upon Issuer Order.

Section 2.13 Defaulted Interest. When any installment of interest becomes overdue (a "Defaulted Interest"), such installment shall forthwith cease to be payable to the Holders in whose names the Notes were registered on the Record Date applicable to such installment of interest. Defaulted Interest (including any interest on such Defaulted Interest) shall be paid by the Issuer, at its election, as provided in clause (a) or clause (b) below.

(a) The Issuer may elect to make payment of any Defaulted Interest (including any interest payable on such Defaulted Interest) to the Holders in whose names the Notes are registered at the close of business on a special record date for the payment of such Defaulted Interest (a " Special Record Date"), which shall be fixed in the following manner. The Issuer shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid and the date of the proposed payment, and at the same time the Issuer shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Holders entitled to such Defaulted Interest as provided in this Section 2.13(a). Thereupon the Trustee shall fix a Special Record Date for the payment of such Defaulted Interest, which shall be not more than fifteen (15) calendar days and not less than ten (10) calendar days prior to the date of the proposed payment and not less than ten (10) calendar days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the Issuer of such Special Record Date and, in the name and at the expense of the Issuer, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be sent, first-class mail, postage prepaid, to each Holder at such Holder's address as it appears in the Note Register, not less than ten (10) calendar days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been mailed as aforesaid, such Defaulted Interest shall be paid to the Holders in whose names the Notes are registered at the close of business on such Special Record Date and shall no longer be payable pursuant to clause (b) below; or

(b) The Issuer may make payment of any Defaulted Interest (including any interest on such Defaulted Interest) in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Notes may be listed, and upon such notice as may be required by such exchange, if, after notice given by the Issuer to the Trustee of the

proposed payment pursuant to this Section 2.13(b), such manner of payment shall be deemed practicable by the Trustee. The Trustee shall in the name and at the expense of the Issuer cause prompt notice of the proposed payment and the date thereof to be sent, first-class mail, postage prepaid, to each Holder at such Holder's address as it appears in the Note Register.

Section 2.14 Additional Notes.

(a) The Issuer may, from time to time, subject to compliance with any other applicable provisions of this Indenture, without the consent of the Holders, create and issue pursuant to this Indenture additional notes (" Additional Notes") that shall have terms and conditions identical to those of the other Outstanding Notes, except with respect to:

(i) the Issue Date;

(ii) the amount of interest payable on the first Interest Payment Date therefor;

(iii) the issue price; and

(iv) any adjustments necessary in order to conform to and ensure compliance with the Securities Act (or other applicable securities laws) and any agreement applicable to such Additional Notes, which are not adverse in any material respect to the Holder of any Outstanding Notes (other than such Additional Notes).

The Notes issued on the Issue Date and any Additional Notes shall be treated as a single series for all purposes under this Indenture; *provided*, that the Issuer may use different CUSIP or other similar numbers among Issue Date Notes and among Additional Notes to the extent required to comply with securities or tax law requirements, including to permit delegending pursuant to Section 2.9(h).

(b) With respect to any Additional Notes, the Issuer will set forth in an Officer's Certificate of the Issuer (the " Additional Note Certificate"), copies of which will be delivered to the Trustee, the following information:

(i) the aggregate principal amount of such Additional Notes to be authenticated and delivered pursuant to this Indenture;

(ii) the Issue Date and the issue price of such Additional Notes; *provided*, that no Additional Notes may be issued at a price that would cause such Additional Notes to have "original issue discount" within the meaning of Section 1273 of the Code, unless such Additional Notes have a separate CUSIP or other similar number from other Notes; and

(iii) whether such Additional Notes will be subject to transfer restrictions under the Securities Act (or other applicable securities laws).

ARTICLE III

COVENANTS

Section 3.1 Payment of Notes.

(a) The Issuer shall pay the principal of and interest (including Defaulted Interest) on the Notes in U.S. Legal Tender on the dates and in the manner provided in the Notes and in this Indenture. Prior to 10:00 a.m. New York City time, on the Business Day prior to each Interest Payment Date and the Maturity Date, the Issuer shall deposit with the Paying Agent in immediately available funds U.S. Legal Tender sufficient to make cash payments due on such Interest Payment Date or Maturity Date, as the case may be. If the Issuer or an Affiliate of the Issuer is acting as Paying Agent, the Issuer or such Affiliate shall, prior to 10:00 a.m. New York City time on the Business Day prior to each Interest Payment Date and the Maturity Date, segregate and hold in trust U.S. Legal Tender, sufficient to make cash payments due on such Interest Payment Date or Maturity Date, as the case may be. Principal and interest shall be considered paid on the date due if on such date the Trustee or the Paying Agent (other than the Issuer or an Affiliate of the Issuer) holds in accordance with this Indenture U.S. Legal Tender designated for and sufficient to pay all principal and interest then due and the Trustee or the Paying Agent, as the case may be, is not prohibited from paying such money to the Holders on that date pursuant to the terms of this Indenture.

(b) The Issuer hereby instructs the Trustee to establish an "Issue Date Note Account" for reception of the interest and principal payments for the Issue Date Notes.

Section 3.2 Maintenance of Office or Agency.

(a) The Issuer shall maintain each office or agency required under Section 2.3. The Issuer will give prompt written notice to the Trustee of any change in the location of any such office or agency. If at any time the Issuer shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee, and the Issuer hereby appoints the Trustee as its agent to receive all such presentations, surrenders, notices and demands.

(b) The Issuer may also from time to time designate one or more other offices or agencies (in or outside of the City of New York) where the Notes may be presented or surrendered for registration of transfer or for exchange and may from time to time rescind any such designation; *provided*, *however*, that no such designation or rescission shall in any manner relieve the Issuer of its obligation to maintain an office or agency in the City of New York for such purposes. The Issuer will give prompt written notice to the Trustee of any such designation or rescission and any change in the location of any such other office or agency.

Section 3.3 Corporate Existence. Subject to Article IV, the Issuer will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence.

Section 3.4 Payment of Taxes and Other Claims. The Issuer will pay or discharge or cause to be paid or discharged, before the same shall become delinquent, (i) all taxes, assessments and governmental charges levied or imposed upon the Issuer or any Restricted Subsidiary or for which it or any of them are otherwise liable, or upon the income, profits or property of the Issuer or any Restricted Subsidiary and (ii) all lawful claims for labor, materials and supplies, which, if unpaid, might by law become a liability or Lien upon the property of the Issuer or any Restricted Subsidiary; *provided*, *however*, that the Issuer shall not be required to pay or discharge or cause to be paid or discharged any such tax, assessment, charge or claim whose amount, applicability or validity is being contested in good faith by appropriate proceedings and for which appropriate reserves, if necessary (in the good faith judgment of the Issuer), are being maintained in accordance with GAAP or where the failure to effect such payment will not be disadvantageous to the Holders.

Section 3.5 Compliance Certificate. The Issuer and each Note Guarantor shall deliver to the Trustee within 105 days after the end of each fiscal year of the Issuer (which fiscal year ends on December 31 of each year, subject to any change in fiscal year following the Issue Date) an Officer's Certificate stating that in the course of the performance by the signers of their duties as Officers of the Issuer or such Note Guarantor, as the case may be, they would normally have knowledge of any Default or Event of Default and whether or not the signers know of any Default or Event of Default that occurred during the previous fiscal year. If they do, the certificate shall describe the Default or Event of Default, its status and what action the Issuer or such Note Guarantor is taking or proposes to take with respect thereto.

Section 3.6 Further Instruments and Acts.

(a) The Issuer and each Note Guarantor will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper or as the Trustee may reasonably request to carry out more effectively the purpose of this Indenture.

(b) The Issuer and the Note Guarantors shall take, and shall cause their Subsidiaries party thereto to take, any and all actions required under the Intercreditor Agreement and the Security Documents to cause the Intercreditor Agreement and the Security Documents to create and maintain, as security for the Obligations of the Issuer and the Note Guarantors hereunder, a valid and enforceable perfected security interest on all the Collateral, in favor of the Security Agent for the equal and ratable benefit of the Holders of the Notes, and the other Permitted Secured Obligations, first in priority to any and all security interests at any time granted upon the Collateral, subject in all respects to Liens imposed by law and Liens for judgments, taxes, assessments or governmental charges.

Section 3.7 Waiver of Stay, Extension or Usury Laws. The Issuer and each Note Guarantor covenant (to the fullest extent permitted by applicable law) that they will not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law or any usury law or other law that would prohibit or forgive the Issuer or such Note Guarantor from paying all or any portion of the principal of or interest on the Notes as contemplated herein,

wherever enacted, now or at any time hereafter in force, or which may affect the covenants or the performance of this Indenture. The Issuer and each Note Guarantor hereby expressly waives (to the fullest extent permitted by applicable law) all benefit or advantage of any such law, and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

Section 3.8 Change of Control.

(a) Upon the occurrence of a Change of Control, each Holder will have the right to require that the Issuer purchase all or a portion (in integral multiples of U.S.$1,000) of the Holder's Notes at a purchase price equal to 101% of the principal amount thereof, plus accrued and unpaid interest thereon through the date of purchase (the "Change of Control Payment").

(b) Within 30 days following the date upon which the Change of Control occurred, the Issuer must send, by first-class mail, a notice to each Holder, with a copy to the Trustee, offering to purchase the Notes as described above (a " Change of Control Offer"). The Change of Control Offer shall state, among other things, the purchase date, which must be no earlier than 30 days nor later than 60 days from the date the notice is mailed, other than as may be required by law (the "Change of Control Payment Date").

(c) On the Change of Control Payment Date, the Issuer will, to the extent lawful:

(i) accept for payment all Notes or portions thereof properly tendered and not withdrawn pursuant to the Change of Control Offer;

(ii) deposit with the Paying Agent funds in an amount equal to the Change of Control Payment in respect of all Notes or portions thereof so tendered; and

(iii) deliver or cause to be delivered to the Trustee the Notes so accepted together with an Officer's Certificate stating the aggregate principal amount of Notes or portions thereof being purchased by the Issuer.

(d) If only a portion of a Note is purchased pursuant to a Change of Control Offer, a new Note in a principal amount equal to the portion thereof not purchased will be issued in the name of the Holder thereof upon cancellation of the original Note (or appropriate adjustments to the amount and beneficial interests in a Global Note will be made, as appropriate); *provided*, that each new Note shall be in a minimum principal amount of U.S.$200,000 and in integral multiples of U.S.$1,000 in excess thereof. Notes (or portions thereof) purchased pursuant to a Change of Control Offer will be cancelled and cannot be reissued.

(e) The Issuer will not be required to make a Change of Control Offer upon a Change of Control if:

(i) a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in this Indenture applicable to a Change of Control Offer made by the Issuer and purchases all Notes properly tendered and not withdrawn under the Change of Control Offer, or

(ii) notice of redemption has been given pursuant to this Indenture as described under Section 5.4 unless and until there is a default in payment of the applicable redemption price.

(f) The Issuer will comply with the requirements of Rule 14e-1 under the Exchange Act and any other applicable securities laws and regulations in connection with the purchase of Notes in connection with a Change of Control Offer. To the extent that the provisions of any securities laws or regulations conflict with the "Change of Control" provisions of this Indenture, the Issuer will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under this Indenture by doing so.

Section 3.9 Limitation on Incurrence of Additional Indebtedness .

(a) The Issuer will not, and will not cause or permit any of its Restricted Subsidiaries to, directly or indirectly, Incur any Indebtedness, including Acquired Indebtedness, except that the Issuer and/or any of the Note Guarantors may Incur Indebtedness, including Acquired Indebtedness, if, at the time of and immediately after giving *pro forma* effect to the Incurrence thereof and the application of the proceeds therefrom, the Consolidated Fixed Charge Coverage Ratio of the Issuer is greater than or equal to 2.0 to 1.0.

(b) Notwithstanding clause (a) above, the Issuer and/or any of its Restricted Subsidiaries, as applicable, may Incur the following Indebtedness ("Permitted Indebtedness"):

(i) Indebtedness not to exceed U.S.$600,000,000 in respect of the Notes, excluding Additional Notes;

(ii) Guarantees by (A) any Note Guarantor of Indebtedness of the Issuer or another Note Guarantor permitted under this Indenture and (B) the Issuer of Indebtedness of any Note Guarantor; *provided*, that if any such Guarantee is of Subordinated Indebtedness, then the obligations of the Issuer under the Notes and this Indenture or the Note Guarantee of such Note Guarantor, as applicable, will be senior to the Guarantee of such Subordinated Indebtedness;

(iii) Indebtedness of the Issuer and/or any of its Restricted Subsidiaries outstanding on the Issue Date (excluding Indebtedness permitted under clauses (v), (vi), (vii) or (x) of this definition of Permitted Indebtedness);

(iv) Hedging Obligations, Compensation Related Hedging Obligations and any Guarantees thereof and any reimbursement obligations with respect to letters of credit related thereto, in each case entered into by the Issuer and/or any of its Restricted Subsidiaries; *provided*, that upon the drawing of such letters of credit, such obligations are reimbursed within 30 days following such drawing;

(v) intercompany Indebtedness between the Issuer and any Restricted Subsidiary or between any Restricted Subsidiaries; *provided*, that in the event that at any time any such Indebtedness ceases to be held by the Issuer or a Restricted Subsidiary, such Indebtedness shall be deemed to be Incurred and not permitted by this clause (v) at the time such event occurs;

(vi) Indebtedness of the Issuer and/or any of its Restricted Subsidiaries arising from (A) the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently drawn against insufficient funds in the ordinary course of business; *provided*, that such Indebtedness is extinguished within five Business Days of Incurrence; or (B) any cash pooling or other cash management agreements in place with a bank or financial institution but only to the extent of offsetting credit balances of the Issuer and/or its Restricted Subsidiaries pursuant to such cash pooling or other cash management agreement;

(vii) Indebtedness of the Issuer and/or any of its Restricted Subsidiaries represented by (A) endorsements of negotiable instruments in the ordinary course of business (excluding an *aval*), (B) documentary credits (including all forms of letter of credit), performance bonds or guarantees, advance payments, bank guarantees, bankers' acceptances, surety or appeal bonds or similar instruments for the account of, or guaranteeing performance by, the Issuer and/or any Restricted Subsidiary in the ordinary course of business, (C) reimbursement obligations with respect to letters of credit in the ordinary course of business (D) reimbursement obligations with respect to letters of credit and performance Guarantees in the ordinary course of business to the extent required pursuant to the terms of any Investment made pursuant to clause (12) of the definition of "Permitted Investment" and (E) other Guarantees by the Issuer and/or any Restricted Subsidiary in favor of a bank or financial institution in respect of obligations of that bank or financial institution to a third party in an amount not to exceed U.S.$500 million at any one time outstanding; *provided*, that in the case of clauses (B), (C) and (D), upon the drawing of such letters of credit or the Incurrence of such Indebtedness, such obligations are reimbursed within 30 days following such drawing or Incurrence;

(viii) Refinancing Indebtedness in respect of:

(A) Indebtedness (other than Indebtedness owed to the Issuer or any Subsidiary of the Issuer) Incurred pursuant to clause (a) above (it being understood that no Indebtedness outstanding on the Issue Date is Incurred pursuant to such clause (a) above), or

(B) Indebtedness Incurred pursuant to clause (i), (ii) or (iii) above or this clause (viii);

(ix) Capitalized Lease Obligations, Sale and Leaseback Transactions, export credit facilities with a maturity of at least one year and Purchase Money Indebtedness of, including Guarantees of any of the foregoing by, the Issuer and/or any Restricted Subsidiary, in an aggregate principal amount at any one time outstanding not to exceed U.S.$1 billion;

(x) Indebtedness arising from agreements entered into by the Issuer and/or a Restricted Subsidiary providing for bona fide indemnification, adjustment of purchase price or similar obligations not for financing purposes, in each case, Incurred or assumed in connection with the acquisition or disposition of any business, assets or Capital Stock of a Restricted Subsidiary (including minority interests); *provided*, that in the case of a disposition, the maximum aggregate liability in respect of such Indebtedness shall at no time exceed the gross proceeds actually received by the Issuer and its Restricted Subsidiaries in connection with such disposition;

(xi) Indebtedness of the Issuer and/or any of its Restricted Subsidiaries in an aggregate amount not to exceed U.S.$1 billion at any one time outstanding; *provided*, that no more than U.S.$250 million of such Indebtedness at any one time outstanding (excluding any Indebtedness under a Permitted Liquidity Facility) may be Incurred by Restricted Subsidiaries that are not Note Guarantors, which amount shall be increased by the corresponding amount of other Indebtedness of Restricted Subsidiaries other than the Note Guarantors outstanding on the Issue Date and subsequently repaid from time to time but in any event not to exceed U.S.$500 million at any one time outstanding; *provided*, *further*, *however*, that (A) the Issuer and/or any of its Restricted Subsidiaries may Incur Indebtedness under a Permitted Liquidity Facility and (B) in the event that the Issuer and/or any of its Restricted Subsidiaries shall have Incurred Indebtedness under a Permitted Liquidity Facility that increases the amount outstanding at such time pursuant to this clause (xi) in excess of U.S.$ 1 billion, then up to U.S.$1.2 billion may be Incurred pursuant to this clause (xi) at any one time outstanding;

(xii) (A) Indebtedness of the Issuer and/or any of its Restricted Subsidiaries in respect of factoring arrangements or Inventory Financing arrangements or (B) other Indebtedness of the Issuer and/or any of its Restricted Subsidiaries with a maturity of 12 months or less for working capital purposes, not to exceed in the aggregate at any one time (calculated as of the end of the most recent fiscal quarter for which consolidated financial information of the Issuer is available) the greater of:

(1) The sum of:

(x) 20% of the net book value of the inventory of the Issuer and its Restricted Subsidiaries and

(y) 20% of the net book value of the accounts receivable of the Issuer and its Restricted Subsidiaries (excluding accounts receivable pledged to secure Indebtedness or subject to a Qualified Receivables Transaction),

less, in each case, the amount of any permanent repayments or reductions of commitments in respect of such Indebtedness made with the Net Cash Proceeds of an Asset Sale in order to comply with Section 3.12; or

(2) U.S.$350 million;

(xiii) [Reserved];

(xiv) Indebtedness of the Issuer and/or any of its Restricted Subsidiaries for taxes levied, assessments due and other governmental charges required to be paid as a matter of law or regulation in the ordinary course of business; *provided*, that such Indebtedness shall be permitted to be Incurred only at such time that the Facilities Agreement (or any refinancing thereof) shall contain an exception to allow the Incurrence of Indebtedness to pay taxes;

(xv) Indebtedness Incurred pursuant to the Banobras Facility;

(xvi) Indebtedness of the Issuer and/or any of its Restricted Subsidiaries Incurred and/or issued to refinance Qualified Receivables Transactions in existence on the Issue Date;

(xvii) Acquired Indebtedness in an aggregate amount at any one time outstanding under this clause (xvii) not to exceed U.S.$100 million; and

(xviii) (A) any Indebtedness that constitutes an Investment that the Issuer and/or any of its Restricted Subsidiaries is contractually committed to

Incur as of the Issue Date in any Person (other than a Subsidiary) in which the Issuer or any of its Restricted Subsidiaries maintains an Investment in equity securities; and (B) Guarantees up to U.S.$100 million in any calendar year by the Issuer and/or any Restricted Subsidiary of Indebtedness of any Person in which the Issuer or any of its Restricted Subsidiaries maintains an equity Investment minus any Investment other than such guarantees in such Person during such calendar year pursuant to clause (17)(b) of the definition of "Permitted Investments."

(c) Notwithstanding anything to the contrary contained in this Section 3.9,

(i) The Issuer shall not, and shall not permit any Note Guarantor to, Incur any Permitted Indebtedness pursuant to Section 3.9(b) if the proceeds thereof are used, directly or indirectly, to Refinance any Subordinated Indebtedness unless such Indebtedness shall be subordinated to the Notes or the applicable Note Guarantee, as the case may be, to at least the same extent as such Subordinated Indebtedness.

(ii) For purposes of determining compliance with, and the outstanding principal amount of, any particular Indebtedness Incurred pursuant to and in compliance with this Section 3.9, the amount of Indebtedness issued at a price that is less than the principal amount thereof will be equal to the amount of the liability in respect thereof determined in accordance with GAAP. Accrual of interest, the accretion or amortization of original issue discount, the payment of regularly scheduled interest in the form of additional Indebtedness of the same instrument or the payment of regularly scheduled dividends on Disqualified Capital Stock in the form of additional Disqualified Capital Stock with the same terms will not be deemed to be an Incurrence of Indebtedness for purposes of this Section 3.9. For purposes of determining compliance with this Section 3.9, mark-to-market fluctuations of hedging obligations or derivatives outstanding on the Issue Date shall not constitute Incurrence of Indebtedness.

(iii) For purposes of determining compliance with this Section 3.9, the principal amount of Indebtedness denominated in foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was Incurred, in the case of term Indebtedness, or first committed, in the case of revolving credit Indebtedness; *provided*, that if such Indebtedness is Incurred to refinance other Indebtedness denominated in foreign currency, and such refinancing would cause the applicable restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such restriction shall be deemed not to have been exceeded so long as the principal amount of such Refinancing Indebtedness does not exceed the principal amount of such

Indebtedness being refinanced. Notwithstanding any other provision of this Section 3.9, the maximum amount of Indebtedness Incurred to refinance other Indebtedness, if Incurred in a different currency from the Indebtedness being refinanced, shall be calculated based on the currency exchange rate applicable to the currencies in which such Refinancing Indebtedness is denominated that is in effect on the date of such refinancing.

(iv) For purposes of determining compliance with this Section 3.9:

(A) in the event that an item of Indebtedness meets the criteria of more than one of the types of Indebtedness described above, including, without limitation, in Section 3.9(a), the Issuer, in its sole discretion, will classify such item of Indebtedness at the time of Incurrence and only be required to include the amount and type of such Indebtedness in one of the above clauses and may later reclassify all or a portion of such item of Indebtedness as having been Incurred pursuant to any other clause to the extent such Indebtedness could be Incurred pursuant to such clause at the time of such reclassification; and

(B) the Issuer will be entitled to divide and classify an item of Indebtedness in more than one of the types of Indebtedness described above, including, without limitation, Section 3.9(a).

Section 3.10 [Reserved].

Section 3.11 Limitation on Restricted Payments.

(a) The Issuer will not, and will not cause or permit any of its Restricted Subsidiaries to, directly or indirectly, take any of the following actions (each, a "Restricted Payment"):

(i) declare or pay any dividend or return of capital or make any distribution on or in respect of shares of Capital Stock of the Issuer or any Restricted Subsidiary to holders of such Capital Stock, other than:

(A) dividends, distributions or returns on capital payable in Qualified Capital Stock of the Issuer,

(B) dividends, distributions or returns on capital payable to the Issuer and/or a Restricted Subsidiary,

(C) dividends, distributions or returns of capital made on a *pro rata* basis to the Issuer and its Restricted Subsidiaries, on the one hand, and minority holders of Capital Stock of a Restricted Subsidiary, on the other hand (or on less than a *pro rata* basis to any minority holder);

(ii) purchase, redeem or otherwise acquire or retire for value:

(A) any Capital Stock of the Issuer, or

(B) any Capital Stock of any Restricted Subsidiary held by an Affiliate of the Issuer or any Preferred Stock of a Restricted Subsidiary, except for:

(1) Capital Stock held by the Issuer or a Restricted Subsidiary, or

(2) purchases, redemptions, acquisitions or retirements for value of Capital Stock on a *pro rata* basis from the Issuer and/or any Restricted Subsidiaries, on the one hand, and minority holders of Capital Stock of a Restricted Subsidiary, on the other hand, according to their respective percentage ownership of the Capital Stock of such Restricted Subsidiary;

(iii) make any principal payment on, purchase, defease, redeem, prepay, decrease or otherwise acquire or retire for value, prior to any scheduled final maturity, scheduled repayment or scheduled sinking fund payment, as the case may be, any Subordinated Indebtedness; or

(iv) make any Investment (other than Permitted Investments);

if at the time of the Restricted Payment immediately after giving effect thereto:

(A) a Default or an Event of Default shall have occurred and be continuing;

(B) the Issuer is not able to Incur at least U.S.$1.00 of additional Indebtedness pursuant to Section 3.9(a); or

(C) the aggregate amount (the amount expended for these purposes, if other than in cash, being the Fair Market Value of the relevant property at the time of the making thereof) of the proposed Restricted Payment and all other Restricted Payments made subsequent to the Issue Date up to the date thereof, less any Investment Return calculated as of the date thereof, shall exceed the sum of:

(1) 50% of cumulative Consolidated Net Income of the Issuer or, if cumulative Consolidated Net Income of the Issuer is a loss, minus (i) 100% of the loss, accrued during the period, treated as one accounting period, beginning on the first full fiscal quarter after the Issue Date to the end of the most recent fiscal

quarter for which consolidated financial information of the Issuer is available and (ii) the amount of cash benefits to the Issuer or a Restricted Subsidiary that is netted against Investments in Similar Businesses pursuant to clause (12) of the definition of "Permitted Investments"; plus

(2) 100% of the aggregate net cash proceeds received by the Issuer from any Person from any:

- contribution to the equity capital of the Issuer (not representing an interest in Disqualified Capital Stock) or issuance and sale of Qualified Capital Stock of the Issuer, in each case, subsequent to the Issue Date, or
- issuance and sale subsequent to the Issue Date (and, in the case of Indebtedness of a Restricted Subsidiary, at such time as it was a Restricted Subsidiary) of any Indebtedness for borrowed money of the Issuer or any Restricted Subsidiary that has been converted into or exchanged for Qualified Capital Stock of the Issuer,

excluding, in each case, any net cash proceeds:

- received from a Subsidiary of the Issuer;
- used to redeem Notes under Article V;
- used to acquire Capital Stock or other assets from an Affiliate of the Issuer; or
- applied in accordance with clause (ii)(B) or (iii)(A) of Section 3.11(b) below.

(b) Notwithstanding Section 3.11(a), this Section 3.11 does not prohibit:

(i) the payment of any dividend within 60 days after the date of declaration of such dividend if the dividend would have been permitted on the date of declaration pursuant to Section 3.11(a);

(ii) if no Default or Event of Default shall have occurred and be continuing, the acquisition of any shares of Capital Stock of the Issuer,

(A) in exchange for Qualified Capital Stock of the Issuer, or

(B) through the application of the net cash proceeds received by the Issuer from a substantially concurrent sale of Qualified Capital Stock of the Issuer or a contribution to the equity capital of the Issuer not representing an interest in Disqualified Capital Stock, in each case not received from a Subsidiary of the Issuer;

*provided*, that the value of any such Qualified Capital Stock issued in exchange for such acquired Capital Stock and any such net cash proceeds shall be excluded from Section 3.11(a)(iv)(C)(2) (and were not included therein at any time);

(iii) if no Default or Event of Default shall have occurred and be continuing, the voluntary prepayment, purchase, defeasance, redemption or other acquisition or retirement for value of any Subordinated Indebtedness:

(A) solely in exchange for, or through the application of net cash proceeds of a substantially concurrent sale, other than to a Subsidiary of the Issuer, of Qualified Capital Stock of the Issuer, or

(B) solely in exchange for Refinancing Indebtedness for such Subordinated Indebtedness,

*provided*, that the value of any Qualified Capital Stock issued in exchange for Subordinated Indebtedness and any net cash proceeds referred to above shall be excluded from Section 3.11(a)(iv)(C)(2) (and were not included therein at any time);

(iv) repurchases by the Issuer of Common Stock of the Issuer or options, warrants or other securities exercisable or convertible into Common Stock of the Issuer from employees or directors of the Issuer or any of its Subsidiaries or their authorized representatives upon the death, disability or termination of employment or directorship of the employees or directors, in an amount not to exceed U.S.$5 million in any calendar year and any repurchases other than in connection with compensation of Common Stock of the Issuer pursuant to binding written agreements in effect on the Issue Date;

(v) payments of dividends on Disqualified Capital Stock issued pursuant to the covenant described under Section 3.9; *provided*, *however*, that such dividends shall be excluded in the calculation of the amount of Restricted Payments;

(vi) non-cash repurchases of Capital Stock deemed to occur upon exercise of stock options, warrants or other similar rights if such Capital Stock represents a portion of the exercise price of such options, warrants or other similar rights;

(vii) cash payments in lieu of the issuance of fractional shares in connection with the exercise of warrants, options or other securities convertible into or exchangeable for Capital Stock of the Issuer;

(viii) purchases of any Subordinated Indebtedness of the Issuer (A) at a purchase price not greater than 101% of the principal amount thereof (together with accrued and unpaid interest) in the event of the occurrence of a Change of Control or (B) at a purchase price not greater than 100% of the principal amount thereof (together with accrued and unpaid interest) in the event of an Asset Sale in accordance with provisions similar to those set forth under Section 3.12; *provided*, *however*, that prior to such purchase of any such Subordinated Indebtedness, the Issuer has made the Change of Control Offer or Asset Sale Offer as provided under Section 3.8 or Section 3.12, respectively, and has purchased all Notes validly tendered and not properly withdrawn pursuant thereto;

(ix) recapitalization of earnings on or in respect of the Qualified Capital Stock of the Issuer pursuant to which additional Qualified Capital Stock of the Issuer or the right to subscribe for additional Capital Stock of the Issuer is issued to the existing shareholders of the Issuer on a *pro rata* basis (which, for the avoidance of doubt, shall not allow any payment in cash to be made in respect of Qualified Capital Stock of the Issuer pursuant to this clause (ix)); and

(x) so long as (A) no Default or Event of Default shall have occurred and be continuing (or result therefrom) and (B) the Issuer could Incur at least U.S.$1.00 of additional Debt pursuant to Section 3.9(a), payment of any dividends on Capital Stock (other than Disqualified Capital Stock) of the Issuer in an aggregate amount which, when taken together with all dividends paid pursuant to this clause (x), does not exceed U.S.$50 million in any calendar year; *provided*, that such dividends shall be included in the calculation of the amount of Restricted Payments.

(xi) [Reserved]

In determining the aggregate amount of Restricted Payments made subsequent to the Issue Date, amounts expended pursuant to clauses (i) (without duplication for the declaration of the relevant dividend), (iv), (viii) and (x) above shall be included in such calculation and amounts expended pursuant to clauses (ii), (iii), (v), (vi), (vii) and (ix) above shall not be included in such calculation.

Section 3.12 Limitation on Asset Sales.

(a) The Issuer will not, and will not permit any of its Restricted Subsidiaries to, consummate an Asset Sale unless:

(i) the Issuer or the applicable Restricted Subsidiary, as the case may be, receives consideration at the time of the Asset Sale at least equal to the Fair Market Value (to be determined as of the date on which such sale is contracted) of the assets sold or otherwise disposed of, and

(ii) other than in respect of Permitted Asset Swap Transactions, at least 80% of the consideration received for the assets sold by the Issuer or the Restricted Subsidiary, as the case may be, in the Asset Sale shall be in the form of cash or Cash Equivalents received at the time of such Asset Sale; *provided*, *however*, for the purposes of this clause (ii), the following are also deemed to be cash or Cash Equivalents:

(A) the assumption of Indebtedness (other than Subordinated Indebtedness) of the Issuer or any Restricted Subsidiary and the release of the Issuer or such Restricted Subsidiary from all liability on such Indebtedness in connection with such Asset Sale;

(B) any securities, notes or obligation received by the Issuer or any Restricted Subsidiary from the transferee that are, within 180 days after the Asset Sale, converted by the Issuer or such Restricted Subsidiary into cash, to the extent of cash received in that conversion;

(C) Capital Stock of a Person who is or who, after giving effect to such Asset Sale, becomes, a Restricted Subsidiary; and

(D) any Designated Non-cash Consideration received by the Issuer or such Restricted Subsidiary in connection with such Asset Sale having an aggregate Fair Market Value which, when taken together with the Fair Market Value of all other Designated Non-cash Consideration received pursuant to this clause (D) since the Issue Date, does not exceed the sum of (1) 3.0% of Consolidated Tangible Assets of the Issuer calculated as of the end of the most recent fiscal quarter for which consolidated financial information is available (with the Fair Market Value of each item of Designated Non-cash Consideration being measured as of the date it was received and without giving effect to subsequent changes in value of any such item of Designated Non-cash Consideration) and (2) the amount of cash or Cash Equivalents received in connection with a subsequent sale of such Designated Non-cash Consideration.

(b) The Issuer or any Restricted Subsidiary may apply the Net Cash Proceeds of any such Asset Sale within 365 days thereof to:

(i) repay any Senior Indebtedness for borrowed money or constituting a Capitalized Lease Obligation and permanently reduce the commitments with respect thereto, or

(ii) purchase:

(A) assets (except for current assets as determined in accordance with GAAP or Capital Stock) to be used by the Issuer or any Restricted Subsidiary in a Permitted Business, or

(B) substantially all of the assets of a Permitted Business or Capital Stock of a Person engaged in a Permitted Business that will become, upon purchase, a Restricted Subsidiary from a Person other than the Issuer and its Restricted Subsidiaries.

(c) To the extent all or a portion of the Net Cash Proceeds of any Asset Sale are not applied within the 365 days of the Asset Sale as described in clause (i) or (ii) of Section 3.12(b), the Issuer will make an offer to purchase Notes (the "Asset Sale Offer"), at a purchase price equal to 100% of the principal amount of the Notes to be purchased, plus accrued and unpaid interest thereon, to the date of purchase (the " Asset Sale Offer Amount"). The Issuer will purchase pursuant to an Asset Sale Offer from all tendering Holders on a *pro rata* basis, and, at the Issuer's option, on a *pro rata* basis with the holders of any other Senior Indebtedness with similar provisions requiring the Issuer to offer to purchase the other Senior Indebtedness with the proceeds of Asset Sales, that principal amount (or accreted value in the case of Indebtedness issued with original issue discount) of Notes and the other Senior Indebtedness to be purchased equal to such unapplied Net Cash Proceeds. The Issuer may satisfy its obligations under this Section 3.12 with respect to the Net Cash Proceeds of an Asset Sale by making an Asset Sale Offer prior to the expiration of the relevant 365-day period.

(d) Pending the final application of any Net Cash Proceeds pursuant to this Section 3.12, the holder of such Net Cash Proceeds may apply such Net Cash Proceeds temporarily to reduce Indebtedness outstanding under a revolving credit facility or otherwise invest such Net Cash Proceeds in any manner not prohibited by this Indenture.

(e) The purchase of Notes pursuant to an Asset Sale Offer shall occur not less than 20 Business Days following the date thereof, or any longer period as may be required by law, nor more than 45 days following the 365th day following the Asset Sale. The Issuer may, however, defer an Asset Sale Offer until there is an aggregate amount of unapplied Net Cash Proceeds from one or more Asset Sales equal to or in excess of U.S.$100 million. At that time, the entire amount of unapplied Net Cash Proceeds, and not just the amount in excess of U.S.$100 million, shall be applied as required pursuant to this Section 3.12.

(f) Each Asset Sale Offer Notice shall be mailed first class, postage prepaid, to the record Holders as shown on the Note Register within 20 days following such 365th day (or such earlier date as the Issuer shall have elected to make such Asset Sale Offer), with a copy to the Trustee offering to purchase the Notes as described above. Each notice of an Asset Sale Offer shall state, among other things, the purchase date, which must be no earlier than 30 days

nor later than 60 days from the date the notice is mailed, other than as may be required by law (the " Asset Sale Offer Payment Date"). Upon receiving notice of an Asset Sale Offer, Holders may elect to tender their Notes in whole or in part, in minimum denominations of U.S.$200,000 and in any integral multiples of U.S.$1,000 in excess thereof in exchange for cash.

(g) On the Asset Sale Offer Payment Date, the Issuer shall, to the extent lawful:

(i) accept for payment all Notes or portions thereof properly tendered pursuant to the Asset Sale Offer;

(ii) deposit with the Paying Agent funds in an amount equal to the Asset Sale Offer Amount in respect of all Notes or portions thereof so tendered; and

(iii) deliver or cause to be delivered to the Trustee the Notes so accepted together with an Officer's Certificate stating the aggregate principal amount of Notes or portions thereof being purchased by the Issuer.

(h) To the extent Holders of Notes and holders of other Senior Indebtedness, if any, which are the subject of an Asset Sale Offer properly tender and do not withdraw Notes or the other Senior Indebtedness in an aggregate amount exceeding the amount of unapplied Net Cash Proceeds, the Issuer shall purchase the Notes and the other Senior Indebtedness on a *pro rata* basis (based on amounts tendered). If only a portion of a Note is purchased pursuant to an Asset Sale Offer, a new Note in a principal amount equal to the portion thereof not purchased shall be issued in the name of the holder thereof upon cancellation of the original Note (or appropriate adjustments to the amount and beneficial interests in a global note shall be made, as appropriate). Notes (or portions thereof) purchased pursuant to an Asset Sale Offer shall be cancelled and cannot be reissued.

(i) The Issuer shall comply with the requirements of Rule 14e-1 under the Exchange Act and any other applicable securities laws in connection with the purchase of Notes pursuant to an Asset Sale Offer. To the extent that the provisions of any applicable securities laws or regulations conflict with this Section 3.12, the Issuer shall comply with these laws and regulations and shall not be deemed to have breached its obligations under the "Asset Sale" provisions of this Indenture by doing so.

(j) Upon completion of an Asset Sale Offer, the amount of Net Cash Proceeds shall be reset at zero. Accordingly, to the extent that the aggregate amount of Notes and other Indebtedness tendered pursuant to an Asset Sale Offer is less than the aggregate amount of unapplied Net Cash Proceeds, the Issuer may use any remaining Net Cash Proceeds for general corporate purposes of the Issuer and its Restricted Subsidiaries.

(k) In the event of the transfer of substantially all (but not all) of the property and assets of the Issuer and its Restricted Subsidiaries as an entirety to a Person in a transaction permitted under Article IV, the Successor Issuer shall be deemed to have sold the properties and assets of the Issuer and its Restricted Subsidiaries not so transferred for purposes of this Section 3.12, and shall comply with the provisions of this Section 3.12 with respect to the deemed sale as

if it were an Asset Sale. In addition, the Fair Market Value of properties and assets of the Issuer or its Restricted Subsidiaries so deemed to be sold shall be deemed to be Net Cash Proceeds for purposes of this Section 3.12.

(l) If at any time any non-cash consideration received by the Issuer or any Restricted Subsidiary, as the case may be, in connection with any Asset Sale, is converted into or sold or otherwise disposed of for cash (other than interest received with respect to any non-cash consideration), the conversion or disposition shall be deemed to constitute an Asset Sale hereunder and the Net Cash Proceeds thereof shall be applied in accordance with this Section 3.12 within 365 days of conversion or disposition.

Section 3.13 Limitation on the Ownership of Capital Stock of Restricted Subsidiaries. The Issuer shall not permit any Person other than the Issuer or another Restricted Subsidiary to, directly or indirectly, own or control any Capital Stock of any Restricted Subsidiary, except for:

(i) Capital Stock owned by such Person on the Issue Date;

(ii) directors' qualifying shares;

(iii) the sale or Disposition of 100% of the shares of the Capital Stock of any Restricted Subsidiary held by the Issuer and its Restricted Subsidiaries to any Person other than the Issuer or another Restricted Subsidiary effected in accordance with, as applicable, Section 3.12 and Article IV;

(iv) in the case of a Restricted Subsidiary other than a Restricted Subsidiary that is a Wholly Owned Subsidiary,

(A) the issuance by that Restricted Subsidiary of Capital Stock on a *pro rata* basis to the Issuer and its Restricted Subsidiaries, on the one hand, and minority holders of Capital Stock of such Restricted Subsidiary, on the other hand (or on less than a *pro rata* basis to any minority holder); or

(B) sales, transfers and other dispositions of Capital Stock in a Restricted Subsidiary to the extent required by, or made pursuant to, buy/sell, put/call or similar shareholder arrangements set forth in binding agreements in effect on the Issue Date; and

(v) the sale of Capital Stock of a Restricted Subsidiary by the Issuer or another Restricted Subsidiary or the sale or issuance by a Restricted Subsidiary of its newly-issued Capital Stock if such sale or issuance is made in compliance with Section 3.12 and either:

(A) such Restricted Subsidiary is no longer a Subsidiary, and the continuing Investment of the Issuer and its Restricted Subsidiaries in such former Restricted Subsidiary is in compliance with Section 3.11, or

(B) such Restricted Subsidiary continues to be a Restricted Subsidiary.

Section 3.14 Limitation on Designation of Unrestricted Subsidiaries .

(a) The Issuer may designate after the Issue Date any Subsidiary of the Issuer other than a Note Guarantor as an Unrestricted Subsidiary under this Indenture (a "Designation") only if:

(i) no Default or Event of Default shall have occurred and be continuing at the time of or after giving effect to such Designation and any transactions between the Issuer or any of its Restricted Subsidiaries and such Unrestricted Subsidiary are in compliance with Section 3.18;

(ii) at the time of and after giving effect to such Designation, the Issuer could Incur U.S.$1.00 of additional Indebtedness pursuant to Section 3.9(a);

(iii) the Issuer would be permitted to make an Investment at the time of Designation (assuming the effectiveness of such Designation and treating such Designation as an Investment at the time of Designation) as a Restricted Payment pursuant to Section 3.11(a) in an amount (the "Designation Amount") equal to the amount of the Issuer's Investment in such Subsidiary on such date; and

(iv) the terms of any Affiliate Transaction existing on the date of such Designation between the Subsidiary being designated (and its Subsidiaries) and the Issuer or any Restricted Subsidiary would be permitted under Section 3.18 if entered into immediately following such Designation.

(b) Neither the Issuer nor any Restricted Subsidiary shall at any time:

(i) provide credit support for, subject any of its property or assets (other than the Capital Stock of any Unrestricted Subsidiary) to the satisfaction of, or Guarantee, any Indebtedness of any Unrestricted Subsidiary (including any undertaking, agreement or instrument evidencing such Indebtedness);

(ii) be directly or indirectly liable for any Indebtedness of any Unrestricted Subsidiary; or

(iii) be directly or indirectly liable for any Indebtedness which provides that the Holder thereof may (upon notice, lapse of time or both) declare a default thereon or cause the payment thereof to be

accelerated or payable prior to its final scheduled maturity upon the occurrence of a default with respect to any Indebtedness of any Unrestricted Subsidiary.

(c) The Issuer may revoke any Designation of a Subsidiary as an Unrestricted Subsidiary (a " Revocation") only if:

(i) no Default or Event of Default shall have occurred and be continuing at the time of and after giving effect to such Revocation; and

(ii) all Liens and Indebtedness of such Unrestricted Subsidiary outstanding immediately following such Revocation, if Incurred at such time, would have been permitted to be Incurred for all purposes of this Indenture.

(d) The Designation of a Subsidiary of the Issuer as an Unrestricted Subsidiary shall be deemed to include the Designation of all of the Subsidiaries of such Subsidiary as Unrestricted Subsidiaries. All Designations and Revocations must be evidenced by an Officer's Certificate of the Issuer, delivered to the Trustee certifying compliance with the preceding provisions.

Section 3.15 Limitation on Dividends and Other Payment Restrictions Affecting Restricted Subsidiaries .

(a) Except as provided in clause (b) below, the Issuer shall not, and shall not cause or permit any of its Restricted Subsidiaries to, directly or indirectly, create or otherwise cause or permit to exist or become effective any consensual encumbrance or restriction on the ability of any Restricted Subsidiary to:

(i) pay dividends or make any other distributions on or in respect of its Capital Stock to the Issuer or any other Restricted Subsidiary or pay any Indebtedness owed to the Issuer or any other Restricted Subsidiary;

(ii) make loans or advances to, or make any Investment in, the Issuer or any other Restricted Subsidiary; or

(iii) transfer any of its property or assets to the Issuer or any other Restricted Subsidiary.

(b) Section 3.15(a) shall not apply to encumbrances or restrictions existing under or by reason of:

(i) applicable law, rule, regulation or order;

(ii) this Indenture;

(iii) any encumbrance or restriction pursuant to an agreement in effect at or entered into on the Issue Date, and any amendments, restatements, renewals, replacements or refinancings thereof; *provided*, that any amendment, restatement, renewal, replacement or refinancing is not materially more restrictive with respect to such encumbrances or restrictions than those in existence on the Issue Date as determined in good faith by the Issuer's senior management;

(iv) customary non-assignment provisions of any contract and customary provisions restricting assignment or subletting in any lease governing a leasehold interest of any Restricted Subsidiary, or any customary restriction on the ability of a Restricted Subsidiary to dividend, distribute or otherwise transfer any asset which secures Indebtedness secured by a Lien, in each case permitted to be Incurred under this Indenture;

(v) any instrument governing Acquired Indebtedness not Incurred in connection with, or in anticipation or contemplation of, the relevant acquisition, merger or consolidation, which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person or the properties or assets of the Person so acquired;

(vi) restrictions with respect to a Restricted Subsidiary of the Issuer imposed pursuant to a binding agreement which has been entered into for the sale or disposition of Capital Stock or assets of such Restricted Subsidiary; *provided*, that such restrictions apply solely to the Capital Stock or assets of such Restricted Subsidiary being sold (and in the case of Capital Stock, its Subsidiaries);

(vii) customary restrictions imposed on the transfer of copyrighted or patented materials;

(viii) an agreement governing Indebtedness Incurred to Refinance the Indebtedness issued, assumed or Incurred pursuant to an agreement referred to in clause (iii) or (v) of this Section 3.15(b); *provided*, that such Refinancing agreement is not materially more restrictive with respect to such encumbrances or restrictions than those contained in the agreement referred to in such clause (iii) or (v) as determined in good faith by the Issuer's senior management;

(ix) Liens permitted to be Incurred pursuant to the provisions of the covenant described under Section 3.17 that limit the right of any person to transfer the assets subject to such Liens;

(x) Purchase Money Indebtedness for property acquired in the ordinary course of business and Capitalized Lease Obligations that impose restrictions of the nature discussed in clause (iii) of this Section 3.15(b) above on the property so acquired;

(xi) restrictions on cash or other deposits imposed by customers under contracts or other arrangements entered into or agreed to in the ordinary course of business not materially more restrictive than those existing on the Issue Date as determined in good faith by the Issuer's senior management;

(xii) customary provisions in joint venture agreements relating to dividends or other distributions in respect of such joint venture or the securities, assets or revenues of such joint venture;

(xiii) restrictions in Indebtedness Incurred by a Restricted Subsidiary in compliance with the covenant described under Section 3.9; *provided*, that such restrictions (A) are not materially more restrictive with respect to such encumbrances and restrictions than those such Restricted Subsidiary was subject to in agreements related to obligations referenced in clause (iii) above as determined in good faith by the Issuer's senior management or (B) constitute financial covenants or similar restrictions that limit the ability to pay dividends or make distributions upon the occurrence or continuance of a default or event of default or that would result in a default or event of default under such Indebtedness upon the declaration or payment of dividends or other distributions; and

(xiv) net worth provisions in leases entered into by the Issuer or any Restricted Subsidiary in the ordinary course of business not materially more restrictive than those existing on the Issue Date as determined in good faith by the Issuer's senior management.

Section 3.16 Limitation on Layered Indebtedness. The Issuer shall not, and shall not permit any Note Guarantor to, directly or indirectly, Incur any Indebtedness that is subordinate in right of payment to any other Indebtedness, unless such Indebtedness is expressly subordinate in right of payment to the Notes or, in the case of a Note Guarantor, its Note Guarantee, to the same extent, on the same terms and for so long (except as a result of the provisions of the Intercreditor Agreement applicable to Facilities Agreement Indebtedness and any refinancing thereof) as such Indebtedness is subordinate to such other Indebtedness.

Section 3.17 Limitation on Liens. The Issuer shall not, and shall not cause or permit any of its Restricted Subsidiaries to, directly or indirectly, incur, grant, assume or suffer to exist any Liens of any kind (except for Permitted Liens) (a) against or upon any of their respective properties or assets, whether owned on the Issue Date or acquired after the Issue Date, or any proceeds therefrom, to secure any Indebtedness or trade payables or (b) deemed to exist in respect of Capitalized Lease Obligations (including any Capitalized Lease Obligations in respect of Sale and Leaseback Transactions), in each case, unless contemporaneously therewith effective provision is made:

(i) in the case of the Issuer or any Restricted Subsidiary that is not a Note Guarantor, to secure the Notes and all other amounts due under this Indenture; and

(ii) in the case of a Note Guarantor, to secure such Note Guarantor's Note Guarantee of the Notes and all other amounts due under this Indenture,

in each case, equally and ratably with such Indebtedness or other obligation (or, in the event that such Indebtedness is subordinated in right of payment to the Notes or such Note Guarantee, as the case may be, prior to such Indebtedness or other obligation) with a Lien on the same properties and assets securing such Indebtedness or other obligation for so long as such Indebtedness or other obligation is secured by such Lien.

Section 3.18 Limitation on Transactions with Affiliates.

(a) The Issuer shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly, enter into any transaction or series of related transactions (including, without limitation, the purchase, sale, lease or exchange of any property or the rendering of any service) with, or for the benefit of, any Affiliate of the Issuer (each an "Affiliate Transaction"), unless the terms of such Affiliate Transaction are no less favorable than those that could reasonably be expected to be obtained in a comparable transaction at such time on an arm's-length basis from a Person that is not an Affiliate of the Issuer;

(b) The provisions of Section 3.18(a) above shall not apply to:

(i) Affiliate Transactions with or among the Issuer and any Restricted Subsidiary or between or among Restricted Subsidiaries;

(ii) reasonable fees and compensation paid to, and any indemnity provided on behalf of, officers, directors, employees, consultants or agents of the Issuer or any Restricted Subsidiary as determined in good faith by the Issuer's Board of Directors or, to the extent consistent with past practice, senior management;

(iii) Affiliate Transactions undertaken pursuant to any contractual obligations or rights in existence on the Issue Date (as in effect on the Issue Date with modifications, extensions and replacements thereof not materially adverse to the Issuer and its Restricted Subsidiaries) as determined in good faith by the Issuer's senior management;

(iv) any Restricted Payments in compliance with Section 3.11;

(v) payments and issuances of Qualified Capital Stock to any officers, directors and employees of the Issuer or any Restricted Subsidiary

pursuant to any management equity plan or stock option plan or any other stock subscription or shareholder agreement, and any employment agreements, stock option plans or other compensatory arrangements (and any successor plans thereto) and any supplemental executive retirement benefit plans or arrangements with any such officers, directors or employees that are, in each case, approved in good faith by the Board of Directors or, to the extent consistent with past practice, senior management of the Issuer;

(vi) loans and advances to officers, directors and employees of the Issuer or any Restricted Subsidiary for travel, entertainment, moving and other relocation expenses, in each case made in the ordinary course of business in amounts consistent with the past practice of the Issuer or such Restricted Subsidiary; and

(vii) loans made by the Issuer or any Restricted Subsidiary to employees or directors in an aggregate amount not to exceed U.S.$15 million (or its equivalent in another currency) at any time outstanding.

Section 3.19 Conduct of Business. The Issuer and its Restricted Subsidiaries shall not engage in any business other than a Permitted Business.

Section 3.20 Reports to Holders.

(a) Notwithstanding that the Issuer may not be subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, so long as any Notes remain outstanding, the Issuer shall:

(i) provide the Trustee and the Holders with:

(A) annual reports on Form 20-F (or any successor form) containing the information required to be contained therein (or such successor form) within the time period required under the rules of the Commission for the filing of Form 20-F (or any successor form) by "foreign private issuers" (as defined in Rule 3b-4 of the Exchange Act (or any successor rule));

(B) reports on Form 6-K (or any successor form) including, whether or not required, unaudited quarterly financial statements (which shall include at least a balance sheet, income statement and cash flow statement) including a discussion of financial condition and results of operations of the Issuer in accordance with past practice, within 45 days after the end of each of the first three fiscal quarters of each fiscal year;

(C) such other reports on Form 6-K (or any successor form) promptly from time to time after the occurrence of an event that would be required to be reported on a Form 6-K (or any successor form); and

(ii) file with the Commission, to the extent permitted, the information, documents and reports referred to in clause (i) within the periods specified for such filings under the Exchange Act (whether or not applicable to the Issuer).

(b) In addition, at any time when the Issuer is not subject to or is not current in its reporting obligations under clause (ii) of Section 3.20(a), the Issuer shall make available, upon request, to any Holder and any prospective purchaser of Notes the information required pursuant to Rule 144A(d)(4) under the Securities Act.

(c) Notwithstanding anything in this Indenture to the contrary, the Issuer shall not be deemed to have failed to comply with any of its obligations hereunder for purposes of clause (iv) of Section 6.1(a) or for any other purpose hereunder until 75 days after the date any report hereunder is due.

(d) Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such reports shall not constitute actual or constructive notice of any information contained therein or determinable from information contained therein, including the Issuer's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officer's Certificates).

Section 3.21 Payment of Additional Amounts.

(a) All payments made by the Issuer or the Note Guarantors under, or with respect to, the Notes shall be made free and clear of, and without withholding or deduction for or on account of any present or future tax, duty, levy, impost, assessment or other governmental charge (including penalties, interest and other liabilities related thereto) (collectively, "Taxes") imposed or levied by or on behalf of the United States, Mexico, Spain, the Netherlands, the United Kingdom, France, Switzerland or, in the event that the Issuer appoints additional paying agents, by the jurisdictions of such additional paying agents (a "Taxing Jurisdiction"), unless the Issuer or such Note Guarantor, as the case may be, is required to withhold or deduct Taxes by law or by the official interpretation or administration thereof.

(b) If the Issuer or any Note Guarantor is so required to withhold or deduct any amount for, or on account of, such Taxes from any payment made under or with respect to the Notes, the Issuer or such Note Guarantor, as the case may be, shall pay such additional amounts (" Additional Amounts") as may be necessary so that the net amount received by each Holder (including Additional Amounts) after such withholding or deduction shall not be less than the amount such Holder would have received if such Taxes had not been required to be withheld or deducted; *provided*, *however*, that the foregoing obligation to pay Additional Amounts does not apply to:

(i) any Taxes imposed solely because at any time there is or was a connection between the Holder and a Taxing Jurisdiction (other than the mere purchase of the Notes, or receipt of a payment or the ownership or holding of a Note),

(ii) any estate, inheritance, gift, sales, transfer, personal property or similar Tax imposed with respect to the Notes,

(iii) any Taxes imposed solely because the Holder or any other person fails to comply with any certification, identification or other reporting requirement concerning the nationality, residence, identity or connection with a Taxing Jurisdiction of the Holder or any beneficial owner of the Note if compliance is required by the applicable law of the Taxing Jurisdiction as a precondition to exemption from, or reduction in the rate of, the tax, assessment or other governmental charge, and the Issuer has given the Holders at least 30 days' notice that Holders shall be required to provide such information and identification,

(iv) any Taxes payable otherwise than by deduction or withholding from payments on the Notes,

(v) any Taxes imposed on a payment to or for the benefit of an individual pursuant to European Council Directive 2003/48/EC or any other directive implementing the conclusions of the ECOFIN Council meeting of November 26-27, 2000 or any law implementing or complying with, or introduced in order to conform to, such directives,

(vi) any Taxes that would have been avoided by presenting for payment (where presentation is required) the relevant Note to another Paying Agent,

(vii) any Taxes with respect to such Note presented for payment more than 30 days after the date on which the payment became due and payable or the date on which payment thereof is duly provided for and notice thereof given to Holders, whichever occurs later, except to the extent that the Holders of such Note would have been entitled to such Additional Amounts on presenting such Note for payment on any date during such 30 day period, and

(viii) any payment on the Note to a Holder that is a fiduciary or partnership or a person other than the sole beneficial owner of any such payment, to the extent that a beneficiary or settlor with respect to such fiduciary, a member of such a partnership or the beneficial owner of the payment would not have been entitled to the Additional Amounts had the beneficiary, settlor, member or beneficial owner been the Holder of the Note.

(c) The obligations in Section 3.21(a) and Section 3.21(b) shall survive any termination or discharge of this Indenture and shall apply mutatis mutandis to any Taxing Jurisdiction with respect to any successor to the Issuer or any Note Guarantor, as the case may be. The Issuer or such Note Guarantor, as applicable, shall (i) make such withholding or deduction and (ii) remit the full amount deducted or withheld to the relevant Taxing Jurisdiction in accordance with applicable law. The Issuer or such Note Guarantor, as applicable, shall use all reasonable efforts to obtain certified copies of tax receipts evidencing the payment of any Taxes so deducted or withheld from each Taxing Jurisdiction imposing such Taxes and shall furnish such certified copies to the Trustee within 30 days after the date the payment of any Taxes so deducted or so withheld is due pursuant to applicable law or, if such tax receipts are not reasonably available to the Issuer or such Note Guarantor, as applicable, furnish such other documentation that provides reasonable evidence of such payment by the Issuer or such Note Guarantor, as applicable.

(d) The limitation on the Issuer's obligations to pay Additional Amounts stated in clause (iii) of Section 3.21(b) will not apply (i) if the provision of information, documentation or other evidence described in such clause would be materially more onerous, in form, in procedure or in the substance of information disclosed, to a holder or beneficial owner of a Note than comparable information or other reporting requirements imposed under U.S. tax law, regulation (including proposed regulations) and administrative practice or (ii) if Article 195, Section II, paragraph (a) of the Mexican Income Tax Law ( *Ley del Impuesto Sobre la Renta*) (or a substitute or equivalent provision) is in effect, unless (A) the provision of the information, documentation or other evidence described in such clause is expressly required by the applicable Mexican laws and regulations in order to apply Article 195, Section II, paragraph (a) of the Mexican Income Tax Law (or substitute or equivalent provision), (B) the Issuer or any Note Guarantor cannot obtain the information, documentation or other evidence necessary to comply with the applicable Mexican laws and regulations on their own through reasonable diligence and (C) the Issuer or any Note Guarantor would not otherwise meet the requirements for application of the applicable Mexican laws and regulations. In addition, clause (iii) of Section 3.21(b) does not require, and shall not be construed to require, that any holder, including any non-Mexican pension fund, retirement fund, tax-exempt organization or financial institution, register with the Mexican Tax Management Service ( *Servicio de Administración Tributaria*) or the Mexican Ministry of Finance and Public Credit (*Secretaría de Hacienda y Crédito Público*) to establish eligibility for an exemption from, or a reduction of, Mexican withholding taxes.

(e) Any reference in this Indenture, any supplemental indenture or the Notes to principal, premium, interest or any other amount payable in respect of the Notes by the Issuer shall be deemed also to refer to any Additional Amount that may be payable with respect to that amount under the obligations referred to in this subsection. Payment of any Additional Amounts with respect to interest shall be considered as an interest payment under, or with respect to, the Notes.

(f) In the event that Additional Amounts actually paid with respect to the Notes pursuant to this Section 3.21 are based on rates of deduction or withholding of withholding taxes in excess of the appropriate rate applicable to the Holder of such Notes, and as a result thereof such Holder is entitled to make a claim for a refund or credit of such excess from the authority imposing such withholding tax, then such Holder shall, by accepting such Notes, and

without any further action, be deemed to have assigned and transferred all right, title and interest to any such claim for a refund or credit of such excess to the Issuer. However, by making such assignment, the Holder makes no representation or warranty that the Issuer shall be entitled to receive such claim for a refund or credit and incurs no other obligation with respect thereto.

Section 3.22 Suspension of Covenants.

(a) During any period of time that the Notes do not have Investment Grade Ratings from two of the Rating Agencies and (i) the Consolidated Leverage Ratio of the Issuer is less than 3.5:1 and (ii) no Default or Event of Default has occurred and is continuing (the occurrence of the events described in the foregoing clauses (i) and (ii) being collectively referred to as a "Partial Covenant Suspension Event"), the Issuer and its Restricted Subsidiaries shall not be subject to the provisions of this Indenture described under Sections 3.12, 3.13, 3.14(b), 3.15, 3.18, 3.19 and 4.1(a)(ii) (collectively, the "Partial Suspended Covenants").

(b) During any period of time that (i) the Notes have Investment Grade Ratings from two of the Rating Agencies and (ii) no Default or Event of Default has occurred and is continuing (the occurrence of the events described in the foregoing clauses (i) and (ii) being collectively referred to as a " Covenant Suspension Event"), the Issuer and its Restricted Subsidiaries shall not be subject to the provisions of this Indenture described under Sections 3.9, 3.11, 3.12, 3.13, 3.14(b), 3.15, 3.16, 3.18, 3.19 and 4.1(a)(ii) (collectively, the "Suspended Covenants").

(c) In addition, (x) no Subsidiary that is a Restricted Subsidiary on the date of the occurrence of a Partial Covenant Suspension Event (the " Partial Covenant Suspension Date") or a Covenant Suspension Event (the "Suspension Date") may be redesignated as an Unrestricted Subsidiary during the Partial Suspension Period or the Suspension Period, as applicable and (y) the Additional Note Guarantors shall be released from their obligation to guarantee the Notes on the date of a Partial Covenant Suspension Event or a Covenant Suspension Event, as the case may be.

(d) The Additional Note Guarantors shall be released from their obligation to guarantee the Notes upon the occurrence of a Partial Covenant Suspension Event or a Covenant Suspension Event; *provided*, that upon the occurrence of a Partial Covenant Reversion Date or a Reversion Date, as applicable, the guarantee of the Notes by the Additional Note Guarantors shall be reinstated in accordance with and subject to the conditions in Section 3.22(e).

(e) In the event that the Issuer and its Restricted Subsidiaries are not subject to the Partial Suspended Covenants or the Suspended Covenants, as the case may be, for any period of time as a result of the foregoing, and on any subsequent date (in the case of Partial Suspended Covenants, such subsequent date being the "Partial Covenant Reversion Date" and, in the case of Suspended Covenants, such subsequent date being the " Reversion Date") (i) the Consolidated Leverage Ratio of the Issuer is not less than 3.5:1 during the applicable Partial Suspension Period or (ii) the Notes do not have Investment Grade Ratings from at least two of the Rating Agencies during the applicable Suspension Period, then in each case in clauses (i) and (ii), the Issuer and its Restricted Subsidiaries will thereafter again be subject to the Partial

Suspended Covenants or the Suspended Covenants, as applicable, and the Notes will again be guaranteed by the Additional Note Guarantors (unless, solely with respect to any Additional Note Guarantor, the conditions for release as described under Section 10.2 are otherwise satisfied during the Partial Suspension Period or the Suspension Period, as applicable). The Issuer shall cause such Additional Note Guarantor to promptly execute and deliver to the Trustee a supplemental indenture hereto in form and substance reasonably satisfactory to the Trustee in accordance with the provisions of Article IX, evidencing that such Additional Note Guarantor's guarantee on substantially the terms set forth in Article X. The period of time between the Partial Covenant Suspension Date and the Partial Covenant Reversion Date is referred to as the "Partial Suspension Period" and the period of time between the Suspension Date and the Reversion Date is referred to as the "Suspension Period." Notwithstanding that the Partial Suspended Covenants, the Suspended Covenants and the guarantees by the Additional Note Guarantors may be reinstated, no Default or Event of Default will be deemed to have occurred as a result of a failure to comply with the Partial Suspended Covenants during the Partial Suspension Period or the Suspended Covenants during the Suspension Period, as the case may be (or upon termination of the applicable Partial Suspension Period or the Suspension Period or after that time based solely on events that occurred during the applicable Partial Suspension Period or the Suspension Period, as the case may be).

(f) On the Reversion Date, all Indebtedness Incurred during the Suspension Period shall be classified to have been Incurred pursuant to Section 3.9(a) or Section 3.9(b) (to the extent such Indebtedness would be permitted to be Incurred thereunder as of the Reversion Date and after giving effect to Indebtedness Incurred prior to the Suspension Period and outstanding on the Reversion Date). To the extent such Indebtedness would not be so permitted to be Incurred pursuant to Section 3.9(a) or 3.9(b), such Indebtedness shall be deemed to have been outstanding on the Issue Date, so that it is classified as permitted under clause (iii) of Section 3.9(b). Calculations made after the Reversion Date of the amount available to be made as Restricted Payments under Section 3.11 shall be made as though Section 3.11 had been in effect since the Issue Date and throughout the Suspension Period. The Issuer will give the Trustee written notice of any occurrence of a Reversion Date not later than five (5) Business Days after such Reversion Date. After any such notice of the occurrence of a Reversion Date, the Trustee shall assume the Suspended Covenants apply and are in full force and effect. Accordingly, Restricted Payments made during the Suspension Period will reduce the amount available to be made as Restricted Payments under Section 3.11(a).

(g) The Issuer will give the Trustee written notice of any Partial Covenant Suspension Event or Covenant Suspension Event and in any event not later than five (5) Business Days after such Partial Covenant Suspension Event or Covenant Suspension Event has occurred. In the absence of such notice, the Trustee shall assume that the Partial Suspended Covenants or the Suspended Covenants, as applicable, apply and are in full force and effect.

(h) For purposes of this Section 3.22 only, "Consolidated Leverage Ratio" and all associated definitions shall have the meaning set forth in Exhibit E hereto.

ARTICLE IV

SUCCESSOR ISSUER

Section 4.1 Merger, Consolidation and Sale of Assets.

(a) The Issuer shall not, in a single transaction or series of related transactions, consolidate or merge with or into any Person (whether or not the Issuer is the surviving or continuing Person), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of the Issuer's properties and assets (determined on a consolidated basis for the Issuer and its Restricted Subsidiaries), to any Person unless:

(i) either:

(A) the Issuer shall be the surviving or continuing corporation, or

(B) the Person (if other than the Issuer) formed by such consolidation or into which the Issuer is merged or the Person which acquires by sale, assignment, transfer, lease, conveyance or other disposition the properties and assets of the Issuer (determined on a consolidated basis for the Issuer and its Restricted Subsidiaries) substantially as an entirety (the " Successor Issuer"):

(1) shall be a Person organized and validly existing under the laws of Mexico, the United States of America, any State thereof or the District of Columbia, Canada, France, Belgium, Germany, Italy, Luxembourg, the Netherlands, Portugal, Spain, Switzerland or the United Kingdom, or any political subdivision thereof (the " Permitted Merger Jurisdictions"); and

(2) shall expressly assume, by a supplemental indenture (in form and substance satisfactory to the Trustee), executed and delivered to the Trustee, the due and punctual payment of the principal of, and premium, if any, and interest on all of the Notes and the performance and observance of every covenant of the Notes and this Indenture on the part of the Issuer to be performed or observed and provide the Trustee with an Officer's Certificate and Opinion of Counsel, and such transaction is otherwise in compliance with this Indenture;

(ii) immediately after giving effect to such transaction and the assumption contemplated by clause (i)(B)(2) of this Section 4.1(a) (including giving effect on a pro forma basis to any Indebtedness, including any Acquired Indebtedness, Incurred or anticipated to be Incurred or discharged in connection with or in respect of such transaction), the Issuer or such Successor Issuer, as the case may be:

(A) shall have a Consolidated Fixed Charge Coverage Ratio that shall be not less than the Consolidated Fixed Charge Coverage Ratio of the Issuer immediately prior to such transaction; or

(B) shall be able to Incur at least U.S.$1.00 of additional Indebtedness pursuant to Section 3.9(a);

(iii) immediately before and immediately after giving effect to such transaction and the assumption contemplated by clause (i)(B)(2) of this Section 4.1(a) (including, without limitation, giving effect on a pro forma basis to any Indebtedness, including any Acquired Indebtedness, Incurred or anticipated to be Incurred or discharged and any Lien granted in connection with or in respect of the transaction), no Default or Event of Default shall have occurred or be continuing;

(iv) in the case of a transaction resulting in a Successor Issuer, each Note Guarantor has confirmed by supplemental indenture that its Note Guarantee shall apply for Obligations of the Successor Issuer in respect of this Indenture and the Notes; and

(v) if the Issuer merges with a Person, or the Successor Issuer is, organized under the laws of any of the Permitted Merger Jurisdictions, the Issuer or the Successor Issuer shall have delivered to the Trustee an Opinion of Counsel stating that, as applicable:

(A) the Holders of the Notes shall not recognize income, gain or loss for the purposes of the income tax laws of the United States or the applicable Permitted Merger Jurisdiction as a result of the transaction and shall be taxed in the Holder's home jurisdiction in the same manner and on the same amounts (assuming solely for this purpose that no Additional Amounts are required to be paid on the Notes) and at the same times as would have been the case if the transaction had not occurred;

(B) any payment of interest or principal under or relating to the Notes or any Guarantees shall be paid in compliance with any requirements under Section 3.21; and

(C) no other taxes on income, including capital gains, shall be payable by Holders of the Notes under the laws of the United States or the applicable Permitted Merger Jurisdiction relating to the acquisition, ownership or disposition of the Notes, including the receipt of interest or principal thereon; *provided*, that the Holder does not use or hold, and is not deemed to use or hold the Notes in carrying on a business in the United States or the applicable Permitted Merger Jurisdiction.

The provisions of clauses (ii) and (iii) of this Section 4.1(a) will not apply to:

(x) any transfer of the properties or assets of a Restricted Subsidiary to the Issuer;

(y) any merger of a Restricted Subsidiary into the Issuer; or

(z) any merger of the Issuer into a Wholly Owned Subsidiary of the Issuer.

For purposes of this Section 4.1, the transfer (by lease, assignment, sale or otherwise, in a single transaction or series of transactions) of all or substantially all of the properties or assets of one or more Restricted Subsidiaries of the Issuer, the Capital Stock of which constitutes all or substantially all of the properties and assets of the Issuer (determined on a consolidated basis for the Issuer and its Restricted Subsidiaries), shall be deemed to be the transfer of all or substantially all of the properties and assets of the Issuer.

The Successor Issuer will succeed to, and be substituted for, such Issuer under this Indenture and the Notes, as applicable. For the avoidance of doubt, compliance with this Section 4.1 will not affect the obligations of the Issuer (including a Successor Issuer, if applicable) under Section 3.8 if applicable.

(b) Each Note Guarantor shall not, and the Issuer shall not cause or permit any such Note Guarantor to, consolidate with or merge into, or sell or dispose of all or substantially all of its assets to, any Person (other than the Issuer) that is not a Note Guarantor unless:

(i) such Person (if such Person is the surviving entity) (the "Successor Note Guarantor") assumes all of the obligations of such Note Guarantor in respect of its Note Guarantee by executing a supplemental indenture and providing the Trustee with an Officer's Certificate and Opinion of Counsel, and such transaction is otherwise in compliance with this Indenture;

(ii) such Note Guarantee is to be released as provided under Section 10.2(b); or

(iii) such sale or other disposition of substantially all of such Note Guarantor's assets is made in accordance with Section 3.12.

Subject to certain limitations described in this Indenture, the Successor Note Guarantor will succeed to, and be substituted for, such Note Guarantor under this Indenture and such Note Guarantor's Note Guarantee. The provisions of clauses (i), (ii) and (iii) of this Section 4.1(b) will not apply to:

(x) any transfer of the properties or assets of a Note Guarantor to the Issuer or another Note Guarantor;

(y) any merger of a Note Guarantor into the Issuer or another Note Guarantor; or

(z) any merger of a Note Guarantor into a Wholly Owned Subsidiary of the Issuer.

ARTICLE V

OPTIONAL REDEMPTION OF NOTES

Section 5.1 Optional Redemption. The Issuer may redeem the Notes, at its option, in whole at any time or in part from time to time, subject to the conditions and at the redemption prices specified in the Form of Note in Exhibit A hereto.

Section 5.2 [Reserved].

Section 5.3 Notices to Trustee. If the Issuer elects to redeem the Notes pursuant to the optional redemption provisions of Section 5.1 hereof, it shall furnish to the Trustee, at least 45 days but not more than 60 days before the Redemption Date, an Officer's Certificate setting forth: (a) the Redemption Date, (b) the principal amount of Notes to be redeemed, (c) the CUSIP numbers of the Notes, (d) the redemption price and (e) the amount of interest to be paid with respect to each multiple of U.S.$1,000 principal amount of Notes to be redeemed.

Section 5.4 Notice of Redemption.

(a) The Issuer shall prepare and mail or cause to be mailed a notice of redemption, in the manner provided for in Section 12.1, not less than 30 nor more than 60 days prior to the Redemption Date, to each Holder of Notes to be redeemed.

(b) All notices of redemption shall state:

(i) the Redemption Date,

(ii) the redemption price and the amount of any accrued interest payable as provided in Section 5.7,

(iii) whether or not the Issuer is redeeming all Outstanding Notes,

(iv) if the Issuer is not redeeming all Outstanding Notes, the aggregate principal amount of Notes that the Issuer is redeeming and the aggregate principal amount of Notes that will be Outstanding after the partial redemption, as well as the identification of the particular Notes, or portions of the particular Notes, that the Issuer is redeeming,

(v) if the Issuer is redeeming only part of a Note, the notice that relates to that Note shall state that on and after the Redemption Date, upon surrender of that Note, the Holder will receive, without charge, a new Note or Notes of authorized denominations for the principal amount of the Note remaining unredeemed,

(vi) that on the Redemption Date the redemption price and any accrued interest payable to the Redemption Date as provided in Section 5.7 will become due and payable in respect of each Note, or the portion of each Note, to be redeemed, and, unless the Issuer defaults in making the redemption payment, that interest on each Note, or the portion of each Note, to be redeemed, will cease to accrue on and after the Redemption Date,

(vii) the place or places where a Holder must surrender Notes for payment of the redemption price and any accrued interest payable on the Redemption Date, and

(viii) the CUSIP number, if any, listed in the notice or printed on the Notes, and that no representation is made as to the accuracy or correctness of such CUSIP number.

(c) At the Issuer's request, the Trustee shall give the notice of redemption in the Issuer's names and at its expense; provided, however, that the Issuer shall have delivered to the Trustee, at least 45 days prior to the Redemption Date, an Officer's Certificate requesting that the Trustee give such notice and setting forth the information to be stated in such notice as provided in the preceding Section 5.4(b).

Section 5.5 Selection of Notes to Be Redeemed in Part.

(a) If the Issuer is not redeeming all Outstanding Notes, the Trustee shall select the Notes to be redeemed in compliance with the requirements of the principal national securities exchange, if any, on which the Notes are listed or, if the Notes are not then listed on a national securities exchange, on a pro rata basis, by lot or by any other method as the Trustee shall deem fair and appropriate; provided, however, that if a partial redemption is made with the proceeds of an Equity Offering, selection of the Notes, or portions of the Notes, for redemption shall be made by the Trustee only on a pro rata basis, or on as nearly a pro rata basis as is practicable (subject to the procedures of DTC), unless the method is otherwise prohibited. The Trustee shall make the selection from the then Outstanding Notes not previously called for redemption. The Trustee shall promptly notify the Issuer in writing of the Notes selected for redemption and, in the case of any Notes selected for partial redemption, the principal amount of the Notes to be redeemed. In the event of a partial redemption by lot, the Trustee shall select the particular Notes to be redeemed not less than 30 nor more than 60 days prior to the relevant Redemption Date from the then Outstanding Notes not previously called-for redemption. No Notes of U.S.$200,000 principal amount or less shall be redeemed in part. The Trustee may select for redemption portions with minimum denominations of U.S.$200,000 and in integral multiples of U.S.$1,000 in excess thereof.

(b) For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to redemption of Notes shall relate, in the case of any Note redeemed or to be redeemed only in part, to the portion of the principal amount of that Note which has been or is to be redeemed.

Section 5.6 Deposit of Redemption Price. On or prior to 10 :00 a.m. New York City time, on the Business Day prior to the Redemption Date, the Issuer shall deposit with the Trustee or with a Paying Agent (or, if the Issuer or a Note Guarantor is acting as the Paying Agent, segregate and hold in trust as provided in Section 2.4) an amount of money in immediately available funds sufficient to pay the redemption price of, and accrued interest on, all the Notes that the Issuer is redeeming on that date.

Section 5.7 Notes Payable on Redemption Date. If the Issuer, or the Trustee on behalf of the Issuer, gives notice of redemption in accordance with this Article V, the Notes, or the portions of Notes, called-for redemption, shall, on the Redemption Date, become due and payable at the redemption price specified in the notice (together with accrued interest, if any, to the Redemption Date), and from and after the Redemption Date (unless the Issuer shall default in the payment of the redemption price and accrued interest) the Notes or the portions of Notes shall cease to bear interest. Upon surrender of any Note for redemption in accordance with the notice, the Issuer shall pay the Notes at the redemption price, together with accrued interest, if any, to the Redemption Date (subject to the rights of Holders of record on the relevant record date to receive interest due on the relevant Interest Payment Date). If the Issuer shall fail to pay any Note called-for redemption upon its surrender for redemption, the principal shall, until paid, bear interest from the Redemption Date at the rate borne by the Notes.

Section 5.8 Unredeemed Portions of Partially Redeemed Note. Upon surrender of a Note that is to be redeemed in part, the Issuer shall execute, and the Trustee shall authenticate and make available for delivery to the Holder of the Note, at the expense of the Issuer, a new Note or Notes, of any authorized denomination as requested by the Holder, in an aggregate principal amount equal to, and in exchange for, the unredeemed portion of the principal of the Note surrendered, *provided*, that each new Note will be in a principal amount of U.S.$200,000 and in integral multiples of U.S.$1,000 in excess thereof.

## ARTICLE VI

## DEFAULTS AND REMEDIES

Section 6.1 Events of Default.

(a) Each of the following is an "Event of Default":

(i) default in the payment when due of the principal of or premium, if any, on any Notes, including the failure to make a required payment to purchase Notes tendered pursuant to an optional redemption, a Change of Control Offer or an Asset Sale Offer;

(ii) default for 30 days or more in the payment when due of interest or Additional Amounts on any Notes;

(iii) the failure to perform or comply with any of the provisions described under Article IV;

(iv) the failure by the Issuer or any Restricted Subsidiary to comply with, or in the case of non-guarantor Restricted Subsidiaries, to perform according to, any other covenant or agreement contained in this Indenture or in the Notes for 45 days or more after written notice to the Issuer from the Trustee or the Holders of at least 25% in aggregate principal amount of the then Outstanding Notes;

(v) default by the Issuer or any Restricted Subsidiary under any Indebtedness which:

(A) is caused by a failure to pay principal of, or premium, if any, when due or interest on such Indebtedness prior to the later of the expiration of any applicable grace period provided in such Indebtedness on the date of such default or five (5) days past when due; or

(B) results in the acceleration of such Indebtedness prior to its stated maturity;

and the principal or accreted amount of Indebtedness covered by clauses (v)(A) or (v)(B) of this Section 6.1(a) at the relevant time, aggregates U.S.$50 million or more;

(vi) failure by the Issuer or any of its Restricted Subsidiaries to pay one or more final judgments against any of them, aggregating U.S.$100 million or more, which judgment(s) are not paid, discharged or stayed for a period of 60 days or more;

(vii) a Bankruptcy Event of Default; or

(viii) except as permitted herein, any Note Guarantee is held to be unenforceable or invalid in a judicial proceeding or ceases for any reason to be in full force and effect or any Note Guarantor, or any Person acting on behalf of any Note Guarantor, denies or disaffirms such Note Guarantor's obligations under its Note Guarantee.

The foregoing will constitute Events of Default whatever the reason for any such Event of Default and whether it is voluntary or involuntary or is effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body.

(b) The Issuer shall deliver within 30 days to the Trustee written notice of any event which would constitute a Default or Event of Default, their status and what action the Issuer is taking or proposes to take in respect thereof.

Section 6.2 Acceleration.

(a) If an Event of Default (other than an Event of Default specified in clause (vii) of Section 6.1(a) above with respect to the Issuer) shall occur and be continuing, the Trustee or the Holders of at least 25% in principal amount of then Outstanding Notes may declare the unpaid principal of (and premium, if any) and accrued and unpaid interest on all the Notes to be immediately due and payable by notice in writing to the Issuer and the Trustee specifying the Event of Default and that it is a "notice of acceleration." If an Event of Default specified in clause (vii) of Section 6.1(a) above occurs with respect to the Issuer, then the unpaid principal of (and premium, if any) and accrued and unpaid interest on all the Notes will become immediately due and payable without any declaration or other act on the part of the Trustee or any Holder.

(b) At any time after a declaration of acceleration with respect to the Notes as described in the preceding paragraph, the Holders of a majority in principal amount of the Notes may rescind and cancel such declaration and its consequences:

(i) if the rescission would not conflict with any judgment or decree;

(ii) if all existing Events of Default have been cured or waived, except nonpayment of principal or interest that has become due solely because of the acceleration;

(iii) to the extent the payment of such interest is lawful, interest on overdue installments of interest and overdue principal, which has become due otherwise than by such declaration of acceleration, has been paid; and

(iv) if the Issuer has paid the Trustee its reasonable compensation and reimbursed the Trustee for its reasonable expenses, disbursements and advances.

Section 6.3 Other Remedies.

(a) If an Event of Default occurs and is continuing, the Trustee may pursue any available remedy to collect the payment of principal of and interest on the Notes or to enforce the performance of any provision of the Notes or this Indenture.

(b) The Trustee may maintain a proceeding even if it does not possess any of the Notes or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Holder in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. No remedy is exclusive of any other remedy. All available remedies are cumulative to the extent permitted by law.

Section 6.4 Waiver of Past Defaults. Subject to Section 6.2, the Holders of a majority in principal amount of the then Outstanding Notes may waive any existing Default or Event of Default, and its consequences, except a default in the payment of the principal of, premium, if any, or interest on any Notes.

Section 6.5 Control by Majority. The Holders of a majority in principal amount of the then Outstanding Notes may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or of exercising any trust or power conferred on the Trustee. Subject to Section 7.1 and Section 7.2, however, the Trustee may refuse to follow any direction that conflicts with law or this Indenture; *provided*, *however*, that the Trustee may take any other action deemed proper by the Trustee that is not inconsistent with such direction.

Section 6.6 Limitation on Suits.

(a) No Holder of any Notes shall have any right to institute any proceeding with respect hereto or for any remedy hereunder, unless:

(i) such Holder gives to the Trustee written notice of a continuing Event of Default;

(ii) Holders of at least 25% in principal amount of the then Outstanding Notes make a written request to pursue the remedy;

(iii) such Holders of the Notes provide to the Trustee indemnity satisfactory to it;

(iv) the Trustee does not comply within 60 days; and

(v) during such 60 day period the Holders of a majority in principal amount of the then Outstanding Notes do not give the Trustee a written direction which, in the opinion of the Trustee, is inconsistent with the request;

*provided*, that a Holder of a Note may institute suit for enforcement of payment of the principal of and premium, if any, or interest on such Note on or after the respective due dates expressed in such Note.

Section 6.7 Rights of Holders to Receive Payment. Notwithstanding any other provision of this Indenture (including, without limitation, Section 6.6), the right of any Holder to receive payment of principal or interest on the Notes held by such Holder, on or after the respective due dates, Redemption Dates or repurchase date expressed in this Indenture or the Notes, or to bring suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such Holder.

Section 6.8 Collection Suit by Trustee. If an Event of Default specified in clause (i) and (ii) of Section 6.1(a) occurs and is continuing, the Trustee may recover judgment in its own name and as trustee of an express trust against the Issuer and each Note Guarantor for the whole amount then due and owing (together with applicable interest on any overdue principal and, to the extent lawful, interest on overdue interest) and the amounts provided for in Section 7.7.

Section 6.9 Trustee May File Proofs of Claim, etc.

(a) The Trustee may (irrespective of whether the principal of the Notes is then due):

(i) file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee and the Holders under this Indenture and the Notes allowed in any bankruptcy, insolvency, liquidation or other judicial proceedings relative to the Issuer, any Note Guarantor or any Subsidiary of the Issuer or their respective creditors or properties; and

(ii) collect and receive any monies or other property payable or deliverable in respect of any such claims and distribute them in accordance with this Indenture.

Any receiver, trustee, liquidator, sequestrator (or other similar official) in any such proceeding is hereby authorized by each Holder to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, taxes, disbursements and advances of the Trustee, its agent and counsel, and any other amounts due to the Trustee pursuant to Section 7.7.

(b) Nothing in this Indenture shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

Section 6.10 Priorities. If the Trustee collects any money or property pursuant to this Article VI, it shall pay out the money or property in the following order:

FIRST: to the Trustee for amounts due under Section 7.7;

SECOND: if the Holders proceed against the Issuer directly without the Trustee in accordance with this Indenture, to Holders for their collection costs;

THIRD: to Holders for amounts due and unpaid on the Notes for principal and interest, ratably, without preference or priority of any kind, according to the amounts due and payable on the Notes for principal and interest, respectively; and

FOURTH: to the Issuer or, to the extent the Trustee collects any amount pursuant to Article X hereof from any Note Guarantor, to such Note Guarantor, or to such party as a court of competent jurisdiction shall direct.

The Trustee may, upon notice to the Issuer, fix a record date and payment date for any payment to Holders pursuant to this Section 6.10.

Section 6.11 Undertaking for Costs. In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 6.11 does not apply to a suit by the Trustee, a suit by the Issuer, a suit by a Holder pursuant to Section 6.7 or a suit by Holders of more than 10% in principal amount of Outstanding Notes.

## ARTICLE VII

## TRUSTEE

Section 7.1 Duties of Trustee.

(a) If a Default or an Event of Default has occurred and is continuing, the Trustee shall exercise the rights and powers vested in it by this Indenture and use the same degree of care and skill in their exercise as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

(b) Except during the continuance of a Default or an Event of Default:

(i) the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture. However, in the case of any such certificates or opinions that by any provisions hereof are specifically required to be furnished to the Trustee, the Trustee shall examine such certificates and opinions to determine whether or not they conform to the requirements of this Indenture.

(c) The Trustee may not be relieved from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that:

(i) this clause (c) does not limit the effect of clause (b) of this Section 7.1;

(ii) the Trustee shall not be liable for any error of judgment made in good faith by a Trust Officer unless it is proved that the Trustee was negligent in ascertaining the pertinent facts; and

(iii) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 6.2, 6.4 or 6.5.

(d) The Trustee shall not be liable for interest on any money received by it except as the Trustee may agree in writing with the Issuer.

(e) Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

(f) No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers, if it shall have reasonable grounds to believe that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(g) Every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Article VII.

(h) Unless otherwise specifically provided in this Indenture, any demand, request, direction or notice from the Issuer shall be sufficient if signed by an Officer of the Issuer.

(i) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders unless such Holders shall have offered to the Trustee reasonable security or indemnity against the costs, expenses (including reasonable attorneys' fees and expenses) and liabilities that might be incurred by it in compliance with such request or direction.

Section 7.2 Rights of Trustee.

Subject to Section 7.1:

(a) The Trustee may rely on any document reasonably believed by it to be genuine and to have been signed or presented by the proper person. The Trustee need not investigate any fact or matter stated in the document.

(b) Before the Trustee acts or refrains from acting at the direction of the Issuer or any Note Guarantor, it may require an Officer's Certificate or an Opinion of Counsel. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on an Officer's Certificate or Opinion of Counsel.

(c) The Trustee may act through its attorneys and agents and shall not be responsible for the misconduct or negligence of any agent appointed with due care.

(d) The Trustee shall not be liable for any action it takes or omits to take in good faith which it believes to be authorized or within its rights or powers; provided, however, that the Trustee's conduct does not constitute willful misconduct or negligence.

(e) The Trustee may consult with counsel of its selection, and the advice or opinion of counsel with respect to legal matters relating to this Indenture and the Notes shall be full and complete authorization and protection from liability in respect to any action taken, omitted or suffered by it hereunder in good faith and in accordance with the advice or opinion of such counsel.

(f) If the Trustee shall determine, it shall be entitled to examine the books, records and premises of the Issuer, personally or by agent or attorney.

(g) The Trustee shall not be deemed to have notice of any Default or Event of Default unless a Trust Officer of the Trustee has received written notice at the Corporate Trust Office of any event which is in fact such a default, and such notice references the Notes and this Indenture.

(h) The rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and to each agent, custodian and other Person employed to act hereunder.

(i) The Trustee may request that the Issuer deliver an Officer's Certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture, which Officer's Certificate may be signed by any Person authorized to sign an Officer's Certificate, including any Person specified as so authorized in any such certificate previously delivered and not superseded.

(j) The permissive rights of the Trustee enumerated herein shall not be construed as duties.

(k) In no event shall the Trustee be liable, directly or indirectly, for any special, indirect, punitive or consequential damages, even if the Trustee has been advised of the possibility of such damages.

(l) The Trustee shall not be responsible or liable for any failure or delay in the performance of its obligations under this Indenture arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control, including without limitation, acts of God; earthquakes; fires; floods; wars; civil or military disturbances; sabotage; epidemics; riots, interruptions, loss or malfunctions of utilities, computer (hardware or software) or communications service; accidents; labor disputes; acts of civil or military authority or governmental actions; it being understood that the Trustee shall use its best efforts to resume performance as soon as practicable under the circumstances.

(m) The Trustee shall at no time have any responsibility or liability for or in respect to the legality, validity or enforceability of any Collateral or any arrangement or agreement between the Issuer and any other Person with respect thereto, or the perfection or priority of any security interest created in any of the Collateral or maintenance of any perfection and priority, or for or with respect to the sufficiency of the Collateral following an Event of Default.

Section 7.3 Individual Rights of Trustee. The Trustee in its individual or any other capacity may become the owner or pledgee of Notes and may otherwise deal with the Issuer, the Note Guarantors or any Affiliate of the Issuer with the same rights it would have if it were not Trustee. Any Paying Agent, Transfer Agent, Registrar or co-Registrar may do the same with like rights. However, the Trustee must comply with Section 7.10.

Section 7.4 Trustee's Disclaimer. The Trustee shall not be responsible for and makes no representation as to the validity or adequacy of this Indenture or the Notes, it shall not be accountable for the Issuer's use of the proceeds from the Notes, and it shall not be responsible for any statement of the Issuer in this Indenture or in any document issued in connection with the sale of the Notes or in the Notes other than the Trustee's certificate of authentication.

Section 7.5 Notice of Defaults. If a Default or Event of Default occurs and is continuing and if a Trust Officer has actual knowledge thereof, the Trustee shall mail to each Holder notice of the Default or Event of Default within 90 days after the occurrence thereof. Except in the case of a Default or Event of Default in payment of principal or interest on any Note (including payments pursuant to the optional redemption or required repurchase provisions of such Note, if any), the Trustee may withhold the notice if and so long as a committee of its Trust Officers in good faith determines that withholding the notice is in the interests of the Holders.

Section 7.6 [Reserved].

Section 7.7 Compensation and Indemnity.

(a) The Issuer shall pay to the Trustee from time to time reasonable compensation for its acceptance of this Indenture and services hereunder as the Issuer and the Trustee shall from time to time agree in writing. The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust. The Issuer shall reimburse the Trustee upon request for all reasonable out-of-pocket expenses incurred or made by it, including costs of collection, costs of preparing and reviewing reports, certificates and other documents, costs of preparation and mailing of notices to Holders and reasonable costs of counsel retained by the Trustee in connection with the review, negotiation, execution and delivery of this Indenture or otherwise, in addition to the compensation for its services. Such expenses shall include the reasonable compensation and expenses, disbursements and advances of the Trustee's agents, counsel, accountants and experts.

(b) The Issuer and each Note Guarantor shall jointly and severally indemnify the Trustee against any and all loss, liability or expense (including reasonable attorneys' fees and expenses) incurred by it without negligence, willful misconduct or bad faith on its part in connection with the acceptance and administration of this trust and the performance of its duties hereunder, including the costs and expenses of enforcing this Indenture (including this Section 7.7) and of defending itself against any claims (whether asserted by any Holder, the Issuer, any Note Guarantor or otherwise). The Trustee shall notify the Issuer and each Note Guarantor promptly of any claim for which it may seek indemnity. Failure by the Trustee to so notify the Issuer or any Note Guarantor shall not relieve the Issuer or any Note Guarantor of its obligations hereunder. The Issuer shall defend the claim and the Trustee may have separate counsel and the Issuer shall pay the fees and expenses of such counsel; *provided*, that the Issuer shall not be required to pay such fees and expenses if it assumes the Trustee's defense, and, in the reasonable judgment of outside counsel to the Trustee, there is no conflict of interest between the Issuer and the Trustee in connection with such defense. The Issuer need not reimburse any expense or indemnify against any loss, liability or expense incurred by the Trustee through the Trustee's own willful misconduct, negligence or bad faith.

(c) To secure the Issuer's payment obligations in this Section 7.7, the Trustee shall have a lien prior to the Notes on all money or property held or collected by the Trustee other than money or property held in trust to pay principal of and interest on particular Notes. The Trustee's right to receive payment of any amounts due under this Section 7.7 shall not be subordinate to any other liability or Indebtedness of the Issuer.

(d) The Issuer's obligations pursuant to this Section 7.7 shall survive the discharge of this Indenture and the resignation or removal of the Trustee. When the Trustee incurs expenses after the occurrence of a Bankruptcy Event of Default, the expenses are intended to constitute expenses of administration under any Bankruptcy Law; *provided*, *however*, that this shall not affect the Trustee's rights as set forth in this Section 7.7 or Section 6.10.

Section 7.8 Replacement of Trustee.

(a) The Trustee may resign at any time by so notifying the Issuer. The Holders of a majority in principal amount of the then Outstanding Notes may remove the Trustee by so notifying the Trustee and may appoint a successor Trustee reasonably acceptable to the Issuer. The Issuer shall remove the Trustee if:

(i) the Trustee fails to comply with Section 7.10;

(ii) the Trustee is adjudged bankrupt or insolvent;

(iii) a receiver or other public officer takes charge of the Trustee or its property; or

(iv) the Trustee otherwise becomes incapable of acting.

(b) If the Trustee resigns or is removed by the Issuer or by the Holders of a majority in principal amount of the then Outstanding Notes and such Holders do not reasonably

promptly appoint a successor Trustee, or if a vacancy exists in the office of the Trustee for any reason (the Trustee in such event being referred to herein as the retiring Trustee), the Issuer shall promptly appoint a successor Trustee.

(c) A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Issuer. Thereupon the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee shall mail a notice of its succession to Holders. The retiring Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee, subject to the lien provided for in Section 7.7(c).

(d) If a successor Trustee does not take office within 30 days after the retiring Trustee resigns or is removed, the retiring Trustee or the Holders of 10% in principal amount of the then Outstanding Notes may petition, at the Issuer's expense, any court of competent jurisdiction for the appointment of a successor Trustee.

(e) If the Trustee fails to comply with Section 7.10, any Holder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(f) Notwithstanding the replacement of the Trustee pursuant to this Section 7.8, the Issuer's obligations under Section 7.7 shall continue for the benefit of the retiring Trustee.

Section 7.9 Successor Trustee by Merger.

(a) If the Trustee consolidates with, merges or converts into, or transfers all or substantially all its corporate trust business or assets to, another Person, the resulting, surviving or transferee Person without any further act shall be the successor Trustee.

(b) In case at the time such successor or successors to the Trustee shall succeed to the trusts created by this Indenture, any of the Notes shall have been authenticated but not delivered, any such successor to the Trustee may adopt the certificate of authentication of any predecessor trustee, and deliver such Notes so authenticated; and in case at that time any of the Notes shall not have been authenticated, any successor to the Trustee may authenticate such Notes either in the name of any predecessor hereunder or in the name of the successor to the Trustee; and in all such cases such certificates of authentication and such delivery shall be valid for purposes of this Indenture.

Section 7.10 Eligibility; Disqualification. The Trustee shall at all times be a Trustee hereunder that is a Person organized and doing business under the laws of the United States or of any state thereof that is authorized under such laws to exercise corporate trustee power, that is subject to supervision or examination by federal or state authorities and that has, together with its parent, a combined capital and surplus of at least U.S.$50,000,000 as set forth in its most recent published annual report of condition.

Section 7.11 [Reserved].

Section 7.12 [Reserved].

Section 7.13 Authorization and Instruction of the Trustee With Respect to the Collateral. Each Holder and the Issuer authorize and instruct the Trustee (a) to enter into (or cause an agent or grant such powers of attorney to enter into), on its own behalf and on behalf of the Holders of Notes, such documents (the "Security Documents") as are necessary or desirable (which shall be evidenced by a written instruction from the Issuer to the Trustee) in order to create and maintain the security interest of the Trustee and the Holders of Notes in the Collateral as may from time to time be provided to equally and ratably secure the Notes, (b) to grant such powers of attorney and to do or cause to be done all such acts and things, on its own behalf and in the name and on behalf of the Holders of Notes, as are necessary or desirable (which shall be evidenced by a written instruction from the Issuer to the Trustee) to create and maintain the security interest of the Trustee and the Holders of Notes in such Collateral, (c) to appoint the Security Agent to serve as direct representative of the Trustee and the Holders of Notes in connection with the creation and maintenance of the security interest of the Trustee and the Holders of Notes in such Collateral, (d) to accept the security interest in the Collateral on behalf of each Holder, and (e) to grant powers in favor of an attorney to execute an accession public deed before a Spanish notary public accepting the security interest in the Collateral on behalf of the Holders of Notes. It is understood and acknowledged that, in certain circumstances, the Security Documents may be amended, modified or waived without the consent of the Trustee or the Holders of Notes. It is understood and acknowledged that the Security Agent, in addition to being appointed by and acting on behalf of the Trustee and the Holders of Notes, has also been appointed by and is acting on behalf of (and may in the future be appointed by and act on behalf of) other creditors of the Issuer and its Subsidiaries. The Trustee will not have the right to cause the Security Agent to foreclose on the Collateral upon the occurrence of an Event of Default in respect of the Notes. The Trustee shall at no time have any responsibility or liability for or in respect to the legality, validity or enforceability of any Collateral or any arrangement or agreement between the Issuer and any other Person with respect thereto, or the perfection or priority of any security interest created in any of the Collateral or maintenance of any perfection and priority, or for or with respect to the sufficiency of the Collateral following an Event of Default.

ARTICLE VIII

DEFEASANCE; DISCHARGE OF INDENTURE

Section 8.1 Legal Defeasance and Covenant Defeasance .

(a) The Issuer may, at its option, at any time, elect to have either Section 8.1(b) or (c) be applied to all Outstanding Notes upon compliance with the conditions set forth in Section 8.2.

(b) Upon the Issuer's exercise under Section 8.1(a) of the option applicable to this clause (b), the Issuer shall, subject to the satisfaction of the conditions set forth in Section 8.2, be deemed to have been discharged from its obligations with respect to all Outstanding Notes on the date all of the conditions set forth in Section 8.2 are satisfied (hereinafter, "Legal Defeasance"). For this purpose, Legal Defeasance means that the Issuer shall be deemed to have paid and discharged the entire Indebtedness represented by the then Outstanding Notes, which shall thereafter be deemed to be Outstanding only for the purposes of Section 8.3 hereof and the other sections of this Indenture referred to in subclause (i) or (ii) of this clause (b), and to have satisfied all its other obligations under such Notes and this Indenture (and the Trustee, on demand of and at the expense of the Issuer, shall execute proper instruments acknowledging the same), except for the following provisions, which shall survive until otherwise terminated or discharged hereunder:

(i) the rights of Holders of Outstanding Notes to receive solely from the trust fund described in Section 8.3, and as more fully set forth in Section 2.4 payments in respect of the principal of, premium, if any, and interest on such Notes when such payments are due,

(ii) the Issuer's obligations with respect to such Notes under Article II and Section 3.2 hereof,

(iii) the rights, powers, trusts, duties and immunities of the Trustee hereunder and the Issuer's obligations in connection therewith, and

(iv) this Article VIII.

Subject to compliance with this Article VIII, the Issuer may exercise its option under this clause (b) notwithstanding the prior exercise of its option under Section 8.1(c) hereof.

(c) Upon the Issuer's exercise under Section 8.1(a) hereof of the option applicable to this clause (c), the Issuer shall, subject to the satisfaction of the applicable conditions set forth in Section 8.2, be released from its obligations under Sections 3.4, 3.5, 3.8, 3.9, 3.11, 3.12, 3.13, 3.14, 3.15, 3.16, 3.17, 3.18, 3.19, 3.20, 3.21, 3.22, 4.1(a) and 4.1(b) hereof with respect to the then Outstanding Notes on and after the date the conditions set forth below are satisfied (hereinafter, "Covenant Defeasance"), and the Notes shall thereafter be deemed not Outstanding for the purposes of any direction, waiver, consent or declaration or act of Holders

(and the consequences of any thereof) in connection with such covenants, but shall continue to be Outstanding for all other purposes hereunder (it being understood that such Notes shall not be deemed Outstanding for accounting purposes). For this purpose, such Covenant Defeasance means that, with respect to the then Outstanding Notes, the Issuer may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such covenant, whether directly or indirectly, by reason of any reference elsewhere herein to any such covenant or by reason of any reference in any such covenant to any other provision herein or in any other document and such omission to comply shall not constitute a Default or an Event or Default under clause (iii) of Section 6.1(a) (solely with respect to any failure to perform under or comply with clause (ii) or (iii) of Section 4.1(a)), clause (iv) of Section 6.1(a) or clause (v) of Section 6.1(a) hereof, but, except as specified above, the remainder of this Indenture and such Notes shall be unaffected thereby.

Section 8.2 Conditions to Defeasance. The Issuer may exercise its Legal Defeasance option or its Covenant Defeasance option only if:

(a) the Issuer has irrevocably deposited with the Trustee, in trust, for the benefit of the Holders cash in U.S. Legal Tender or U.S. Government Obligations, in such amounts as will be sufficient without reinvestment, in the opinion of a nationally recognized firm of independent public accountants, to pay the principal of, premium, if any, and interest (including Additional Amounts) on the Notes on the stated date for payment thereof or on the applicable Redemption Date, as the case may be;

(b) in the case of Legal Defeasance, the Issuer has delivered to the Trustee an Opinion of Counsel reasonably acceptable to the Trustee (subject to customary exceptions and exclusions) and independent of the Issuer to the effect that:

(i) the Issuer has received from, or there has been published by, the Internal Revenue Service a ruling; or

(ii) since the Issue Date, there has been a change in the applicable U.S. federal income tax law,

in either case to the effect that, and based thereon such Opinion of Counsel shall state that, the Holders will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such Legal Defeasance and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Legal Defeasance had not occurred;

(c) in the case of Covenant Defeasance, the Issuer has delivered to the Trustee an Opinion of Counsel reasonably acceptable to the Trustee (subject to customary exceptions and exclusions) to the effect that the Holders will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such Covenant Defeasance and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Covenant Defeasance had not occurred;

(d) no Default or Event of Default shall have occurred and be continuing on the date of the deposit pursuant to Section 8.2(a) (except any Default or Event of Default resulting from the failure to comply with Section 3.9 as a result of the borrowing of the funds required to effect such deposit);

(e) the Trustee has received an Officer's Certificate stating that such Legal Defeasance or Covenant Defeasance shall not result in a breach or violation of, or constitute a default under this Indenture or any other material agreement or instrument to which the Issuer or any of its Subsidiaries is a party or by which the Issuer or any of its Subsidiaries is bound;

(f) the Issuer has delivered to the Trustee an Officer's Certificate stating that the deposit was not made by the Issuer with the intent of preferring the Holders over any other creditors of the Issuer or any Subsidiary of the Issuer or with the intent of defeating, hindering, delaying or defrauding any other creditors of the Issuer or others;

(g) the Issuer has delivered to the Trustee an Officer's Certificate and an Opinion of Counsel from counsel reasonably acceptable to the Trustee (subject to customary exceptions and exclusions) and independent of the Issuer, each stating that all conditions precedent provided for or relating to the Legal Defeasance or the Covenant Defeasance have been complied with; and

(h) the Issuer has delivered to the Trustee an Opinion of Counsel from counsel reasonably acceptable to the Trustee and independent of the Issuer to the effect that the trust resulting from the deposit does not constitute, or is qualified as, a regulated investment company under the Investment Company Act of 1940.

Section 8.3 Application of Trust Money. The Trustee shall hold in trust U.S. Legal Tender or U.S. Government Obligations deposited with it pursuant to this Article VIII. It shall apply the deposited U.S. Legal Tender or U.S. Government Obligations through the Paying Agent and in accordance with this Indenture to the payment of principal of and interest on the Notes.

Section 8.4 Repayment to Issuer.

(a) The Trustee and the Paying Agent shall promptly turn over to the Issuer upon request any excess money or securities held by them upon payment of all the obligations under this Indenture.

(b) Subject to any applicable abandoned property law, the Trustee and the Paying Agent shall pay to the Issuer upon request any money held by them for the payment of principal of, premium or interest on the Notes that remains unclaimed for two years, and, thereafter, Holders entitled to the money must look to the Issuer for payment as general creditors.

Section 8.5 Indemnity for U.S. Government Obligations. The Issuer shall pay and shall indemnify the Trustee against any tax, fee or other charge imposed on or assessed against deposited U.S. Government Obligations or the principal and interest received on such U.S. Government Obligations.

Section 8.6 Reinstatement. If the Trustee or Paying Agent is unable to apply any U.S. Legal Tender or U.S. Government Obligations in accordance with this Article VIII by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the obligations of the Issuer under this Indenture and the Notes shall be revived and reinstated as though no deposit had occurred pursuant to this Article VIII until such time as the Trustee or Paying Agent is permitted to apply all such U.S. Legal Tender or U.S. Government Obligations in accordance with this Article VIII; *provided*, *however*, that, if the Issuer has made any payment of principal of, premium or interest on any Notes because of the reinstatement of its obligations, the Issuer shall be subrogated to the rights of the Holders of such Notes to receive such payment from U.S. Legal Tender or U.S. Government Obligations held by the Trustee or Paying Agent.

Section 8.7 Satisfaction and Discharge . This Indenture will be discharged and will cease to be of further effect (except as to surviving rights of registration of transfer or exchange of the Notes, as expressly provided for in this Indenture) as to all Outstanding Notes when:

(a) either:

(i) all the Notes theretofore authenticated and delivered (except lost, stolen or destroyed Notes which have been replaced or paid and Notes for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Issuer and thereafter repaid to the Issuer or discharged from such trust) have been delivered to the Trustee for cancellation; or

(ii) all Notes not theretofore delivered to the Trustee for cancellation have become due and payable, and the Issuer has irrevocably deposited or caused to be deposited with the Trustee U.S. Legal Tender or U.S. Government Obligations sufficient without reinvestment to pay and discharge the entire Indebtedness on the Notes not theretofore delivered to the Trustee for cancellation, for principal of, premium, if any, and interest on the Notes to the date of deposit, together with irrevocable instructions from the Issuer directing the Trustee to apply such funds to the payment;

(b) the Issuer has paid all other sums payable under this Indenture and the Notes by it; and

(c) the Issuer has delivered to the Trustee an Officer's Certificate and an Opinion of Counsel stating that all conditions precedent under this Indenture relating to the satisfaction and discharge of this Indenture have been complied with.

ARTICLE IX
AMENDMENTS

Section 9.1 Without Consent of Holders.

(a) The Issuer, the Note Guarantors and the Trustee may amend or supplement this Indenture, the Notes or the Note Guarantees without notice to or consent of any Holder:

(i) to cure any ambiguity, omission, defect or inconsistency;

(ii) to comply with Article IV in respect of the assumption by a Successor Issuer of the obligations of the Issuer under the Notes and this Indenture;

(iii) to provide for uncertificated Notes in addition to or in place of Certificated Notes; provided, however, that the uncertificated Notes are issued in registered form for purposes of Section 163(f) of the Code;

(iv) to add guarantees with respect to the Notes or to secure the Notes;

(v) to add to the covenants of the Issuer or the Note Guarantors for the benefit of the Holders or to surrender any right or power herein conferred upon the Issuer or the Note Guarantors;

(vi) to make any change that does not, in the opinion of the Issuer as conclusively evidenced by an Officer's Certificate to such effect, adversely affect the rights of any Holder in any material respect;

(vii) to conform the text of this Indenture, the Note Guarantees or the Notes to any provision of the section "Description of Notes" in the Offering Memorandum to the extent that such provision in such "Description of Notes" was intended to be a verbatim recitation of a provision of this Indenture or the Notes or Note Guarantees;

(viii) to comply with the requirements of any applicable securities depositary;

(ix) to provide for the issuance of Additional Notes as permitted by Section 2.2(c) and Section 2.14, which will have terms substantially identical to the other Outstanding Notes except as specified in Section 2.13, or Section 2.14, and which will be treated, together with any other Outstanding Notes, as a single issue of securities; or

(x) in order to effect and maintain the listing of the Notes on the Global Exchange Market of the Irish Stock Exchange.

(b) After an amendment or supplement under this Section 9.1 becomes effective, the Issuer shall mail to Holders a notice briefly describing such amendment. The failure to give such notice to all Holders, or any defect therein, shall not impair or affect the validity of an amendment under this Section 9.1.

Section 9.2 With Consent of Holders.

(a) The Issuer, the Note Guarantors and the Trustee may amend or supplement this Indenture or the Notes without notice to any Holder but with the written consent of the Holders of at least a majority in principal amount of the then Outstanding Notes (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes). Subject to Section 6.4, the Holder or Holders of a majority in aggregate principal amount of the then Outstanding Notes may waive compliance by the Issuer and the Note Guarantors with any provision of this Indenture or the Notes. However, without the consent of each Holder affected, an amendment, supplement or waiver may not:

(i) reduce the amount of Notes whose Holders must consent to an amendment, supplement or waiver;

(ii) reduce the rate of or change or have the effect of changing the time for payment of interest, including Defaulted Interest, on any Notes;

(iii) reduce the principal of or change or have the effect of changing the fixed maturity of any Notes, or change the date on which any Notes may be subject to redemption, or reduce the redemption price therefor;

(iv) make any Notes payable in money other than that stated in the Notes;

(v) make any change in the provisions of this Indenture entitling each Holder to receive payment of principal of, premium, if any, and interest on such Notes on or after the due date thereof or to bring suit to enforce such payment, or permitting Holders of a majority in principal amount of the then Outstanding Notes to waive Defaults or Events of Default;

(vi) amend, change or modify in any material respect any obligations of the Issuer to make and consummate a Change of Control Offer in respect of a Change of Control that has occurred or make and consummate an Asset Sale Offer with respect to any Asset Sale that has been consummated;

(vii) make any change in the provisions of this Indenture described under Section 3.21 that adversely affects the rights of any Holder or amend the terms of the Notes in a way that would result in a loss of exemption from Taxes; or

(viii) make any change to the provisions of this Indenture or the Notes that adversely affect the ranking of the Notes.

(b) It shall not be necessary for the consent of the Holders under this Section 9.2 to approve the particular form of any proposed amendment, supplement or waiver but it shall be sufficient if such consent approves the substance thereof.

(c) After an amendment, supplement or waiver under this Section 9.2 becomes effective, the Issuer shall mail to Holders a notice briefly describing such amendment, supplement or waiver. The failure to give such notice to all Holders, or any defect therein, shall not impair or affect the validity of an amendment, supplement or waiver under this Section 9.2.

(d) The Notes issued on the Issue Date, and any Additional Notes part of the same series, will be treated as a single series for all purposes under this Indenture, including with respect to waivers and amendments. For the purposes of calculating the aggregate principal amount of Notes that have consented to or voted in favor of any amendment, waiver, consent, modifications or other similar action, the Issuer (acting reasonably and in good faith) shall be entitled to select a record date as of which the principal amount of any Notes shall be calculated in such consent or voting process.

Section 9.3 [Reserved].

Section 9.4 Revocation and Effect of Consents and Waivers.

(a) A consent to an amendment, supplement or waiver by a Holder of a Note shall bind the Holder and every subsequent Holder of that Note or portion of the Note that evidences the same debt as the consenting Holder's Note, even if notation of the consent or waiver is not made on the Note. However, any such Holder or subsequent Holder may revoke the consent or waiver as to such Holder's Note or portion of the Note if the Trustee receives the notice of revocation before the date the amendment, supplement or waiver becomes effective. After an amendment, supplement or waiver becomes effective, it shall bind every Holder, except as otherwise provided in this Article IX. An amendment, supplement or waiver shall become effective upon receipt by the Trustee of the requisite number of written consents under Section 9.2.

(b) The Issuer may, but shall not be obligated to, fix a record date for the purpose of determining the Holders entitled to give their consent or take any other action described above or required or permitted to be taken pursuant to this Indenture. If a record date is fixed, then notwithstanding the immediately preceding paragraph, those Persons who were Holders at such record date (or their duly designated proxies), and only those Persons, shall be entitled to give such consent or to revoke any consent previously given or to take any such action, whether or not such Persons continue to be Holders after such record date. No such consent shall be valid or effective for more than 90 days after such record date.

Section 9.5 Notation on or Exchange of Notes. If an amendment or supplement changes the terms of a Note, the Trustee may require the Holder of the Note to deliver it to the Trustee. The Trustee may place an appropriate notation on the Note regarding the changed terms and return it to the Holder. Alternatively, if the Issuer or the Trustee so determines, the Issuer, in exchange for the Note, will execute and upon Issuer Order, the Trustee will authenticate and make available for delivery a new Note that reflects the changed terms. Failure to make the appropriate notation or to issue a new Note shall not affect the validity of such amendment or supplement.

Section 9.6 Trustee to Sign Amendments and Supplements. The Trustee shall sign any amendment, supplement or waiver authorized pursuant to this Article IX if the amendment or supplement does not adversely affect the rights, duties, liabilities or immunities of the Trustee. If it does, the Trustee may but need not sign it. In signing such amendment, supplement or waiver, the Trustee shall be entitled to receive indemnity reasonably satisfactory to it and to receive, and (subject to Section 7.1 and Section 7.2) shall be fully protected in relying upon, in addition to the documents required by Section 12.4, an Opinion of Counsel and an Officer's Certificate each stating that such amendment, supplement or waiver is authorized or permitted by this Indenture and that all conditions precedent to the execution of such amendment, supplement or waiver have been complied with.

## ARTICLE X

## NOTE GUARANTEES

Section 10.1 Note Guarantees.

(a) Each Note Guarantor hereby fully and unconditionally guarantees, as primary obligor and not merely as surety, jointly and severally with each other Note Guarantor, to each Holder and the Trustee, the full and punctual payment when due, whether at maturity, by acceleration, by redemption or otherwise, of the Obligations (such guaranteed Obligations, the "Guaranteed Obligations"). Each Note Guarantor further agrees that its Note Guarantee herein constitutes a guarantee of payment when due (and not a guarantee of collection) and agrees to pay, in addition to the amounts stated in Section 10.1(f), any and all expenses (including reasonable counsel fees and expenses) incurred by the Trustee or the Holders in enforcing or exercising any rights under any Note Guarantee.

(b) In no event shall the Trustee or the Holders be obligated to take any action, obtain any judgment or file any claim prior to enforcing or exercising any rights under any Note Guarantee.

(c) Each Note Guarantor further agrees that its Note Guarantee constitutes an absolute and unconditional and continuing guarantee. Each Note Guarantor hereby waives, to the extent permitted by law:

(i) any claim as to the legality, validity, regularity or enforceability of this Indenture, the Notes or any other agreement;

(ii) any claim as to the lack of authority of the Issuer to execute or deliver this Indenture, the Notes or any other agreement;

(iii) diligence, presentation to, demand of payment from and protest to the Issuer of any of the Obligations and notice of protest for nonpayment;

(iv) the occurrence of any Default or Event of Default under this Indenture, the Notes or any other agreement;

(v) notice of any Default or Event of Default under this Indenture, the Notes or any other agreement;

(vi) the failure of the Trustee or any Holder to assert any claim or demand or to enforce any right or remedy against the Issuer or any other Person under this Indenture, the Notes or any other agreement;

(vii) any extension or renewal of the Obligations, this Indenture, the Notes or any other agreement;

(viii) any rescission, waiver, amendment or modification of any of the terms or provisions of this Indenture, the Notes or any other agreement;

(ix) the existence of any bankruptcy, insolvency, reorganization or similar proceedings involving the Issuer;

(x) any setoff, counterclaim, recoupment, termination or defense of any kind or nature which may be available to or asserted by any Note Guarantor or the Issuer against the Holders or the Trustee;

(xi) any impairment, taking, furnishing, exchange or release of, or failure to perfect or obtain protection of any security interest in, any collateral securing this Indenture and the Notes and any right to require that any resort be had by the Trustee or any Holder to any such collateral;

(xii) the failure of the Trustee or any Holder to exercise any right or remedy against any other Note Guarantor;

(xiii) any change in the ownership of the Issuer;

(xiv) any change in the laws, rules or regulations of any jurisdiction;

(xv) any present or future action of any governmental authority or court amending, varying, reducing or otherwise affecting, or purporting to amend, vary, reduce or otherwise affect, any of the obligations of the Issuer under this Indenture or the Notes or of any Note Guarantor under its Note Guarantee; and

(xvi) any other act or thing or omission or delay to do any other act or thing which may or might in any manner or to any extent vary the risk of each Note Guarantor or would otherwise operate as a discharge of such Note Guarantor as a matter of law or equity.

(d) Each of the Note Guarantors further expressly waives irrevocably and unconditionally:

(i) Any right it may have to first require any Holder to proceed against, initiate any actions before a court of law or any other judge or authority, or enforce any other rights or security or claim payment from the Issuer or any other Person (including any Note Guarantor or any other guarantor of the Notes) before claiming from it under this Indenture;

(ii) Any right to which it may be entitled to have the assets of the Issuer or any other Person (including any Note Guarantor or any other guarantor of the Notes) first be used, applied or depleted as payment of the Issuer's or the Note Guarantors' obligations hereunder, prior to any amount being claimed from or paid by any of the Note Guarantors hereunder;

(iii) Any right to which it may be entitled to have claims hereunder divided between the Note Guarantors;

(iv) To the extent applicable, the benefits of *orden*, *excusión*, *división*, *quita* and *espera* and any right specified in articles 2814, 2815, 2817, 2818, 2819, 2820, 2821, 2822, 2823, 2826, 2837, 2838, 2839, 2840, 2845, 2846, 2847 and any other related or applicable articles that are not explicitly set forth herein because of Note Guarantor's knowledge thereof of the *Código Civil Federal* of Mexico, and the *Código Civil* of each State of the Mexican Republic and the Federal District of Mexico.

(e) The obligations assumed by each Note Guarantor hereunder shall not be affected by the absence of judicial request of payment by a Holder to the Issuer or by whether any such person takes timely action pursuant to articles 2848 and 2849 of the Código Civil Federal of Mexico and the Código Civil of each State of the Mexican Republic and the Federal District of Mexico and each Note Guarantor hereby expressly waives the provisions of such articles.

(f) The obligations of each Note Guarantor hereunder shall not be subject to any reduction, limitation, impairment or termination for any reason (other than payment of the Obligations in full), including any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to any defense of setoff, counterclaim, recoupment or termination whatsoever or by reason of the invalidity, illegality or unenforceability of the Obligations or otherwise. Without limiting the generality of the foregoing, the obligations of each Note

Guarantor herein shall not be discharged or impaired or otherwise affected by the failure of any Holder to assert any claim or demand or to enforce any remedy under this Indenture, the Notes or any other agreement, by any waiver or modification of any thereof, by any default, failure or delay, willful or otherwise, in the performance of the Obligations, or by any other act or thing or omission or delay to do any other act or thing which may or might in any manner or to any extent vary the risk of such Note Guarantor or would otherwise operate as a discharge of such Note Guarantor as a matter of law or equity.

(g) Except as provided in Section 10.2, the obligations of each Note Guarantor hereunder shall not be subject to any reduction, limitation, impairment or termination for any reason other than payment of the Obligations in full.

(h) Each Note Guarantor further agrees that its Note Guarantee herein shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of principal of or interest on any of the Obligations is rescinded or must otherwise be restored by any Holder upon the bankruptcy or reorganization of the Issuer or otherwise.

(i) In furtherance of the foregoing and not in limitation of any other right which the Trustee or any Holder has at law or in equity against each Note Guarantor by virtue hereof, upon the failure of the Issuer to pay any of the Obligations when and as the same shall become due, whether at maturity, by acceleration, by redemption or otherwise, each Note Guarantor hereby promises to and will, upon receipt of written demand by the Trustee, forthwith pay, or cause to be paid, in cash, to the Holders an amount equal to the sum of:

(i) the unpaid amount of such Obligations then due and owing; and

(ii) accrued and unpaid interest on such Obligations then due and owing (but only to the extent not prohibited by law);

*provided*, that any delay by the Trustee in giving such written demand shall in no event affect any Note Guarantor's obligations under its Note Guarantee.

(j) Each Note Guarantor further agrees that, as between such Note Guarantor, on the one hand, and the Holders, on the other hand:

(i) the maturity of the Obligations guaranteed hereby may be accelerated as provided in this Indenture for the purposes of its Note Guarantee herein, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the Obligations guaranteed hereby; and

(ii) in the event of any such declaration of acceleration of such Obligations, such Obligations (whether or not due and payable) shall forthwith become due and payable by the Note Guarantor for the purposes of this Note Guarantee.

Section 10.2 Limitation on Liability; Termination, Release and Discharge.

(a) Subject to the limitations set out in Section 10.5 and Section 10.6, the obligations of each Note Guarantor hereunder will be limited to the maximum amount as will, after giving effect to all other contingent and fixed liabilities of such Note Guarantor and after giving effect to any collections from or payments made by or on behalf of any other Note Guarantor in respect of the obligations of such other Note Guarantor under its Note Guarantee or pursuant to its contribution obligations under this Indenture, result in the obligations of such Note Guarantor under its Note Guarantee not constituting a fraudulent conveyance or fraudulent transfer under federal or state law.

(b) A Note Guarantor will be released and relieved of its obligations under its Note Guarantee in the event that:

(i) there is a Legal Defeasance of the Notes pursuant to Article VIII;

(ii) there is a sale or other disposition of Capital Stock of such Note Guarantor following which such Note Guarantor is no longer a direct or indirect Subsidiary of the Issuer;

(iii) such Note Guarantor is designated as an Unrestricted Subsidiary in accordance with Section 3.14;

(iv) solely with respect to an Additional Note Guarantor, either (A) the Facilities Agreement Indebtedness has been repaid in full and such Additional Note Guarantor is not a guarantor of the Indebtedness Incurred to refinance such Facilities Agreement Indebtedness or (B) at least 85% of the outstanding Indebtedness of the Issuer and its Restricted Subsidiaries is not guaranteed by such Additional Note Guarantor; or

(v) solely with respect to an Additional Note Guarantor, upon the occurrence of a Partial Covenant Suspension Event or Covenant Suspension Event until the occurrence of a Partial Covenant Reversion Date or a Reversion Date, as applicable, at which time the guarantee of the Notes by such Additional Note Guarantor shall be reinstated unless such Additional Note Guarantor would have been released at any time during the Partial Suspension Period or the Suspension Period, as applicable, pursuant to clause (i), (ii), (iii) or (iv) of this Section 10.2(b).

Section 10.3 Right of Contribution. Each Note Guarantor that makes a payment or distribution under a Note Guarantee will be entitled to a contribution from each other Note Guarantor in a *pro rata* amount, based on the net assets of each Note Guarantor determined in accordance with GAAP. The provisions of this Section 10.3 shall in no respect limit the obligations and liabilities of each Note Guarantor to the Trustee and the Holders and each Note Guarantor shall remain liable to the Trustee and the Holders for the full amount guaranteed by such Note Guarantor hereunder.

Section 10.4 No Subrogation. Each Note Guarantor agrees that it shall not be entitled to any right of subrogation in respect of any Guaranteed Obligations until payment in full in cash or Cash Equivalents of all Obligations. If any amount shall be paid to any Note Guarantor on account of such subrogation rights at any time when all of the Obligations shall not have been paid in full in cash or Cash Equivalents, such amount shall be held by such Note Guarantor in trust for the Trustee and the Holders, segregated from other funds of such Note Guarantor, and shall, forthwith upon receipt by such Note Guarantor, be turned over to the Trustee in the exact form received by such Note Guarantor (duly endorsed by such Note Guarantor to the Trustee, if required), to be applied against the Obligations.

Section 10.5 French Guarantee Limitation.

(a) The obligations of any Note Guarantor incorporated in France (a "French Note Guarantor") are subject to the limitations set out in this Section 10.5.

(b) The obligations and liabilities of any French Note Guarantor under the Indenture and the Notes, and in particular under this Article X, shall not include any obligation or liability which, if incurred, would constitute the provision of financial assistance within the meaning of article L.225-216 of the French Commercial Code and/or would constitute a misuse of corporate assets within the meaning of article(s) L. 241-3 or L. 242-6 of the French Commercial Code or any other law or regulations having the same effect, as interpreted by French courts.

(c) The obligations and liabilities of any French Note Guarantor under this Article X for the Issuer's obligations under the Indenture and the Notes shall be limited, at any time, to an amount equal to the aggregate of all amounts made available under the Notes and the Indenture to the Issuer to the extent directly or indirectly on-lent to such French Note Guarantor and/or its direct and indirect Subsidiaries under intercompany loan agreements (excluding, for the avoidance of doubt, any cash-pooling arrangements or other cash management agreements, *provided*, that the proceeds of the Notes shall not be used, in whole or in part, to finance, directly or indirectly, such cash pooling arrangements or other cash management agreements) and outstanding at the date a payment is to be made by such French Note Guarantor under this Article X, it being specified that any payment made by a French Note Guarantor under this Article X in respect of the obligations of the Issuer shall reduce *pro tanto* the outstanding amount of the intercompany loans due by such French Note Guarantor or its relevant direct or indirect Subsidiary under the intercompany loan agreements referred to above and that any repayment of the intercompany loans by the French Note Guarantor or its relevant direct or indirect Subsidiary shall reduce *pro tanto* the amount payable by the French Note Guarantor under this Article X.

(d) It is acknowledged that no French Note Guarantor is acting jointly and severally with the other Note Guarantors and no French Note Guarantor shall therefore be considered as "*co-débiteur solidaire*" as to its obligations pursuant to the guarantee given pursuant to this Article X.

Section 10.6 Swiss Guarantee Limitation.

(a) The obligations of any Note Guarantor incorporated in Switzerland (a " Swiss Note Guarantor") are subject to the limitations set out in this Section 10.6.

(b) The obligations and liabilities of a Swiss Note Guarantor under the Indenture, the Notes or any other agreement, and in particular under this Article X, in relation to the obligations, undertakings, indemnities or liabilities of a Note Guarantor other than that Swiss Note Guarantor or any of its fully owned and controlled subsidiaries (the "Restricted Obligations") shall not include any obligation or liability which, if incurred, would constitute the provision of financial assistance not permitted under the laws of Switzerland then in force and/or would constitute a misuse of corporate assets under Swiss law as interpreted by Swiss courts and shall be limited to the amount of that Swiss Note Guarantor's Free Reserves Available for Distribution (as defined below) at the time payment is requested, *provided*, that such limitation is a requirement under applicable law (including any case law) at that point in time and that such limitation shall not free the Swiss Note Guarantor from its obligations in excess thereof, but merely postpone the performance date until such time as performance is permitted notwithstanding such limitation.

(c) For the purpose of this clause, "Free Reserves Available for Distribution" means an amount equal to the maximal amount in which the relevant Swiss Note Guarantor can make a dividend payment to its shareholder(s) (being the balance sheet profit and any freely disposable reserves available for this purpose, in each case in accordance with applicable Swiss law).

(d) As soon as possible after having been requested to discharge a Restricted Obligation, the Swiss Note Guarantor shall, if it cannot discharge the full amount of the Restricted Obligations, provide the Trustee with an interim statutory balance sheet audited by the statutory auditors of the Swiss Note Guarantor setting out the Free Reserves Available for Distribution and, immediately thereafter, pay the amount corresponding to the Free Reserves Available for Distribution to the Trustee (save to the extent provided below).

(e) In respect of the Restricted Obligations, the Swiss Note Guarantor shall:

(i) if and to the extent required by applicable law in force at the relevant time:

(A) subject to any applicable double taxation treaties, deduct Swiss withholding tax at the rate of 35 percent (or such other rate as is in force at that time) from any payment made by it;

(B) pay any such deduction to the Swiss Federal Tax Administration; and

(C) notify and provide evidence to the Trustee that the Swiss withholding tax has been paid to the Swiss Federal Tax Administration;

(ii) to the extent such deduction is made, not be required to make a gross-up, indemnify or otherwise hold harmless the Trustee or the Holders for the deduction of the Swiss withholding tax notwithstanding anything to the contrary contained in the Indenture, the Notes or any other agreement, unless grossing up is permitted under the laws of Switzerland then in force and *provided*, that this should not in any way limit any obligations of any non-Swiss Note Guarantors under the Indenture, the Notes or any other agreement to indemnify the Trustee or the Holders in respect of the deduction of the Swiss withholding tax. The Swiss Note Guarantor shall use all reasonable efforts to procure that any person which is entitled to a full or partial refund of any Swiss withholding tax paid pursuant to paragraph (a) above will, as soon as possible after the deduction of the Swiss withholding tax: (y) request a refund of the Swiss withholding tax under any applicable law (including double taxation treaties) and (z) pay to the Trustee upon receipt any amount so refunded.

(f) The Swiss Note Guarantor will take, and cause to be taken, all and any other action, including, without limitation, the passing of any shareholders' resolutions to approve any payment or other performance under the Indenture and the Notes and the receipt of any confirmations from the Swiss Note Guarantor's auditors, whether following a request to discharge a Restricted Obligation or which may be required as a matter of mandatory Swiss law in force at the time it is required to make a payment or perform other obligations under the Indenture, the Notes or any other agreement in order to allow a prompt payment or performance of other obligations under the Indenture or the Notes.

(g) If the enforcement of the Restricted Obligations would be limited due to the effects referred to in this Section 10.6 and if any asset of the Swiss Note Guarantor has a book value that is less than its market value (an " Undervalued Asset"), the Swiss Note Guarantor shall, to the extent permitted by applicable law and its accounting standards (i) write up the book value of such Undervalued Asset such that its balance sheet reflects a book value that is equal to the market value of such Undervalued Asset, and (ii) make reasonable efforts to realize the Undervalued Asset for a sum which is at least equal to the market value of such asset. Without prejudice to the rights of the Trustee and the Holders under the Indenture, the Notes or any other agreement, the Swiss Note Guarantor will only be required to realize an Undervalued Asset if such asset is not necessary for the Swiss Note Guarantor's business ( *nicht betriebsnotwendig*).

## ARTICLE

## XI COLLATERAL

Section 11.1 The Collateral. Subject to Section 11.2, the Issuer and the Note Guarantors agree that the Notes will be at all times secured by a first-priority security interest in the Collateral on at least an equal and ratable basis with the Permitted Secured Obligations.

Section 11.2 Release of the Collateral.

(a) The Notes will cease to be secured by a security interest in the Collateral in accordance with the provisions of the Intercreditor Agreement.

(b) In addition to the Collateral release provisions set forth in the Intercreditor Agreement, the Notes will cease to be secured by a security interest on the Collateral upon:

(i) (A) payment in full of the principal of, any accrued and unpaid interest on, the Notes and all other amounts or Obligations that are due and payable at or prior to the time such principal, accrued and unpaid interest, if any, are paid, (B) a satisfaction and discharge of this Indenture or (C) a Legal Defeasance or Covenant Defeasance pursuant to Article VIII; or

(ii) a refinancing of the Facilities Agreement Indebtedness in full as a result of which the Collateral does not secure Indebtedness Incurred to refinance such Facilities Agreement Indebtedness.

## ARTICLE XII

## MISCELLANEOUS

Section 12.1 Notices.

(a) Any notice or communication shall be in writing and delivered in person or mailed by first-class mail, postage prepaid, addressed as follows:

if to the Issuer and the Note Guarantors:

c/o CEMEX, S.A.B. de C.V.
Av. Ricardo Margáin Zozaya #325
Colonia Valle del Campestre
Garza García, Nuevo León
México 66265
Attention: Chief Financial Officer
Fax: +1 52 81 8888 4417

if to the Trustee:

The Bank of New York Mellon
101 Barclay Street – 4E
New York, NY 10286
Attention: International Corporate Trust
Fax: 212-815-5915

The Issuer or the Trustee by notice to the other may designate additional or different addresses for subsequent notices or communications.

(b) All notices to Holders of Notes will be validly given if mailed to them at their respective addresses in the register of the Holders of such Notes, if any, maintained by the Registrar. For so long as any Notes are represented by Global Notes, all notices to Holders of the Notes will be delivered to DTC, delivery of which shall be deemed to satisfy the requirements of this paragraph.

(c) Each such notice shall be deemed to have been given on the date of delivery or mailing. Any notice or communication mailed to a Holder shall be mailed to such Person by first-class mail or other equivalent means and shall be sufficiently given to them if so mailed within the time prescribed. Failure to mail a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders. If a notice or communication is mailed in the manner provided above, it is duly given, whether or not the addressee receives it.

(d) Subject to Section 7.1(c) and Section 7.2(a), the Trustee shall accept electronic transmissions; *provided*, that (i) the Trustee shall not have any duty or obligation to verify or confirm that the Person sending instructions, directions, reports, notices or other communications or information by electronic transmission is, in fact, a Person authorized to give such instructions, directions, reports, notices or other communications or information on behalf of the party purporting to send such electronic transmission; and the Trustee shall not have any liability for any losses, liabilities, costs or expenses incurred or sustained by any party as a result of such reliance upon or compliance with such instructions, directions, reports, notices or other communications or information and (ii) each other party agrees to assume all risks arising out of the use of electronic methods to submit instructions, directions, reports, notices or other communications or information to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, notices, reports or other communications or information, and the risk of interception and misuse by third parties.

(e) Any notice or communication mailed to a registered Holder shall be mailed to the Holder at the Holder's address as it appears on the Note Register and shall be sufficiently given if so mailed within the time prescribed.

(f) Failure to mail a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders. If a notice or communication is mailed in the manner provided above, it is duly given, whether or not the addressee receives it.

(g) Any notice or communication delivered to the Issuer under the provisions herein shall constitute notice to the Note Guarantors.

Section 12.2 Communication by Holders with Other Holders. Holders may communicate with other Holders with respect to their rights under this Indenture (including the Note Guarantees) or the Notes.

Section 12.3 Certificate and Opinion as to Conditions Precedent. Upon any request or application by the Issuer to the Trustee to take or refrain from taking any action under this Indenture, the Issuer shall furnish to the Trustee:

(a) an Officer's Certificate in form and substance reasonably satisfactory to the Trustee stating that, in the opinion of the signers, all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with; and

(b) an Opinion of Counsel in form and substance reasonably satisfactory to the Trustee stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

Section 12.4 Statements Required in Certificate or Opinion. Each certificate or opinion, including an Opinion of Counsel or Officer's Certificate, with respect to compliance with a covenant or condition provided for in this Indenture shall include:

(a) a statement that the individual making such certificate or opinion has read such covenant or condition;

(b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(c) a statement that, in the opinion of such individual, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(d) a statement as to whether or not, in the opinion of such individual, such covenant or condition has been complied with.

In giving an Opinion of Counsel, counsel may rely as to factual matters on an Officer's Certificate or on certificates of public officials.

Section 12.5 Rules by Trustee, Paying Agent, Transfer Agent and Registrar. The Trustee may make reasonable rules for action by, or a meeting of, Holders. The Paying Agent, Transfer Agent and the Registrar may make reasonable rules for their functions.

Section 12.6 Legal Holidays. A "Legal Holiday" is a Saturday, a Sunday or other day on which commercial banking institutions are authorized or required to be closed in New York City, Mexico, Madrid, Amsterdam, London, Paris or Zurich. If a payment date is a Legal Holiday, payment shall be made on the next succeeding day that is not a Legal Holiday, and no interest shall accrue for the intervening period. If a regular record date is a Legal Holiday, the record date shall not be affected.

Section 12.7 Governing Law, etc.

(a) THIS INDENTURE (INCLUDING EACH NOTE GUARANTEE) AND THE NOTES SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK. THE PARTIES HERETO EACH HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS INDENTURE, THE NOTES OR EACH NOTE GUARANTEE OR ANY TRANSACTION RELATED HERETO OR THERETO TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

(b) Each of the parties hereto hereby:

(i) agrees that any suit, action or proceeding against it arising out of or relating to this Indenture (including the Note Guarantees) or the Notes, as the case may be, may be instituted in any Federal or state court sitting in the City of New York and in the courts of its own corporate domicile, in respect of actions brought against it as a defendant,

(ii) waives to the fullest extent permitted by applicable law, any objection which it may now or hereafter have to the laying of venue of any such suit, action or proceeding, any claim that any suit, action or proceeding in such a court has been brought in an inconvenient forum, and any right to which it may be entitled, on account of place of residence or domicile,

(iii) irrevocably submits to the jurisdiction of such courts in any suit, action or proceeding,

(iv) agrees that final judgment in any such suit, action or proceeding brought in such a court shall be conclusive and binding may be enforced in the courts of the jurisdiction of which it is subject by a suit upon judgment, and

(v) agrees that service of process by mail to the addresses specified herein shall constitute personal service of such process on it in any such suit, action or proceeding.

(c) The Issuer and the Note Guarantors (other than CEMEX Corp.) have appointed CEMEX NY Corporation, 590 Madison Avenue, 41st Floor, New York, NY 10022, as its authorized agent (the "Authorized Agent") upon whom all writs, process and summonses may be served in any suit, action or proceeding arising out of or based upon this Indenture or the Notes which may be instituted in any state or federal court in the City of New York, New York. The Issuer and the Note Guarantors (other than CEMEX Corp.) hereby represent and warrant that the Authorized Agent has accepted such appointment and has agreed to act as said agent for service of process, and the Issuer and the Note Guarantors (other than CEMEX Corp.) agree to take any and all action, including the filing of any and all documents, that may be necessary to continue each such appointment in full force and effect as aforesaid so long as the Notes remain

outstanding. The Issuer and the Note Guarantors (other than CEMEX Corp.) agree that the appointment of the Authorized Agent shall be irrevocable so long as any of the Notes remain outstanding or until the irrevocable appointment by the Issuer and the Note Guarantors (other than CEMEX Corp.) of a successor agent in the City of New York, New York as each of their authorized agent for such purpose and the acceptance of such appointment by such successor. Service of process upon the Authorized Agent shall be deemed, in every respect, effective service of process upon the Issuer and the Note Guarantors (other than CEMEX Corp.).

(d) To the extent that any of the Issuer and the Note Guarantors have or hereafter may acquire any immunity (sovereign or otherwise) from any legal action, suit or proceeding, from jurisdiction of any court or from set-off or any legal process (whether service or notice, attachment in aid or otherwise) with respect to itself or any of its property, the Issuer and the Note Guarantors hereby irrevocably waive and agree not to plead or claim such immunity in respect of their obligations under this Indenture or the Notes.

(e) Nothing in this Section 12.7 shall affect the right of the Trustee or any Holder of the Notes to serve process in any other manner permitted by law.

Section 12.8 [Reserved].

Section 12.9 No Recourse Against Others. An incorporator, director, officer, employee, stockholder or controlling person, as such, of the Issuer or any Note Guarantor shall not have any liability for any obligations of the Issuer or any Note Guarantor under the Notes or this Indenture or for any claims based on, in respect of or by reason of such obligations or their creation. By accepting a Note, each Holder shall waive and release all such liability.

Section 12.10 Successors. All agreements of the Issuer and any Note Guarantor in this Indenture and the Notes shall bind their respective successors. All agreements of the Trustee in this Indenture shall bind its successors.

Section 12.11 Duplicate and Counterpart Originals. The parties may sign any number of copies of this Indenture. One signed copy is enough to prove this Indenture. This Indenture may be executed in any number of counterparts, each of which so executed shall be an original, but all of them together represent the same agreement. Signatures of the parties hereto transmitted by facsimile or pdf shall be deemed to be their original signatures for all purposes.

Section 12.12 Severability. In case any provision in this Indenture or in the Notes shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 12.13 [Reserved].

Section 12.14 Currency Indemnity.

(a) U.S. Legal Tender is the sole currency of account and payment for all sums payable by the Issuer and any Note Guarantor under or in connection with the Notes or this Indenture, including damages. Any amount received or recovered in currency other than U.S. Legal Tender in respect of the Notes (whether as a result of, or of the enforcement of, a judgment or order of a court of any jurisdiction, in the winding-up or dissolution of the Issuer, a Note Guarantor or any Subsidiary of the Issuer or otherwise) by any Holder of the Notes in respect of any sum expressed to be due to it from the Issuer or any Note Guarantor shall only constitute a discharge of them under the Notes and this Indenture only to the extent of the U.S. Legal Tender amount which the recipient is able to purchase with the amount so received or recovered in that other currency on the date of that receipt or recovery (or, if it is not practicable to make that purchase on that date, on the first date on which it is practicable to do so). If that U.S. Legal Tender amount is less than the U.S. Legal Tender amount expressed to be due to the recipient under the Notes or this Indenture, the Issuer and the Note Guarantors shall jointly and severally indemnify and hold harmless the recipient, to the greatest extent permitted by law, against any loss or cost sustained by it in making any such purchase. For the purposes of this Section 12.14, it will be sufficient for the Holder of a Note to certify that it would have suffered a loss had an actual purchase of U.S. Legal Tender been made with the amount so received in that other currency on the date of receipt or recovery (or, if a purchase of U.S. Legal Tender on such date had not been practicable, on the first date on which it would have been practicable).

(b) The indemnities of the Issuer and the Note Guarantors contained in this Section 12.14, to the extent permitted by law: (i) constitute a separate and independent obligation from the other obligations of the Issuer and the Note Guarantors under this Indenture and the Notes; (ii) shall give rise to a separate and independent cause of action against the Issuer and the Note Guarantors; (iii) shall apply irrespective of any waiver granted by any Holder of the Notes or the Trustee from time to time; and (iv) shall continue in full force and effect notwithstanding any other judgment, order, claim or proof of claim for a liquidated amount in respect of any sum due under the Notes or this Indenture or any other judgment or order.

Section 12.15 Table of Contents; Headings. The table of contents and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not intended to be considered a part hereof and shall not modify or restrict any of the terms or provisions hereof.

Section 12.16 USA PATRIOT Act. The parties hereto acknowledge that, in accordance with Section 326 of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law on October 26, 2001)) (as amended, modified or supplemented from time to time, the "USA PATRIOT Act"), the Trustee, like all financial institutions, is required to obtain, verify, and record information that identifies each person or legal entity that opens an account. The parties to this Agreement agree that they will provide the Trustee with such information as the Trustee may request in order for the Trustee to satisfy the requirements of the USA PATRIOT Act.

*[Signature page follows]*

IN WITNESS WHEREOF, the parties have caused this Indenture to be duly executed as of the date first written above.

CEMEX, S.A.B. de C.V., as Issuer

By: /s/ Héctor Vela
Name: Héctor Vela
Title: Attorney-in-Fact

CEMEX México, S.A. de C.V., as Note Guarantor

By: /s/ Héctor Vela
Name: Héctor Vela
Title: Attorney-in-Fact

CEMEX España, S.A., as Note Guarantor

By: /s/ Héctor Vela
Name: Héctor Vela
Title: Attorney-in-Fact

Cemex Research Group AG, as Note Guarantor

By: /s/ Héctor Vela
Name: Héctor Vela
Title: Attorney-in-Fact

New Sunward Holding B.V., as Additional Note Guarantor

By: /s/ Héctor Vela
Name: Héctor Vela
Title: Attorney-in-Fact

Cemex Shipping B.V., as Note Guarantor

By: /s/ Héctor Vela
Name: Héctor Vela
Title: Attorney-in-Fact

Cemex Asia B.V., as Note Guarantor

By: /s/ Héctor Vela
Name: Héctor Vela
Title: Attorney-in-Fact

Cemex Egyptian Investments B.V., as Note Guarantor

By: /s/ Héctor Vela
Name: Héctor Vela
Title: Attorney-in-Fact

CEMEX UK, as Note Guarantor

By: /s/ Héctor Vela
Name: Héctor Vela
Title: Attorney-in-Fact

CEMEX France Gestion (S.A.S.), as Note Guarantor

By: /s/ Héctor Vela
Name: Héctor Vela
Title: Attorney-in-Fact

CEMEX Corp., as Note Guarantor

By: /s/ Héctor Vela
Name: Héctor Vela
Title: Attorney-in-Fact

CEMEX Concretos, S.A. de C.V., as Additional Note Guarantor

By: /s/ Héctor Vela
Name: Héctor Vela
Title: Attorney-in-Fact

Empresas Tolteca de México, S.A. de C.V., as Additional Note Guarantor

By: /s/ Héctor Vela
Name: Héctor Vela
Title: Attorney-in-Fact

THE BANK OF NEW YORK MELLON, as Trustee

By: /s/ John T. Needham, Jr.

Name: John T. Needham, Jr.

Title: Vice President

**SCHEDULE I**

NOTE GUARANTORS

1. CEMEX España, S.A. (Spain)
2. CEMEX México, S.A. de C.V. (Mexico)
3. New Sunward Holding B.V. (the Netherlands)
4. Cemex Asia B.V. (the Netherlands)
5. CEMEX Concretos, S.A. de C.V. (Mexico)
6. CEMEX Corp. (Delaware)
7. Cemex Egyptian Investments B.V. (the Netherlands)
8. CEMEX France Gestion (S.A.S.) (France)
9. Cemex Research Group AG (Switzerland)
10. Cemex Shipping B.V. (the Netherlands)
11. CEMEX UK (United Kingdom)
12. Empresas Tolteca de México, S.A. de C.V. (Mexico)

**EXHIBIT A**

FORM OF NOTE

*[Include the following legend for Global Notes only:*

"THIS IS A GLOBAL NOTE WITHIN THE MEANING OF THE INDENTURE REFERRED TO HEREINAFTER.

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), NEW YORK, NEW YORK, TO THE ISSUER OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFERS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF DTC OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN THE INDENTURE REFERRED TO ON THE REVERSE HEREOF."]

[*Include the following legend on all Notes that are Restricted Notes:*

"THE NOTES EVIDENCED HEREBY HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND [*Include the following on all Regulation S Notes that are Restricted Notes:* , PRIOR TO THE EXPIRATION OF THE 40-DAY DISTRIBUTION COMPLIANCE PERIOD (AS DEFINED IN REGULATION S UNDER THE SECURITIES ACT),] MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT (A) (1) TO CEMEX, S.A.B. DE C.V., (2) TO A PERSON WHO THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A AND TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS MADE IN RELIANCE ON RULE 144A, (3) IN AN OFFSHORE TRANSACTION COMPLYING WITH RULE 903 OR RULE 904 OF REGULATION S UNDER THE SECURITIES ACT, (4) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT (IF AVAILABLE), OR

(5) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT AND (B) IN ACCORDANCE WITH ALL APPLICABLE SECURITIES LAWS OF THE STATES OF THE UNITED STATES. THIS LEGEND CAN ONLY BE REMOVED AT THE OPTION OF THE ISSUER."]

[*Include the following on all Regulation S Notes that are Restricted Notes:* PRIOR TO THE EXPIRATION OF THE 40-DAY DISTRIBUTION COMPLIANCE PERIOD (AS DEFINED IN REGULATION S UNDER THE SECURITIES ACT),] EACH PERSON ACQUIRING AN OWNERSHIP INTEREST IN THE NOTES (1) SHALL BE DEEMED TO REPRESENT AND WARRANT THAT IT EITHER (A) IS A "QUALIFIED INSTITUTIONAL BUYER" (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT), (B) IS NOT A U.S. PERSON (AS DEFINED IN REGULATION S) AND IS OUTSIDE THE UNITED STATES OR (C) IS ACQUIRING SUCH OWNERSHIP INTEREST PURSUANT TO A VALID REGISTRATION STATEMENT OR IN ANOTHER TRANSACTION EXEMPT FROM SUCH REGISTRATION; (2) AGREES THAT [*Include the following on all Regulation S Notes that are Restricted Notes:* PRIOR TO THE EXPIRATION OF THE 40-DAY DISTRIBUTION COMPLIANCE PERIOD (AS DEFINED IN REGULATION S UNDER THE SECURITIES ACT),] (X) IT WILL NOT RESELL OR OTHERWISE TRANSFER THIS NOTE EXCEPT IN ACCORDANCE WITH THE FOREGOING RESTRICTIONS, AND IN ANY CASE IN COMPLIANCE WITH ALL APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES AND ANY OTHER APPLICABLE JURISDICTION; (Y) PRIOR TO SUCH TRANSFER, IT WILL FURNISH TO THE BANK OF NEW YORK MELLON, AS TRUSTEE (OR A SUCCESSOR TRUSTEE, AS APPLICABLE), SUCH CERTIFICATIONS, LEGAL OPINIONS OR OTHER INFORMATION AS THE TRUSTEE MAY REASONABLY REQUIRE TO CONFIRM THAT SUCH TRANSFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND (Z) IT WILL DELIVER TO EACH PERSON TO WHOM THIS SECURITY IS TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND. AS USED HEREIN, THE TERMS "UNITED STATES", "U.S. PERSON" AND "OFFSHORE TRANSACTION" HAVE THE MEANINGS GIVEN TO THEM BY REGULATION S UNDER THE SECURITIES ACT."]

*[Include the following legend on all Notes as the Mexican law legend:*

"THE NOTES EVIDENCED HEREBY HAVE NOT BEEN AND WILL NOT BE REGISTERED WITH THE NATIONAL SECURITIES REGISTRY (*REGISTRO NACIONAL DE VALORES*) MAINTAINED BY THE MEXICAN NATIONAL BANKING AND SECURITIES COMMISSION (*COMISIÓN NACIONAL BANCARIA Y DE VALORES*, OR CNBV), AND MAY NOT BE OFFERED OR SOLD PUBLICLY, OR OTHERWISE BE SUBJECT TO BROKERAGE ACTIVITIES, IN MEXICO, EXCEPT THAT THE NOTES MAY BE OFFERED IN MEXICO TO QUALIFIED OR INSTITUTIONAL INVESTORS PURSUANT TO THE PRIVATE PLACEMENT EXEMPTION SET FORTH UNDER ARTICLE 8 OF THE MEXICAN SECURITIES MARKET LAW (*LEY DEL MERCADO DE VALORES*). THE NOTES EVIDENCED

HEREBY AND THE INVITATION MEMORANDUM RELATED THERETO ARE SOLELY OUR RESPONSIBILITY AND HAVE NOT BEEN REVIEWED OR AUTHORIZED BY THE CNBV.”]

**FORM OF FACE OF NOTE**

**5.875% Senior Secured Notes due 2019**

No. [ ] Principal Amount U.S.$[ ]

*[If the Note is a Global Note include the following two lines:*
as revised by the Schedule of Increases and
Decreases in Global Note attached hereto]

CUSIP NO. [1]

ISIN NO. [2]

CEMEX, S.A.B. de C.V. (together with its successors and assigns, the "Issuer"), promises to pay to Cede & Co., or registered assigns, the principal sum of [ ] Dollars [*If the Note is a Global Note*, *add the following*, as revised by the Schedule of Increases and Decreases in Global Note attached hereto], on March 25, 2019.

Interest Payment Dates: March 25 and September 25, commencing on September 25, 2013

Record Dates: March 15 and September 15

[1] CUSIP No. for Rule 144A Note: 151290 BH5; CUSIP No. for Regulation S Note: P2253T JC4
[2] ISIN No. for Rule 144A Note: US151290BH59; ISIN No. for Regulation S Note: USP2253TJC47

Additional provisions of this Note are set forth on the other side of this Note.

CEMEX, S.A.B. de C.V.

By: _____
Name:
Title:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

THE BANK OF NEW YORK MELLON as Trustee, certifies that this is one of the Notes referred to in the Indenture.

By: _____ Date: _____
Authorized Signatory

**FORM OF REVERSE SIDE OF NOTE**

**5.875% Senior Secured Notes due 2019**

Capitalized terms used but not defined herein shall have the meanings assigned to them in the Indenture referred to below unless otherwise indicated.

1. Interest

CEMEX, S.A.B. de C.V., a publicly traded stock corporation with variable capital (*sociedad anónima bursátil de capital variable*) organized under the laws of the United Mexican States (together with its successors and assigns, the "Issuer"), promises to pay interest on the principal amount of this Note at the rate per annum shown above.

The Issuer will pay interest semiannually in arrears on each Interest Payment Date of each year commencing September 25, 2013; *provided*, that if any such Interest Payment Date is not a Business Day, then such payment shall be made on the next succeeding Business Day. Interest on the Notes will accrue from the most recent date to which interest has been paid on the Notes or, if no interest has been paid, from March 25, 2013; *provided*, that if there is no existing Default or Event of Default on the payment of interest, and if this Note is authenticated between a Record Date referred to on the face hereof and the next succeeding Interest Payment Date (but after March 25, 2013), interest shall accrue from such next succeeding Interest Payment Date, except in the case of the original issuance of Notes, in which case interest shall accrue from March 25, 2013. The Issuer shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue principal at the then applicable interest rate on the Notes to the extent lawful; it shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue installments of interest ("Defaulted Interest"), without regard to any applicable grace period, at the same rate to the extent lawful. Interest will be computed on the basis of a 360-day year of twelve 30-day months. Each interest period shall end on (but not include) the relevant interest payment date.

All payments made by the Issuer in respect of the Notes will be made free and clear of and without deduction or withholding for or on account of any Taxes imposed or levied by or on behalf of any Taxing Jurisdiction, unless such withholding or deduction is required by law or by the interpretation or administration thereof. In that event, the Issuer will pay to each Holder of the Notes Additional Amounts as provided in the Indenture subject to the limitations set forth in the Indenture.

2. Method of Payment

By at least 10:00 a.m. (New York City time) on the Business Day prior to the date on which any principal of or interest on any Note is due and payable, the Issuer shall irrevocably deposit with the Trustee or the Paying Agent money sufficient to pay such principal and/or interest. The Issuer will pay interest (except Defaulted Interest) on the applicable Interest Payment Date to the Persons who are registered Holders of Notes at the close of business on the Record Date preceding the Interest Payment Date even if Notes are canceled, repurchased or redeemed after the Record Date and on or before the relevant Interest Payment Date, except as

provided in Section 2.13 of the Indenture with respect to Defaulted Interest. Holders must surrender Notes to a Paying Agent to collect principal payments. The Issuer will pay principal and interest in U.S. Legal Tender.

Payments in respect of Notes represented by a Global Note (including principal and interest) will be made by the transfer of immediately available funds to the accounts specified by the DTC. The Issuer will make all payments in respect of a Certificated Note (including principal and interest) by mailing a check to the registered address of each registered Holder thereof as set forth in the Note Register; *provided*, *however*, that payments on the Notes may also be made, in the case of a Holder of at least U.S.$10,000,000 aggregate principal amount of Notes, by wire transfer to a U.S. dollar account maintained by the payee with a bank in the United States if such Holder elects payment by wire transfer by giving written notice to the Trustee or the Paying Agent to such effect designating such account no later than 10 days immediately preceding the relevant due date for payment (or such other date as the Trustee may accept in its discretion).

3. Paying Agent and Registrar

Initially, The Bank of New York Mellon, the Trustee under the Indenture, will act as Trustee, Paying Agent and Registrar. The Issuer may appoint and change any Paying Agent, Registrar or co-Registrar without notice to any Holder. The Issuer, any Note Guarantor or any of their respective Affiliates may act as Paying Agent, Registrar or co-Registrar.

4. Indenture

The Issuer issued the Notes under an Indenture, dated as of March 25, 2013 (as it may be amended or supplemented from time to time in accordance with the terms thereof, the "Indenture"), among the Issuer, the Note Guarantors and the Trustee. The terms of the Notes include those stated in the Indenture. The Notes are subject to all such terms, and Holders are referred to the Indenture for a statement of those terms. Each Holder, by accepting a Note, agrees to be bound by all of the terms and provisions of the Indenture, as amended or supplemented from time to time.

The Notes are general senior obligations, which are secured by a first priority security interest in the Collateral on an equal and ratable basis with the other Permitted Secured Obligations, subject to the Collateral release provisions set forth in the Intercreditor Agreement. U.S.$600,000,000 in aggregate principal amount of Notes will be initially issued on the Issue Date. Subject to the conditions set forth in the Indenture and without the consent of the Holders, the Issuer may issue Additional Notes. All Notes will be treated as a single series of securities under the Indenture. The Indenture imposes certain limitations on, among other things, the ability of the Issuer and its Restricted Subsidiaries to: Incur Indebtedness, make Restricted Payments, incur Liens, designate Unrestricted Subsidiaries, make Asset Sales, enter into transactions with Affiliates, or consolidate or merge or transfer or convey all or substantially all of the Issuer's assets.

To guarantee the due and punctual payment of the principal of (and premium, if any) and interest on the Notes and all other amounts payable by the Issuer under the Indenture

and the Notes when and as the same shall be due and payable, whether at maturity, by acceleration or otherwise, according to the terms of the Notes and the Indenture, the Note Guarantors have unconditionally guaranteed, jointly and severally, such obligations pursuant to the terms of the Indenture. Each Note Guarantee will be subject to release as provided in the Indenture.

The obligations of each Note Guarantor in respect of its Note Guarantee will be limited to the maximum amount as will, after giving effect to all other contingent and fixed liabilities of such Note Guarantor and after giving effect to any collections from or payments made by or on behalf of any other Note Guarantor in respect of the obligations of such other Note Guarantor under its Note Guarantee or pursuant to its contribution obligations under the Indenture, result in the obligations of such Note Guarantor under its Note Guarantee not constituting a fraudulent conveyance, fraudulent transfer, or similar illegal transfer under federal or state law or the law of the jurisdiction or formation and incorporation of such Note Guarantors.

5. Optional Redemption

Except as stated below, the Issuer may not redeem the Notes. The Issuer may redeem the Notes, at its option, in whole at any time or in part from time to time, on and after March 25, 2016, at the following redemption prices, expressed as percentages of the principal amount thereof, if redeemed during the twelve-month period commencing on March 25 of any year set forth below, plus any accrued and unpaid interest on the principal amount of the Notes to the date of redemption:

| Year | Percentage |
|---|---|
| 2016 | 102.938% |
| 2017 | 101.469% |
| 2018 and thereafter | 100.00% |

*provided*, *however*, that the Issuer shall not have the right to exercise any such optional redemption at any time when the Issuer is prohibited from having such an option under the Facilities Agreement.

Prior to March 25, 2016, the Issuer will have the right, at its option, to redeem any of the Notes, in whole or in part, at any time or from time to time prior to their maturity at a redemption price equal to the greater of (1) 100% of the principal amount of such Notes and (2) the sum of the present value of each remaining scheduled payment of principal and interest thereon (exclusive of interest accrued to the date of redemption) discounted to the Redemption Date on a semi-annual basis (assuming a 360-day year consisting of twelve 30-day months) at the Treasury Rate (as defined below) plus 75 basis points, plus, in each case, any accrued and unpaid interest on the principal amount of the Notes to the date of redemption, *provided*, *however*, that the Issuer shall not have the right to exercise any such optional redemption at any time when the Issuer is prohibited from having such an option under the Facilities Agreement.

"Treasury Rate" means, with respect to any Redemption Date, the rate per annum equal to the semi-annual equivalent yield to maturity or interpolated maturity (on a day count basis) of the Comparable Treasury Issue, assuming a price for the Comparable Treasury Issue (expressed as a percentage of its principal amount) equal to the Comparable Treasury Price (as defined below) for such Redemption Date.

"Comparable Treasury Issue" means the United States Treasury security or securities selected by an Independent Investment Banker (as defined below) as having an actual or interpolated maturity comparable to the remaining term of the Notes to be redeemed that would be utilized, at the time of selection and in accordance with customary financial practice, in pricing new issues of corporate debt securities of a comparable maturity to the remaining term of such Notes.

"Independent Investment Banker" means one of the Reference Treasury Dealers (as defined below) appointed by the Issuer.

"Comparable Treasury Price" means, with respect to any Redemption Date (1) the average of the Reference Treasury Dealer Quotations for such Redemption Date, after excluding the highest and lowest such Reference Treasury Dealer Quotation or (2) if the Independent Investment Banker or Issuer obtains fewer than four such Reference Treasury Dealer Quotations, the average of all such quotations.

"Reference Treasury Dealer" means any one of Citigroup Global Markets Inc., HSBC Securities (USA) Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated or their respective affiliates which are primary United States government securities dealers and not less than two other leading primary United States government securities dealers in New York City reasonably designated by the Issuer; *provided*, *however*, that if any of the foregoing shall cease to be a primary United States government securities dealer in New York City (a "Primary Treasury Dealer"), the Issuer will substitute therefore another Primary Treasury Dealer.

"Reference Treasury Dealer Quotation" means, with respect to each Reference Treasury Dealer and any Redemption Date, the average, as determined by the Independent Investment Banker or Issuer, of the bid and asked price for the Comparable Treasury Issue (expressed in each case as a percentage of its principal amount) quoted in writing to the Independent Investment Banker or Issuer by such Reference Treasury Dealer at 3:30 p.m. New York time on the third business day preceding such Redemption Date.

*Optional Redemption upon Equity Offerings* . At any time, or from time to time, on or prior to March 25, 2016, the Issuer may, at its option, use the net cash proceeds of one or more Equity Offerings to redeem in the aggregate up to 35% of the aggregate principal amount of the Notes issued pursuant to the Indenture at a redemption price equal to 105.875% of the principal amount thereof plus any accrued and unpaid interest on the principal amount of the Notes to the date of redemption; *provided*, that:

- after giving effect to any such redemption at least 65% of the aggregate principal amount of the Notes issued under the Indenture remains outstanding; and
- the Issuer shall make such redemption not more than 90 days after the consummation of such Equity Offering;

*provided*, *however*, that the Issuer shall not have the right to exercise any such optional redemption at any time when the Issuer is prohibited from exercising such an option under the Facilities Agreement.

"Equity Offering" means any public or private sale of Qualified Capital Stock after the Issue Date for cash other than issuances to any Subsidiary of the Issuer.

*Optional Redemption for Changes in Withholding Taxes*. If, as a result of any amendment to, or change in, the laws (or any rules or regulations thereunder) of a Taxing Jurisdiction affecting taxation, or any amendment to or change in an official interpretation or application of such laws, rules or regulations that has a general effect, which amendment to or change of such laws, rules or regulations becomes effective on or after the Issue Date (which, in the case of a merger, consolidation or other transaction permitted and described under Article IV shall be treated for this purpose as the date of such transaction) we would be obligated, after taking all reasonable measures to avoid this requirement, to pay Additional Amounts in excess of those attributable to a withholding tax rate of 10% with respect to the Notes (see "Additional Amounts"), then, at our option, all, but not less than all, of the Notes may be redeemed at any time on giving not less than 30 nor more than 60 days' notice, at a redemption price equal to 100% of the outstanding principal amount, plus any accrued and unpaid interest on the principal amount of the Notes to the date of redemption; *provided*, *however*, that (1) no notice of redemption for tax reasons may be given earlier than 90 days prior to the earliest date on which we would be obligated to pay these Additional Amounts if a payment on the Notes were then due, and (2) at the time such notice of redemption is given such obligation to pay such Additional Amounts remains in effect; *provided*, *further*, *however*, that the Issuer shall not have the right to exercise any such optional redemption at any time when the Issuer is prohibited from having such an option under the Facilities Agreement.

Prior to the delivery of any notice of redemption pursuant to this provision, the Issuer will deliver to the Trustee:

- an Officer's Certificate stating that the Issuer is entitled to effect the redemption and setting forth a statement of facts showing that the conditions precedent to the Issuer's right to redeem have occurred, and
- an opinion of outside legal counsel of recognized standing in the affected Taxing Jurisdiction to the effect that the Issuer has or will become obligated to pay such Additional Amounts as a result of such change or amendment.

This notice, once delivered by the Issuer to the Trustee, will be irrevocable.

In the case of any partial redemption, selection of the Notes for redemption will be made in accordance with Article V of the Indenture. On and after the Redemption Date,

interest will cease to accrue on Notes or portions thereof called-for redemption as long as the Issuer has deposited with the Paying Agent funds in satisfaction of the applicable redemption price pursuant to the Indenture.

6. Mandatory Repurchase Provisions

*Change Of Control Offer*. Upon the occurrence of a Change of Control, each Holder of Notes will have the right to require that the Issuer purchase all or a portion (in integral multiples of U.S.$1,000) of the Holder's Notes at a purchase price equal to 101% of the principal amount thereof, plus accrued and unpaid interest through the date of purchase. Within 30 days following the date upon which the Change of Control occurred, the Issuer must make a Change of Control Offer pursuant to a Change of Control Notice. As more fully described in the Indenture, the Change of Control Notice shall state, among other things, the Change of Control Payment Date, which must be no earlier than 30 days nor later than 60 days from the date the notice is mailed, other than as may be required by applicable law.

*Asset Sale Offer*. The Indenture imposes certain limitations on the ability of the Issuer and its Restricted Subsidiaries to make Asset Sales. In the event the proceeds from a permitted Asset Sale exceed certain amounts and are not applied as specified in the Indenture, the Issuer will be required to make an Asset Sale Offer to purchase to the extent of such remaining proceeds each Holder's Notes together with holders of certain other Indebtedness at 100% of the principal amount thereof, plus accrued interest (if any) to the Asset Sale Offer Payment Date, as more fully set forth in the Indenture.

7. Denominations; Transfer; Exchange

The Notes are in fully registered form without coupons, and only in denominations of principal amount of U.S.$200,000 and in integral multiples of U.S.$1,000 in excess thereof. A Holder may transfer or exchange Notes in accordance with the Indenture. The Registrar may require a Holder, among other things, to furnish appropriate endorsements or transfer documents and to pay any taxes and fees required by law or permitted by the Indenture. The Registrar shall not be required to register the transfer or exchange of (x) any Note for a period beginning: (1) 15 days before the mailing of a notice of an offer to repurchase or redeem Notes and ending at the close of business on the day of such mailing or (2) 15 days before an Interest Payment Date and ending on such Interest Payment Date and (y) any Note selected for repurchase or redemption, except the unrepurchased or unredeemed portion thereof, if any.

8. Persons Deemed Owners

The registered holder of this Note may be treated as the owner of it for all purposes.

9. Unclaimed Money

If money for the payment of principal or interest remains unclaimed for two years, the Trustee or Paying Agent shall pay the money back to the Issuer at its request unless an abandoned property law designates another Person. After any such payment, Holders entitled to the money must look only to the Issuer and not to the Trustee for payment.

10. Discharge Prior to Redemption or Maturity

Subject to certain conditions set forth in the Indenture, the Issuer at any time may terminate some or all of its obligations under the Notes and the Indenture if the Issuer deposits with the Trustee U.S. Legal Tender or U.S. Government Obligations for the payment of principal of and interest on the Notes to redemption or maturity, as the case may be.

11. Amendment, Waiver

Subject to certain exceptions set forth in the Indenture, (i) the Indenture or the Notes may be amended or supplemented with the written consent of the Holders of at least a majority in principal amount of the then Outstanding Notes and (ii) any default (other than with respect to nonpayment or in respect of a provision that cannot be amended or supplemented without the written consent of each Holder affected) or noncompliance with any provision may be waived with the written consent of the Holders of a majority in aggregate principal amount of the then Outstanding Notes. Subject to certain exceptions set forth in the Indenture, without the consent of any Holder, the Issuer and the Trustee may amend or supplement the Indenture or the Notes to, among other things, cure any ambiguity, omission, defect or inconsistency, or to comply with Article IV of the Indenture, or to provide for uncertificated Notes in addition to or in place of certificated Notes, or to add guarantees with respect to the Notes or to secure the Notes, or to add additional covenants or surrender rights and powers conferred on the Issuer or the Note Guarantors, or to make any change that does not adversely affect the rights of any Holder, or to provide for the issuance of Additional Notes.

12. Defaults and Remedies

If an Event of Default occurs and is continuing, the Trustee or the Holders of at least 25% in principal amount of the Outstanding Notes may declare all the Notes to be due and payable immediately. A Bankruptcy Event of Default will result in the Notes being due and payable immediately upon the occurrence of such Bankruptcy Event of Default.

Holders may not enforce the Indenture or the Notes except as provided in the Indenture. The Trustee may refuse to enforce the Indenture or the Notes unless it receives reasonable indemnity or security. Subject to certain limitations, Holders of a majority in principal amount of the Outstanding Notes may direct the Trustee in its exercise of any trust or power. The Trustee may withhold from Holders notice of any continuing Default or Event of Default (except a Default or Event of Default in payment of principal or interest) if it determines that withholding notice is in their interest.

13. Trustee Dealings with the Issuer and the Note Guarantors

Subject to certain limitations set forth in the Indenture, the Trustee under the Indenture, in its individual or any other capacity, may become the owner or pledgee of Notes and may otherwise deal with and collect obligations owed to it by the Issuer, any Note Guarantor or its Affiliates and may otherwise deal with the Issuer, any Note Guarantor or its Affiliates with the same rights it would have if it were not Trustee.

14. No Recourse Against Others

An incorporator, director, officer, employee, stockholder or controlling person, as such, of the Issuer or any Note Guarantor shall not have any liability for any obligations of the Issuer or any Note Guarantor under the Notes or the Indenture or for any claims based on, in respect of or by reason of such obligations or their creation. By accepting a Note, each holder waives and releases all such liability.

15. Authentication

Any Officer of the Issuer may sign the Notes for the Issuer by manual or facsimile signature. This Note shall not be valid until an authorized signatory of the Trustee (or an Authenticating Agent) manually signs the certificate of authentication on the other side of this Note.

16. Abbreviations

Customary abbreviations may be used in the name of a Holder or an assignee, such as TEN COM (= tenants in common), TEN ENT (= tenants by the entirety), JT TEN (= joint tenants with rights of survivorship and not as tenants in common), CUST (=custodian) and U/G/M/A (= Uniform Gift to Minors Act).

17. CUSIP Numbers

Pursuant to a recommendation promulgated by the Committee on Uniform Security Identification Procedures the Issuer has caused CUSIP or other similar numbers to be printed on the Notes and has directed the Trustee to use CUSIP numbers in notices of redemption as a convenience to Holders. No representation is made as to the accuracy of such numbers either as printed on the Notes or as contained in any notice of redemption and reliance may be placed only on the other identification numbers placed thereon.

18. Governing Law

This Note shall be governed by, and construed in accordance with, the laws of the State of New York.

19. Currency of Account; Conversion of Currency .

U.S. Legal Tender is the sole currency of account and payment for all sums payable by the Issuer and the Note Guarantors under or in connection with the Notes or the Indenture, including damages. The Issuer and the Note Guarantors will indemnify the Holders as provided in respect of the conversion of currency relating to the Notes and the Indenture.

20. Agent for Service; Submission to Jurisdiction; Waiver of Immunities .

The Issuer and the Note Guarantors have agreed that any suit, action or proceeding against the Issuer or any Note Guarantor brought by any Holder or the Trustee arising out of or based upon the Indenture or the Notes may be instituted in any state or federal

court in the City of New York, New York. The Issuer and the Note Guarantors (other than CEMEX Corp.) have irrevocably submitted to the jurisdiction of such courts for such purpose and waived, to the fullest extent permitted by law, trial by jury and any objection it may now or hereafter have to the laying of venue of any such proceeding, and any claim it may now or hereafter have that any proceeding in any such court is brought in an inconvenient forum. The Issuer and the Note Guarantors (other than CEMEX Corp.) have appointed CEMEX NY Corporation, 590 Madison Avenue, 41st Floor, New York, NY 10022, as each of their authorized agent upon whom all writs, process and summonses may be served in any suit, action or proceeding arising out of or based upon the Indenture or the Notes which may be instituted in any state or federal court in the City of New York, New York. To the extent that any of the Issuer and the Note Guarantors (other than CEMEX Corp.) have or hereafter may acquire any immunity (sovereign or otherwise) from any legal action, suit or proceeding, from jurisdiction of any court or from set-off or any legal process (whether service or notice, attachment in aid or otherwise) with respect to itself or any of its property, the Issuer and the Note Guarantors (other than CEMEX Corp.) have irrevocably waived and agreed not to plead or claim such immunity in respect of its obligations under the Indenture or the Notes.

The Issuer will furnish to any Holder upon written request and without charge to the Holder a copy of the Indenture which has in it the text of this Note in larger type. Requests may be made to:

CEMEX, S.A.B. de C.V.
Av. Ricardo Margáin Zozaya # 325
Colonia Valle del Campestre
Garza García, Nuevo León, México 66265
Tel: +5281-8888-8888

**ASSIGNMENT FORM**

To assign this Note, fill in the form below:

I or we assign and transfer this Note to

_____

(Print or type assignee's name, address and zip code)

_____

(Insert assignee's soc. sec. or tax I.D. No.)

and irrevocably appoint as agent to transfer this Note on the books of the Issuer. The agent may substitute another to act for him.

Date: _____ Your Signature: _____

Signature Guarantee: _____

(Signature must be guaranteed)

Sign exactly as your name appears on the other side of this Note.

The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program), pursuant to Exchange Act Rule 17Ad-15.

*To be attached to Global Notes only:*

SCHEDULE OF INCREASES OR DECREASES IN GLOBAL NOTE

The following increases or decreases in this Global Note have been made:

| Date of Exchange | Amount of decrease in Principal Amount of this Global Note | Amount of increase in Principal Amount of this Global Note | Principal Amount of this Global Note following such decrease or increase | Signature of authorized signatory of Trustee or Note Custodian |
|---|---|---|---|---|
| | | | | |

OPTION OF HOLDER TO ELECT PURCHASE

If you want to elect to have this Note purchased by the Issuer pursuant to Section 3.8 or Section 3.12 of the Indenture, check either box:

☐ **Section 3.8** ☐ **Section 3.12**

If you want to elect to have only part of this Note purchased by the Issuer pursuant to Section 3.12 of the Indenture, state the principal amount (which must be in minimum denominations of U.S.$200,000 and in an integral multiple of U.S.$1,000): U.S.$

Date: _____ Your Signature _____

(Sign exactly as your name appears on the other side of the Note)

Signature Guarantee: _____

(Signature must be guaranteed)

The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program), pursuant to Exchange Act Rule 17Ad-15.

**EXHIBIT B**

FORM OF CERTIFCATION FOR TRANSFER PURSUANT TO REGULATIONS

[Date]

The Bank of New York Mellon
101 Barclay Street – 4E
New York, NY 10286
Attention: International Corporate Trust

Re: 5.875% Senior Secured Notes due 2019 (the "Notes") of
S.A.B. de C.V. (the "Issuer")
CEMEX,

Ladies and Gentlemen:

Reference is hereby made to the Indenture, dated as of March 25, 2013 (as amended and supplemented from time to time, the "Indenture"), among the Issuer, the Note Guarantors named therein and The Bank of New York Mellon, as Trustee. Capitalized terms used but not defined herein shall have the meanings given them in the Indenture or Regulation S under the Securities Act of 1933, as amended (the "Securities Act"), as the case may be.

In connection with our proposed transfer of U.S.$[ ] aggregate principal amount of the Notes, which represent an interest in a Rule 144A Global Note beneficially owned by the undersigned ("Transferor"), we confirm that such transfer has been effected pursuant to and in accordance with Regulation S and, accordingly, we represent that:

(a) the offer of the Notes was not made to a person in the United States;

(b) either (i) at the time the buy order was originated, the transferee was outside the United States or we and any person acting on our behalf reasonably believed that the transferee was outside the United States or (ii) the transaction was executed in, on or through the facilities of a designated off-shore securities market and neither we nor any person acting on our behalf knows that the transaction has been pre-arranged with a buyer in the United States;

(c) no directed selling efforts have been made in the United States in contravention of the requirements of Rule 903(b) or Rule 904(b) of Regulation S, as applicable;

(d) the transaction is not part of a plan or scheme to evade the registration requirements of the Securities Act; and

(e) we are the beneficial owner of the principal amount of Notes being transferred.

In addition, if the transfer is made during a Distribution Compliance Period and the provisions of Rule 904(b)(1) or Rule 904(b)(2) of Regulation S are applicable thereto, we confirm that such transfer has been made in accordance with the applicable provisions of Rule 904(b)(1) or Rule 904(b)(2), as the case may be.

You, the Issuer and the Note Guarantors are entitled to rely upon this letter and are irrevocably authorized to produce this letter or a copy hereof to any interested party in any administrative or legal proceedings or official inquiry with respect to the matters covered hereby.

Very truly yours,

[Name of Transferor]

By: _____

Authorized Signature]

Signature Guarantee: _____
(Signature must be guaranteed)

The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program), pursuant to Exchange Act Rule 17Ad-15.

**EXHIBIT C**

FORM OF CERTIFICATION FOR TRANSFER PURSUANT TO RULE 144

[Date]

The Bank of New York Mellon
101 Barclay Street – 4E
New York, NY 10286
Attention: International Corporate Trust

Re: 5.875% Senior Secured Notes due 2019 (the "Notes") of
CEMEX, S.A.B. de C.V. (the "Issuer")

Ladies and Gentlemen:

Reference is hereby made to the Indenture, dated as of March 25, 2013 (as amended and supplemented from time to time, the "Indenture"), among the Issuer, the Note Guarantors named therein and The Bank of New York Mellon, as Trustee. Capitalized terms used but not defined herein shall have the meanings given them in the Indenture.

In connection with our proposed transfer of U.S.$[ ] aggregate principal amount of the Notes, which represent an interest in a 144A Global Note beneficially owned by the undersigned ("Transferor"), we confirm that such transfer has been effected pursuant to and in accordance with Rule 144 under the Securities Act.

You, the Issuer and the Note Guarantors are entitled to rely upon this letter and are irrevocably authorized to produce this letter or a copy hereof to any interested party in any administrative or legal proceedings or official inquiry with respect to the matters covered hereby.

Very truly yours,

[Name of Transferor]

By: _____

Authorized Signature

Signature Guarantee: _____
(Signature must be guaranteed)

The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program), pursuant to Exchange Act Rule 17Ad-15.

**EXHIBIT D**

FORM OF CERTIFICATION FOR TRANSFER PURSUANT TO RULE 144A

[Date]

The Bank of New York Mellon
101 Barclay Street – 4E
New York, NY 10286
Attention: International Corporate Trust

Re: 5.875% Senior Secured Notes due 2019 (the "Notes") of
CEMEX, S.A.B. de C.V. (the "Issuer")

Ladies and Gentlemen:

Reference is hereby made to the Indenture, dated as of March 25, 2013 (as amended and supplemented from time to time, the " Indenture"), among the Issuer, the Note Guarantors named therein and The Bank of New York Mellon, as Trustee. Capitalized terms used but not defined herein shall have the meanings given them in the Indenture.

In connection with our proposed transfer of U.S.$[ ] aggregate principal amount of the Notes, which represent an interest in a Regulation S Global Note beneficially owned by the undersigned (" Transferor"), we confirm that such transfer has been effected pursuant to and in accordance with Rule 144A under the Securities Act of 1933, as amended, and, accordingly, we represent that the beneficial interest will be transferred to a Person that we reasonably believe is purchasing the beneficial interest for its own account, or for one or more accounts with respect to which such Person exercises sole investment discretion, and such Person and each such account is a "qualified institutional buyer" within the meaning of Rule 144A in a transaction meeting the requirements of Rule 144A and such transfer is in compliance with any applicable blue sky securities laws of any state of the United States.

You, the Issuer and the Note Guarantors are entitled to rely upon this letter and are irrevocably authorized to produce this letter or a copy hereof to any interested party in any administrative or legal proceedings or official inquiry with respect to the matters covered hereby.

Very truly yours,

[Name of Transferor]

By: _____

_____
Authorized Signature]

Signature Guarantee: _____

(Signature must be guaranteed)

The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program), pursuant to Exchange Act Rule 17Ad-15.

**EXHIBIT E**

"CONSOLIDATED LEVERAGE RATIO" AND RELATED DEFINITIONS

The definition of "Consolidated Leverage Ratio" comes from the 2009 Financing Agreement, as in effect immediately prior to giving effect to the amendment and restatement thereof on September 17, 2012, and is to be used solely for purposes of calculating the Consolidated Leverage Ratio in the context of determining whether a Partial Covenant Suspension Event has occurred.

"**2012 CB Amount**" means an aggregate amount equal to the Relevant Existing Financial Indebtedness maturing on or prior to the 2012 CB Maturity Date.

"**2012 CB Maturity Date**" means the final maturity date of the Relevant Existing Financial Indebtedness maturing in September, 2012 (being 21 September, 2012).

"**Acceptable Bank**" means:

(a) a bank or financial institution which has a rating for its long-term unsecured and non credit-enhanced debt obligations of A- or higher by S&P or A- or higher by Fitch or A3 or higher by Moody's or a comparable rating from an internationally recognised credit rating agency;

(b) any other bank or financial institution in a jurisdiction in which a member of the Group conducts commercial operations where such member of the Group, in the ordinary course of trading, subscribes for certificates of deposit issued by such bank or financial institution; or

(c) any other bank or financial institution approved by the Administrative Agent.

"**Accession Letter**" means a document substantially in the form set out in Schedule 4 ( *Form of Accession Letter*) of the Financing Agreement.

"**Additional Guarantor**" means a company that becomes an Additional Guarantor in accordance with Clause 28 ( *Changes to the Obligors*) of the Financing Agreement.

"**Additional Security Provider**" means a company that becomes an Additional Security Provider in accordance with Clause 28 ( *Changes to the Obligors*) of the Financing Agreement.

"**Administrative Agent**" means Citibank International PLC, as administrative agent of the Finance Parties (other than itself) under the Financing Agreement.

"**Affiliate**" means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company.

"**Applicable GAAP**" means:

(a) in the case of the Issuer, Mexican FRS or, if adopted by the Issuer in accordance with Clause 22.3 ( *Requirements as to financial statements*) of the Financing Agreement, IFRS;

(b) in the case of CEMEX España, Spanish GAAP or, if adopted by CEMEX España in accordance with Clause 22.3 ( *Requirements as to financial statements*) of the Financing Agreement, IFRS; and

(c) in the case of any other Obligor, the generally accepted accounting principles applying to it in the country of its incorporation or in a jurisdiction agreed to by the Administrative Agent or, if adopted by the relevant Obligor, IFRS.

"**Authorised Signatory**" means, in relation to any Obligor, any person who is duly authorised and in respect of whom the Administrative Agent has received a certificate signed by a director or another Authorised Signatory of such Obligor setting out the name and signature of such person and confirming such person's authority to act.

"**Banobras Facility**" means a revolving loan agreement ( *Contrato de Apertura de Crédito en Cuenta Corriente* ) between CEMEX CONCRETOS, S.A. de C.V., as borrower and Banco Nacional de Obras y Servicios Públicos, Sociedad Nacional de Crédito, Institución de Banca de Desarrollo, as lender ( "**Banobras**"), in an aggregate principal amount equal to Mex$5,000,000,000.00 (five billion pesos), dated April 22, 2009, which was formalized by means of public deeds number 116,380 and 116,381 dated April 22, 2009, granted before Mr. José Angel Villalobos Magaña, notary public number 9 for Mexico, Federal District, as such facility may be amended from time to time.

"**Base Currency**" means US dollars.

"**Base Currency Amount**" means on any date:

(a) in relation to an amount or Exposure denominated in the Base Currency, that amount or the amount of that Exposure; and

(b) in relation to an amount or Exposure denominated in a currency other than the Base Currency, that amount or the amount of that Exposure converted into the Base Currency at:

(i) for the purposes of determining the Majority Participating Creditors, the exchange rate displayed on the appropriate Reuters screen at or about 11:00 a.m. on the date on which such determination is made (or if the agreed page is replaced or services cease to be available, the Administrative Agent may specify another page or service displaying the appropriate rate after consultation with the Issuer and the Participating Creditors); and

(ii) for all other purposes, the exchange rate displayed on the appropriate Reuters screen at or about 11:00 a.m. on the date which is five Business Days before that date (or if the agreed page is replaced or services cease to be available, the Administrative Agent may specify another page or service displaying the appropriate rate after consultation with the Issuer and the Participating Creditors).

"**Bilateral Bank Facilities**" means the facilities described in Part IB of Part II of Schedule 1 ( *The Original Participating Creditors* ) of the Financing Agreement.

"**Borrower**" means an Original Borrower unless it has ceased to be a Borrower in accordance with Clause 28.2 ( *Resignation of a Borrower*) of the Financing Agreement.

"**Business Day**" means a day (other than a Saturday or Sunday) on which banks are open for general business in London, Madrid, New York, Amsterdam and Mexico City (in the case of Mexico City, if applicable, as specified by a governmental authority), and:

(a) (in relation to any date for payment or lending or purchase of, or the determination of an interest rate or rate of exchange in relation to, a currency other than euro) the principal financial centre of the country of that currency; or

(b) (in relation to any date for payment or lending or purchase of, or the determination of an interest rate or rate of exchange in relation to, euro) any TARGET Day.

"**Business Plan**" means the five year business plan of the Group delivered in conjunction with the Financing Agreement.

"**Capital Expenditure**" means any expenditure or obligation in respect of expenditure which, in accordance with Applicable GAAP of the Issuer, is treated as capital expenditure (and including the capital element of any expenditure or obligation incurred in connection with a Capital Lease) (and, solely for the purposes of paragraph (c) of Clause 23.2 ( *Financial condition*) of the Financing Agreement, the maximum amount of Capital Expenditure of the Group permitted in the Financial Year ending on or about 31 December 2009 will be increased by an amount not exceeding $50,000,000 in aggregate to the extent necessary to take into account currency fluctuations or additional costs and expenses contemplated by (or that have occurred since the date of) the Business Plan).

"**Capital Lease**" means, as to any person, the obligations of such person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of the Issuer under Applicable GAAP and the amount of such obligations at any time shall be the capitalized amount thereof at such time determined in accordance with Applicable GAAP of the Issuer.

"**Capital Stock**" means any and all shares, interests, participations or other equivalents (however designed) of capital stock of a corporation, any and all equivalent ownership interests in a person (other than a corporation) and any and all warrants, rights or options to purchase any of the foregoing.

"**Cash Equivalent Investments**" means at any time:

(a) certificates of deposit maturing within one year after the relevant date of calculation and issued by an Acceptable Bank;

(b) any investment in marketable debt obligations issued or expressly guaranteed by the government of Mexico, the United States of America (or any state thereof (including any political subdivision of such state)), the United Kingdom, any member state of the European Economic Area or any Participating Member State or any member state of NAFTA (or any other jurisdiction in which a member of the Group conducts commercial operations if that member of the Group makes investments in such debt obligations in the ordinary course of its trading) or by an instrumentality or agency of any of them having an equivalent credit rating, maturing within one year after the relevant date of calculation and not convertible or exchangeable to any other security;

(c) commercial paper not convertible into or exchangeable for any other security:

  (i) for which a recognised trading market exists;

  (ii) issued by an issuer incorporated in Mexico, the United States of America (or any state thereof (including any political subdivision of such state)), the United Kingdom, any member state of the European Economic Area or any Participating Member State or any member state of NAFTA (or any other jurisdiction in which a member of the Group makes investments in such debt obligations in the ordinary course of trading);

  (iii) which matures within one year after the relevant date of calculation; and

  (iv) which has a credit rating of either A-1 or higher by S&P or F 1 or higher by Fitch or P-1 or higher by Moody's, or, if no rating is available in respect of the commercial paper, the issuer of which has, in respect of its long-term unsecured and non-credit enhanced debt obligations, an equivalent rating;

(d) sterling bills of exchange eligible for rediscount at the Bank of England and accepted by an Acceptable Bank (or their dematerialised equivalent);

(e) any investment in money market funds which (i) have a credit rating of either A-1 or higher by S&P or F1 or higher by Fitch or P-1 or higher by Moody's, (ii) which invest substantially all their assets in securities of the types described in paragraphs (a) to (d) above and (f) and (g) below and (iii) can be turned into cash on not more than 30 days' notice; or

(f) any deposit issued by any of Nacional Financiera, S.N.C., Banco Nacional de Comercio Exterior, S.N.C., Banco National de Obras y Sevicios Publicos, S.N.C. or any other development bank controlled by the Mexican government;

(g) any other debt instrument rated "investment grade" (or the local equivalent thereof according to local criteria in a country in which any member of the Group conducts commercial operations and in which local pensions are permitted by law to invest) with maturities of 12 months or less from the date of acquiring such investment;

(h) investments in mutual funds, managed by banks or financial institutions, with a local currency credit rating of at least MxAA by S&P or equivalent by any other reputable local rating agency, that invest principally in marketable direct obligations issued by the Mexican government, or issued by any agency or instrumentality thereof; and

(i) any other debt security, certificate of deposit, commercial paper, bill of exchange, investment in money market funds or material funds approved by the Majority Participating Creditors, in each case, to which any member of the Group is alone (or together with other members of the Group) beneficially entitled at that time and which is not issued or guaranteed by any member of the Group or subject to any Security (other than Security arising under the Transaction Security Documents).

"**CB Cash Replenishment Amount**" means, for a particular Relevant Prepayment Period, the amount of cash in hand of the Issuer on a consolidated basis to be applied by the Issuer to the CB Reserve pursuant to paragraph (b) of Clause 13.3 ( *Mandatory prepayments: Certificados Bursatiles Reserve* ) of the Financing Agreement at any time during that Relevant Prepayment Period **provided that** such amount, together with the CB Disposal Proceeds Replenishment Amount applicable to that Relevant Prepayment Period, may not exceed the CB Reserve Shortfall at that time.

"**CB Disposal Proceeds Replenishment Amount**" means for a particular Relevant Prepayment Period, the amount of any Disposal Proceeds received by any member of the Group during that Relevant Prepayment Period to be applied by the Issuer to the CB Reserve pursuant to paragraph (b) of Clause 13.3 (*Mandatory prepayments: Certificados Bursatiles Reserve* ) of the Financing Agreement **provided that** such amount, together with the CB Cash Replenishment Amount applicable to that Relevant Prepayment Period, may not exceed the CB Reserve Shortfall at that time.

"**CB Reserve**" means the reserve created by the Issuer or any of its Subsidiaries for the purposes of holding the proceeds of any Permitted Fundraising that, as set out in the relevant CB Reserve Certificate, are to be applied in accordance with Clause 13.3 ( *Mandatory prepayments: Certificados Bursátiles Reserve*) of the Financing Agreement.

"**CB Reserve Certificate**" means a certificate signed by a Responsible Officer of the Issuer setting out, with respect to a Permitted Fundraising the net cash proceeds of which are to be applied in accordance with Clause 13.3 ( *Mandatory prepayments: Certificados Bursatiles Reserve* ) of the Financing Agreement:

(i) the amount of proceeds from the relevant Permitted Fundraising that the Issuer wishes to be applied to the CB Reserve (such amount to not exceed the aggregate amount of the Relevant Existing Financial Indebtedness that is due to mature within the Relevant Prepayment Period to which it applies); and

(ii) specific details of the Relevant Existing Financial Indebtedness to which any amounts are designated by the Issuer to be applied including the total aggregate amount of such Relevant Existing Financial Indebtedness and the date on which such Relevant Existing Financial Indebtedness matures.

"**CB Reserve Shortfall**" means at any time, for a particular Relevant Prepayment Period, an amount equal to the lower of:

(i) the aggregate amount of (A) any voluntary prepayments made to Participating Creditors pursuant to Clause 12.2 ( *Voluntary prepayment of Exposures*) of the Financing Agreement from proceeds standing to the credit of the CB Reserve in that Relevant Prepayment Period and (B) the 2012 CB Amount; and

(ii) the principal amount of any Relevant Existing Financial Indebtedness then outstanding in that Relevant Prepayment Period.

"**Change of Control**" means that the beneficial ownership (within the meaning of Rule 13d-3 promulgated by the SEC under the Securities Exchange Act of 1934, as amended) of 20 per cent. or more in voting power of the outstanding voting stock of the Issuer is acquired by any person, **provided that** the acquisition of beneficial ownership of capital stock of the Issuer by Lorenzo H. Zambrano or any member of his immediate family shall not constitute a Change of Control.

"**Charged Property**" means all of the assets of the Security Providers which from time to time are, or are expressed to be, the subject of the Transaction Security.

"**Compliance Certificate**" means a certificate substantially in the form set out in Schedule 5 ( *Form of Compliance Certificate*) of the Financing Agreement.

"**Consolidated Coverage Ratio**" means, on any date of determination, the ratio of (a) EBITDA for the one (1) year period ending on such date to (b) Consolidated Interest Expense for the one (1) year period ending on such date.

"**Consolidated Debt**" means, at any date, the sum (without duplication) of (a) the aggregate amount of all Debt of the Issuer and its Subsidiaries at such date, which shall include the amount of any recourse in respect of Inventory Financing permitted under paragraph (e) of the definition of Permitted Financial Indebtedness, *plus* (b) to the extent not included in Debt, the aggregate net mark-to-market amount of all derivative financing in the form of equity swaps outstanding at such date (except to the extent such exposure is cash collateralized to the extent permitted under the Finance Documents).

"**Consolidated Funded Debt**" means, for any period, Consolidated Debt less the sum (without duplication) of (i) all obligations of such person to pay the deferred purchase price of property or services, (ii) all obligations of such person as lessee under Capital Leases, and (iii) all obligations of such person with respect to product invoices incurred in connection with export financing.

"**Consolidated Interest Expense**" means, for any period, the sum of the (1) total gross cash and non cash interest expense of the Issuer and its consolidated Subsidiaries relating to Consolidated Funded Debt of such persons, (2) any amortization or accretion of debt discount or any interest paid on Consolidated Funded Debt of such person and its Subsidiaries in the form of additional Financial Indebtedness (but excluding any amortization of deferred financing and debt issuance costs), (3) the net costs under Treasury Transactions in respect of interest rates (but excluding amortization of fees), (4) any amounts paid in cash on preferred stock, and (5) any interest paid or accrued in respect of Consolidated Funded Debt without a maturity date, regardless of whether considered interest expense under Applicable GAAP of the Issuer. For purposes of calculating Consolidated Interest Expense for the Reference Period ending 30 June 2010, $131,406,696.17 shall be deducted, constituting the amount of interest paid in respect of perpetual debentures on 1 July 2009 for the period ending 30 June 2009.

"**Consolidated Leverage Ratio**" means, on any date of determination, the ratio of (a) Consolidated Funded Debt on such date to (b) EBITDA for the one (1) year period ending on such date.

"**Core Bank Facilities**" means the Syndicated Bank Facilities, the Bilateral Bank Facilities and the Promissory Notes.

"**Creditor's Representative**" means:

(a) with respect to each of the Syndicated Bank Facilities, the person appointed as the agent of the creditors in relation to such Facility under the Existing Finance Documents relating to such Facility;

(b) with respect to each other Core Bank Facility, the Participating Creditor with an Exposure under that Facility; and

(c) with respect to each USPP Note, the Participating Creditor with an Exposure under that USPP Note.

"**Debt**" of any person means, without duplication, (i) all obligations of such person for borrowed money, (ii) all obligations of such person evidenced by bonds, debentures, notes or other similar instruments, including the perpetual bonds, (iii) the aggregate net mark-to-market of Treasury Transactions (except to the extent such exposure is cash collateralized to the extent permitted under the Finance Documents) of such person but excluding Treasury Transactions relating to the rate or price of energy or any commodity, (iv) all obligations of such person to pay the deferred purchase price of property or services, except trade accounts payable arising in the ordinary course of trading, (v) all obligations of such person as lessee under Capital Leases, (vi) all Debt of others secured by Security on any asset of such person, up to the value of such asset, (vii) all obligations of such person with respect to product invoices incurred in connection with export financing, (viii) all obligations of such person under repurchase agreements for the stock issued by such person or another person, (ix) all obligations of such person in respect of Inventory Financing permitted under paragraph (e) of the definition of Permitted Financial Indebtedness and (x) all guarantees of such person in respect of any of the foregoing **provided, however**, that for the purposes of calculating the Consolidated Funded Debt element of the Consolidated Leverage Ratio, Relevant Convertible/Exchangeable Obligations shall be excluded from each of the foregoing paragraphs (i) to (x) inclusive (**provided that**, in the case of outstanding Financial Indebtedness under any Relevant Convertible/Exchangeable Obligations (1) only the principal amount thereof shall be excluded and (2) such exclusion shall apply only for so long as such amounts remain subordinated in accordance with the terms of that definition) and (b) amounts falling within paragraph (v) of the definition of Excluded Fundraising Proceeds, for the period in which they are held by the Issuer or any member of the Group pending application in accordance with the terms of the Financing Agreement, shall be deducted from the aggregate Debt calculation resulting from this definition. For the avoidance of doubt, all letters of credit, banker's acceptances or similar credit transactions, including reimbursement obligations in respect thereof are not Debt until they are required to be funded.

"**Debt Documents**" means the Finance Documents, the "Refinancing Documents" (as defined in the Intercreditor Agreement) and the "Noteholder Documents" (as defined in the Intercreditor Agreement).

"**Debt Reduction Satisfaction Date**" means the first date following 30 September 2010 on which:

(a) the Base Currency Amount of the Exposures of Participating Creditors under the Facilities (calculated as at the date that any reduction of Exposures occurs and in accordance with the Financing Agreement) has been reduced by an aggregate amount equal to at least US$1,000,000,000 compared to the Exposures of Participating Creditors under the Facilities as at 30 September 2010; and

(b) the amount of Consolidated Funded Debt is at least US$1,000,000,000 (or its equivalent in any other currency) lower than the level of Consolidated Funded Debt as at 30 September 2010 (for the avoidance of doubt, when used in this sub-paragraph, Consolidated Funded Debt shall not include any Relevant Convertible/Exchangeable Obligations),

with notification of the occurrence of such date being provided by the Parent delivering a certificate to the Administrative Agent signed by an Authorised Signatory confirming that (a) and (b) above have been met.

"**Delegate**" means any delegate, agent, attorney or co-trustee appointed by the Security Agent.

"**Discontinued EBITDA**" means, for any period, the sum for Discontinued Operations of (a) operating income ( *utilidad de operación*), and (b) depreciation and amortization expense, in each case determined in accordance with Applicable GAAP of the Issuer consistently applied for such period.

"**Discontinued Operations**" means operations that are accounted for as discontinued operations pursuant to Applicable GAAP of the Issuer for which the Disposal of such assets has not yet occurred.

"**Disposal**" means a sale, lease, license, transfer, loan or other disposal by a person of any asset (including shares in any Subsidiary or other company), undertaking or business (whether by a voluntary or involuntary single transaction or series of transactions).

"**Disposal Proceeds**" means:

(i) the cash consideration received by any member of Group (including any amount received from a person who is not a member of the Group in repayment of intercompany debt save to the extent that the creditor in respect of the intercompany debt is obliged to repay that amount to the purchaser at or about completion of the Disposal) for any Disposal;

(ii) any proceeds of any Disposal received in the form of Marketable Securities that are required to be disposed of for cash (after deducting reasonable expenses incurred by the party disposing of those Marketable Securities to persons other than members of the Group) pursuant to the criteria set out at paragraph (h) of the definition of Permitted Disposal; and

(iii) any proceeds of any Disposal received in any other form to the extent disposed of or otherwise converted into cash within 90 days of receipt; and

(iv) any consideration falling within paragraphs (i) to (iii) above that is received by any member of the Group from the Disposal of assets of the Group in Venezuela prior to the date of the Financing Agreement,

but excluding any Excluded Disposal Proceeds and, in every case, after deducting:

(1) any reasonable expenses which are incurred by the disposing party of such assets with respect to that Disposal to persons who are not members of the Group;

(2) any Tax incurred and required to be paid by the disposing party in connection with that Disposal (as reasonably determined by the disposing party on the basis of rates existing at the time of the disposal and taking account of any available credit, deduction or allowance);

"**EBITDA**" means, for any period, the sum for the Issuer and its Subsidiaries, determined on a consolidated basis of (a) operating income ( *utilidad de operacion*), and (b) depreciation and amortization expense, in each case determined in accordance with Applicable GAAP of the Issuer, subject to the adjustments herein, consistently applied for such period and adjusted for Discontinued EBITDA as follows: if the amount of Discontinued EBITDA is a positive amount, then EBITDA shall increase by such amount, and if the amount of Discontinued EBITDA is a negative amount, then EBITDA shall decrease by the absolute value of such amount. For the purposes of calculating EBITDA for any applicable period pursuant to any determination of the Consolidated Leverage Ratio (but not the Consolidated Coverage Ratio): (A) (i) if at any time during such applicable period the Borrower or any of its Subsidiaries shall have made any Material Disposal, the EBITDA for such applicable period shall be reduced by an amount equal to the EBITDA (if positive) attributable to the property that is the subject of such Material Disposal for such applicable period (but when the Material Disposal is by way of lease, income received by the Issuer or any of its Subsidiaries under such lease shall be included in EBITDA) and (ii) if at any time during such applicable period the Issuer or any of its Subsidiaries shall have made any Material Acquisition, EBITDA for such applicable period shall be calculated after giving *pro forma* effect thereto as if such Material Acquisition had occurred on the first day of such applicable period. Additionally, if since the beginning of such applicable period any person that subsequently shall have become a Subsidiary or was merged or consolidated with the Issuer or any of its Subsidiaries as a result of a Material Acquisition occurring during such applicable period shall have made any Material Disposal or Material Acquisition of property that would have required an adjustment pursuant to clause (i) or (ii) above if made by the Issuer or any of its Subsidiaries during such applicable period, EBITDA for such period shall be calculated after giving *pro forma* effect thereto as if such Material Disposal or Material Acquisition had occurred on the first day of such applicable period; and (B) EBITDA will be recalculated by multiplying each month's EBITDA by the Ending Exchange Rate and dividing the amount obtained thereto by the exchange rate used by the Issuer in preparation of its monthly financial statements in accordance with Applicable GAAP of the Issuer to convert $ into Mexican pesos (such recalculated EBITDA being the "**Recalculated EBITDA**").

"**Ending Exchange Rate**" means the exchange rate at the end of a Reference Period for converting $ into Mexican pesos as used by the Issuer and its auditors in preparation of the Issuer's financial statements in accordance with Applicable GAAP of the Issuer.

"**Excluded Disposal Proceeds**" means any CB Disposal Proceeds Replenishment Amount and the proceeds of any Disposal of:

(i) inventory or trade receivables in the ordinary course of trading of the disposing entity;

(ii) assets pursuant to a Permitted Securitisation programme existing as at the date of the Financing Agreement (or any rollover or extension of such a Permitted Securitisation);

(iii) any asset from any member of the Group to another member of the Group on arm's length terms and for fair market or book value;

(iv) any assets the consideration for which (when aggregated with the consideration for any related Disposals) is less than $5,000,000 (or its equivalent in any other currency);

(v) assets leased or licensed to any director, officer or employee of any member of the Group in connection with and as part of the ordinary course of the service or employment arrangements of the Group;

(vi) Marketable Securities (other than Marketable Securities received as consideration for a Disposal as envisaged in paragraphs (ii) and (iii) of the definition of Disposal Proceeds); and

(vii) any cash or other assets arising out of or in connection with any Permitted Put/Call Transaction, including, but not limited to any settlement, disposal, transfer, assignment, closeout or other termination of such Permitted Put/Call Transaction.

"**Excluded Fundraising Proceeds**" means the proceeds of:

(i) a Permitted Fundraising falling within paragraph (f)(i) of the definition of Permitted Financial Indebtedness entered into for the purpose of refinancing or extending the maturity of Existing Financial Indebtedness falling within paragraph (a) of the definition thereof (or paragraph (b) of the definition thereof, to the extent that it relates to Short Term Certificados Bursatiles) (and, in the case of a refinancing, where the proceeds that would, but for this paragraph (i), constitute "Permitted Fundraising Proceeds," are actually applied for such purpose as soon as reasonably practicable (and in any event within 90 days) following receipt of those proceeds by any member of the Group);

(ii) a Permitted Fundraising falling within paragraph (f)(ii) of the definition of Permitted Financial Indebtedness entered into for the purpose of refinancing or extending the maturity of Existing Financial Indebtedness falling within paragraphs (a) to (e) of the definition thereof (and, in the case of a refinancing, where the proceeds that would, but for this paragraph (ii), constitute "Permitted Fundraising Proceeds," are actually applied for such purpose as soon as reasonably practicable (and in any event within 90 days) following receipt of those proceeds by any member of the Group).

(iii) any transaction between members of the Group;

(iv) Permitted Securitisations;

(v) prior to the Debt Reduction Satisfaction Date, a Permitted Fundraising falling within paragraph (c) of that definition or, after the Debt Reduction Satisfaction Date, a Permitted Fundraising falling within paragraphs (a), (b) or (c) of that definition **provided that** any Relevant Existing Financial Indebtedness due to

mature within the particular Relevant Prepayment Period and the proceeds of such Permitted Fundraising are to be applied in accordance with Clause 13.3 (*Mandatory prepayments: Certificados Bursatiles Reserve*) of the Financing Agreement;

(vi) subject to Clause 13.4(ii) of the Financing Agreement, a Permitted Fundraising falling within paragraph (c) of that definition and applied or to be applied in accordance with Clause 13.4 (*Mandatory prepayments: Relevant Convertible/Exchangeable Obligations*) of the Financing Agreement; and

(vii) a Permitted Fundraising arising out of or in connection with any Permitted Put/Call Transaction, including, but not limited to, any settlement, disposal, transfer, assignment, close-out or other termination of such Permitted Put/Call Transaction.

"**Executive Compensation Plan**" means any stock option plan, restricted stock plan or retirement plan which the Issuer or any other Obligor customarily provides to its employees, consultants and directors.

"**Existing Facility Agreements**" means the facility agreements and other documents described in Part II, Schedule 1 (*The Original Participating Creditors*) of the Financing Agreement.

"**Existing Finance Documents**" means each Existing Facility Agreement, the USPP Note Guarantee, the "Finance Documents" as defined in any Existing Facility Agreement and the "Facility Transaction Documents" as defined in Exhibit H to the NY Law Amendment Agreement (but in each case excluding any document that is designated a "**Finance Document**" or "**Facility Transaction Document**" by an Obligor and the relevant Creditor's Representative under an Existing Facility Agreement after the date of the Financing Agreement).

"**Existing Financial Indebtedness**" means:

(a) the Financial Indebtedness described in Part I of Schedule 10 (*Existing Financial Indebtedness*) of the Financing Agreement **provided that** the principal amount of such Financial Indebtedness does not increase above the principal amount outstanding as at the date of the Financing Agreement (except by the amount of any capitalised interest under any facility or instrument that provided for capitalisation of interest on those terms as at the date of the Financing Agreement) less the amount of any repayments and prepayments made in respect of such Financial Indebtedness;

(b) the Financial Indebtedness described in Part II of Schedule 10 (*Existing Financial Indebtedness*) of the Financing Agreement and any Short-Term Certificados Bursatiles, working capital or other operating facilities that replace or refinance such Financial Indebtedness;

(c) the Financial Indebtedness described in Part III of Schedule 10 (*Existing Financial Indebtedness*) of the Financing Agreement and any Capital Leases that replace (and relate to the same or similar assets as) such Financial Indebtedness;

(d) the Financial Indebtedness described in Part IV of Schedule 10 (*Existing Financial Indebtedness*) of the Financing Agreement and any Inventory Financing or factoring arrangements that replace (and relate to the same or similar assets as) such Financial Indebtedness; and

(e) the Banobras Facility and any other facility that replaces or refinances such facility **provided that** any such replacement or refinancing facility is (i) with a development bank controlled by the Mexican Government or (ii) with any other financial institution to finance public works or infrastructure assets,

**provided that** (i) the aggregate principal amount of such Existing Financial Indebtedness falling under each of paragraphs (b) to (e) of this definition shall not be increased above the principal amount of Financial Indebtedness committed or capable of being drawn down under the Financial Indebtedness referred to in that paragraph of this definition as at the date of the Financing Agreement (except by the amount of any capitalised interest under any facility or instrument that provided for capitalisation of interest on those terms as at the date of the Financing Agreement) and (ii), for the avoidance of doubt, any refinancing or replacement of Existing Financial Indebtedness falling within paragraphs (b) to (d) above need not satisfy the requirements of paragraph (f) of the definition of Permitted Financial Indebtedness.

"**Exposure**" means, at any time:

(a) in relation to a Participating Creditor and a Syndicated Bank Facility or Bilateral Bank Facility, that Participating Creditor's participation in Loans made under the relevant Facility at that time;

(b) in relation to Participating Creditor and a Promissory Note, the principal amount owed to that Participating Creditor under that Promissory Note at that time; and

(c) in relation to a Participating Creditor and a USPP Note, the principal amount owed to that Participating Creditor under that USPP Note at that time.

"**Facility**" means a Core Bank Facility and each USPP Note.

"**Fee Letter**" means any letter or agreement between the Administrative Agent or Security Agent and the Issuer setting out (i) the upfront fee and (ii) the level of fees payable in respect of the services and obligations performed by those agents under the relevant New Finance Documents.

"**Finance Document**" means each New Finance Document and each Existing Finance Document.

"**Finance Party**" means the Administrative Agent, the Security Agent, each Creditor's Representative or a Participating Creditor.

"**Financial Indebtedness**" means any indebtedness for or in respect of:

(a) moneys borrowed and debit balances at banks or other financial institutions;

(b) any acceptance under any acceptance credit or bill discounting facility (or dematerialised equivalent);

(c) any amount raised pursuant to a note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument (including, without limitation, any perpetual bonds);

(d) the amount of any liability in respect of any lease or hire purchase contract which would (in accordance with Applicable GAAP of the Issuer) be treated as a finance or capital lease;

(e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis and meet any requirement for de-recognition under Applicable GAAP of the Issuer);

(f) any Treasury Transaction (and, when calculating the value of that Treasury Transaction, only the mark-to-market value (or, if any actual amount is due as a result of the termination or close-out of that Treasury Transaction, that amount) shall be taken into account);

(g) any counter-indemnity obligation in respect of a guarantee, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution;

(h) any amount raised by the issue of redeemable shares which are redeemable (other than at the option of the issuer) before the Termination Date or are otherwise classified as borrowings under Applicable GAAP of the Issuer;

(i) any amount of any liability under an advance or deferred purchase agreement if (i) one of the primary reasons behind entering into the agreement is to raise finance or to finance the acquisition or construction of the asset or service in question or (ii) the agreement is in respect of the supply of assets or services and payment is due more than 60 days after the date of supply;

(j) any arrangement pursuant to which an asset sold or otherwise disposed of by that person may be re-acquired by a member of the Group (whether following the exercise of an option or otherwise) and any Inventory Financing;

(k) any amount raised under any other transaction (including any forward sale or purchase, sale and sale back or sale and leaseback agreement) having the commercial effect of a borrowing or otherwise classified as borrowings under Applicable GAAP of the Issuer; and

(l) the amount of any liability in respect of any guarantee for any of the items referred to in paragraphs (a) to (k) above.

"**Financial Quarter**" means the period commencing on the day after one Quarter Date and ending on the next Quarter Date.

"**Financial Year**" means the annual accounting period of the Issuer ending on or about 31 December in each year.

"**Fitch**" means Fitch Ratings Limited or any successor thereto from time to time.

"**Group**" means the Issuer and each of its Subsidiaries for the time being.

"**Guarantors**" means the Original Guarantors and any Additional Guarantor other than any Original Guarantor or Additional Guarantor which has ceased to be a Guarantor pursuant to Clause 28.4 ( *Resignation of Guarantor)* of the Financing Agreement and has not subsequently become an Additional Guarantor pursuant to Clause 28.3 ( *Additional Guarantors and Additional Security Providers* ) of the Financing Agreement and "**Guarantor**" means any of them.

"**Holding Company**" means, in relation to a company or corporation, any other company or corporation in respect of which it is a Subsidiary.

"**IFRS**" means international accounting standards within the meaning of IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements.

"**Intellectual Property**" means:

(a) any patents, trademarks, service marks, designs, business names, copyrights, design rights, data-base rights, inventions, knowhow and other intellectual property rights and interests, whether registered or unregistered; and

(b) the benefit of all applications and rights to use such assets of each member of the Group.

"**Intercreditor Agreement**" means the intercreditor agreement dated on or about the date of the Financing Agreement and made between, among others, the Issuer, Wilmington Trust (London) Limited as Security Agent, Citibank International PLC as Administrative Agent, the Participating Creditors and any other creditors of the Group that may accede to it from time to time in accordance with its terms, as such agreement may be amended from time to time.

"**Inventory Financing**" means a financing arrangement pursuant to which a member of the Group sells inventory to a bank or other institution (or a special purpose vehicle or partnership incorporated or established by or on behalf of such bank or other institution or an Affiliate of such bank or other institution) and has an obligation to repurchase such inventory to the extent that it is not sold to a third party within a specified period.

"**Joint Venture**" means any joint venture entity, whether a company, unincorporated firm, undertaking, association, joint venture or partnership or any other entity.

"**Joint Venture Investment**" has the meaning given to such term in sub-paragraph (b) (ii) of the definition of Permitted Joint Venture.

"**Loan**" means:

(a) in relation to a Syndicated Bank Facility or Bilateral Bank Facility, a loan made or to be made under such Facility or the principal amount outstanding for the time being of that loan; and

(b) in relation to a Promissory Note, the Exposure of the Participating Creditors for the time being under that Promissory Note.

"**Majority Participating Creditors**" means, at any time, a Participating Creditor or Participating Creditors the Base Currency Amount of whose Exposures under the Facilities at that time aggregate 66.67 per cent. or more of the Base Currency Amount of all the Exposures of the Participating Creditors under all of the Facilities at that time.

"**Marketable Securities**" means securities (whether equity, debt or other securities) which are listed on a stock exchange or for which a trading market exists (whether on market or over the counter) but excluding: (A) shares in any member of the Group, and (B) any shares in Axtel, S.A.B. de C.V.

"**Material Acquisition**" means any (a) acquisition of property or series of related acquisitions of property that constitutes assets comprising all or substantially all of an operating unit, division or line of business or (b) acquisition of or other investment in the Capital Stock of any Subsidiary or any person which becomes a Subsidiary or is merged or consolidated with the Borrower or any of its Subsidiaries, in each case, which involves the payment of consideration by the Borrower and its Subsidiaries in excess of $100,000,000 (or the equivalent in other currencies).

"**Material Disposal**" means any Disposal of property or series of related Disposals of property that yields gross proceeds to the Issuer or any of its Subsidiaries in excess of $100,000,000 (or the equivalent in other currencies).

"**Mexican FRS**" means Mexican Financial Reporting Standards ( *Normas de Información Financiera* ) as in effect from time to time and consistent with those used in the preparation of the most recent audited financial statements referred to in Clause 22.1 (Financial Statements).

"**Mexican pesos**," "**Mex$**," "**MXN**" and "**pesos**" means the lawful currency of Mexico.

"**Mexico**" means the United Mexican States.

"**Moody's**" means Moody's Investor Services Limited or any successor to its ratings business.

**"NAFTA"** means the North American Free Trade Agreement.

"**New Finance Document**" means the Financing Agreement, the NY Law Amendment Agreement, the Intercreditor Agreement, each Transaction Security Document, any Accession Letter, any Fee Letter, any Resignation Letter and any other document designated as a " **New Finance Document**" by the Administrative Agent and the Issuer.

"**New Equity Securities**" means

(i) The US$977.5 million aggregate principal amount of 3.25% convertible subordinated notes due 2016, including US$177.5 million notes issued pursuant to an over-allotment option in connection with those subordinated notes due 2016; and

(ii) US$690 million aggregate principal amount of 3.75% convertible subordinated notes due 2018, including US$90 million notes issued pursuant to an over-allotment option in connection with those subordinated notes due 2018.

in each case, issued on 15 March 2011 by the Issuer.

"**NY Law Amendment Agreement**" means the omnibus amendment agreement dated on or about the date of the Financing Agreement between, among others, the Issuer and the Participating Creditors with Exposures under those Existing Facility Agreements (other than the USPP Note Agreement) that are governed by the laws of the State of New York, as such agreement may be amended from time to time.

"**Obligors**" means the Borrowers, the Guarantors and the Security Providers and " **Obligor**" means any of them.

"**Original Borrowers**" means, together with the Issuer, the Subsidiaries of the Issuer listed in Part I of Schedule 1 ( *The Original Parties*) of the Financing Agreement as borrowers or issuers.

"**Original Financial Statements**" means (a) in relation to the Issuer, its audited unconsolidated and consolidated financial statements for its Financial Year ended 31 December 2008 accompanied by an audit opinion of KPMG Cardenas Dosal, S.C.; (b) in relation to CEMEX España, its audited consolidated financial statements for its financial year ended 31 December 2008; and (c) in relation to any other borrower or guarantor under the Financing Agreement, its most recent annual financial statements (audited, if available).

"**Original Guarantors**" means the Subsidiaries of the Issuer listed in Part I of Schedule 1 ( *The Original Parties*) of the Financing Agreement as guarantors, together with the Issuer.

"**Original Participating Creditors**" means the financial institutions and noteholders listed in Part II of Schedule 1 ( *The Original Participating Creditors*) of the Financing Agreement as creditors.

"**Original Security Providers**" means the Subsidiaries of the Issuer listed in Part I of Schedule 1 ( *The Original Parties*) of the Financing Agreement as security providers.

"**Participating Creditor**" means:

(a) any Original Participating Creditor; and

(b) any person which has become a Party in accordance with Clause 27 ( *Changes to the Participating Creditors*), of the Financing Agreement,

which in each case has not ceased to be a Party in accordance with the terms of the Financing Agreement.

"**Participating Member State**" means any member state of the European Union that adopts or has adopted the euro as its lawful currency in accordance with legislation of the European Union relating to Economic and Monetary Union.

"**Party**" means a party to the Financing Agreement.

"**Permitted Acquisition**" means:

(a) an acquisition by a member of the Group of an asset sold, leased, transferred or otherwise disposed of by another member of the Group in circumstances constituting a Permitted Disposal;

(b) an acquisition of shares or securities pursuant to a Permitted Share Issue;

(c) an acquisition of cash or securities which are Cash Equivalent Investments;

(d) an acquisition to which a member of the Group is contractually committed as at the date of the Financing Agreement, with the material terms of those acquisitions requiring consideration payable in excess of $10,000,000 described in the list delivered to the Administrative Agent under paragraph 4(f) of Part I (Initial Conditions Precedent) of Schedule 2 of the Financing Agreement (**provided that** there has been or is no material change to the terms of such acquisition subsequent to the date of the Financing Agreement);

(e) the incorporation of a company which on incorporation becomes a member of the Group or which is a special purpose vehicle, whether a member of the Group or not;

(f) an acquisition that constitutes a Permitted Joint Venture;

(g) an acquisition of assets and, if applicable, cash, in exchange for other assets and, if applicable, cash, of equal or higher value **provided that**: (i) the cash element of any such acquisition must not be more than 20 per cent. of the aggregate consideration for the acquisition; and (ii) the maximum aggregate market value of the assets acquired pursuant to all such transactions must not be more than $100,000,000 (or its equivalent in any other currency) in any Financial Year;

(h) any acquisition of shares of the Issuer pursuant to an obligation in respect of any Executive Compensation Plan;

(i) any other acquisition consented to by the Administrative Agent acting on the instructions of the Majority Participating Creditors;

(j) an acquisition of shares in the Issuer to the extent that a member of the Group has an obligation to deliver such shares to any holder(s) of convertible securities falling within paragraph (f)(i) of the definition of Permitted Financial Indebtedness pursuant to the terms of such convertible securities; and

(k) any other acquisition of a company, of shares, securities or a business or undertaking (or, in each case, any interest in any of them) **provided that** the aggregate amount of the consideration for such acquisitions (when aggregated with the aggregate amount of Joint Venture Investment falling within paragraph (b)(iii)(1) of the definition of Permitted Joint Venture in that Financial Year) does not exceed $100,000,000 (or its equivalent in any other currencies) in any Financial Year.

"**Permitted Disposal**" means any sale, lease, licence, transfer or other disposal which, except in the case of Disposals as between members of the Group, is on arm's length terms:

(a) of trading stock or cash made by any member of the Group in the ordinary course of trading of the disposing entity;

(b) of any asset by a member of the Group (the "**Disposing Company**") to another member of the Group (the "**Acquiring Company**"), but if:

(i) the Disposing Company is an Obligor, the Acquiring Company must also be an Obligor;

(ii) the Disposing Company had given Transaction Security over the asset, the Acquiring Company must give equivalent Transaction Security over that asset; and

(iii) the Disposing Company is a Guarantor, the Acquiring Company must be a Guarantor guaranteeing at all times an amount no less than that guaranteed by the Disposing Company,

**provided that** the conditions set out in paragraphs (i), (ii) and (iii) above shall only apply if the applicable assets are shares or if all or substantially all of the assets of the Disposing Company are being disposed of;

(c) of obsolete or redundant vehicles, machinery, parts and equipment in the ordinary course of trading;

(d) of cash or Cash Equivalent Investments for cash or in exchange for other Cash Equivalent Investments;

(e) constituted by a licence of Intellectual Property in the ordinary course of trading;

(f) to a Joint Venture, to the extent permitted by Clause 24.17 (*Joint ventures*) of the Financing Agreement;

(g) arising as a result of any Permitted Security;

(h) of any shares in a member of the Group ( **provided that** all such shares in that entity owned by a member of the Group are the subject of the Disposal) or of any other asset, in each case on arm's length terms and for full market value where:

(i) no less than 85 per cent. of the consideration for the Disposal is payable to the Group in cash or Marketable Securities paid or received by a member of the Group at completion of the Disposal ( **provided that** where a portion of that 85 per cent. is comprised of Marketable Securities, those Marketable Securities must be disposed of for cash to a person that is not a member of the Group within 90 days of completion);

(ii) if the aggregate consideration for the Disposal (when aggregated with the consideration for any related Disposals) is equal to 5 per cent. or more of the value of consolidated assets of the Group, the Issuer has delivered to the Administrative Agent a certificate signed by an Authorised Signatory confirming that, on a *pro forma* basis, assuming that the Disposal had been completed and the proceeds had been applied in accordance with Clause 13 ( *Mandatory Prepayment*) of the Financing Agreement immediately prior to the first day of the most recent Reference Period for which a Compliance Certificate has been or is required to have been delivered under the Financing Agreement, the Issuer would have been in compliance with the financial covenants in paragraphs (a) and (b) of Clause 23.2 ( *Financial condition*) of the Financing Agreement as at the last day of the most recent Reference Period for which a Compliance Certificate has been or is required to have been delivered under the Financing Agreement; and

(iii) the Disposal Proceeds received by members of the Group are applied (to the extent required) in accordance with Clause 13 (*Mandatory prepayment*) of the Financing Agreement;

(i) of any asset compulsorily acquired by a governmental authority **provided that** the Disposal Proceeds received by members of the Group are applied (to the extent required) in accordance with Clause 13 ( *Mandatory prepayment*) of the Financing Agreement;

(j) of any receivables disposed of pursuant to a factoring or similar receivables financing arrangement that is otherwise permitted under the Financing Agreement (including, for the avoidance of doubt, the Banobras Facility);

(k) of any inventory disposed of pursuant to an Inventory Financing or similar arrangement that is otherwise permitted under the Financing Agreement;

(l) of any plant or equipment disposed of pursuant to a sale and lease-back arrangement that is otherwise permitted under the Financing Agreement;

(m) of any asset to which a member of the Group was contractually committed as at the date of the Financing Agreement, with all material terms of those disposals which relate to the disposal of assets with a value of at least $10,000,000 being described in Schedule 14 *(Disposals)* of the Financing Agreement ( **provided that** there has been or is no material change to the terms of such Disposal subsequent to the date of the Financing Agreement);

(n) of receivables disposed of pursuant to a Permitted Securitisation;

(o) of land or buildings arising as a result of lease or licence in the ordinary course of its trading;

(p) of any shares of the Issuer pursuant to an obligation in respect of any Executive Compensation Plan;

(q) of shares, common equity securities in the Issuer or reference property in connection with the same to the extent that a member of the Group has an obligation to deliver such shares, common equity securities or reference property to any holder(s) of convertible or exchangeable securities falling within paragraph (f)(i) of the definition of Permitted Financial Indebtedness pursuant to the terms of such convertible or exchangeable securities or to any counterparty pursuant to the terms of any Permitted Put/Call Transaction;

(r) of assets and, if applicable, cash in exchange for other assets and, if applicable, cash, of equal or higher value **provided that**: (i) the cash element of any such Disposal must not be more than 20 per cent. of the aggregate consideration for the Disposal; and (ii) the maximum aggregate market value of all assets disposed of in such transactions must not be more than $100,000,000 (or its equivalent in any other currencies) in any Financial Year; or

(s) otherwise approved by the Administrative Agent acting on the instructions of the Majority Participating Creditors.

"**Permitted Financial Indebtedness**" means Financial Indebtedness:

(a) incurred or arising under the Finance Documents;

(b) that is Existing Financial Indebtedness;

(c) owed to a member of the Group;

(d) that constitutes a Permitted Securitisation;

(e) arising under Capital Leases, factoring arrangements, Inventory Financing arrangements or export credit facilities for the purchase of equipment (**provided that** any Security granted in relation to any such facility relates solely to equipment, the purchase of which was financed under such Facility) or pursuant to sale and lease-back transactions **provided that** the maximum aggregate Financial Indebtedness of members of the Group under such transactions (excluding any Existing Financial Indebtedness) does not exceed $350,000,000 at any time;

(f) arising:

(i) pursuant to an issuance of bonds, notes or other debt securities, or of convertible or exchangeable securities by:

(A) in the case of bonds, notes or other debt securities or convertible or exchangeable securities issued to refinance or replace Existing Financial Indebtedness falling within Part I of Schedule 10 (Existing Financial Indebtedness) of the Financing Agreement, one or more Obligors (other than CEMEX Materials LLC and CEMEX, Inc.) or

the same member of the Group (including, where applicable, CEMEX Materials LLC and CEMEX, Inc.) that issued the relevant Existing Financial Indebtedness that is being refinanced or replaced (whether acting as co-issuers or otherwise but, for the avoidance of doubt, with several liability only); or

(B) in the case of bonds, notes or other debt securities or convertible or exchangeable securities issued so as to be applied in repayment or prepayment of the Exposures of the Participating Creditors under the Facilities, one or more Obligors (other than CEMEX Materials LLC and CEMEX, Inc.) whether acting as co-issuers or otherwise, (and, for the avoidance of doubt, such securities may be issued with an original issue discount) on the capital markets in each case subscribed or paid for in full in cash on issue (unless such securities are exchanged on issue for other securities that constitute Existing Financial Indebtedness falling within paragraph (a) of the definition thereof on issue) **provided that** (other than any conversion into common equity securities of the Issuer) no principal repayments are scheduled (and no call options can be exercised) in respect thereof until after the Termination Date;

(ii) under a loan facility in respect of which the only borrowers are:

(A) in the case of loan facilities entered into to refinance or replace Existing Financial Indebtedness falling within Part I of Schedule 10 (*Existing Financial Indebtedness*) of the Financing Agreement one or more Obligors (other than CEMEX Materials LLC and CEMEX, Inc.) or the same member of the Group (including, where applicable, CEMEX Materials LLC and CEMEX, Inc.) that borrowed the relevant Existing Financial Indebtedness that is being refinanced or replaced, (whether acting as joint or multiple borrowers but for the avoidance of doubt, with several liability only); or

(B) in the case of loan facilities entered into so as to refinance or replace the Exposures of the Participating Creditors under the Facilities, one or more Obligors (other than CEMEX Materials LLC and CEMEX, Inc.) whether acting as joint or multiple borrowers,

**provided that** no principal repayments are scheduled (and no mandatory prepayment obligations arise save as a result of unlawfulness affecting a creditor in respect of such loan facility) in respect thereof until after the Termination Date,

and further **provided that** (1) the terms applicable to such issuance under paragraph (f)(i) (excluding pricing, but including, without limitation, as to prepayments, representations, covenants, events of default, guarantees and security) taken as a whole are no more restrictive or onerous than the terms applicable to the Facilities, and the terms applicable to such incurrence under paragraph (f)(ii) (excluding pricing, but including, without limitation, as to prepayments, representations, covenants, events of default, guarantees and security) are no more restrictive or onerous than the terms applicable to the Facilities; (2) the proceeds of such issuance or incurrence are applied (to the extent required) in

accordance with Clause 13 (*Mandatory prepayment*) of the Financing Agreement; (3) if proceeds of such issuance or incurrence are, to the extent required under the Financing Agreement, being used to replace or refinance (x) Financial Indebtedness which shares in the Transaction Security or (y) the CEMEX España Euro Notes, such Financial Indebtedness issued or incurred shall be entitled to share in the Transaction Security in accordance with (and on the terms of) the Intercreditor Agreement, **provided that** in the case of Financial Indebtedness issued or incurred to replace or refinance the CEMEX España Euro Notes, such Financial Indebtedness shall only be entitled to share in the Transaction Security if, prior to the first replacement or refinancing of the CEMEX España Euro Notes, the Debt Reduction Satisfaction Date has occurred; and (4) for the avoidance of doubt, any refinancing or replacement of Existing Financial Indebtedness falling within paragraphs (b) to (d) of the definition of Existing Financial Indebtedness need not satisfy the requirements of this paragraph (f);

(g) that constitutes a Permitted Liquidity Facility;

(h) that becomes Financial Indebtedness solely as a result of any change in Applicable GAAP of the Issuer after the date of the Financing Agreement and that existed prior to the date of such change in Applicable GAAP of the Issuer (or that replaces, and is on substantially the same terms as, such Financial Indebtedness);

(i) of any person acquired by a member of the Group pursuant to an acquisition falling within paragraphs (d) or (f) of the definition of Permitted Acquisition **provided that**: (i) such Financial Indebtedness existed prior to the date of the acquisition and was not incurred, increased or extended in contemplation of, or since, the acquisition; and (ii) the aggregate amount of any such Financial Indebtedness of members of the Group does not exceed $100,000,000 at any time;

(j) under Treasury Transactions entered into in accordance with Clause 24.26 ( *Treasury Transactions*) of the Financing Agreement;

(k) incurred pursuant to or in connection with any cash pooling or other cash management agreements in place with a bank or financial institution, but only to the extent of offsetting credit balances of the Issuer or its Subsidiaries pursuant to such cash pooling or other cash management arrangement;

(l) constituting Financial Indebtedness for taxes levied, assessments due and other governmental charges required to be paid as a matter of law or regulation in the ordinary course of trading;

(m) that constitutes a Permitted Joint Venture;

(n) approved by the Administrative Agent acting on the instructions of the Majority Participating Creditors; and

(o) that, when aggregated with the principal amount of any other Financial Indebtedness not falling within paragraphs (a) to (n) above, does not exceed $200,000,000 (or its equivalent in other currencies) in aggregate at any time.

"**Permitted Fundraising**" means:

(a) any issuance of equity securities by the Issuer paid for in full in cash on issue (and, for the avoidance of doubt, such securities may be issued with an original issue discount) and not redeemable on or prior to the Termination Date and where such issue does not lead to a Change of Control;

(b) any issuance of equity-linked securities issued by any member of the Group that are linked solely to, and result only in the issuance of, equity securities of the Issuer otherwise entitled to be issued under this definition (and that do not, for the avoidance of doubt, result in the issuance of any equity securities by such member of the Group) and that are paid for in full in cash on issue (and, for the avoidance of doubt, such securities may be issued with an original issue discount) and where such issue does not lead to a Change of Control (**provided that** such securities do not provide for the payment of interest in cash and are not redeemable on or prior to the Termination Date); and

(c) any incurrence of Financial Indebtedness falling within paragraph (f) of the definition of Permitted Financial Indebtedness.

"**Permitted Fundraising Proceeds**" means the cash proceeds received by any member of the Group from a Permitted Fundraising other than Excluded Fundraising Proceeds after deducting:

(i) any reasonable expenses which are incurred by the relevant member(s) of the Group with respect to that Permitted Fundraising owing to persons who are not members of the Group; and

(ii) any Tax incurred and required to be paid by the relevant member(s) of the Group with respect to that Permitted Fundraising (as reasonably determined by the relevant member(s) of the Group on the basis of rates existing at the time and taking account of any available credit, deduction or allowance).

"**Permitted Joint Venture**" means any investment in any Joint Venture where:

(a) such investment exists or a member of the Group is contractually committed to such investment at the date of the Financing Agreement and, if the value of the Group's investment in such Joint Venture is $50,000,000 or greater (as shown in the Original Financial Statements of the Issuer) is detailed in Schedule 12 (Permitted Joint Ventures) of the Financing Agreement; or

(b) such investment is made after the date of the Financing Agreement and:

(i) either the investment has been consented to by the Administrative Agent acting on the instructions of the Majority Participating Creditors or the Joint Venture is engaged in a business substantially the same as that carried on by the Group; and

(ii) in any Financial Year of the Issuer, the aggregate of:

(1) all amounts subscribed for shares in, lent to, or invested in all such Joint Ventures by any member of the Group;

(2) the contingent liabilities of any member of the Group under any guarantee given in respect of the liabilities of any such Joint Venture; and

(3) the market value of any assets transferred by any member of the Group to any such Joint Venture,

minus

(4) from and including 1 January 2010, an amount up to, but not exceeding, $100,000,000 (or its equivalent in other currencies) in any Financial Year that represents all cash amounts received by any member of the Group (i) relating to dividends, repayment of loans or distributions of any other nature in respect of any such Joint Ventures in that Financial Year and (ii) as a result of or in relation to any disposals of shares, interests or participations, divestments, capital reductions or any similar decreases of interest in any such Joint Ventures in that Financial Year, does not exceed $100,000,000 (or its equivalent in other currencies) or such greater amount as the Administrative Agent (acting on the instructions of the Majority Participating Creditors) may agree (such amount being the "Joint Venture Investment"); and

(iii) the Issuer has (by written notice to the Administrative Agent prior to the end of the Financial Year in which the investment is made) designated the Joint Venture Investment as counting against:

(1) paragraph (k) of the definition of Permitted Acquisition; or

(2) the maximum amount of Capital Expenditure permitted in that Financial Year under paragraph (c) of Clause 23.2 (*Financial condition*) of the Financing Agreement.

"**Permitted Liquidity Facilities**" means a loan facility or facilities made available to one or more members of the Group by one or more Participating Creditors (or their respective Affiliates) **provided that** the aggregate principal amount of utilised and unutilised commitments under such facilities must not exceed $1,000,000,000 (or its equivalent in any other currency) at any time.

"**Permitted Put/Call Transaction**" means any call option, call spread, capped call transaction, put option, put spread, capped put transaction or any combination of the foregoing and/or any other Treasury Transaction or transactions having a similar effect to any of the foregoing, in each case entered into, sold or purchased not for speculative purposes but for the purposes of managing specific risks or exposures associated with any issuance of Relevant Convertible Securities/Exchangeable Obligations.

"**Permitted Securitisations**" means a transaction or series of related transactions providing for the securitisation of receivables and related assets by the Issuer or its Subsidiaries, including a sale at a discount, **provided that** (i) such receivables have been transferred, directly or indirectly, by the originator thereof to a person that is not a member of the Group in a manner that satisfies the requirements for an absolute conveyance (or, where the originator is organised in Mexico, a true sale), and not merely a pledge, under the laws and regulations of the jurisdiction in which such originator is organised; and (ii) except for customary representations, warranties, covenants and indemnities, such sale, transfer or other securitisation is carried out on a non-recourse basis or on a basis where recovery is limited solely to the collection of the relevant receivables.

"**Permitted Security**" means:

(A) Security for taxes, assessments and other governmental charges the payment of which is being contested in good faith by appropriate proceedings promptly initiated and diligently conducted and for which such reserves or other appropriate provision, if any, as shall be required by Applicable GAAP of the Issuer shall have been made;

(B) Security granted pursuant to or in connection with any netting or set-off arrangements entered into in the ordinary course of trading (including, for the avoidance of doubt, any cash pooling or cash management arrangements in place with a bank or financial institution falling within paragraph (k) of the definition of Permitted Financial Indebtedness);

(C) statutory liens of landlords and liens of carriers, warehousemen, mechanics and materialment incurred in the ordinary course of business for sums not yet due or the payment of which is being contested in good faith by appropriate proceedings promptly initiated and diligently conducted and for which such reserves or other appropriate provision, if any, as shall be required by Applicable GAAP of the Issuer shall have been made;

(D) liens incurred or deposits made in the ordinary course of business in connection with (1) workers' compensation, unemployment insurance and other types of social security, or (2) other insurance maintained by the Group in accordance with Clause 24.9 (*Insurance*) of the Financing Agreement;

(E) any attachment or judgment lien, unless the judgment it secures shall not, within 60 days after the entry thereof, have been discharged or execution thereof stayed pending appeal, or shall not have been discharged within 60 days after the expiration of any such stay;

(F) Security and Quasi-Security existing on the date of the Financing Agreement as described in Schedule 6 ( *Existing Security and Quasi-Security*) of the Financing Agreement (or any replacement of Security or Quasi-Security in accordance with paragraph 3 of Schedule 15 (*Hedging Parameters*) of the Financing Agreement or any equivalent Security or Quasi-Security for Existing Financial Indebtedness that is a refinancing or replacement of Existing Financial Indebtedness) **provided that** the principal amount secured thereby is not increased (save that principal amounts secured by Security or Quasi-Security in respect of:

(1) Treasury Transactions where there are fluctuations in the mark-to-market exposures of those Treasury Transactions;

(2) Existing Financial Indebtedness under paragraph (a) of the definition where principal may increase by virtue of capitalisation of interest; and,

(3) the Banobras Facility, where further drawings may be made **provided that** the maximum amount outstanding under such facility does not exceed Mex$5,000,000,000 at any time, may be increased by the amount of such fluctuations or capitalisations, as the case may be);

(G) any Security or Quasi-Security permitted by the Administrative Agent, acting on the instructions of the Majority Participating Creditors;

(H) any Security created or deemed created pursuant to a Permitted Securitisation;

(I) any Security granted by any member of the Group to secure Financial Indebtedness under a Permitted Liquidity Facility **provided that**: (1) such Security is not granted in respect of assets that are the subject of the Transaction Security; and (2) the maximum aggregate amount of the Financial Indebtedness secured by such Security does not exceed $500,000,000 at any time;

(J) any Security granted by the Issuer or any member of the Group incorporated in Mexico in favour of a Mexican development bank (sociedad *nacional de crédito*) controlled by the government of Mexico (including Banco Nacional de Comercio Exterior, S.N.C., and Banco Nacional de Obras y Sevicios Publicos, S.N.C.) securing indebtedness of the members of the Group in an aggregate additional amount of such indebtedness not exceeding $250,000,000 (or its equivalent in any other currency);

(K) any Security or Quasi-Security granted in connection with any Treasury Transaction, excluding any Treasury Transaction described in Schedule 6 (*Existing Security and Quasi-Security*) of the Financing Agreement, that constitutes Permitted Financial Indebtedness **provided that** the aggregate value of the assets that are the subject of such Security or Quasi-Security does not exceed $200,000,000 (or its equivalent in other currencies) at any time;

(L) Security or Quasi-Security granted or arising over receivables, inventory, plant or equipment that are the subject of an arrangement falling within paragraph (e) of the definition of Permitted Financial Indebtedness;

(M) the Transaction Security including, for the avoidance of doubt, any sharing in the Transaction Security referred to in paragraph (f) of the definition of Permitted Financial Indebtedness;

(N) any Quasi-Security that is created or deemed created on shares of the Issuer under paragraph (q) of the definition of Permitted Disposals by virtue of such shares being held on trust for the holders of the convertible securities pending exercise of any conversion option, where such Quasi-Security is customary for such transaction;

(O) in addition to the Security and Quasi-Security permitted by the foregoing paragraphs (A) to (N), Security or Quasi-Security securing indebtedness of the Issuer and its Subsidiaries (taken as a whole) not in excess of $500,000,000.

"**Permitted Share Issue**" means:

(a) a Permitted Fundraising falling within paragraphs (a) or (b) of the definition thereof;

(b) an issue of shares by a member of the Group which is a Subsidiary of the Issuer to another member of the Group or the Issuer (and, where the member of the Group has a minority shareholder, to that minority shareholder on a pro rata basis) where (if the existing shares of the Subsidiary are the subject of the Transaction Security) the newly-issued shares also become subject to the Transaction Security on the same terms;

(c) an issue of shares by the Issuer to comply with an obligation in respect of any Executive Compensation Plan; or

(d) an issue of common equity securities of the Issuer either (i) by the Issuer or (ii) to any member of the Group where the Issuer or that member of the Group has an obligation to deliver such shares to a counterparty pursuant to the terms of a Permitted Put/Call Transaction or an obligation to deliver such shares to the holder(s) of convertible or exchangeable securities falling within paragraph (f)(i) of the definition of Permitted Financial Indebtedness pursuant to the terms of such convertible or exchangeable securities.

"**Promissory Notes**" means the promissory notes described in Part II of Schedule 1 ( *The Original Participating Creditors*) of the Financing Agreement.

"**Quarter Date**" means each of 31 March, 30 June, 30 September and 31 December.

"**Quasi Security**" means an arrangement or transaction in which the Issuer or any Subsidiary:

(i) sells, transfers or otherwise disposes of any of its assets on terms whereby they are or may be leased to or re-acquired by an Obligor or any other member of the Group;

(ii) sells, transfers or otherwise disposes of any of its receivables on recourse terms;

(iii) enters into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or

(iv) enters into any other preferential arrangement having a similar effect,

in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.

"**Receiver**" means a receiver or receiver and manager or administrative receiver of the whole or any part of the Charged Properties.

"**Reference Period**" means a period of four consecutive Financial Quarters.

"**Relevant Convertible/Exchangeable Obligations**" means: (a) any Financial Indebtedness incurred by any person the terms of which provide that satisfaction of the principal amount owing under such Financial Indebtedness (whether on or prior to its maturity and whether as a result of bankruptcy, liquidation or other default by such person or otherwise) shall occur solely by delivery of shares or common equity securities in the Issuer; and (b) any Financial Indebtedness under any Subordinated Optional Convertible Securities.

"**Relevant Existing Financial Indebtedness**" means any Existing Financial Indebtedness set out in:

(i) paragraph (a) of the definition of Existing Financial Indebtedness to the extent that it relates to Part I.C ( *Mexican Public Debt Instruments*) of Schedule 10 (*Existing Financial Indebtedness*) of the Financing Agreement; and/or

(ii) paragraph (b) of the definition of Existing Financial Indebtedness to the extent it relates to Part II.A ( *Short Term Certificados Bursatiles*) of Schedule 10 (*Existing Financial Indebtedness*) of the Financing Agreement and any Short-Term Certificados Bursatiles that replace or refinance such Existing Financial Indebtedness.

"**Relevant Prepayment Period**" means the period commencing on the date of receipt of the proceeds of a Permitted Fundraising by a member of the Group and ending on the later of:

(a) the date falling 364 days thereafter; and

(b) the 2012 CB Maturity Date.

"**Resignation Letter**" means a document substantially in the form set out in Part I of Schedule 11 ( *Form of Resignation Letter*) of the Financing Agreement.

"**Responsible Officer**" means the Chief Financial Officer and/or Chief Controlling Officer of the Issuer or a person holding equivalent status (or higher).

"**S&P**" means Standard & Poor's Rating Services, a division of The McGraw-Hill Companies, Inc., or any successor thereto from time to time.

"**SEC**" means the U.S. Securities Exchange Commission and any successor thereto.

"**Secured Parties**" means each Finance Party from time to time to the Financing Agreement and any Receiver or Delegate.

"**Security** " means a mortgage, charge, pledge, lien, security trust or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

"**Security Agent**" means Wilmington Trust (London) Limited as security agent of the Secured Parties.

"**Security Providers**" means the Original Security Providers and any Additional Security Provider other than any Original Security Provider or Additional Security Provider which has ceased to be a Security Provider pursuant to Clause 28.6 ( *Resignation of a Security Provider*) of the Financing Agreement and has not subsequently become an Additional Security Provider pursuant to Clause 28.3 ( *Additional Guarantors and Additional Security Providers*) of the Financing Agreement, and "**Security Provider**" means any of them.

"**Short-Term Certificados Bursatiles**" means any securities with a term of not more than 12 months issued by the Issuer in the Mexican capital markets with the approval of the Mexican National Banking and Securities Banking and Securities Commission and listed on the Mexican Stock Exchange.

"**Spanish GAAP**" means the Spanish General Accounting Plan ( *Plan general Contable*) approved by Royal Decree 1514/2007 as in effect from time to time and consistent with those used in the preparation of the most recent audited financial statements referred to in Clause 22.1 ( *Financial Statements*) of the Financing Agreement.

"**Subordinated Optional Convertible Securities**" means any Financial Indebtedness incurred by any member of the Group meeting the requirements of paragraph (f)(i) of the definition of Permitted Financial Indebtedness (including that no principal repayments are scheduled (and no call options can be exercised) until after the Termination Date) (which may, for the avoidance of doubt, include a fundraising the proceeds of which are applied in accordance with Clause 13.4 (Mandatory prepayments: Relevant

*Convertible/Exchangeable Obligations*) of the Financing Agreement)) the terms of which provide that such indebtedness is capable of optional conversion into equity securities of the Issuer and that repayment of principal and accrued but unpaid interest thereon is subordinated (under terms customary for an issuance of such Financial Indebtedness) to all senior Financial Indebtedness of the Issuer (including, but not limited to, all Exposures of Participating Creditors) except for: (i) indebtedness that states, or is issued under a deed, indenture, agreement or other instrument that states, that it is subordinated to or ranks equally with any Subordinated Optional Convertible Securities and (ii) indebtedness between or among members of the Group.

"**Subsidiary**" means in relation to any company or corporation, a company or corporation:

(a) which is controlled, directly or indirectly, by the first mentioned company or corporation;

(b) more than half the issued share capital of which is beneficially owned, directly or indirectly by the first mentioned company or corporation; or

(c) which is a Subsidiary of another Subsidiary of the first mentioned company or corporation,

and for this purpose, a company or corporation shall be treated as being controlled by another if that other company or corporation is able to direct its affairs and/or to control the composition of its board of directors or equivalent body.

"**Syndicated Bank Facilities**" means the facilities described in Part IA of Part II of Schedule 1 ( *The Original Participating Creditors*) of the Financing Agreement.

"**TARGET2**" means the Trans-European Automated Real-time Gross Settlement Express Transfer payment system, which utilizes a single shared platform and which was launched on 19 November 2007.

"**TARGET Day**" means any day on which TARGET2 is open for the settlement of payments in euro.

"**Tax**" means any tax, levy, impost, duty or other charge, deduction or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

"**Termination Date**" means 14 February 2014.

"**Transaction Security**" means the Security created or expressed to be created in favour of the Security Agent pursuant to the Transaction Security Documents.

"**Transaction Security Documents**" means each of the documents listed as being a Transaction Security Document in paragraph 2(e) of Part I of Schedule 2 (*Conditions Precedent*) of the Financing Agreement and any document required to be delivered to the Administrative Agent under paragraph 3(d) of Part II of Schedule 2 (*Conditions Precedent*) of the Financing Agreement together with any other document entered into by any Obligor creating or expressed to create any Security over all or any part of its assets in respect of the obligations of any of the Obligors under any of the Finance Documents (and any other Debt Documents).

"**Treasury Transactions**" means any derivatives transaction (i) that is a rate swap transaction, swap option, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, credit protection transaction, credit swap, credit default swap, credit default option, total return swap, credit spread transaction, repurchase transaction, reverse repurchase transaction, buy/sell-back transaction, securities lending transaction, weather index transaction or forward purchase or

sale of a security, commodity or other financial instrument or interest (including any option with respect to any of these transactions), (ii) that is a type of transaction that is similar to any transaction referred to in clause (i) above that is currently, or in the future becomes, recurrently entered into in the financial markets and that is a forward, swap, future, option or other derivative (including one or more spot transactions that are equivalent to any of the foregoing) on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, economic indices or measures of economic risk or value, or other benchmarks against which payments or deliveries are to be made or (iii) that is a combination of these transactions, it being understood that any Executive Compensation Plan permitted by the Financing Agreement is not a Treasury Transaction.

"**USPP Note**" means a note issued under the USPP Note Agreement.

"**USPP Note Agreement**" means the consolidated, amended and restated note purchase agreement described in Part II of Schedule 1 ( *Original Participating Creditors)* of the Financing Agreement.

"**USPP Note Guarantee**" means the consolidated, amended and restated note guarantee granted in favour of the USPP Noteholders.

"**USPP Noteholders**" means the holders from time to time of the notes issued pursuant to the USPP Note Agreement.

**Exhibit 4.48**

**RAFAEL MONJO CARRIÓ**
**NOTARY**
**C/ Monte Esquinza, 6**
**28010 MADRID**
**Phone: 91 418 32 80 Fax: 91 319 90 46**

**COPY**

***ACCESSION DEED TO THE PLEDGE OF SHARES IN CEMEX ESPAÑA, S.A. EXECUTED BY THE ENTITIES "THE BANK OF NEW YORK MELLON" AND "CEMEX ESPAÑA, S.A."***

NUMBER FIVE HUNDRED AND THIRTY-SIX

In Madrid, my place of residence, on March twenty fifth two thousand and thirteen.

Before me, **Mr. RAFAEL MONJO CARRIÓ,** a Notary of Madrid and its Illustrious College,

**APPEARS:**

**Ms. MARTA GARCÍA LÓPEZ,** of full age, a Spanish citizen, domiciled for the purposes hereof at the Calle José Abascal, 45 in Madrid, holding valid Spanish Identity Document number 02634855-K,

**Mr. JUAN PELEGRI Y GIRON,** of full age, domiciled for the purposes hereof in Madrid, Calle Hernández de Tejada, number l, Madrid, holding valid Spanish Identity Document number 01489996-X, and

**INVOLVED:**

**The first party,** for and on behalf of **THE BANK OF NEW YORK MELLON** (hereinafter, the "**Bank**"), incorporated in accordance with the laws of the State of New York (United States of America), with registered office at One Wall Street, New York, N.Y. 10286, United States of America, which in turn acts on behalf and for the benefit of the holders of senior secured notes (Senior Secured Notes, in its name in English) **maximum aggregate principal amount of U.S.$600 million**, at an interest rate of 5.875%, maturing in 2019, subject to prepayment assumptions that are planned, issued under the Indenture, governed by the laws of the State of New York (United States of America ), signed on March 25, 2013 by, among others, CEMEX, S.A.B. de C.V., a corporation with variable capital incorporated under the laws of Mexico, as issuer, and The Bank of New York Mellon, as trustee (hereinafter, together with its subsequent amendments or novations, the "**Notes Issue**").

Makes effective use of power, as affirmed, in his favor conferred by deed executed before New York Notary Public Mr. Danny Lee on twenty-fifth of March two thousand and thirteen,

photocopy which has been shown to me whose original has been duly apostilled under The Hague Convention of October 5 th 1961 and I, the Notary, will attach to this deed, by diligence when it is delivered to me.

**The second party ,** for and on behalf of **CEMEX ESPAÑA, S.A.,** a company governed by the laws of Spain (formerly Compañía Valenciana de Cementos Portland, S.A.), with registered office at Calle Hernández de Tejada, number 1, Madrid, whose corporate objects are, among others is the manufacturing, commercialization, marketing and distribution of all kinds of bags and packaging or similar article, paper or any other material, for the packaging of cement, etc..

It was incorporated for an indefinite period in deed authorized by Valencia Notary Mr. Juan Bautista Roch Contelles on 30 th April 1917, adapted to the laws now in force in a deed authorized by Valencia Notary Mr. Antonio Soto Bisquert on 13th July 1990; the incorporation was REGISTERED in the Companies Register of Valencia at volume 122, Companies book 28, public section 3 of companies, sheet 354, entry 1; adaptation is entered in the aforementioned Register, at volume 2854, book 10, general section, folio sheet-V2533, entry 165; the company's articles of association were also consolidated in another public instrument authorized by Madrid Notary Mr. Antonio Francés y de Mateo on August 12 th 1993, document number 6796, which was taken to entry 200.

The company moved to the aforementioned current registered office as provided for in a deed authorized by Valencia Notary Mr. Antonio Soto Bisquert on 29th June 1995, document number 1489, and this was entered in the Companies Register of Madrid, at volumes 9743 and 9744, Companies Book section 8, folios 1 and 166, sheet number M-156542, entries 1 and 2.

Its name was changed to its current name by means of a resolution adopted by the Company's General Shareholders' Meeting held on twenty-fourth June two thousand and two, publicly recorded before me on the same day, under document number 662, taken to entry 122 of the registration sheet.

It is provided with C.I.F. number: A46004214.

It makes use of existing powers, according to its favor conferred by resolution adopted by the Board of Directors of the Company at its meeting held on March twelve of two thousand thirteen in a public deed executed before me on March 20, two thousand thirteen under the order number 487 of my protocol, I am credited with a certified copy of the deed that I have in view.

For the purposes stated in Article 98 of Law 24/2001, and in accordance with the Resolution of the Directorate General of Registries and Notaries of April 12, 2002, I note that in my opinion I consider sufficient accredited representative powers to formalize this Deed on the terms set out below.

REAL TITLE. – I, the Notary, expressly state that I have fulfilled the obligation of title owner identification according to Act 10/2010, of April 28, whose result is recorded in the authorized act approved before my testimony, on November 11 of two thousand ten, under number 2.387 of order of my protocol, which has not changed since then, according to statements by the representative of the Company.

In my view, the appearing parties, acting for their aforementioned principals, have full legal capacity and a lawful interest as required to execute this **ACCESSION DEED TO THE PLEDGE AGREEMENT OF SHARES IN CEMEX ESPAÑA, S.A.** and, therefore, using their aforementioned powers, and for all statutory purposes,

**WHEREAS**

**I.** That, under contract in a policy issued by me on November 8, 2012 inscribed with the number 3530 in Section A of its register (hereinafter, the "Pledge Policy") (hereinafter, the "**Pledge Agreement**"), CEMEX, S.A.B. de C.V. and New Sunward Holding B.V. constituted certain pledge property rights (hereinafter, the "**Pledges**") on the shares of CEMEX ESPAÑA, S.A.

**II.** That, pursuant to the Relationship Agreement between Creditors (as defined in this Pledge Policy), creditors of CEMEX group under notes issues such as the Notes Issue shall be considered Additional Notes Creditors (Additional Notes Creditors) and, therefore, of Secured Parties (Secured Parties) on the terms provided in the Relationship Agreement between Creditors and the Pledge Policy, and may get the benefit of the Pledges by adhering to the Pledge Policy as provided in Clause 16 thereof.

**IV.** In accordance with the provisions of Clause 16 of the Pledge Policy, the Secured Parties in whose benefit the Security Agent acted, which includes the Bank, as trustee of the note holders of the Issue Notes, may adhere to the Pledge Policy and ratify its contents, accepting the Pledges established in their favor as security for the relevant Secured Notes, by appearing before me.

Those accessions will be carried out by signing the relevant accession deed or agreement of accession and without the need of a new consent by the pledgers or the credit pledgers because they previously gave their consent in the Relationship Contract between Creditors and in the Pledge Policy.

**V.** The Bank expressly states that the accession referred to in the Articles of this Deed is formalized merely as an instrument enforcing the rights conferred on the Bank in the Pledge Policy which provides for such accession, in order for the payment obligations under the Notes Issue to be secured with a security interest consisting of a first ranking pledge in and to the Shares (as defined in the Pledge Agreement), concurrently with the remaining Pledges.

**VI.** Now therefore, the Bank wishes to execute this Accession Deed (hereinafter, the " **Deed**") in conformity with the following

**ARTICLES**

**ONE.- ACCESSION TO THE PLEDGE POLICY** The Bank hereby adheres to, ratifies and approves all the terms of the Pledge Policy and declares that it is acquainted with the full

contents thereof, and therefore that such accession shall be fully valid and effective and accepting that the payment obligations arising from the Notes Issue dated March twenty-fifth two thousand and thirteen shall be secured with a security interest consisting of a first ranking pledge in and to the Shares (as defined in the Pledge Agreement), concurrently with the remaining Pledges.

The Bank REQUESTS that I, the Notary, **NOTIFY** this accession to **WILMINGTON TRUST (LONDON) LIMITED**, domiciled for the purposes hereof at Third Floor, 1 King's Arms Yard, London, United Kingdom, EC2R 7AF (attention Sajada Afzail), as Collateral Agent and I, the Notary, accept such request.

CEMEX España, S.A. appears herein for the purpose of acknowledging this accession.

**TWO.- GOVERNING LAW AND JURISDICTION.**

2.1 This Deed is subject to general Spanish law.

2.2 The Parties expressly submit to the jurisdiction and authority of the Courts and Tribunals of the capital city of Madrid for any and all matters arising in connection with the validity, construction, performance and enforcement of this Deed.

DATA PROCESSING.- The appearing parties accept that their details and a copy of the identity documents shall be included in the Notary's filing systems for the purpose of discharging the duties of a practicing notary and communicate data as provided for in the Public Administrations Act and, as the case may be, to the Notary taking over from the undersigned Notary in due course. They may exercise their rights of access, correction, erasure and objection at the authorizing Notary's Office.

Thus they have stated and declared.

And I, the Notary, HEREBY CERTIFY:

a.- That I have identified the appearing parties by means of their identity documents, referred to in the recitals, which have been shown to me.

b.- That the appearing parties have capacity and have a lawful interest, in my view, for the purposes hereof.

c.- That this deed conforms to the law and to the appearing parties' free and duly informed intention.

d.- That this public instrument was read out to the signatories, who were first advised of their right to do so on their own, which they have used, and that they confirm that they have become duly acquainted with the full contents hereof, which they consent to, all in accordance with article 193 of the Notarial Regulations.

e.- I, the Notary, certify that this public instrument has been written up on nine series AS sheets of notarial paper, numbers 2401598 and the following five in correlative order, I, the Notary, attest. -. Followed by the appearing parties' signatures.- : RAFAEL MONJO CARRIÓ. Initialed- - The Notary's Seal.-

**CERTIFICATION.**- This is to certify that on twenty-sixth of March two thousand and thirteen I left before the Post Office branch 2825494, E.O. MINISTRY OF PUBLIC ADMINISTRATIONS, for Recorded delivery and confirmation of receipt the document for service of the foregoing certificate, and that the officer in charge of the service has provided me with the slip showing shipment number RR26804063 5ES.

And I certify all of the above and that this certification is written up after the originating deed on the last series AS sheet of exclusive paper for notarial purposes number 6791650. Madrid, twenty-sixth of March two thousand and thirteen.-

Signed.- RAFAEL MONJO CARRIÓ.- Initialed.- The Notary's Seal.

**CERTIFICATION.**- I, the Notary, issue this certification to certify that I have on today's date, twenty-sixth of April two thousand and thirteen, been provided with a copy of the power of attorney executed by THE BANK OF NEW YORK MELLON before New York Notary Public Mr. Danny Lee on twenty-fifth of March two thousand and thirteen, duly authenticated with The Hague Apostille, and I, the Notary, consider that the bank's representative is duly empowered to perfect the deed subject hereof. A copy of that power has been attached hereto as an integral part hereof.

And with nothing further to record, I, the Notary, do certify that I have issued these presents on this single sheet of notarial paper. Signed.- RAFAEL MONJO CARRIÓ.- Initialed.- The Notary's seal.-

**Exhibit 8.1**

The following is a list of the significant subsidiaries of CEMEX, S.A.B. de C.V. as of December 31, 2012, including the name of each subsidiary and its country of incorporation.

| | | |
|---|---|---|
| 1. | CEMEX México, S.A. de C.V. | MEXICO |
| 2. | CEMEX Agregados, S.A. de C.V. | MEXICO |
| 3. | CEMEX Central, S.A. de C.V. | MEXICO |
| 4. | CEMEX Concretos, S.A. de C.V. | MEXICO |
| 5. | CEMEX España, S.A. | SPAIN |
| 6. | CEMEX España Operaciones, S.L.U. | SPAIN |
| 7. | Cemex Corp. | USA |
| 8. | CEMEX Construction Materials Florida, LLC | USA |
| 9. | CEMEX Materials, LLC | USA |
| 10. | CEMEX Finance LLC | USA |
| 11. | CEMEX, Inc. | USA |
| 12. | CEMEX Construction Materials Pacific, LLC | USA |
| 13. | Gulf Coast Portland Cement Co. | USA |
| 14. | CEMEX Southeast LLC | USA |
| 15. | Ready Mix USA LLC | USA |
| 16. | CEMEX Colombia S.A. | COLOMBIA |
| 17. | Assiut Cement Company | EGYPT |
| 18. | CEMEX Beton Ile de France (SAS) | FRANCE |
| 19. | Cemento Bayano, S.A. | PANAMA |

**Exhibit 12.1**

**Certification of the Principal Executive Officer of**
**CEMEX, S.A.B. de C.V.**
**Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002**

**CERTIFICATIONS**

I, Lorenzo H. Zambrano, certify that:

1. I have reviewed this annual report on Form 20-F of CEMEX, S.A.B. de C.V.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the company as of, and for, the periods presented in this report;
4. The company's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the company and have:
   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the company, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
   (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
   (c) Evaluated the effectiveness of the company's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
   (d) Disclosed in this report any change in the company's internal control over financial reporting that occurred during the period covered by the annual report that has materially affected, or is reasonably likely to materially affect, the company's internal control over financial reporting; and

5. The company's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the company's auditors and the audit committee of the company's board of directors (or persons performing the equivalent functions):

   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the company's ability to record, process, summarize and report financial information; and

   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the company's internal control over financial reporting.

Date: April 23, 2013

/s/ Lorenzo H. Zambrano

Lorenzo H. Zambrano
Chief Executive Officer
CEMEX, S.A.B. de C.V.

**Exhibit 12.2**

**Certification of the Principal Financial Officer of**
**CEMEX, S.A.B. de C.V.**
**Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002**

**CERTIFICATIONS**

I, Fernando A. González, certify that:

1. I have reviewed this annual report on Form 20-F of CEMEX, S.A.B. de C.V.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the company as of, and for, the periods presented in this report;
4. The company's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the company and have:
   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the company, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
   (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
   (c) Evaluated the effectiveness of the company's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
   (d) Disclosed in this report any change in the company's internal control over financial reporting that occurred during the period covered by the annual report that has materially affected, or is reasonably likely to materially affect, the company's internal control over financial reporting; and

5. The company's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the company's auditors and the audit committee of the company's board of directors (or persons performing the equivalent functions):

   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the company's ability to record, process, summarize and report financial information; and

   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the company's internal control over financial reporting.

Date: April 23, 2013

/s/ Fernando A. González

Fernando A. González
Executive Vice President of Finance and Administration and
Chief Financial Officer
CEMEX, S.A.B. de C.V.

**Exhibit 13.1**

**Certification of the Principal Executive and Financial Officers of**
**CEMEX, S.A.B. de C.V.**
**Pursuant to 18 U.S.C. Section 1350,**
**as Adopted Pursuant to**
**Section 906 of the Sarbanes-Oxley Act of 2002**

In connection with the Annual Report on Form 20-F of CEMEX, S.A.B. de C.V. (the "Company") for the year ended December 31, 2012, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), Lorenzo H. Zambrano, as Chief Executive Officer of the Company, and Fernando A. González, as Executive Vice President of Finance and Administration and Chief Financial Officer of the Company, each hereby certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of his knowledge:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company as of the dates and periods set forth therein.

/s/ Lorenzo H. Zambrano

Name: Lorenzo H. Zambrano
Title: Chief Executive Officer
Date: April 23, 2013

/s/ Fernando A. González

Name: Fernando A. González
Title: Executive Vice President of Finance and Administration and Chief Financial Officer
Date: April 23, 2013

This certification is furnished as an exhibit to the Report and accompanies the Report pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and shall not be deemed filed by the Company for purposes of Section 18 of the Securities Exchange Act of 1934, as amended.

**Exhibit 14.1**

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

The Board of Directors and Stockholders
CEMEX, S.A.B. de C.V.:

We consent to the incorporation by reference in (i) the Registration Statement on Form 5-8 (File No. 333-13970) of CEMEX, S.A.B. de C.V., (ii) the Registration Statement on Form S-8 (File No. 333-83962) of CEMEX, S.A.B. de C.V., (iii) the Registration Statement on Form S-8 (File No. 333-86090) of CEMEX, S.A.B. de C.V., (iv) the Registration Statement on Form S-8 (File No. 333-128657) of CEMEX, S.A.B. de C.V. and (v) the Registration Statement on Form F-3 (File No. 333-161787) of CEMEX, S.A.B. de C.V. of our reports dated April 23, 2013, with respect to the consolidated balance sheets of CEMEX, S.A.B. de C.V. and subsidiaries (the Company) as of December 31, 2012 and 2011, and the related consolidated statements of operations, comprehensive loss, changes in stockholders' equity, and cash flows for each of the years in the three-year period ended December 31, 2012, and the effectiveness of internal control over financial reporting as of December 31, 2012, which reports appear in the December 31, 2012 Annual Report on Form 20-F of CEMEX, S.A.B. de C.V.

KPMG Cardenas Dosal, S.C.

/s/ Celin Zorrilla Rizo

Monterrey, N.L., México
April 23, 2013

**Exhibit 15.1**

**Disclosure of Mine Safety and Health Administration ("MSHA") Safety Data**

Section 1503(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act") requires certain disclosures by companies required to file periodic reports under the Securities Exchange Act of 1934 that operate mines regulated under the Mine Act. CEMEX's U.S. quarry and mining operations are subject to MSHA regulation under the U.S. Federal Mine Safety and Health Act of 1977 (the "Mine Act"). MSHA inspects the Company's quarries and mines on a regular basis and issues various citations and orders when it believes a violation has occurred under the Mine Act. Whenever MSHA issues a citation or order, it also generally proposes a civil penalty, or fine, related to the alleged violation. Citations or orders can be contested and appealed, and as part of that process, are often reduced in severity and amount, and are sometimes dismissed.

In January 2012, the SEC issued final rules and regulations implementing the mine safety disclosure requirements of Section 1503(a) of the Dodd-Frank Act. Pursuant to those rules and regulations, we have provided the information below for mining operations in the United States only. The Dodd-Frank Act and the implementing rules and regulations thereunder do not apply to mining and quarry operations outside the U.S.

The information in the table below reflects citations and orders MSHA issued to the Company during the year ended December 31, 2012. The data was compiled primarily from the data maintained on MSHA's public website as of January 30, 2013. In evaluating this information, consideration should also be given to factors such as: (i) the number of citations and orders may vary depending on the size and operation of the mine, (ii) the number of citations issued may vary from inspector to inspector and mine to mine, and (iii) citations and orders may be contested and appealed, and in that process, may be reduced in severity and amount, and may be dismissed.

| Mine ID number[1] | Mine or Operating Name | Section 104 Significant and Substantial Citations[2] | Section 104(b) Orders[3] | Section 104(d) Citations and Orders[4] | Section 110(b)(2) Violations[5] | Section 107(a) Orders[6] | Total dollar value of MSHA assessments proposed[7] | Total number of Mining Related Fatalities | Received Notice of Pattern of Violations Under Section 104(e) yes/no | Received Notice of Potential to Have Pattern under section 104(e) yes/no |
|---|---|---|---|---|---|---|---|---|---|---|
| 800078 | Alico Road Quarry | 1 | 0 | 0 | 0 | 0 | 734 | 0 | no | no |
| 0103130 | B & R Sand & Gravel* | 0 | 0 | 0 | 0 | 0 | 200 | 0 | no | no |
| 4102885 | Balcones Plant | 8 | 0 | 0 | 0 | 0 | 43,060 | 0 | no | no |
| 4100994 | Balcones Quarry | 9 | 0 | 1 | 0 | 0 | 9,534 | 0 | no | no |
| 0100578 | Bellwood Sand Plant* | 0 | 0 | 0 | 0 | 0 | 100 | 0 | no | no |
| 405701 | Black Mountain Quarry | 10 | 0 | 0 | 0 | 0 | 27,532 | 0 | no | no |
| 800800 | Brooksville Cement Plant | 0 | 0 | 0 | 0 | 0 | 700 | 0 | no | no |
| 800024 | Brooksville Quarry | 2 | 0 | 0 | 0 | 0 | 1,612 | 0 | no | no |
| 801287 | Brooksville South Cement Plant | 2 | 0 | 2 | 0 | 0 | 450 | 0 | no | no |
| 402763 | Cache Creek Quarry | 3 | 0 | 0 | 0 | 0 | 0 | 0 | no | no |
| 3503508 | Canby Pit | 0 | 0 | 0 | 0 | 0 | 500 | 0 | no | no |
| 800511 | Card Sound Quarry | 1 | 0 | 0 | 0 | 0 | 324 | 0 | no | no |
| 200988 | CEMEX - 19th Ave | 5 | 0 | 0 | 0 | 0 | 4,783 | 0 | no | no |
| 202585 | CEMEX - APEX | 0 | 0 | 0 | 0 | 0 | 300 | 0 | no | no |
| 202606 | CEMEX - Camp Verde | 1 | 0 | 0 | 0 | 0 | 2,828 | 0 | no | no |
| 200717 | CEMEX - Casa Grande | 0 | 0 | 0 | 0 | 0 | 208 | 0 | no | no |
| 202601 | CEMEX - County 19 | 0 | 0 | 0 | 0 | 0 | 208 | 0 | no | no |
| 201249 | CEMEX - Globe / Bixby | 3 | 0 | 0 | 0 | 0 | 702 | 0 | no | no |
| 202851 | CEMEX - Gray Mountain | 4 | 0 | 0 | 0 | 0 | 2,874 | 0 | no | no |

| Mine ID number[1] | Mine or Operating Name | Section 104 Significant and Substantial Citations[2] | Section 104(b) Orders[3] | Section 104(d) Citations and Orders[4] | Section 110(b)(2) Violations[5] | Section 107(a) Orders[6] | Total dollar value of MSHA assessments proposed[7] | Total number of Mining Related Fatalities | Received Notice of Pattern of Violations Under Section 104(e) yes/no | Received Notice of Potential to Have Pattern under section 104(e) yes/no |
|---|---|---|---|---|---|---|---|---|---|---|
| 200722 | CEMEX - Hwy 95 | 0 | 0 | 0 | 0 | 0 | 200 | 0 | no | no |
| 202355 | CEMEX - Maricopa | 2 | 0 | 0 | 0 | 0 | 920 | 0 | no | no |
| 202571 | CEMEX - McCormick | 1 | 0 | 0 | 0 | 0 | 778 | 0 | no | no |
| 2600789 | CEMEX - Paiute Pit | 8 | 0 | 2 | 0 | 0 | 54,873 | 0 | no | no |
| 202670 | CEMEX - Pima | 0 | 0 | 0 | 0 | 0 | 227 | 0 | no | no |
| 202849 | CEMEX - Prescott / Fain | 2 | 0 | 0 | 0 | 0 | 770 | 0 | no | no |
| 203023 | CEMEX - Sacaton | 0 | 0 | 0 | 0 | 0 | 200 | 0 | no | no |
| 2602082 | CEMEX - Sierra Stone Quarry | 4 | 0 | 0 | 0 | 0 | 23,737 | 0 | no | no |
| 202062 | CEMEX - Sierra Vista | 1 | 0 | 0 | 0 | 0 | 776 | 0 | no | no |
| 202753 | CEMEX - West Valley | 0 | 0 | 0 | 0 | 0 | 276 | 0 | no | no |
| 3300161 | Cemex Fairborn Cement Plant | 2 | 0 | 0 | 0 | 0 | 2,104 | 0 | no | no |
| 400173 | Clayton Plant | 0 | 0 | 0 | 0 | 0 | 954 | 0 | no | no |
| 0900053 | Clinchfield Plant | 4 | 0 | 0 | 0 | 0 | 5,939 | 0 | no | no |
| 801271 | Davenport Sand Mine | 0 | 0 | 0 | 0 | 0 | 200 | 0 | no | no |
| 100016 | Demopolis Plant Cemex Inc | 7 | 0 | 0 | 0 | 0 | 10,471 | 0 | no | no |
| 4103816 | East Loop 375 Sand Plt | 0 | 0 | 0 | 0 | 0 | 200 | 0 | no | no |
| 401891 | Eliot Plant | 3 | 0 | 0 | 0 | 0 | 950 | 0 | no | no |
| 4503089 | English Pit | 1 | 0 | 0 | 0 | 0 | 1,916 | 0 | no | no |
| 4500577 | Everett Pit & Plant | 0 | 0 | 0 | 0 | 0 | 200 | 0 | no | no |
| 800519 | FEC Quarry | 1 | 0 | 0 | 0 | 0 | 1,711 | 0 | no | no |
| 4503424 | Granite Falls Quarry | 0 | 0 | 0 | 0 | 0 | 327 | 0 | no | no |
| 4000840 | Knoxville Cement Plant | 3 | 0 | 0 | 0 | 0 | 8,474 | 0 | no | no |
| 1500040 | Kosmos Cement Battletown Quarry | 2 | 0 | 0 | 0 | 0 | 952 | 0 | no | no |
| 1504469 | KOSMOS Cement Co. | 21 | 0 | 0 | 0 | 0 | 107,187 | 0 | no | no |
| 801015 | Krome Quarry | 2 | 0 | 0 | 0 | 0 | 1,983 | 0 | no | no |
| 2900445 | La Luz Pit | 2 | 0 | 0 | 0 | 0 | 362 | 0 | no | no |
| 801269 | Lake Wales Sand Mine | 0 | 0 | 0 | 0 | 0 | 100 | 0 | no | no |
| 402843 | Lapis Plant | 2 | 0 | 0 | 0 | 0 | 7,751 | 0 | no | no |
| 401896 | Lemon Cove Plant | 2 | 0 | 0 | 0 | 0 | 1,373 | 0 | no | no |
| 500344 | Lyons Cement Plant Cemex Inc | 25 | 1 | 3 | 0 | 1 | 98,046 | 0 | no | no |
| 405216 | Lytle Creek Pit | 3 | 0 | 0 | 0 | 0 | 1,741 | 0 | no | no |
| 4101066 | McCombs Quarry | 1 | 0 | 0 | 0 | 0 | 262 | 0 | no | no |
| 4100046 | McKelligon Canyon | 2 | 0 | 0 | 0 | 0 | 2,311 | 0 | no | no |
| 800046 | Miami Cement Plant | 5 | 0 | 0 | 0 | 0 | 56,594 | 0 | no | no |
| 4104331 | Mobile Crusher #1 | 0 | 0 | 0 | 0 | 0 | 100 | 0 | no | no |
| 404140 | Moorpark Quarry | 1 | 0 | 0 | 0 | 0 | 276 | 0 | no | no |
| 4100060 | Odessa Cement Plant | 12 | 1 | 0 | 0 | 0 | 35,256 | 0 | no | no |
| 801216 | Palmdale Sand Mine | 0 | 0 | 0 | 0 | 0 | 100 | 0 | no | no |
| 4503692 | Portable #2 | 0 | 0 | 0 | 0 | 0 | 200 | 0 | no | no |
| 403623 | Red Hill | 1 | 0 | 0 | 0 | 0 | 162 | 0 | no | no |
| 0103290 | Reed Pit #509 | 0 | 0 | 0 | 0 | 0 | 600 | 0 | no | no |
| 200758 | Rinker Materials Bullhead | 0 | 0 | 0 | 0 | 0 | 100 | 0 | no | no |

| Mine ID number[1] | Mine or Operating Name | Section 104 Significant and Substantial Citations[2] | Section 104(b) Orders[3] | Section 104(d) Citations and Orders[4] | Section 110(b)(2) Violations[5] | Section 107(a) Orders[6] | Total dollar value of MSHA assessments proposed[7] | Total number of Mining Related Fatalities | Received Notice of Pattern of Violations Under Section 104(e) yes/no | Received Notice of Potential to Have Pattern under section 104(e) yes/no |
|---|---|---|---|---|---|---|---|---|---|---|
| 401897 | Rockfield Plant | 4 | 0 | 0 | 0 | 0 | 2,238 | 0 | no | no |
| 800918 | S C L Quarry | 0 | 0 | 0 | 0 | 0 | 100 | 0 | no | no |
| 0103302 | Sardine South Pit #505 | 0 | 0 | 0 | 0 | 0 | 500 | 0 | no | no |
| 4103278 | South Quarry | 1 | 0 | 0 | 0 | 0 | 1,107 | 0 | no | no |
| 401895 | Tracy Kerlinger Plant | 3 | 0 | 0 | 0 | 0 | 2,737 | 0 | no | no |
| 0103359 | Tuscaloosa Sand* | 1 | 0 | 0 | 0 | 0 | 540 | 0 | no | no |
| 3800127 | Union Sand Mine | 0 | 0 | 0 | 0 | 0 | 276 | 0 | no | no |
| 2902128 | Vado Quarry | 6 | 0 | 0 | 0 | 0 | 3,712 | 0 | no | no |
| 400281 | Victorville Cement Plant | 7 | 0 | 0 | 0 | 0 | 14,622 | 0 | no | no |
| 4104308 | West Quarry | 0 | 0 | 0 | 0 | 0 | 208 | 0 | no | no |
| 3503596 | West Salem Aggregate | 0 | 0 | 0 | 0 | 0 | 200 | 0 | no | no |

* Sites sold by the Company, effective July 1, 2012. This data represents citations, orders, violations, assessments, etc. for the period of January 1, 2012 through June 30, 2012.

(1) MSHA assigns an identification number to each mine or operation and may or may not assign a separate identification number to related facilities. The information provided in this table is presented by mine identification number.

(2) Represents the total number of citations issued by MSHA for violation of health or safety standards that could significantly and substantially contribute to a serious injury if left unabated.

(3) Represents the total number of orders issued, which represents a failure to abate a citation under section 104(a) within the period prescribed by MSHA. This results in an order of immediate withdrawal from the area of the mine affected by the condition until MSHA determines that the violation has been abated.

(4) Represents the total number of citation and orders issued by MSHA for unwarrantable failure to comply with mandatory health or safety standards.

(5) Represents the total number of flagrant violations identified.

(6) Represents the total number of imminent danger orders issued under section 107(a) of the Mine Act.

(7) Amounts represent the total dollar value of proposed assessments received from MSHA and do not necessarily relate to the citations or orders issued by MSHA during the period or to the pending legal actions reported below.

The table below sets forth the total number of reportable legal actions for the twelve months ended December 31, 2012.

| | | Legal Actions Pending as of Last Day of Period (December 31, 2012) (#)[8] | | | | | | Legal Actions Initiated During Period (#) | Legal Actions Resolved During Period (#) |
|---|---|---|---|---|---|---|---|---|---|
| Mine ID Number | Mine or Operating Name | Contests of Citations/ Orders | Contests of Proposed Penalties | Complaints for Compensation | Complaints of Discharge / Discrimination/ Interference | Application for Temporary Relief | Appeals to FMSHRC | | |
| 800078 | Alico Road Quarry | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 9 |
| 4102885 | Balcones Plant | 12 | 12 | 0 | 0 | 0 | 0 | 12 | 2^^ |
| 4100994 | Balcones Quarry | 5 | 5 | 0 | 0 | 0 | 0 | 5 | 0 |

| Mine ID Number | Mine or Operating Name | Legal Actions Pending as of Last Day of Period (December 31, 2012) (#)[8] Contests of Citations/ Orders | Contests of Proposed Penalties | Complaints for Compensation | Complaints of Discharge / Discrimination/ Interference | Application for Temporary Relief | Appeals to FMSHRC | Legal Actions Initiated During Period (#) | Legal Actions Resolved During Period (#) |
|---|---|---|---|---|---|---|---|---|---|
| 0100578 | Bellwood* | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 12 |
| 405701 | Black Mountain Quarry | 45 | 35^ | 0 | 0 | 0 | 0 | 10 | 36 |
| 800800 | Brooksville Cement Plant | 1 | 1 | 0 | 0 | 0 | 0 | 1 | 0 |
| 800024 | Brooksville Quarry | 2 | 2 | 0 | 0 | 0 | 0 | 0 | 0 |
| 801287 | Brooksville South Cement Plant | 2 | 0^ | 0 | 0 | 0 | 0 | 2 | 13 |
| 402763 | Cache Creek Quarry | 9 | 0^ | 0 | 0 | 0 | 0 | 9 | 0 |
| 800511 | Card Sound Quarry | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 |
| 200722 | CEMEX - Hwy 95 | 2 | 2 | 0 | 0 | 0 | 0 | 2 | 0 |
| 2602082 | CEMEX - Sierra Stone Quarry | 3 | 3 | 0 | 0 | 0 | 0 | 0 | 0 |
| 800750 | Center Hill Mine | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 |
| 400173 | Clayton Plant | 21 | 21 | 0 | 0 | 0 | 0 | 7 | 5 |
| 0900053 | Clinchfield Plant | 4 | 4 | 0 | 0 | 0 | 0 | 1 | 0 |
| 3500965 | Coyote Springs Sand & Gravel | 1 | 0^ | 0 | 0 | 0 | 0 | 1 | 0 |
| 100016 | Demopolis Plant Cemex Inc | 4 | 0^ | 0 | 0 | 0 | 0 | 4 | 0 |
| 4402341 | Eden Quarry | 3 | 3 | 0 | 0 | 0 | 0 | 0 | 0 |
| 401891 | Eliot Plant | 13 | 7^ | 0 | 0 | 0 | 0 | 6 | 6 |
| 800519 | FEC Quarry | 9 | 9 | 0 | 0 | 0 | 0 | 2 | 3 |
| 4503039 | Fisher Quarry | 2 | 0^ | 0 | 0 | 0 | 0 | 2 | 2^^ |
| 4503424 | Granite Falls Quarry | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 |
| 801035 | Inglis Quarry | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 |
| 4000840 | Knoxville Cement Plant | 22 | 22 | 0 | 0 | 0 | 0 | 3 | 44 |
| 1500040 | Kosmos Cement Battletown Quarry | 1 | 0^ | 0 | 0 | 0 | 0 | 1 | 0 |
| 1504469 | KOSMOS Cement Co. | 18 | 18 | 0 | 0 | 0 | 0 | 18 | 6 |
| 801015 | Krome Quarry | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 |
| 2900445 | La Luz Pit | 2 | 0^ | 0 | 0 | 0 | 0 | 2 | 0 |
| 401896 | Lemon Cove Plant | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 3 |
| 500344 | Lyons Cement Plant Cemex Inc | 27 | 27 | 0 | 0 | 0 | 0 | 23 | 54 |
| 4101066 | McCombs Quarry | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 |
| 4100046 | McKelligon Canyon | 13 | 13 | 0 | 0 | 0 | 0 | 0 | 0 |
| 800046 | Miami Cement Plant | 23 | 23 | 0 | 0 | 0 | 0 | 12 | 46 |
| 4100060 | Odessa Cement Plant | 24 | 10^ | 0 | 0 | 0 | 0 | 15 | 7 |
| 801216 | Palmdale Sand Mine | 2 | 2 | 0 | 0 | 0 | 0 | 0 | 0 |
| 4503692 | Portable #2 | 1 | 0^ | 0 | 0 | 0 | 0 | 1 | 0 |
| 800918 | S C L Quarry | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 |
| 4103278 | South Quarry | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 |
| 401895 | Tracy Kerlinger Plant | 0 | 0 | 0 | 0 | 0 | 0 | 2 | 2 |
| 2902128 | Vado Quarry | 2 | 2 | 0 | 0 | 0 | 0 | 2 | 0 |
| 400281 | Victorville Cement Plant | 13 | 6^ | 0 | 0 | 0 | 0 | 12 | 1 |
| 4104308 | West Quarry | 1 | 0^ | 0 | 0 | 0 | 0 | 1 | 0 |
| 3503596 | West Salem Aggregate | 1 | 0^ | 0 | 0 | 0 | 0 | 1 | 0 |

^ As of December 31, 2012, the penalty had not yet been assessed or not yet contested.

^^ Indicates citations inadvertently omitted from prior year reporting and resolved during the current reporting period.

(8) Pending legal actions before the Federal Mine Safety and Health Review Commission (the "Commission") as required to be reported by Section 1503(a)(3) of the Act.

The following provides additional information regarding the types or categories of proceedings that may be brought before the commission.

A Contest Proceedings - a contest proceeding may be filed with the Commission by an operator to challenge the issuance of a citation or order issued by MSHA;

B Civil Penalty Proceedings - a civil penalty proceeding may be filed with the Commission by an operator to challenge a civil penalty MSHA has proposed for a violation contained in a citation or order;

C Compensation Proceedings - a compensation proceeding may be filed with the Commission by miners entitled to compensation when a mine is closed by certain closure orders issued by MSHA. The purpose of the proceeding is to determine the amount of compensation if any, due to miners idled by the orders;

D (i) Discrimination Proceedings - a discrimination proceeding involves a miner's allegation that he or she has suffered adverse employment action because he or she engaged in activity protected under the Mine Act, such as making a safety complaint;

(ii) Temporary Reinstatement Proceedings - a temporary reinstatement proceeding involves cases in which a miner has filed a complaint with MSHA stating that he or she has suffered discrimination and the miner has lost his or her position;

E Applications for Temporary Relief-applications for temporary relief of any order issued under Section 104; and

F Appeals of judges' decisions or orders to the FMSHRC.