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# 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, 2010**

**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, (011-5281) 8888-8888, (011-5281) 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)**

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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.

9,798,571,935 CPOs
20,043,602,184 Series A shares (including Series A shares underlying CPOs)
10,021,801,092 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 ☒

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## 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 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 Mexican Financial Reporting Standards, or MFRS, which differ in significant respects from generally accepted accounting principles in the United States, or U.S. GAAP. Beginning on January 1, 2008, according to MFRS B-10, *Inflation Effects* ("MFRS B-10") inflationary accounting is only applied in a high-inflation environment, defined by MFRS B-10 as existing when the cumulative inflation for the preceding three years equals or exceeds 26%. Until December 31, 2007, inflationary accounting was applied to both CEMEX, S.A.B. de C.V. and all of its subsidiaries regardless of the inflation level of their respective countries. Beginning in 2008, only the financial statements of those subsidiaries whose functional currency corresponds to a country under high inflation are restated to take account of inflation. Designation of a country as a high or low inflation environment takes place at the end of each year, and inflation is applied or suspended prospectively. In 2008, only the financial statements of our subsidiaries in Costa Rica and Venezuela were restated. In 2009, we restated the financial statements of our subsidiaries in Egypt, Nicaragua, Latvia and Costa Rica. In 2010, we restated the financial statements of our subsidiaries in Egypt, Nicaragua and Costa Rica.

Beginning in 2008, MFRS B-10 eliminated the restatement of the financial statements for the period as well as the comparative financial statements for prior periods into constant values as of the date of the most recent balance sheet. Likewise, beginning in 2008, the amounts of the statement of operations, statement of cash flows and statement of changes in stockholders' equity are presented in nominal values; meanwhile, pursuant to MFRS B-10, amounts of financial statements for prior years are presented in constant Pesos as of December 31, 2007, the date in which inflationary accounting ceased to be generally applied.

Until December 31, 2007, the restatement factors applied to our consolidated financial statements of prior periods were calculated using the weighted average inflation and the fluctuation in the exchange rate of each country in which CEMEX operates relative to the Mexican Peso, weighted according to the proportion that our assets in each country represent of our total assets. Also, see note 24A to our consolidated financial statements for a description of the principal differences between MFRS and U.S. GAAP as they relate to us. Non-Peso amounts included in the financial statements are first translated into 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 Dollar amounts are then translated into Peso amounts at the CEMEX accounting rate, described under "Item 3 — Key Information — Mexican Peso Exchange Rates," as of the relevant period or date, as applicable.

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 Ps12.36 to U.S.$1.00, the CEMEX accounting rate as of December 31, 2010. 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, 2010 through June 10, 2011, the Peso appreciated by 4% 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, 2010 was Ps12.38 to U.S.$1.00 and on June 10, 2011 was Ps11.87 to U.S.$1.00.

See "Item 5 — Operating and Financial Review and Prospects — Status of our IFRS Migration Process."

## 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**

As of December 31, 2008, we had approximately Ps258.1 billion (U.S.$18.8 billion) of total debt, not including approximately Ps41.5 billion (U.S.$3.0 billion) of Perpetual Debentures (as defined below), which are not accounted for as debt under MFRS but are considered to be debt for purposes of U.S. GAAP. Most of our outstanding debt as of December 31, 2008 had been incurred to finance our acquisitions, including the acquisition of Rinker Group Limited, or Rinker, in 2007, and our capital expenditure programs. The acquisition of Rinker substantially increased our exposure in the United States, which in recent years has been experiencing a sharp and prolonged downturn in the housing and construction sectors. The downturn in the United States has had adverse effects on our U.S. operations, making it more difficult for us to achieve our goal of decreasing our acquisition-related leverage and, given extremely tight credit markets during the height of the economic crisis, made it increasingly difficult for us to refinance our acquisition-related debt. Nonetheless, after long negotiations, on August 14, 2009 we reached a comprehensive financing agreement with our major creditors, as subsequently amended, the "Financing Agreement." The Financing Agreement extended the maturities of approximately U.S.$15.1 billion in syndicated and bilateral bank facilities and private placement obligations. As part of the Financing Agreement, we pledged or transferred to a trustee under a security trust substantially all the shares of CEMEX México, S.A. de C.V., or 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., CEMEX Trademarks Holding Ltd., New Sunward Holding B.V., or New Sunward, and CEMEX España, S.A., or CEMEX España, as collateral (the "Collateral") and all proceeds of such Collateral, to secure our payment obligations under the Financing Agreement and under several other financing arrangements for the benefit of the participating creditors and holders of debt and other obligations that benefit from provisions in their instruments requiring that their obligations be equally and ratably secured. These subsidiaries collectively own, directly or indirectly, substantially all our operations worldwide.

Since the signing of the Financing Agreement, we have completed a number of capital markets transactions and asset disposals, the majority of the proceeds of which have been used to reduce the amounts outstanding under the Financing Agreement, to pay other debt not subject to the Financing Agreement and also to improve our liquidity position. In 2009 and 2010, such capital market transactions consisted of (i) a global offering of 1,495 million CPOs, directly or in the form of ADSs, for approximately U.S.$1.8 billion in net proceeds in September 2009; (ii) the issuance of approximately Ps4.1 billion (approximately U.S.$315 million) in mandatory convertible securities (the "Mandatory Convertible Securities"), in exchange for promissory notes previously issued by CEMEX, S.A.B. de C.V. in the Mexican capital markets (*Certificados Bursátiles*), or CBs, in December 2009; (iii) CEMEX Finance LLC's issuance of U.S.$1,250 million aggregate principal amount of its 9.50% Senior Secured Notes due 2016 (the "9.50% Dollar-denominated Notes"), and €350 million aggregate principal amount of its 9.625% Senior Secured Notes due 2017 (the "9.625% Euro-denominated Notes") in December 2009, and CEMEX Finance LLC's issuance of an additional U.S.$500 million aggregate principal amount of the 9.50% Dollar-denominated Notes (together with the 9.50% Dollar-denominated Notes and the 9.625% Euro-denominated Notes, the "December 2009 Notes") in January 2010; (iv) the issuance of our 4.875% Convertible Subordinated Notes due 2015 (the "2010 Optional Convertible Subordinated Notes") in March 2010; (v) CEMEX España, Luxembourg branch's issuance of U.S.$1,067,665,000 aggregate principal amount of its 9.25% Senior Secured Notes due 2020 (the "9.25% Dollar-denominated Notes") and €115,346,000 aggregate principal amount of its 8.875% Senior

Secured Notes due 2017 (the "8.875% Euro-denominated Notes" and, together with the 9.25% Dollar-denominated Notes, the "May 2010 Notes"), in exchange for Dollar-denominated 6.196% fixed-to-floating rate callable perpetual debentures (the "6.196% Perpetual Debentures"), Dollar-denominated 6.640% fixed-to-floating rate callable perpetual debentures (the "6.640% Perpetual Debentures"), Dollar-denominated 6.722% fixed-to-floating rate callable perpetual debentures (the "6.722% Perpetual Debentures") and Euro-denominated 6.277% fixed-to-floating rate callable perpetual debentures (the "6.277% Perpetual Debentures" and, together with the 6.196% Perpetual Debentures, the 6.640% Perpetual Debentures and the 6.722% Perpetual Debentures, the "Perpetual Debentures"), pursuant to a private placement exchange offer and consent solicitation (the "2010 Exchange Offer") directed to the holders of Perpetual Debentures in May 2010; and (vi) an early cash payment of approximately Ps4.0 billion (approximately U.S.$330 million) in long-term CBs following a public tender offer and the exercise of a call option in June 2010. 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."

As a result of the foregoing transactions, sales of assets, debt repayments and other activities, as of December 31, 2010, we had approximately Ps202,818 million (U.S.$16,409 million) of total debt, not including approximately Ps16,310 million (U.S.$1,320 million) of Perpetual Debentures, which are not accounted for as debt under MFRS but are considered to be debt for purposes of U.S. GAAP. In addition, as of December 31, 2010, we had reduced debt outstanding under the Financing Agreement by approximately U.S.$5.3 billion, or 35.4% of the original U.S.$15.1 billion principal amount.

Since the beginning of 2011, we have engaged in a number of significant financing transactions designed to lengthen our average debt maturities and improve our balance sheet.

On January 11, 2011, we issued U.S.$1.0 billion aggregate principal amount of our 9.000% Senior Secured Notes due 2018 (the "January 2011 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 January 2011 Notes is fully and unconditionally guaranteed by CEMEX México, New Sunward and CEMEX España. The January 2011 Notes are secured by a first-priority security interest over the Collateral and all proceeds of such Collateral. The net proceeds from the offering, of approximately U.S.$981 million, were used for general corporate purposes and the repayment of indebtedness, including (i) a prepayment of approximately U.S.$256 million of CBs that had been due in September 2011, (ii) a prepayment of approximately U.S.$218 million of CBs that had been due in January 2012, (iii) a prepayment of approximately U.S.$56 million of CBs that had been due in September 2011, and (iv) a repayment of U.S.$50 million of indebtedness under the Financing Agreement.

On January 19, 2011, we prepaid approximately U.S.$256 million of CBs that had been due in September 2011, for which we had created a CB reserve with the proceeds from the offering of the January 2011 Notes. In addition, on January 27, 2011, we prepaid approximately U.S.$218 million of CBs maturing in January 2012, or the January 2012 CBs, for which we had created a CB reserve with the proceeds from the offering of the January 2011 Notes.

On February 10, 2011, we made a prepayment of U.S.$50 million to reduce the principal amount due under the Financing Agreement. We made this prepayment with proceeds from the offering of the January 2011 Notes.

On March 4, 2011, we closed a private exchange (the "2011 Private Exchange") of €119,350,000 aggregate principal amount of the 6.277% Perpetual Debentures issued by C-10 EUR Capital (SPV) Limited and held by an investor for U.S.$125,331,000 aggregate principal amount of new 9.25% Dollar-denominated Notes, issued by CEMEX España, acting through its Luxembourg branch, and guaranteed by CEMEX, S.A.B. de C.V., CEMEX México and New Sunward (the "Additional 2020 Notes"). As a result of the 2011 Private Exchange, €119,350,000 in aggregate principal amount of the 6.277% Perpetual Debentures were cancelled. The Additional 2020 Notes are secured by a first-priority security interest over the Collateral and all proceeds of such Collateral. The exchange was effected in reliance upon the exemption from U.S. securities law registration provided by Regulation S under the Securities Act.

On March 15, 2011, we closed the offering of U.S.$977.5 million aggregate principal amount of 3.25% Convertible Subordinated Notes due 2016 (the "2016 Notes") and U.S.$690 million aggregate principal amount of 3.75% Convertible Subordinated Notes due 2018 (the "2018 Notes" and, together with the 2016 Notes, the "2011 Optional Convertible Subordinated Notes"), in transactions exempt from registration pursuant to Rule 144A and

Regulation S under the Securities Act. The aggregate principal amount of the 2011 Optional Convertible Subordinated Notes issued reflects the full exercise of the U.S.$177.5 million over-allotment option granted to the initial purchasers with respect to the 2016 Notes and the U.S.$90 million over-allotment option granted to the initial purchasers with respect to the 2018 Notes. We used approximately U.S.$128 million of the net proceeds from this offering to prepay CBs maturing in March 2012, and approximately U.S.$1,287 million to repay indebtedness under the Financing Agreement.

In March 2011, we prepaid approximately Ps691 million (approximately U.S.$56 million based on prevailing exchange rates as of December 31, 2010) of CBs, in connection with a private cash tender offer to holders of CBs in Mexico for up to approximately Ps999 million (approximately U.S.$81 million based on prevailing exchange rates as of December 31, 2010). After these prepayments, we had approximately Ps308 million (approximately U.S.$25 million based on prevailing exchange rates as of December 31, 2010) of CBs outstanding, which are due on September 15, 2011.

On April 5, 2011, we closed the offering of U.S.$800 million aggregate principal amount of Floating Rate Senior Secured Notes due 2015 (the "April 2011 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 April 2011 Notes is fully and unconditionally guaranteed by CEMEX México, New Sunward and CEMEX España. The April 2011 Notes are secured by a first-priority security interest over the Collateral and all proceeds of such Collateral. The net proceeds from the offering, approximately U.S.$788 million, were used to repay indebtedness under the Financing Agreement. We refer to the December 2009 Notes, the May 2010 Notes, the January 2011 Notes, the Additional 2020 Notes and the April 2011 Notes collectively, as the Senior Secured Notes.

On April 12, 2011, we obtained consents from the required lenders and our major creditors under the Financing Agreement to make certain amendments to the Financing Agreement to allow us to retain funds in the CB reserve from disposal proceeds, permitted fundraisings and cash in hand, to meet CBs maturing in April and September 2012.

We refer to the prepayments of CBs in January and March 2011, the prepayments to the Financing Agreement in February, March and April 2011, and additional repayments of indebtedness of approximately U.S.$59 million, collectively, as the 2011 Prepayments. For a more detailed description of the transactions completed after December 31, 2010, see "Item 5 — Operating and Financial Review and Prospects — Recent Developments — Recent Developments Relating to Our Indebtedness."

As of December 31, 2010, after giving *pro forma* effect to (1) the issuance of the January 2011 Notes, the 2011 Optional Convertible Subordinated Notes and the April 2011 Notes, (2) the 2011 Prepayments and (3) the 2011 Private Exchange, our total debt was approximately Ps208,100 million (U.S.$16,837 million), not including approximately Ps14,342 million (U.S.$1,160 million) of Perpetual Debentures, but including our debt not subject to the Financing Agreement, which was approximately Ps115,829 million (U.S.$9,372 million). Of such *pro forma* total debt amount, approximately Ps1,059 million (U.S.$86 million) matures during 2011; Ps4,717 million (U.S.$382 million) matures during 2012; Ps9,283 million (U.S.$751 million) matures during 2013; Ps99,956 million (U.S.$8,087 million) matures during 2014; and Ps93,085 million (U.S.$7,531 million) matures after 2014.

As of December 31, 2010, after giving *pro forma* effect to (1) the issuance of the January 2011 Notes, the 2011 Optional Convertible Subordinated Notes and the April 2011 Notes, and (2) the 2011 Prepayments, the Financing Agreement had the following semi-annual amortization schedule, with a final maturity of approximately U.S.$6.8 billion on February 14, 2014:

| Repayment Date | Cumulative repayment amount % | Original repayment amount % | Approximate required payment (in millions of Dollars) |
|---|---|---|---|
| June 2011* | 20.69% | 1.59% | — |
| December 2011* | 33.11% | 12.42% | — |
| June 2012* | 35.75% | 2.64% | — |
| December 2012* | 38.39% | 2.64% | — |
| June 2013* | 46.35% | 7.96% | — |
| December 2013 | 54.31% | 7.96% | U.S.$ 696 |
| February 2014 | 100.00% | 45.69% | U.S.$ 6,769 |

* Repaid in full.

The *pro forma* financial information giving effect to our most significant transactions completed after December 31, 2010 has been included in this annual report for the convenience of the reader.

**Risk Factors**

Many factors could have an 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 U.S., Mexico and Western Europe. Despite some aggressive measures taken by governments and central banks thus far, there is still a significant risk that these measures may not prevent several of the countries where we operate from falling into an even deeper and longer lasting recession. In the construction sector, declines in residential construction in several of our major markets have broadened and intensified in line with the spread and deterioration of the financial crisis. The adjustment process has been more severe in countries that experienced the largest housing market expansion during the years of high credit availability (such as the U.S., Spain, Ireland and the U.K.). 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 U.S., Mexico and Spain, 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.

In the U.S., the recession was longer and deeper than the previous two recessions during the 1990s and in early 2000, and the economy continues to languish. In December 2010, housing starts, the primary driver of cement demand in the residential sector, reached an annual rate of 586,900, according to the U.S. Census Bureau, which was less than 10% higher than the annual rate of 554,000 in 2009. The timing of a housing recovery remains uncertain given the current market environment, tight credit conditions and housing oversupply. As part of the announced government fiscal stimulus package, the U.S. Congress passed the American Recovery and Reinvestment Act of 2009, which provides approximately U.S.$85 billion for infrastructure spending. To date, however, spending under this program has not been entirely effective to offset the decline in cement and ready-mix concrete demand as a result of current economic conditions. The uncertain economic environment and tight credit conditions also adversely affected the U.S. industrial and commercial sectors during 2010, with contract awards — a leading indicator of construction activity — declining 17% in 2010 compared to 2009, according to FW Dodge. This combination of factors resulted in the worst decline in sales volumes that we have experienced in the United States in recent history. Our U.S. operations' domestic cement sales volumes were flat and ready-mix concrete sales volumes decreased approximately 7% in 2010 compared to 2009.

The Mexican economy has also been significantly and adversely affected by the financial crisis. Mexican dependence on the U.S. economy remains very important, and therefore, any downside to the economic outlook in the United States may hinder the recovery in Mexico. The crisis has also adversely affected local credit markets resulting in an increased cost of capital that may negatively impact companies' ability to meet their financial needs. During 2008, the Mexican Peso depreciated by 26% against the Dollar. During 2009 and 2010, the Mexican Peso had a mild recovery, appreciating by approximately 5% and 6%, respectively, against the Dollar. Exchange rate depreciation and/or volatility in the markets would adversely affect our operational and financial results. We cannot be certain that a contraction of Mexican economic output will not take place, which would translate into a more challenging outlook for the construction sector and its impact on cement and concrete consumption. According to the Mexican Statistics Office ( *Instituto Nacional de Estadística, Geografía e Informática,* or "INEGI"), spending on infrastructure-related projects increased approximately 1% for the full year 2010 compared to 2009, and approximately 15% for the full year 2009 compared to 2008. However, we cannot give any assurances that this trend will continue, as the Mexican government's plan to increase infrastructure spending could prove to be, as in other countries, difficult to implement in a timely manner and in the officially announced amounts. As a result of the current economic environment, our domestic cement and ready-mix concrete sales volumes in Mexico decreased approximately 4% in 2010 compared to 2009.

Many Western European countries, including the U.K., France, Spain, Germany and Ireland, have faced difficult economic environments due to the financial crisis and its impact on their economies, including the construction sectors. If this situation were to deteriorate further, our financial condition and results of operations could be further affected. The situation has been 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, or those more exposed to financial turmoil, such as the U.K. According to OFICEMEN, the Spanish cement trade organization, domestic cement demand in Spain declined 15% in 2010 compared to 2009. Our domestic cement and ready-mix concrete sales volumes in Spain decreased approximately 22% and 20%, respectively, in 2010 compared to 2009. In the U.K., according to the British Cement Association, domestic cement demand increased approximately 3% in 2010 compared to 2009. Our domestic cement sales volumes in the U.K. increased approximately 1%, while the ready-mix concrete sales volumes in the U.K. decreased approximately 3% in 2010 compared to 2009. In the construction sector, the residential adjustment could last longer than anticipated, while non-residential construction could experience a sharper decline than expected. Finally, the boost to infrastructure spending that is anticipated as a result of the stimulus packages that have been announced by most European countries could be lower than projected due to bureaucratic hurdles, delays in implementation or funding problems. If these risks materialize, our business, financial condition, and results of operations may be adversely affected. The important trade links with Western Europe make some of the Eastern European countries susceptible to the Western European recession. Large financing needs in these countries pose a significant vulnerability. Central European economies could face delays in implementation of European Union Structural Funds (funds provided by the European Union to member states with lowest national incomes per capita) related projects due to logistical and funding problems, which could have a material adverse effect on cement and/or ready-mix concrete demand. In addition, the current concerns about sovereign debt and the budget deficit levels of Greece, Ireland, Portugal, Spain and several other European Union countries have resulted in increased volatility and risk perception in the financial markets. The plan announced in May 2010 by the European Union and the International Monetary Fund to provide approximately €720 billion to support financial stability in Europe is designed to reduce liquidity risk and debt default probability of any individual European Union member. However, under these and similar plans, fiscal adjustments would need to be implemented in countries with unsustainable fiscal deficits, which likely will lead to a decrease in infrastructure investment in some countries, including Spain, which could have a material adverse effect on cement and/or ready-mix concrete demand and/or would delay any expected economic recovery.

The Central and South American economies also pose a downside risk in terms of overall activity. The financial downturn, lower exports to the U.S. 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 cement and ready-mix concrete consumption and/ or prices. Political or economic volatility in the South American, Central American or the Caribbean countries in which we have operations may also have an impact on cement prices and demand for cement and ready-mix concrete, which could adversely affect our business and results of operations.

The Asia-Pacific region will likely be affected if the economic landscape further deteriorates. An additional increase in country risk and/or decreased confidence among global investors would also limit capital flows and investments in the Asian region. In the Middle East region, lower oil revenues and tighter credit conditions could moderate economic growth and adversely affect construction investments. Our operations in the United Arab Emirates (the "UAE") have been adversely affected by credit concerns and the end of the construction boom. In addition, the accumulated housing overhang, the rapid decline in property values, and the radical change in the international financial situation could prompt a sudden adjustment of the residential markets in some of the countries in the region. The recent political instability in Egypt, which resulted in former President Hosni Mubarak resigning from his post on February 11, 2011, is currently causing a reduction in overall economic activity in Egypt, which is affecting demand for building materials, and interruptions in services, such as banking, which is also having a material adverse effect on our operations in Egypt.

If the economies of the 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.

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

The Financing Agreement has required us, beginning June 30, 2010, to comply with several financial ratios and tests, including a consolidated coverage ratio of EBITDA to consolidated interest expense of not less than (i) 1.75:1 for each semi-annual period beginning on June 30, 2010 through the period ending December 31, 2012 and (ii) 2.00:1 for the remaining semi-annual periods to December 31, 2013. In addition, the Financing Agreement allows us a maximum consolidated leverage ratio of total debt (including the perpetual debentures) to EBITDA for each semi-annual period not to exceed 7.75:1 for the period beginning June 30, 2010 and ending June 30, 2011, decreasing to 7.00:1 for the period ending December 31, 2011, and decreasing gradually thereafter for subsequent semi-annual periods to 4.25:1 for the period ending December 31, 2013. Our ability to comply with these ratios may be affected by current economic conditions and high volatility in foreign exchange rates and the financial and capital markets. Pursuant to the Financing Agreement, we (i) were prohibited from making aggregate capital expenditures in excess of U.S.$700 million for the year ended December 31, 2010 and (ii) are prohibited from making aggregate capital expenditures in excess of U.S.$800 million for the year ending December 31, 2011 and each year thereafter until the debt under the Financing Agreement has been repaid in full. For the years ended December 31, 2009 and 2010, we recorded U.S.$636 million and U.S.$555 million in capital expenditures, respectively.

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 (as defined in the Financing 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 Financing Agreement also contains a number of affirmative covenants that, among other things, require us to provide periodic financial information to our lenders. Pursuant to the Financing Agreement, however, a number of those covenants and restrictions will automatically cease to apply or become less restrictive if (i) we receive an investment-grade rating from two of Standard & Poor's, Moody's Investors Service, Inc. and Fitch Ratings; (ii) we reduce the indebtedness under the Financing Agreement by at least 50.96% (approximately U.S.$7.6 billion) from the original amount of U.S.$15 billion; (iii) our consolidated leverage ratio for the two most recently completed semi-annual testing periods is less than or equal to 3.5:1; and (iv) no default under the Financing Agreement is continuing. Restrictions that will cease to apply when we satisfy such conditions include the capital expenditure limitations mentioned above, any applicable margin increases that were due to a failure to meet amortization targets, 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 participating 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, there can be no assurance that we will be able to meet the conditions for these restrictions to cease to apply prior to the final maturity date under the Financing Agreement.

The Financing 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 or insolvency of CEMEX, any borrower under an existing facility agreement (as defined in the Financing Agreement) or any other of our material subsidiaries (as defined in the Financing 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; (viii) a change to the ownership of any of our subsidiary obligors under the Financing Agreement, unless the proceeds of such disposal are used to prepay Financing 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 August 14, 2009 limiting transfers of foreign exchange by any obligor for purposes of performing material obligations under the Financing Agreement; (xii) any material adverse change arising in the financial condition of CEMEX and each of its subsidiaries, taken as a whole, which more than 66.67% of the participating creditors determine would result in our failure, taken as a whole, to perform payment obligations under the existing facilities or the Financing Agreement; and (xiii) failure to comply with laws or our obligations under the Financing Agreement cease to be legal. If an event of default occurs and is continuing, upon the authorization of 66.67% of the participating creditors, the creditors have the ability to accelerate all outstanding amounts due under the existing facilities. Acceleration is automatic in the case of insolvency.

There can be no assurance that we will be able to comply with the restrictive covenants and limitations contained in the Financing 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.

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

As part of the Financing Agreement, we pledged or transferred to trustees under security trusts, as collateral, the Collateral and all proceeds of such Collateral to secure our payment obligations under the Financing Agreement and under a number of other financing arrangements for the benefit of the participating creditors and holders of debt and other obligations that benefit from provisions in their instruments requiring that their obligations be equally and ratably secured. The payment of principal, interest and premium, if any, on the Senior Secured Notes are secured by a first-priority security interest over the Collateral and all proceeds of such Collateral. As of December 31, 2010, after giving *pro forma* effect to (1) the issuance of the January 2011 Notes, the 2011 Optional Convertible Subordinated Notes and the April 2011 Notes, (2) the 2011 Prepayments and (3) the 2011 Private Exchange, the Collateral and all proceeds of such Collateral secured (i) Ps163,698 million (U.S.$13,244 million) aggregate principal amount of debt under the Financing Agreement, the Senior Secured Notes and other financing arrangements, and (ii) Ps14,342 million (U.S.$1,160 million) aggregate principal amount of dual-currency notes issued in connection with the Perpetual Debentures, which are not accounted for as debt under MFRS but are considered to be debt for purposes of U.S. GAAP. These subsidiaries collectively own, directly or indirectly, substantially all of our operations worldwide. Provided that no default has occurred which is continuing, as defined under the Financing Agreement, the Collateral will be released automatically if we meet specified debt reduction and financial covenant targets.

***The interest rate of our debt included in the Financing Agreement may increase if we do not meet certain amortization targets.***

Conditional interest rate increases that may occur with respect to our financial indebtedness included in the Financing Agreement could adversely affect our business. In general, our existing bank facilities that are included in

the Financing Agreement bear interest at a base rate LIBOR or EURIBOR plus, in each case, an applicable margin. The base rates, LIBOR and EURIBOR applicable to our existing bank facilities remain in place, and under the Financing Agreement, the applicable margin for each bank facility is set at 4.5% per annum; however, if we are unable to repay at least 50.96% (approximately U.S.$7.6 billion) of the aggregate initial exposures of the participating creditors between the closing of the Financing Agreement and December 31, 2011, the applicable margin will increase by 0.5% per annum, starting on January 1, 2012.

As of December 31, 2010, after giving *pro forma* effect to (1) the issuance of the January 2011 Notes, the 2011 Optional Convertible Subordinated Notes and the April 2011 Notes,and (2) the 2011 Prepayments, we had reduced indebtedness under the Financing Agreement by approximately U.S.$7.5 billion (calculated as prevailing exchanges rates on each payment date), thereby avoiding an interest rate increase that otherwise could have been applicable as of December 2010 pursuant to the terms of the Financing Agreement. We need to prepay an additional approximately U.S.$200 million under the Financing Agreement before December 31, 2011 to avoid an interest rate increase of 0.5% per annum that otherwise would be applicable pursuant to the terms of the Financing Agreement.

The private placement obligations subject to the Financing Agreement bear interest at a rate of 8.91% (except for the private placement obligations denominated in Japanese Yen, which bear a corresponding rate of 6.625%) per annum. The interest rate on such private placement obligations is subject to the same adjustment as described above. An interest rate increase due to a failure to meet amortization targets will cease to apply on the Covenant Reset Date (as defined in the Financing Agreement). There can be no assurance that we will be able to satisfy the requirements necessary to prevent such pricing increase.

***We have a substantial amount of debt maturing in the next several years, including a significant portion of debt not subject to the Financing Agreement, which could limit our ability to take advantage of investment opportunities. 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.***

As of December 31, 2010, after giving *pro forma* effect to (1) the issuance of the January 2011 Notes, the 2011 Optional Convertible Subordinated Notes and the April 2011 Notes, (2) the 2011 Prepayments and (3) the 2011 Private Exchange, we had approximately Ps208,100 million (U.S.$16,837 million) of total debt, not including approximately U.S.$1,160 million (Ps14,342 million) of Perpetual Debentures, which are not accounted for as debt under MFRS but are considered to be debt for purposes of U.S. GAAP, but including our debt subject to the Financing Agreement, which was approximately Ps92,271 million (U.S.$7,465 million). Of such *pro forma* total debt amount, approximately Ps1,059 million (U.S.$86 million) matures during 2011; approximately Ps4,717 million (U.S.$382 million) matures during 2012; approximately Ps9,283 million (U.S.$751 million) matures during 2013; approximately Ps99,956 million (U.S.$8,087 million) matures during 2014; and approximately Ps93,085 million (U.S.$7,531 million) matures after 2014.

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. Further, if we are unable to comply with our upcoming principal maturities under our indebtedness (including the Financing Agreement), or refinance our indebtedness, our debt could be accelerated. Acceleration of our debt would have a material adverse effect on our business and financial condition.

***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, receivables and inventory financing facilities, proceeds of debt and equity offerings and proceeds from asset sales.

As of December 31, 2010, we had U.S.$561 million in outstanding short-term working capital and receivables financing facilities, which consisted of four securitization programs with a combined funded amount of U.S.$539 million and U.S.$22 million outstanding in short-term CBs. Our accounts receivable securitization program in Spain, which had a funded amount of U.S.$117 million as of December 31, 2010, was extended for five years on May 5, 2011 and now expires on May 5, 2016. On May 19, 2010, we entered into a one-year accounts receivable securitization program for our U.S. operations for up to U.S.$300 million in funded amounts. As of December 31, 2010, we had U.S.$231 million in funded amounts under this program. On May 17, 2011, we extended this program two years for up to U.S.$275 million, and it now expires on May 17, 2013. The scheduled maturity for the securitization program in France, which had a funded amount of U.S.$57 million as of December 31, 2010, has been extended to September 30, 2011. The securitization program in Mexico, which had a funded amount of U.S.$134 million at December 31, 2010, expires on December 29, 2011, with the first principal payment (equal to approximately 16.66% of the program) due in August 2011 and the remainder in five equal monthly installments through the program's expiration date. We cannot ensure that, going forward, we will be able to roll over or renew these programs, which could adversely affect our liquidity.

The global equity and credit markets in the last few years have experienced significant price volatility, dislocations and liquidity disruptions, which have caused market prices of many stocks to fluctuate substantially and the spreads on prospective and outstanding debt financings to widen considerably. This volatility and illiquidity has materially and adversely affected a broad range of fixed income securities. As a result, the market for fixed income securities has experienced decreased liquidity, increased price volatility, credit downgrade events and increased defaults. Global equity markets have also been experiencing heightened volatility and turmoil, with issuers exposed to the credit markets being most seriously affected. The disruptions in the financial and credit markets may continue to adversely affect our credit rating and the market value of our common stock, our CPOs and our ADSs. If the current pressures on credit continue or worsen, and alternative sources of financing continue to be limited, we may be dependent on the issuance of equity as a source to repay our existing indebtedness, including meeting amortization requirements under the Financing Agreement. Although we have been able to raise debt, equity and equity linked capital following our entry into the Financing Agreement in August 2009, as capital markets recovered, 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, there is no guarantee that we will be able to successfully raise additional debt or equity capital at all or on terms that are favorable.

The Financing Agreement restricts us from incurring additional debt, subject to a number of exceptions. The debt covenant under the Financing Agreement permits us to incur a liquidity facility or facilities entered into with a participating creditor under the Financing Agreement in an amount not to exceed U.S.$1.0 billion (of which up to U.S.$500 million may be secured). In addition, the Financing Agreement requires proceeds from asset disposals, incurrence of debt and issuance of equity, and cash flow to be applied to the prepayments of the exposures of participating creditors subject to our right to retain cash on hand up to U.S.$650 million, 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 Financing Agreement), and to temporarily reserve proceeds from asset disposals, permitted refinancings and cash on hand, to be applied to the repayment of CBs that are scheduled to mature during 2012.

As a result of the current global economic environment and uncertain market conditions, we may not be able to complete asset divestitures on terms that we find economically attractive or at all.

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 payment maturities 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.***

We have issued a total of U.S.$4,743 million and €465 million aggregate principal amount of our Senior Secured Notes under the indentures governing the Senior Secured Notes. 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; (xiii) 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.

Each of the covenants is 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 and under other existing debt obligations, as a result of the cross-default provisions contained in the documentation governing such debt obligations. In the event of a default under the indentures governing the Senior Secured Notes, the holders of such 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 can offer no assurance that our assets would be sufficient to repay in full that indebtedness and our other indebtedness.

Furthermore, upon the occurrence of any event of default under the Financing 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 can offer no assurance that our assets will be sufficient to repay in full those amounts or to satisfy all of 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.

***Our ability to comply with our debt maturities in 2013 and subsequent years 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.***

In the short term, we intend to use our capital resources, cash flow from operations, proceeds from capital markets debt and equity offerings and proceeds from the sale of assets to repay debt in order to reduce our leverage, strengthen our capital structure and regain our financial flexibility. Our ability to comply with our payment obligations under the Financing Agreement and other indebtedness may depend in large part 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 Financing Agreement and other debt instruments, the current global economic environment and uncertain market conditions, we may not be able to complete asset divestitures on terms that we find economically attractive or at all. The current volatility of the credit and capital markets can significantly affect us due to the limited availability of funds to potential acquiring parties. The lack of acquisition financing in the current economic environment and existing relatively high levels of indebtedness among many industry peers may likely make it difficult for potential interested acquirers to purchase our assets. 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. Given market conditions at the time of any future asset sales, we can not assure you that we may not be forced to sell our assets at prices substantially lower than their fair market value.

If we are unable to complete asset divestitures and our cash flow or capital resources prove inadequate, we could face liquidity problems during 2013 and subsequent years and may not be able to comply with payment obligations under our indebtedness.

***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. The acquisition of Rinker substantially increased our exposure in the United States, which has been experiencing a prolonged downturn in the housing and construction sectors. The downturn in the United States has had adverse effects on our operations in the U.S., making it more difficult for us to achieve our goal of decreasing our acquisition-related leverage. We also may not be able to achieve all the anticipated cost savings from the Rinker acquisition. Our financial statements for the year ended December 31, 2008 included non-cash charges of approximately U.S.$1.5 billion for impairment losses in accordance with MFRS, of which approximately U.S.$1.3 billion related to impairment of goodwill (mainly related to the Rinker acquisition). Considering differences in the measurement of fair value, including the selection of economic variables, as well as the methodology for determining final impairment losses between MFRS and U.S. GAAP, our preliminary impairment losses in 2008 under U.S. GAAP amounted to approximately U.S.$4.9 billion, including the impairment losses determined under MFRS, of which approximately U.S.$4.7 billion related to impairment of goodwill. After finalizing our 2008 impairment exercise under U.S. GAAP during 2009, our impairment losses were reduced by approximately U.S.$71 million. See note 24 to our consolidated financial statements included elsewhere in this annual report.

During the last quarter of 2010, we performed, under MFRS, our annual goodwill impairment test. Based on this analysis, in 2010, we determined an impairment loss of goodwill for approximately Ps189 million (U.S.$15 million) associated with our reporting unit in Puerto Rico, which we acquired in July 2002, under MFRS. We did not recognize any additional goodwill impairment losses under U.S. GAAP for the year ended December 31, 2010. Although we currently are seeking to dispose of assets to reduce our overall leverage and the Financing 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 would be materially and adversely affected.

As a result of the sale of our operations in Australia, for the year ended December 31, 2009, we recognized a loss on sale, net of income tax, and the reclassification of foreign currency translation effects accrued in equity and included under “Other comprehensive income,” for an aggregate amount of approximately Ps5.9 billion (U.S.$446 million). This is reflected in a single line item of “Discontinued operations.” See note 3B to our consolidated financial statements included elsewhere in this annual report.

***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, there is no assurance that our use of such instruments will allow us to achieve these objectives due to the inherent risks in any derivatives transaction. For the years ended December 31, 2008, 2009 and 2010, we had net losses of approximately Ps15,172 million (U.S.$1.4 billion), Ps2,127 million (U.S.$156 million) and Ps956 million (U.S.$75 million), respectively, from financial instruments.

The 2008 losses resulted from a variety of factors, including losses related to changes in the fair value of equity derivative instruments attributable to the generalized decline in price levels in the capital markets worldwide and in our own shares, losses related to changes in the fair value of cross-currency swaps and other currency derivatives attributable to the appreciation of the Dollar against the Euro, and losses related to changes in the fair value of interest rate derivatives primarily attributable to the decrease in the five-year interest rates in Euros and Dollars.

During 2009, we reduced the aggregate notional amount of our derivatives, thereby reducing the risk of cash margin calls. This initiative 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,

which we finalized during April 2009. The Financing Agreement and other debt instruments significantly restrict our ability to enter into derivative transactions.

As of December 31, 2010, our derivative financial instruments that had a potential impact on our comprehensive financing result consisted of equity forward contracts on third party shares and equity derivatives under our own shares (including our capped call transactions in connection with the 2010 Optional Convertible Subordinated Notes, which we closed in March 2010), a forward instrument over the Total Return Index of the Mexican Stock Exchange and interest rate derivatives related to energy projects. See note 12C to our consolidated financial statements included elsewhere in this annual report. We have recently entered into capped call transactions with several financial institutions in connection with the issuance of the 2011 Optional Convertible Subordinated Notes. See "Item 5 — Operating and Financial Review and Prospects — Recent Developments — Recent Developments Relating to Our Indebtedness."

Most derivative financial instruments are subject to margin calls in case the threshold set by the counterparties is exceeded. If we resume using derivative financing instruments in the future, 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 income and our related ratios. 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 resume using derivative financing instruments, or with respect to our outstanding or new equity derivative positions, we may incur net losses from our derivative financial instruments. See "Item 5 — Operating and Financial Review and Prospects — Critical Accounting Policies — Derivatives Financial Instruments."

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

Our operations consume significant amounts of energy and fuel, the cost of which has significantly increased worldwide in 2011 and in recent years. Energy and fuel prices have recently increased and may continue to increase as a result of the political turbulence in Egypt, Libya and other countries in Africa and the Middle East. In an attempt to mitigate high energy and fuel costs and volatility, we have implemented the use of alternative fuels such as tires, biomass and household waste, which is designed to make us less vulnerable to price spikes. We have also implemented technical improvements in several facilities and entered into long-term supply contracts of petcoke and electricity to mitigate price volatility. Despite these measures, we cannot assure you that our operations would not be materially adversely affected in the future if energy and fuel costs increase.

***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 and industry conditions continue to deteriorate further, impairment charges may be recognized. Our charges for impairment may be materially greater under U.S. GAAP than under MFRS.***

As of December 31, 2010, approximately 40% of our total assets were intangible assets, of which approximately 69% (Ps142,094 million) corresponded to goodwill related primarily to our acquisitions of RMC Group, p.l.c., or RMC, and Rinker. Goodwill is recognized at the acquisition date based on the preliminary allocation of the purchase price to the fair value of the assets acquired and liabilities assumed. If applicable, goodwill is subsequently adjusted for any correction to the preliminary assessment given to the assets acquired and/or liabilities assumed within the twelve-month period following the purchase date.

Our consolidated financial statements have been prepared in accordance with MFRS, which differ significantly from U.S. GAAP with respect to the methodology used to determine the final impairment loss, when applicable, including the selection of key economic assumptions related to the determination of the discount rates used to assess our assets' fair value. Pursuant to our policy under MFRS, goodwill and other intangible assets of indefinite life are not amortized and are tested for impairment when impairment indicators exist or in the fourth quarter of each year, by determining the value in use of the reporting units to which those intangible assets relate (a reporting unit comprises multiple cash generating units), which is the result of the discounted amount of estimated future cash flows expected to be generated by the reporting units. An impairment loss is recognized under MFRS if the value in use is lower than the net book value of the reporting unit. We determine the discounted amount of

estimated future cash flows over a period of five years, unless a longer period is justified in a specific country, considering the economic cycle of the reporting units and prevailing industry conditions. Impairment tests are sensitive to the projected future prices of our products, trends in operating 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 after-tax discount rates, which are applied to after-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 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. See note 11B to our consolidated financial statements included elsewhere in this annual report.

During the fourth quarter of 2008, the global economic crisis caused financing scarcity in almost all productive sectors, resulting in a decrease in economic activity in all our markets and a worldwide downturn in macroeconomic indicators. This effect lowered the overall growth expectations within the countries in which we operate, particularly affecting the construction industry due to the cancellation or deferral of several investment projects. These conditions, which constitute an impairment indicator, remained during a significant portion of 2009. During the fourth quarters of 2010, 2009 and 2008, we performed our annual goodwill impairment testing under MFRS. In 2008, our test coincided with the negative economic environment previously described. For the year ended December 31, 2008, we recognized goodwill impairment losses under MFRS of approximately Ps18.3 billion (U.S.$1.3 billion), of which the impairment corresponding to the United States reporting unit was approximately Ps16.8 billion (U.S.$1.2 billion). The estimated impairment loss in the United States during 2008 was mainly related to the acquisition of Rinker in 2007 and overall was attributable to the negative economic situation expected in the markets during 2009 and 2010, particularly in the construction industry. For the year ended December 31, 2009, we did not recognize goodwill impairment losses despite the economic conditions prevailing during the year, considering that in such period, the main global stock markets started their stabilization and achieved growth as compared to the closing pricing levels in 2008. Likewise, the reference interest rates at the end of 2009 decreased with respect to their level in 2008 due to an increase in liquidity in the debt and equity markets, which slightly reduced the risk premium in the countries where we operate. These elements jointly generated a decrease in the discount rates in 2009 in comparison with the 2008 discount rates and consequently generated an increase in the value in use of the reporting units. For the year ended December 31, 2010, we recognized a goodwill impairment loss under MFRS of approximately Ps189 million (U.S.$15 million) associated with our reporting unit in Puerto Rico, which we acquired in July 2002. See notes 11 and 11B to our audited consolidated financial statements included elsewhere in this annual report.

As mentioned above, differences between MFRS and U.S. GAAP with respect to the methodology used to determine the final impairment loss, when applicable, including the selection of key economic assumptions related to the determination of the discount rates used to assess our assets' fair value, led to a materially greater impairment loss under U.S. GAAP, as compared to that recognized in our 2008 consolidated financial statements under MFRS. For the year ended December 31, 2008, we recognized goodwill impairment losses under U.S. GAAP of approximately U.S.$4.7 billion (compared to U.S.$1.3 billion under MFRS), of which an estimated impairment loss corresponding to the United States reporting unit was recognized for approximately U.S.$4.5 billion (compared to U.S.$1.2 billion of goodwill impairment losses recognized under MFRS) related to the completion of the second step required to allocate the fair value of the U.S. reporting unit's net assets. During 2009, we completed our U.S. GAAP analysis in connection with the year 2008 impairment exercise and reduced final impairment losses under U.S. GAAP by approximately U.S.$71 million. We did not recognize any additional goodwill impairment losses under U.S. GAAP for the year ended December 31, 2010.

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 both MFRS and U.S. GAAP. Such an impairment test could result in additional impairment charges which could be material to our financial statements.

***Our ability to repay debt and pay dividends depends on our subsidiaries' ability to transfer income and dividends to us.***

We are a holding company with no significant assets other than the stock of our direct and indirect subsidiaries and our holdings of cash and marketable securities. In general, our ability to repay debt and pay

dividends depends on the continued transfer to us of dividends and other income from our wholly-owned and non-wholly-owned subsidiaries. The Financing Agreement restricts CEMEX, S.A.B de C.V.'s ability to declare or pay cash dividends.

The ability of our subsidiaries to pay dividends, and make loans and other transfers to us 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 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 satisfaction of losses, if any, incurred by such subsidiary in previous fiscal years.

We may also be subject to exchange controls on remittances by our subsidiaries from time to time in a number of jurisdictions. In addition, our ability to receive funds from these subsidiaries may be restricted by covenants in the debt instruments and other contractual obligations of those entities.

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

***The instruments governing our debt contain cross-default and cross-acceleration provisions that may cause substantially all of the debt we have issued or incurred to become immediately due and payable as a result of a default under any one of our debt instruments.***

Instruments governing our debt contain certain affirmative and negative covenants. Our failure to comply with the obligations contained in indentures or other instruments governing our indebtedness could result in an event of default under the applicable instrument, which could result in the related debt and the debt issued under other instruments becoming immediately due and payable. In such event, we would need to raise funds from alternative sources, which may not be available to us on favorable terms, on a timely basis or at all. Alternatively, such default could require us to sell our assets and otherwise curtail operations in order to pay our creditors.

***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 coincide 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 Dollar-denominated obligations with revenues generated in Pesos or other currencies, as we do not generate sufficient revenue in Dollars from our operations to service all our Dollar-denominated obligations. 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 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 outstanding debt is denominated in Dollars. As of December 31, 2010, after giving *pro forma* effect to (1) the issuance of the January 2011 Notes, the 2011 Optional Convertible Subordinated Notes and the April 2011 Notes, (2) the 2011 Prepayments and (3) the 2011 Private Exchange, our Dollar-denominated debt represented approximately 75% of our total debt, not including approximately U.S.$965 million of Perpetual Debentures. Our Dollar-denominated debt must be serviced with funds generated by our subsidiaries.

Although the acquisition of Rinker increased our U.S. assets substantially, we nonetheless continue to rely on our non-U.S. assets to generate revenues to service our Dollar-denominated debt. Consequently, we have to use revenues generated in Pesos, Euros or other currencies to service our Dollar-denominated debt. 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 Dollar, could adversely affect our ability to service our debt. In 2010, Mexico, Spain, the United Kingdom, Germany, France and the Rest of Europe region (which includes our subsidiaries in Ireland, Poland, Croatia, Austria, Hungary, the Czech Republic, Latvia and other assets in the European region), our main non-Dollar-denominated operations, together generated approximately 57% of our total net sales in Peso terms (approximately 23%, 4%, 8%, 7%, 7% and 7%, respectively) before eliminations resulting from consolidation. In 2010, approximately 17% of our net sales in Peso terms were generated in the United States. During 2010, the Peso appreciated approximately 6% against the Dollar, the Euro depreciated approximately 7% against the Dollar and the Pound depreciated approximately 3% against the Dollar. If we enter into future 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 Pesos and also result in foreign exchange gains and losses as well as gains and losses on derivative contracts we may have entered into to hedge our exchange rate exposure.

In addition, as of December 31, 2010, our Euro denominated debt, after giving *pro forma* effect to (1) the issuance of the January 2011 Notes, the 2011 Optional Convertible Subordinated Notes and the April 2011 Notes, (2) the 2011 Prepayments, and (3) the 2011 Private Exchange, represented approximately 21% of our total debt, not including the €147 million aggregate principal amount of the 6.277% Perpetual Debentures outstanding after the completion of the 2011 Private Exchange.

***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 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, tax matters in Mexico, as well as antitrust investigations in Europe and antitrust actions by private parties in Florida. 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 (the "EPA") issued the final portland cement national emission standard for hazardous air pollutants under the federal Clean Air Act ("Portland Cement NESHAP"). This rule requires Portland cement facilities to limit emissions of mercury, total hydrocarbons, hydrochloric acid and particulate matter, and is scheduled to take effect in 2013. The EPA also promulgated New Source Performance Standards ("NSPS") for cement plants at the same time. The Company, along with others in its industry, has challenged these rules in administrative and judicial proceedings. It is too soon to predict the outcome of these challenges, although the EPA recently agreed to reconsider certain aspects of the rules. It did not, however, delay implementation of the rules, and it refused to reconsider certain aspects of the rules considered important to us. If the rules take effect as proposed, they could have a material impact on our business or results of operations.

In addition, the Company and others in its industry have challenged the EPA's final emissions standards for commercial and industrial solid waste incinerators ("CISWI"), which were published in March 2011. The

challenges assert, among other things, that the rules impermissibly overlap with the Portland Cement NESHAP and create ambiguity with respect to how portland cement kilns will be regulated in the future. If the rules take effect as proposed, they could have a material impact on our business or results of operations. In May 2011, the EPA announced that it will postpone implementation of the standards while it reconsiders portions of the rules and addresses related legal challenges. We cannot predict when the EPA will take action to implement the rules, nor whether the rules will be modified as a result of the pending administrative and judicial proceedings.

The EPA also has 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 ("RCRA"). We use 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 the 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 mix of our products away from ones that use CCPs as a raw material. Based on current information, we believe, although there can be no assurance, that such matters will not have a material impact on us.

Efforts to address climate change through domestic federal, state and regional laws and regulations, as well as through international agreements and the laws and regulations of other countries, to reduce the emissions of greenhouse gases ("GHGs") can create risks and uncertainties for our business. This is because the cement manufacturing process requires the combustion of large amounts of fuel and creates carbon dioxide ("$CO_2$") as a by product of the calcination process. Such risks could include costs to purchase allowances or credits to meet GHG emission caps, costs required to provide 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.

The EPA has promulgated a series of regulations pertaining to emissions of GHGs from industrial sources. The EPA issued a Mandatory Reporting of GHG 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 are in the process of complying with this regulation, and do not expect 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. 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 the EPA's rules, stationary sources, such as cement manufacturing, which are already regulated under the PSD program for non-GHG pollutants, would need to apply for a PSD permit as of January 2, 2011, for any GHG emissions increases above 75,000 tons/year of carbon dioxide equivalent ("$CO_2e$"). Therefore, new cement plants and existing plants undergoing modification which are major sources for non-GHG pollutants regulated under the Clean Air Act would need to acquire a PSD permit for construction or modification activities that increase $CO_2e$ by 75,000 or more tons/year, and would have to determine and install BACT controls for those emissions. Beginning in July 2011, any new source that emits 100,000 tons/year of $CO_2e$ or any existing source that emits 100,000 tons/year of $CO_2e$ and undergoes modifications that would emit 75,000 tons/year of $CO_2e$, must comply with PSD obligations. PSD permits can involve significant costs and delay.

In addition, environmental groups have challenged the recently issued NSPS for the cement sector claiming that EPA violated the Clean Air Act by failing to include limits for GHG emission. 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. It is not possible at this time to predict whether any federal climate change legislation may be enacted, what that legislation may provide or whether it may impact existing federal regulations or state laws or regulations on GHG emissions. Therefore, it is not possible at this time to predict how such legislation would impact our U.S. operations. However, any impositions by legislation of

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. In December 2008, the California Air Resource Board ("CARB") approved a plan to implement AB32, which includes a cap-and-trade program beginning in 2012. The program has been challenged in litigation, but if it takes effect, there can be no assurance that it will not have a material impact on our operations in California.

Also, 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. The company 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.

Finally, there are ongoing efforts on the international front to address GHG emissions. We are actively monitoring negotiations of the United Nations Framework Convention on Climate Change ("UNFCCC"), and we operate in countries that are signatories to the Kyoto Protocol, which establishes GHG emission reduction targets for developed country parties to the protocol, such as the countries of the European Union. Hence, our operations in the United Kingdom, Spain, Germany, Latvia and Poland are subject to binding caps on CO2 emissions imposed by member states of the European Union as a result of the European Commission's directive establishing the European Emissions Trading System ("ETS") to implement the Kyoto Protocol. Under this directive, companies receive from the relevant member states set limitations on the levels of CO2 emissions from their industrial facilities. 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. Failure to meet the emissions caps is subject to significant monetary penalties. For the years 2008 through 2012, the European Commission significantly reduced the overall availability of allowances. 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 setting out the rules, including benchmarks of GHG emissions performance, to be used by the Member States in calculating the number of allowances to be allocated free annually to industrial sectors, including the cement sector, that are deemed to be exposed to the risk of carbon leakage. Based on the criteria in the 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, assuming that the cement industry continues to be considered a trade exposed industry. As a result of continuing uncertainty regarding final allowances, however, 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 EU. For example, there is now a trading scheme in place in Croatia.

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 clean development mechanism ("CDM") projects under the Kyoto Protocol in emerging markets. We have registered 5 CDM projects. 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 an impact on our operating results.

Although we monitor other international efforts to regulate GHG emissions carefully, it is more difficult to estimate the potential impact of any international agreements under the UNFCCC or through other international or

multilateral instruments. A Conference of Parties was held in December 2010 in Cancún, Mexico, but no binding legal agreements were reached there.

In conclusion, 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.

In addition to the risks identified above arising from actual or potential statutory and regulatory controls, severe weather, rising seas, higher temperatures and other effects that may be attributable to climate change may impact any manufacturing sector in terms of direct costs (e.g., property damage and disruption to operations) and indirect costs (e.g., disruption to customers and suppliers, higher insurance premiums, potential lawsuits over emissions). Because the impacts of climate change are still subject to scientific debate and the related law is developing, we cannot at this time predict the impact that such matters may have on our future business or operations.

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). Under various laws, we may be subject to claims related to exposure to these or other substances. Based on our past experience, we believe, although there can be no assurance, that such claims will not have a material impact on our business or operations.

Environmental laws and regulations also impose liability and responsibility on present and former owners, operators or users of facilities and sites for hazardous substance contamination at such facilities and third-party disposal sites 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, there can be no assurance that these requirements will not change and that compliance will not adversely affect our operations in the future. Furthermore, we cannot provide assurance that existing or future circumstances or developments with respect to contamination will not require us to make significant remediation or restoration expenditures.

***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 results.

With the acquisitions of RMC in 2005 and Rinker in 2007, our geographic diversity has significantly increased. As of December 31, 2010, we had operations in Mexico, the United States, the United Kingdom, Spain, the Rest of Europe region, South America, Central America and the Caribbean region (which includes our subsidiaries in Colombia, Costa Rica, the Dominican Republic, Panama, Nicaragua, Puerto Rico, Guatemala, Argentina and other assets in the Caribbean region), Africa and the Middle East (which includes our subsidiaries in Egypt, the UAE and Israel) and Asia (which includes our subsidiaries in the Philippines, Thailand, Malaysia, Bangladesh and other assets in the Asian region).

We sold our operations in Australia on October 1, 2009. As of December 31, 2010, after eliminations resulting from consolidation, our operations in Mexico represented approximately 12% of our total assets, our operations in the U.S. represented approximately 43% of our total assets, our operations in Spain represented

approximately 10% of our total assets, our operations in the United Kingdom represented approximately 6% of our total assets, our operations in Germany represented approximately 2% of our total assets, our operations in France represented approximately 3% of our total assets, our operations in the Rest of Europe represented approximately 4% of our total assets, our operations in South America, Central America and the Caribbean represented approximately 6% of our total assets, our operations in Africa and the Middle East represented approximately 3% of our total assets, our operations in Asia represented approximately 2% of our total assets, and our other operations represented approximately 9% of our total assets. For the year ended December 31, 2010, before eliminations resulting from consolidation in Peso terms, our operations in Mexico represented approximately 23% of our net sales, our operations in the U.S. represented approximately 17% of our net sales, our operations in Spain represented approximately 4% of our net sales, our operations in the United Kingdom represented approximately 8% of our net sales, our operations in Germany represented approximately 7% of our net sales, our operations in France represented approximately 7% of our net sales, our operations in the Rest of Europe represented approximately 7% of our net sales, our operations in South America, Central America and the Caribbean represented approximately 11% of our net sales, our operations in Africa and the Middle East represented approximately 8% of our net sales, our operations in Asia represented approximately 3% of our net sales and our other operations represented approximately 5% of our net sales. Adverse economic conditions in any of these countries or regions may produce a negative impact on our net income.

For a geographic breakdown of our net sales for the year ended December 31, 2010, please see "Item 4 — Information on the Company — Geographic Breakdown of Our 2010 Net Sales."

Our operations in South America, Central America and the Caribbean 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. The government of Venezuela has paid no compensation to the CEMEX affiliates, CEMEX Caracas Investments B.V. and CEMEX Caracas II Investments B.V. (together, "CEMEX Caracas"), which held a 75.7% interest in CEMEX Venezuela, or to any other former CEMEX Venezuela shareholder. On October 16, 2008, CEMEX Caracas filed a request for arbitration against the government of Venezuela before the International Centre for Settlement of Investment Disputes, or ICSID, pursuant to the bilateral investment treaty between the Netherlands and Venezuela, seeking relief for the expropriation of their interest in CEMEX Venezuela. The ICSID arbitral tribunal, or ICSID Tribunal, has been constituted, and the arbitration is now in the merits phase, the jurisdiction aspects having been concluded by the issuance of the award discussed below. We are unable at this preliminary stage to estimate the likely range of potential recovery (if any) or to determine what position the government of Venezuela will take in these proceedings, the nature of the award that may be issued by the ICSID Tribunal, and the difficulties of collection of any possible monetary award issued to CEMEX Caracas, among other matters. See "Item 4 — Information on the Company — Regulatory Matters and Legal Proceedings — Other Legal Proceedings — Expropriation of CEMEX Venezuela and ICSID Arbitration."

Our operations in Africa and the Middle East have experienced instability as a result of, among other things, civil unrest, extremism and the deterioration of general diplomatic relations in the region. There can be no assurance 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 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 then issued a statement expressing a commitment to oversee an orderly transition of power by holding elections under a stable environment. Since then, 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 in countries in which we maintain operations, and ongoing threats of future terrorist attacks. There can be no assurance 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 results of operations and profitability if they occur with unusual intensity, during abnormal periods, or last longer than usual in our major markets, especially during peak construction periods.

***The Mexican tax consolidation regime may have an adverse effect on 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 will require 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. In 2010, we were required to pay, at the new 30% tax rate, 25% of Additional Consolidation Taxes resulting from eliminating the tax consolidation effects from 1999 to 2004. The remaining 75% is payable as follows: 25% in 2011, 20% in 2012, 15% in 2013 and 15% in 2014.

Additional Consolidation Taxes arising after 2004 will be 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%). Applicable taxes payable as a result of this tax reform will be increased by inflation adjustments as required by Mexican Income Tax Law (*Ley del Impuesto Sobre la Renta*). In connection with the changes in the tax consolidation regime in Mexico, as of December 31, 2009, we recognized a liability of approximately Ps10.5 billion (U.S.$799 million), of which approximately Ps8.2 billion (U.S.$628 million) were recognized under "Other non-current assets" in connection with the net liability recognized before the new tax law and that we expect to realize in connection with the payment of this tax liability; and approximately Ps2.2 billion (U.S.$171 million) were recognized under "Retained earnings," considering special provisions under MFRS, for the portion, 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 that represented the transfer of resources within such group. In December 2010, the tax authority in Mexico granted us the option to defer the calculation and payment of income taxes, until a subsidiary is disposed of or until CEMEX eliminates the tax consolidation, over 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. As a result, CEMEX reduced its estimated taxes payable by approximately Ps2,911 million against a credit to "Retained earnings." In our U.S. GAAP reconciliation of our 2010 and 2009 financial statements, the approximately income of Ps2.9 billion (U.S.$236 million) and expense of Ps2.2 billion (U.S.$171 million), respectively, recognized under "Retained earnings" under MFRS were reclassified under U.S. GAAP to income tax revenue for the period in 2010 and income tax expense for the period in 2009.

As of December 31, 2010, our estimated payment schedule of remaining taxes payable resulting from changes in the tax consolidation regime was as follows: approximately Ps501 million in 2011, approximately Ps667 million in 2012, approximately Ps667 million in 2013, approximately Ps1.9 billion in 2014 and approximately Ps6.3 billion in 2015 and thereafter. For the year ended December 31, 2010, we paid Ps325 million (U.S.$26 million) in

respect of Additional Consolidated Taxes. See notes 2N and 15A to our consolidated financial statements included elsewhere in this annual report.

On February 15, 2010, we filed a constitutional challenge (*juicio de amparo*) against this tax reform. However, we cannot assure you that we will prevail in this constitutional challenge.

***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 United States 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 United States 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 our 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.

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

ADS holders may be unable to exercise preemptive rights granted to our shareholders, in which case ADS holders could be substantially diluted following future equity or equity-linked offerings. Under Mexican law, whenever we issue new shares for payment in cash or in kind, we are generally required to grant preemptive rights to our 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.

***Non-Mexicans may not hold our Series A shares directly and must have them held in a trust at all times.***

Non-Mexican investors in our CPOs or ADSs may not directly hold the underlying Series A shares, but may hold them indirectly through our CPO trust. Upon the early termination or expiration of the 30-year term of our CPO trust, the underlying Series A shares of our CPOs held by non-Mexican investors must be placed in 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 transfers 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.

**Mexican Peso Exchange Rates**

Mexico has had no exchange control system in place since the dual exchange control system was abolished on November 11, 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 appreciated against the Dollar by approximately 5% in 2005, depreciated against the Dollar by approximately 2%, 1% and 26% in 2006, 2007 and 2008, respectively, appreciated against the Dollar by approximately 5% in 2009, and appreciated against the Dollar by approximately 6% in 2010. These percentages are based on the exchange rate that we use for accounting purposes, or the CEMEX accounting rate. CEMEX accounting rates represent 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 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 Pesos, expressed in 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 |
| 2005 | 10.62 | 10.85 | 11.38 | 10.42 | 10.63 | 10.89 | 11.41 | 10.41 |
| 2006 | 10.80 | 10.91 | 11.49 | 10.44 | 10.80 | 10.90 | 11.46 | 10.43 |
| 2007 | 10.92 | 10.93 | 11.07 | 10.66 | 10.92 | 10.93 | 11.27 | 10.67 |
| 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 |
| **Monthly (2010-2011)** | | | | | | | | |
| November | 12.49 | | 12.50 | 12.21 | 12.45 | | 12.57 | 12.21 |
| December | 12.36 | | 12.49 | 12.31 | 12.38 | | 12.47 | 12.33 |
| January | 12.12 | | 12.26 | 11.99 | 12.15 | | 12.25 | 12.04 |
| February | 12.11 | | 12.18 | 11.98 | 12.11 | | 12.18 | 11.97 |
| March | 11.97 | | 12.22 | 11.89 | 11.92 | | 12.11 | 11.92 |
| April | 11.50 | | 11.85 | 11.50 | 11.52 | | 11.86 | 11.52 |
| May | 11.57 | | 11.77 | 11.53 | 11.58 | | 11.77 | 11.51 |
| June(2) | 11.86 | | 11.91 | 11.64 | 11.87 | | 11.87 | 11.64 |

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

(2) June noon buying rates are through June 10, 2011. CEMEX accounting rates are through June 13, 2011.

On June 13, 2011, the CEMEX accounting rate was Ps11.86 to U.S.$1.00. Between January 1, 2011 and June 10, 2011, the Peso appreciated by 4% against the Dollar, based on the noon buying rate for Pesos.

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

**Selected Consolidated Financial Information**

The financial data set forth below as of and for each of the five years ended December 31, 2010 have been derived from our audited consolidated financial statements. The financial data set forth below as of December 31, 2010 and 2009 and for each of the three years ended December 31, 2010, 2009 and 2008 have been derived from, and should be read in conjunction with, and are qualified in their entirety by reference to, the consolidated financial statements and the notes thereto included elsewhere in this annual report. Our audited consolidated financial statements for the year ended December 31, 2010 were approved by our shareholders at the annual shareholders general meeting, which was held on February 24, 2011.

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 operating control. As a result, the financial data for the years ended December 31, 2006, 2007, 2008, 2009 and 2010 may not be comparable to that of prior periods.

Our consolidated financial statements included elsewhere in this annual report have been prepared in accordance with MFRS, which differ in significant respects from U.S. GAAP. Beginning on January 1, 2008, according to MFRS B-10, "Inflation effects," inflationary accounting is only applied in a high-inflation environment, defined by MFRS B-10 as existing when the cumulative inflation for the preceding three years equals or exceeds 26%. Until December 31, 2007, inflationary accounting was applied to all CEMEX subsidiaries regardless of the inflation level of their respective country. Beginning in 2008, only the financial statements of those subsidiaries whose functional currency corresponds to a country under high inflation are restated to take account of inflation. Designation of a country as a high or low inflation environment takes place at the end of each year and inflation is applied prospectively. During 2008, the financial statements of our subsidiaries in Costa Rica and Venezuela were restated; during 2009, the financial statements of our subsidiaries in Egypt, Nicaragua, Latvia and Costa Rica were restated; and during 2010, the financial statements of our subsidiaries in Egypt, Nicaragua and Costa Rica were restated.

Beginning in 2008, MFRS B-10 has eliminated the restatement of financial statements for the period as well as the comparative financial statements for prior periods into constant values as of the date of the most recent balance sheet. Beginning in 2008, the amounts of the statement of operations, statement of cash flows and statement of changes in stockholders' equity are presented in nominal values; meanwhile, pursuant to MFRS B-10, amounts of financial statements for prior years are presented in constant Pesos as of December 31, 2007, the date in which inflationary accounting ceased to be generally applied. Until such date, the restatement factors for current and prior periods were calculated considering the weighted average inflation of the countries in which we operate and the changes in the exchange rates of each of these countries relative to the Mexican Peso, weighted according to the proportion that our assets in each country represent of our total assets.

The following table reflects the factor that was used to restate the originally reported Pesos as of and for the year ended December 31, 2006 to Pesos of constant purchasing power as of December 31, 2007:

| | Annual Weighted Average Factor | Cumulative Weighted Average Factor to December 31, 2007 |
|---|---|---|
| 2006 | 1.0846 | 1.0846 |

Non-Peso amounts included in the financial statements are first translated into 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 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 Dollar amounts provided below and, unless otherwise indicated elsewhere in this annual report, are translations of Peso amounts at an exchange rate of Ps12.36 to U.S.$1.00, the CEMEX accounting rate as of December 31, 2010. 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. The noon buying rate for Pesos on December 31, 2010 was Ps12.38 to U.S.$1.00. From December 31, 2010 through June 10 , 2011, the Peso appreciated by approximately 4% against the Dollar, based on the noon buying rate for Pesos.

## CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES

## SELECTED CONSOLIDATED FINANCIAL INFORMATION

| | As of and for the year ended December 31, | | | | |
|---|---|---|---|---|---|
| | 2006 | 2007 | 2008 | 2009 | 2010 |
| | (in millions of Pesos, except ratios and share and per share amounts) | | | | |
| **Statement of Operations Information:** | | | | | |
| Net sales | Ps 213,767 | Ps 228,152 | Ps 225,665 | Ps 197,801 | Ps 178,260 |
| Cost of sales(1) | (136,447) | (151,439) | (153,965) | (139,672) | (128,307) |
| Gross profit | 77,320 | 76,713 | 71,700 | 58,129 | 49,953 |
| Operating expenses | (42,815) | (45,103) | (45,612) | (42,289) | (39,110) |
| Operating income | 34,505 | 31,610 | 26,088 | 15,840 | 10,843 |
| Other expense, net(2) | (580) | (2,984) | (21,403) | (5,529) | (6,672) |
| Comprehensive financing result(3) | (505) | 1,018 | (28,326) | (15,106) | (15,627) |
| Equity in income of associates | 1,425 | 1,487 | 869 | 154 | (524) |
| Income (loss) before income tax | 34,845 | 31,131 | (22,772) | (4,641) | (11,980) |
| Discontinued operations(4) | — | 288 | 2,097 | (4,276) | — |
| Non-controlling net income | 1,292 | 837 | 45 | 240 | 27 |
| Controlling interest net income (loss) | 27,855 | 26,108 | 2,278 | 1,409 | (16,516) |
| Basic earnings (loss) per share(5)(6)(7) | 1.29 | 1.17 | 0.09 | 0.05 | (0.55) |
| Diluted earnings (loss) per share(5)(6)(7) | 1.29 | 1.17 | 0.09 | 0.05 | — |
| Dividends per share(5)(8)(9) | 0.28 | 0.29 | — | — | — |
| Number of shares outstanding(5)(10) | 21,987 | 22,297 | 22,985 | 25,643 | 29,975 |
| **Balance Sheet Information:** | | | | | |
| Cash and temporary investments | 18,494 | 8,108 | 12,900 | 14,104 | 8,354 |
| Property, machinery and equipment, net | 201,425 | 250,015 | 270,281 | 258,863 | 231,458 |
| Total assets | 351,083 | 542,314 | 623,622 | 582,286 | 515,097 |
| Short-term debt | 14,657 | 36,160 | 95,269 | 7,393 | 5,637 |
| Long-term debt | 73,674 | 180,636 | 162,805 | 203,751 | 197,181 |
| Non-controlling interest and perpetual debentures(11) | 22,484 | 40,985 | 46,575 | 43,697 | 19,524 |
| Total controlling stockholders' equity | 150,627 | 163,168 | 190,692 | 213,873 | 194,176 |
| **Other Financial Information:** | | | | | |
| Net working capital(12) | 10,389 | 15,108 | 16,358 | 12,380 | 9,051 |
| Book value per share(5)(10)(13) | 6.85 | 7.32 | 8.30 | 8.34 | 6.48 |
| Operating margin | 16.1% | 13.9% | 11.6% | 8.0% | 6.1% |
| Operating EBITDA(14) | 48,466 | 48,752 | 45,787 | 36,153 | 29,317 |
| Ratio of Operating EBITDA to interest expense(14) | 8.38 | 5.53 | 4.49 | 2.68 | 1.80 |
| Investment in property, machinery and equipment, net | 16,067 | 21,779 | 20,511 | 6,655 | 4,726 |
| Depreciation and amortization | 13,961 | 17,666 | 19,699 | 20,313 | 18,474 |
| Net cash flow provided by continuing operations(15) | 47,845 | 45,625 | 38,455 | 33,728 | 21,838 |
| Basic earnings (loss) per CPO(5)(6)(7) | 3.87 | 3.51 | 0.30 | 0.18 | (1.65) |
| **U.S. GAAP(16)(17):** | | | | | |
| **Statement of Operations Information:** | | | | | |
| Net sales | Ps 203,660 | Ps 226,742 | Ps 224,804 | Ps 197,801 | Ps 178,260 |
| Operating income (loss)(17) | 32,804 | 28,623 | (42,233) | 10,396 | 5,484 |
| Controlling interest net income (loss) | 26,384 | 21,367 | (61,886) | (5,904) | (7,170) |
| Basic earnings (loss) per share | 1.23 | 0.96 | (2.31) | (0.21) | (0.23) |
| Diluted earnings (loss) per share | 1.23 | 0.96 | (2.31) | (0.21) | (0.23) |
| **Balance Sheet Information:** | | | | | |
| Total assets | 351,927 | 563,565 | 605,072 | 558,541 | 504,065 |
| Perpetual debentures(11) | 14,037 | 33,470 | 41,495 | 39,859 | 16,310 |

| | As of and for the year ended December 31, | | | | |
|---|---|---|---|---|---|
| | 2006 | 2007 | 2008 | 2009 | 2010 |
| | (in millions of Pesos, except ratios and share and per share amounts) | | | | |
| Long-term debt(11) | 69,375 | 164,497 | 162,810 | 203,602 | 197,068 |
| Non-controlling interest | 7,581 | 8,010 | 5,105 | 3,865 | 3,334 |
| Total controlling stockholders' equity | 153,239 | 172,217 | 151,294 | 165,539 | 151,538 |

(1) Cost of sales includes depreciation, as well as freight expenses of raw materials used in our 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, except for distribution or delivery expenses related to our ready-mix concrete business, which are included in our cost of sales.

(2) Beginning in 2007, current and deferred Employees' Statutory Profit Sharing ("ESPS") is included within "Other expense, net." Until December 31, 2006, ESPS was presented in a specific line item within the income taxes section of the statement of operations. The "Selected Consolidated Financial Information" data for 2006 were reclassified to conform to the presentation required beginning in 2007.

(3) Comprehensive financing result includes financial expenses, financial income, results from financial instruments, including derivatives and marketable securities, foreign exchange result and monetary position result. See "Item 5 — Operating and Financial Review and Prospects."

(4) On October 1, 2009, we completed the sale of our Australian operations to a subsidiary of Holcim Ltd. for approximately $2.02 billion Australian Dollars (approximately U.S.$1.7 billion). "Discontinued operations" includes the results of our Australian operations, net of income tax, for the nine-month period ended September 30, 2009, the twelve-month period ended December 31, 2008 and the six-month period ended December 31, 2007. Accordingly, our financial information under MFRS and under U.S. GAAP presented above for the years ended December 31, 2007, 2008 and 2009 was restated to present our Australian operations as "Discontinued Operations." See note 3B to our consolidated financial statements included elsewhere in this annual report.

(5) Our capital stock consists of Series A shares and Series B shares. Each of our CPOs represents two Series A shares and one Series B share. As of December 31, 2010, approximately 97.8% of our outstanding share capital was represented by CPOs. Each of our ADSs represents ten CPOs.

(6) Earnings (loss) per share are calculated based upon the weighted average number of shares outstanding during the year, as described in note 18 to our consolidated financial statements included elsewhere in this annual report. Basic earnings (loss) per CPO is determined by multiplying the basic earnings (loss) per share for each period by three (the number of shares underlying each CPO). Basic earnings (loss) per CPO is presented solely for the convenience of the reader and does not represent a measure under MFRS.

(7) Basic earnings per share in the table above for the years ended December 31, 2007, 2008 and 2009 are comprised of basic earnings per share of continuing operations of Ps1.16, Ps0.01 and Ps0.21, respectively, and basic earnings per share of discontinued operations of Ps0.01 in 2007, Ps0.08 in 2008 and a loss per share of Ps0.16 in 2009. Likewise, diluted earnings per share for the years ended December 31, 2007, 2008 and 2009 are comprised of diluted earnings per share of continuing operations of Ps1.16, Ps0.01 and Ps0.21, respectively, and diluted basic earnings per share of discontinued operations of Ps0.01 in 2007, Ps0.08 in 2008 and a loss per share of discontinued operations of Ps0.16 in 2009. In 2006 and 2010, the results of operations and basic and diluted earnings (loss) per share are comprised solely of results from continuing operations. In 2010, diluted earnings per share are not presented because, pursuant to MFRS, diluted earnings per share shall not be disclosed when the result from continuing operations for the period is a loss.

(8) Dividends declared at each year's annual shareholders' meeting are reflected as dividends of the preceding year.

(9) In years prior to the 2008 fiscal year, our board of directors proposed, and our shareholders approved, dividend proposals, whereby our shareholders had a choice between stock dividends or cash dividends declared in respect of the prior year's results, with the stock issuable to shareholders who receive the stock dividend being issued at a 20% discount from then current market prices. The dividends declared per share or per CPO in these years,

expressed in Pesos, were as follows: 2006, Ps0.81 per CPO (or Ps0.27 per share); 2007, Ps0.84 per CPO (or Ps0.28 per share); and 2008, Ps0.87 per CPO (or Ps0.29 per share). As a result of dividend elections made by shareholders, in 2006, Ps161 million in cash was paid and approximately 212 million additional CPOs were issued in respect of dividends declared for the 2005 fiscal year; in 2007, Ps147 million in cash was paid and approximately 189 million additional CPOs were issued in respect of dividends declared for the 2006 fiscal year; and in 2008, Ps214 million in cash was paid and approximately 284 million additional CPOs were issued in respect of dividends declared for the 2007 fiscal year. For purposes of the table, dividends declared at each year's annual shareholders' meeting for each period are reflected as dividends for the preceding year. We did not declare a dividend for fiscal years 2008, 2009 and 2010. At our 2008, 2009 and 2010 annual shareholders' meetings, held on April 23, 2009, April 23, 2010, and February 24, 2011, respectively, our shareholders approved recapitalizations of retained earnings. New CPOs issued pursuant to each of the recapitalizations were allocated to shareholders on a pro-rata basis. As a result, shares equivalent to approximately 334 million CPOs, approximately 384 million CPOs and approximately 401 million CPOs were allocated to shareholders on a pro-rata basis in connection with the 2008, 2009 and 2010 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.

(10) 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.

(11) Non-controlling interest, as of December 31, 2006, 2007, 2008, 2009 and 2010, includes U.S.$1,250 million (Ps14,642 million), U.S.$3,065 million (Ps33,470 million), U.S.$3,020 million (Ps41,495 million), U.S.$3,045 million (Ps39,859 million) and U.S.$1,320 million (Ps16,310 million), respectively, that represents the nominal amount of the fixed-to-floating rate callable perpetual debentures, denominated in Dollars and Euros, issued by consolidated entities. In accordance with MFRS, these securities qualify as equity due to their perpetual nature and the option to defer the coupons. However, for purposes of our U.S. GAAP reconciliation, we record these debentures as debt and coupon payments thereon as part of financial expenses in our statement of operations.

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

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

(14) Operating EBITDA equals operating income before amortization expense and depreciation. 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. Operating EBITDA is reconciled below to operating income under MFRS as reported in the statements of operations, before giving effect to any non-controlling interest, and to net cash flows provided by continuing operations as reported in the statements of cash flows, which we consider to be the most comparable measure as determined under MFRS. Interest expense under MFRS does not include coupon payments and issuance costs of the perpetual debentures issued by consolidated entities of approximately Ps152 million for 2006, approximately Ps1,847 million for 2007, approximately Ps2,596 million for 2008, approximately Ps2,704 million for 2009 and approximately Ps1,624 million for 2010, as described in note 16D to our consolidated financial statements included elsewhere in this annual report.

| | For the year ended December 31, | | | | |
|---|---|---|---|---|---|
| | 2006 | 2007 | 2008 | 2009 | 2010 |
| | | | (in millions of Pesos) | | |
| **Reconciliation of operating EBITDA to Net cash flows provided by continued operations** | | | | | |
| Operating EBITDA | Ps 48,466 | Ps 48,752 | Ps 45,787 | Ps 36,153 | Ps 29,317 |
| Less: | | | | | |
| Operating depreciation and amortization expense | 13,961 | 17,142 | 19,699 | 20,313 | 18,474 |
| Operating income | Ps 34,505 | Ps 31,610 | Ps 26,088 | Ps 15,840 | Ps 10,843 |

| | For the year ended December 31, | | | | |
|---|---|---|---|---|---|
| | 2006 | 2007 | 2008 | 2009 | 2010 |
| | (in millions of Pesos) | | | | |
| Plus / minus: | | | | | |
| Changes in working capital excluding income taxes | 2,270 | (877) | 1,299 | (2,599) | 100 |
| Operating depreciation and amortization expense | 13,961 | 17,142 | 19,699 | 20,313 | 18,474 |
| Other cash expenses, net | (2,891) | (3,484) | (8,631) | 174 | (7,579) |
| Net cash flows provided by continued operations after income tax | 47,845 | 44,391 | 38,455 | 33,728 | 21,838 |

(15) For the two years ended December 31, 2006 and 2007, statements of cash flows were not required under MFRS; therefore net resources provided by operating activities included in this item for such years refer to the Statements of Changes in Financial Position and represent controlling interest net income plus items not affecting cash flow plus investment in working capital excluding effects from acquisitions and including inflation effects and unrealized foreign exchange effects.

(16) We have restated the information at and for the year ended December 31, 2006 under U.S. GAAP using the inflation factor derived from the national consumer price index, or NCPI, in Mexico, as required by Regulation S-X under the Exchange Act, instead of using the weighted average restatement factors used by us until December 31, 2007 according to MFRS and applied to the information presented under MFRS of prior years. These figures are presented in constant Pesos as of December 31, 2007, the last date in which inflationary accounting was applied (see note 2A to our consolidated financial statements included elsewhere in this annual report). The amounts for the years ended December 31, 2008, 2009 and 2010 are presented in nominal Pesos.

(17) Operating loss under U.S. GAAP for the year ended December 31, 2008 includes impairment losses of approximately Ps67,202 million (U.S.$4,891 million).

**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**

We are 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, México 66265. Our main phone number is (011-5281) 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 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, 2010 of approximately 96.1 million tons. We are the largest ready-mix concrete company in the world with annual sales volumes of approximately 51 million cubic meters and one of the largest aggregates companies in the world with annual sales volumes of approximately 158 million tons, in each case based on our annual sales volumes in 2010. We are also one of the world's largest traders of cement and clinker, having traded approximately 7.9 million tons of cement and clinker in 2010. 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 and clinker throughout the world.

We operate globally with operations in North America, Europe, South America, Central America and the Caribbean, Africa and the Middle East and Asia. As of December 31, 2010, we had total assets of approximately Ps515 billion (U.S.$42 billion) and an equity market capitalization of approximately Ps131.8 billion (U.S.$10.7 billion).

As of December 31, 2010, our main cement production facilities were located in Mexico, the United States, Spain, the United Kingdom, Germany, Poland, Croatia, Latvia, Colombia, Costa Rica, the Dominican Republic, Panama, Nicaragua, Puerto Rico, Egypt, the Philippines and Thailand. As of December 31, 2010, 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.

| | As of December 31, 2010 | | |
|---|---|---|---|
| | Assets after eliminations (in billions of Pesos) | Number of cement plants | Installed cement production capacity (millions of tons per annum) |
| North America | | | |
| Mexico | 63 | 15 | 29.3 |
| United States | 220 | 13 | 17.2 |
| Europe | | | |
| Spain | 50 | 8 | 11.0 |
| United Kingdom | 31 | 3 | 2.8 |
| Germany | 11 | 2 | 4.9 |
| France | 15 | — | — |
| Rest of Europe(1) | 22 | 6 | 7.0 |
| South America, Central America and the Caribbean(2) | 30 | 11 | 12.8 |
| Africa and the Middle East(3) | 15 | 1 | 5.4 |

| | As of December 31, 2010 | | |
|---|---|---|---|
| | Assets after eliminations (in billions of Pesos) | Number of cement plants | Installed cement production capacity (millions of tons per annum) |
| Asia(4) | 10 | 3 | 5.7 |
| Cement and Clinker Trading Assets and Other Operations | 48 | — | — |

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

(1) Includes our subsidiaries in Ireland, Poland, Croatia, Austria, Hungary, the Czech Republic, Latvia and other assets in the European region, and, for purposes of the columns labeled "Assets after eliminations" and "Installed cement production capacity," includes our approximate 33% interest, as of December 31, 2010, in a Lithuanian cement producer that operated one cement plant with annual installed capacity of 1.3 million tons of cement as of December 31, 2010.

(2) Includes our subsidiaries in Colombia, Costa Rica, the Dominican Republic, Panama, Nicaragua, Puerto Rico, Guatemala, Argentina and other assets in the Caribbean region.

(3) Includes our subsidiaries in Egypt, the United Arab Emirates and Israel.

(4) Includes our subsidiaries in the Philippines, Thailand, Malaysia, Bangladesh and other assets in the Asian region.

During 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 have been our most significant acquisitions over the last five years:

- On July 1, 2007, we completed for accounting purposes the acquisition of 100% of the Rinker shares for a total consideration of approximately U.S.$14.2 billion (excluding the assumption of approximately U.S.$1.3 billion of Rinker's debt). Rinker, then headquartered in Australia, was a leading international producer and supplier of materials, products and services used primarily in the construction industry, with operations primarily in the United States and Australia, and limited operations in China. Rinker operations in the United States consisted of two cement plants located in Florida with an installed capacity of 1.9 million tons of cement and 172 ready-mix concrete plants. In Australia, through its Readymix subsidiary, Rinker's Australian operations, which we have since sold, comprised 344 operating plants including 84 quarries and sand mines, 243 concrete plants and 17 concrete pipe and product plants, as of the date of acquisition. In China, through its Readymix subsidiary, Rinker operated four concrete plants in the northern cities of Tianjin and Qingdao.
- On March 1, 2005, we completed our acquisition of RMC for a total purchase price of approximately U.S.$4.3 billion, excluding approximately U.S.$2.2 billion of assumed debt. RMC, headquartered in the United Kingdom, was one of Europe's largest cement producers and one of the world's largest suppliers of ready-mix concrete and aggregates, with operations in 22 countries, primarily in Europe and the United States. The assets acquired included 13 cement plants with an approximate installed capacity of 17 million tons, located in the United Kingdom, the United States, Germany, Croatia, Poland and Latvia.

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:

- 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. 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).
- As required by the Antitrust Division of the United States Department of Justice, pursuant to a divestiture order in connection with the Rinker acquisition, in December 2007, we sold to the Irish producer CRH plc, ready-mix concrete and aggregates plants in Arizona and Florida for approximately U.S.$250 million, of which approximately U.S.$30 million corresponded to the sale of assets from our pre-Rinker acquisition operations.
- During 2006 we sold our 25.5% interest in the Indonesian cement producer PT Semen Gresik for approximately U.S.$346 million including dividends declared of approximately U.S.$7 million.
- On March 2, 2006, we sold 4K Beton A/S, our Danish subsidiary, which operated 18 ready-mix concrete plants in Denmark, to Unicon A/S, a subsidiary of Cementir Group, an Italian cement producer, for approximately €22 million (approximately U.S.$29 million). As part of the transaction, we purchased from Unicon A/S two companies engaged in the ready-mix concrete and aggregates business in Poland for approximately €12 million (approximately U.S.$16 million). We received net cash proceeds of approximately €6 million (approximately U.S.$8 million), after cash and debt adjustments, from this transaction.
- On December 22, 2005, we terminated our 50/50 joint ventures with Lafarge Asland in Spain and Portugal, which we acquired in the RMC acquisition. Under the terms of the termination agreement, Lafarge Asland received a 100% interest in both joint ventures and we received approximately U.S.$61 million in cash, as well as 29 ready-mix concrete plants and five aggregates quarries in Spain.
- As a condition to closing the RMC acquisition, we agreed with the U.S. Federal Trade Commission, or FTC, to divest several ready-mix concrete and related assets. On August 29, 2005, we sold RMC's operations in the Tucson, Arizona area to California Portland Cement Company for a purchase price of approximately U.S.$16 million.
- On July 1, 2005, we and Ready Mix USA 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. Under the terms of the limited liability company agreements and related asset contribution agreements, we contributed two cement plants (Demopolis, Alabama and Clinchfield, Georgia) and 11 cement terminals to CEMEX Southeast, LLC, representing approximately 98% of its contributed capital, while Ready Mix USA contributed cash to CEMEX Southeast, LLC representing approximately 2% of its contributed capital. In addition, we contributed our ready-mix concrete, aggregates and concrete block assets in the Florida panhandle and southern Georgia to Ready Mix USA LLC, representing approximately 9% of its contributed capital, while Ready Mix USA contributed all its ready-mix concrete and aggregate operations in Alabama, Georgia, the Florida panhandle and Tennessee, as well as its concrete block operations in Arkansas, Tennessee, Mississippi, Florida and Alabama to Ready

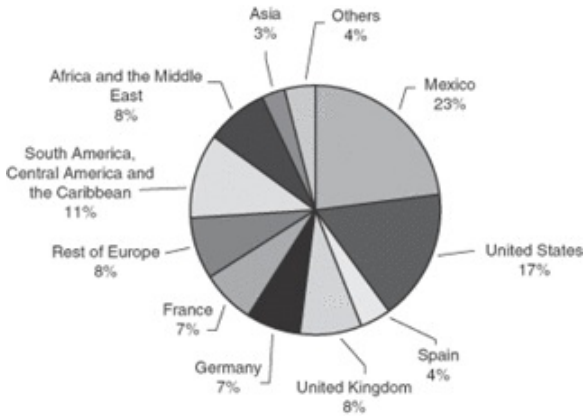
Mix USA LLC, representing approximately 91% of its contributed capital. We own a 50.01% interest, and Ready Mix USA owns a 49.99% interest, in the profits and losses and voting rights of CEMEX Southeast, LLC, while Ready Mix USA owns a 50.01% interest, and we own a 49.99% interest, in the profits and losses and voting rights of Ready Mix USA LLC. In a separate transaction, on September 1, 2005, we sold 27 ready-mix concrete plants and four concrete block facilities located in the Atlanta, Georgia metropolitan area to Ready Mix USA LLC for approximately U.S.$125 million.

On January 11, 2008, in connection with the assets acquired from Rinker, and as part of our agreements with Ready Mix USA, a privately owned ready-mix concrete producer with operations in the Southeastern United States (described below), CEMEX contributed and sold to Ready Mix USA LLC, our ready-mix concrete joint venture with Ready Mix USA certain assets located in Georgia, Tennessee and Virginia, which had a fair value of approximately U.S.$437 million. We received U.S.$120 million in cash for the assets sold to Ready Mix USA LLC, and the remaining assets were treated as a U.S.$260 million contribution by us to Ready Mix USA LLC. As part of the same transaction, Ready Mix USA contributed U.S.$125 million in cash to Ready Mix USA LLC, which in turn received bank loans of U.S.$135 million. Ready Mix USA LLC made a special distribution in cash to us of U.S.$135 million. Ready Mix USA manages all the assets acquired. Following this transaction, Ready Mix USA LLC continues to be owned 50.01% by Ready Mix USA and 49.99% by CEMEX. See “Item 4 — Information on the Company — North America — Operation in the United States — Overview” for a description of Ready Mix USA LLC’s asset sale. On September 30, 2010, Ready Mix USA exercised its put option right. As a result, we will acquire Ready Mix USA’s interest in CEMEX Southeast, LLC and Ready Mix USA LLC, which have cement, aggregates, ready-mix and block assets located in the southeast region of the U.S. The acquisition will take place upon the closing of the transaction, which is expected in September 2011, after the performance of the obligations by both parties under the put option agreement. CEMEX’s purchase price for Ready Mix USA’s interests, including a non-compete and a transition services agreement, will be approximately U.S.$355 million. As of March 31, 2011, Ready Mix USA, LLC had approximately $23 million (unaudited) in net debt (debt minus cash and cash equivalents), which is subject to be consolidated upon closing of the transaction.

In connection with our ongoing efforts to strengthen our capital structure and regain financial flexibility, we are continuing a process aimed at divesting several assets management regards as non-core, and we are currently engaged in marketing for sale additional assets in our portfolio, which we do not consider strategic.

**Geographic Breakdown of Our 2010 Net Sales**

The following chart indicates the geographic breakdown of our net sales, before eliminations resulting from consolidation, for the year ended December 31, 2010:




For a description of a breakdown of total revenues by geographic markets for each of the years ended December 31, 2008, 2009 and 2010, please see "Item 5 — Operating and Financial Review and Prospects."

**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 vertical integration brings us closer to the end consumer. 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 less than 20 years, we have 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.

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 our principal markets (particularly the United States, Mexico, Colombia, Central America, Eastern Europe, Egypt 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 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 the U.S., Spain, Italy and Australia.

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

We want CEMEX to be the supplier of choice for our customers, whether global construction firms or individuals building their family's first home. We want to provide them with the most efficient and effective building solutions for their construction project, large or small. We seek a clear understanding of what they require to meet their needs.

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. For example, by directly bidding for, and managing the implementation of, concrete pavement projects, we are consolidating our leadership position in the infrastructure segment in Mexico. These concrete pavement projects include the refurbishment of major highways in Mexico, and in urban areas, such as Tijuana and Mexico City, among others.

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 agricultural, 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 cement production related costs and corporate overhead through disciplined cost management policies and through improving efficiencies by removing redundancies. We also implemented several worldwide standard platforms as part of this process. 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 reduce costs. 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 allow us to obtain competitive freight contracts for key components of our cost structure, such as fuel and coal, among others. Our cost-reduction program has helped further streamline our businesses and, in important markets, such as the United States, we have made a concerted effort to structure our asset portfolio to better capture any potential upturn in demand through optimized processes, streamlined cost structures and efficient management systems.

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. 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 current 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, improving cash flow generation and extending maturities. This ongoing effort has included the following key strategic initiatives:

*Global Refinancing*. On August 14, 2009, we entered into the Financing Agreement. The Financing Agreement extended the maturities of approximately U.S.$15.1 billion in syndicated and bilateral bank facilities and private placement obligations and provides for a semi-annual amortization schedule, with a final maturity of approximately U.S.$6.8 billion on February 14, 2014. We have since then successfully completed several capital markets transactions, including: (i) 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, (ii) in December 2009, the issuance of approximately Ps4.1 billion (approximately U.S.$315 million) in mandatory convertible securities, or the Mandatory Convertible Securities, in exchange for CBs, (iii) in December 2009 and January 2010, the issuance by CEMEX Finance LLC of U.S.$1,750 million aggregate principal amount of its 9.50% Senior Secured Notes due 2016 and €350 million aggregate principal amount of its 9.625% Senior Secured Notes due 2017, or together, the December 2009 Notes, (iv) in March 2010, the issuance of U.S.$715 million of our 4.875% Convertible Subordinated Notes due 2015, or the 2010 Optional Convertible Subordinated Notes, (v) 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, or together, the May 2010 Notes, in exchange for a majority in principal amount of our then outstanding perpetual debentures pursuant to an exchange offer, or the 2010 Exchange Offer, (vi) in January 2011, the issuance of U.S.$1.0 billion of the January 2011 Notes, (vii) in March 2011, the 2011 Private Exchange, (viii) in March 2011, the issuance of U.S.$977.5 million aggregate principal amount of 3.25% Convertible Subordinated Notes due 2016 and U.S.$690 million aggregate principal amount of 3.75% Convertible Subordinated Notes due 2018 and (ix) in April 2011, the issuance of U.S.$800 million aggregate principal amount of the April 2011 Notes. As of December 31, 2010, after giving *pro forma* effect to (1) the issuance of the January 2011 Notes, the 2011 Optional Convertible Subordinated Notes and the April 2011 Notes, (2) the 2011 Prepayments and (3) the 2011 Private Exchange, the weighted average life of our indebtedness was 4.6 years and we had reduced indebtedness under the Financing Agreement by approximately U.S.$7.5 billion. We believe that our financial profile and resulting amortization schedule will enable us to operate in the normal course of business and take advantage of a potential upturn in the business cycle in our core markets. In addition, we expect that our financial profile will allow us to conduct our planned asset divestitures under better terms and conditions.

*Asset Divestitures*. 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. In addition to the October 1, 2009 sale of our operations in Australia for approximately $2.02 billion Australian Dollars (approximately U.S.$1.7 billion), we sold our operations in the Canary Islands and Italy for approximately €310 million (U.S.$437 million) in 2008, and 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 approximately U.S.$65 million. On August 27, 2010, we completed the sale of seven aggregates quarries, three resale aggregates distribution centers and one concrete block manufacturing facility in Kentucky to Bluegrass Materials Company, LLC for approximately U.S.$88 million, which were used to reduce our outstanding debt and to enhance our liquidity position, and were sold at a loss of U.S.$38 million. These assets were acquired by CEMEX in

2007 as part of the acquisition of Rinker. We considered these facilities and properties to be non-core assets for our integrated cement, concrete, aggregates and building materials operations throughout the United States.

*Global Cost-Reduction Program*. 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 a global cost-reduction program intended to reduce our annual cost structure to a level consistent with the decline in demand for our products. During 2009, we completed the implementation of the initial stage of our global cost-reduction program, resulting in approximately U.S.$900 million of estimated annual cost savings. We estimate that approximately 60% of these cost-reduction savings are sustainable in the long-term; the remainder is short-term cost savings resulting from the scaling down of our operations in response to reduced demand for our products in the construction industry. Our global cost-reduction program encompasses different undertakings, including headcount reductions, capacity closures across the cement value chain and a general reduction in global operating expenses. During 2010, we continued with our cost-reduction initiatives and achieved an additional U.S.$150 million in annual cost savings. In addition, we are currently implementing additional initiatives intended to improve our operating results by approximately U.S.$250 million during 2011. 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. CEMEX is targeting to generate approximately U.S.$400 million in annualized cost savings intended to improve our operating results by the end of 2012 through the implementation of this program, which contemplates an improvement in underperforming operations, a reduction in SG&A costs and the optimization of the company's organizational structure.

In connection with the implementation of our cost-reduction program, and as part of our ongoing efforts to eliminate redundancies at all levels and streamline corporate structures to increase our efficiency and reduce operating expenses, we have reduced our global headcount by approximately 24%, from 61,545 employees as of December 31, 2007 to 46,533 employees as of December 31, 2010. Both figures exclude personnel from our operations in Australia sold in October 2009 and our operations in Venezuela, which were expropriated in 2008.

In addition, during 2009, we temporarily shut down (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. On January 22, 2010, we announced the permanent closure of our Davenport cement plant located in northern California, which had an installed cement production capacity of approximately 0.9 million tons per annum. The plant had been closed on a temporary basis since March 2009 due to 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. 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. Opened in 1906, Davenport was the least efficient of our 14 plants in the United States. We have no other set plans for the Davenport facility at this time. During the first quarter of 2011, due to the low levels of construction activity and increased costs, we have implemented a minimum margin strategy in our Arizona operations, through the closure of under-utilized facilities, the reduction of headcount, among other actions pursuing improvement in the profitability of our operations in the region.

Furthermore, we reduced our energy costs by actively managing our energy contracting and sourcing, and by increasing the use of alternative fuels. We believe that these cost-reduction 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 going forward.

*Lower Capital Expenditures.* In light of the continued weak demand for our products throughout most of our markets, we reduced (as agreed with our creditors under the Financing Agreement) capital expenditures related to maintenance and expansion of our operations to approximately U.S.$555 million during 2010, from approximately U.S.$636 million during 2009, and approximately U.S.$2.2 billion during 2008. This reduction in capital expenditures has been 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. Pursuant to the Financing Agreement, we cannot make aggregate capital expenditures in excess of U.S.$800 million for the year ending December 31, 2011 and for each year thereafter until the debt under the Financing Agreement has been repaid in full. We believe that these restrictions in capital expenditures do not affect our world-class operating and quality standards.

Having completed our initial refinancing process and several capital markets transactions to reduce our outstanding indebtedness under the Financing Agreement, implemented our initial cost-reduction measures and executed significant divestitures, we continue to focus on reducing existing indebtedness.

***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, low-income housing and infrastructure, carbon strategy, environmental and biodiversity management, strengthen local communities, partnership with key stakeholders and health and safety.

*Lead in Sustainable Construction*. We aim to take the lead in sustainable construction, which involves developing better building products and solutions that can be more sustainably produced, facilitate more efficient construction processes, and contribute to the overall sustainability of buildings and other infrastructure. Moreover, we support the design and transformation of buildings to consume significantly less energy, water, and other resources in their use, maintenance, renovation, and dismantling. In 2010, we introduced a carbon footprint tool —first of its kind in the building materials industry—that allows the company to measure the greenhouse gas emissions of all of our cement, ready-mix concrete, and aggregates products. It has been implemented in sites representing 58% of our total worldwide production.

*Low income Housing and Infrastructure.* We embrace our responsibility to support social and economic progress, especially in the developing countries where we operate. We believe we can make a difference by helping support affordable housing and better, more modern and durable community infrastructure such as roads and sidewalks, schools, hospitals, parks, and other public spaces. In Mexico, for example, during 2010 close to 10 million square meters of urban and highway concrete paving were completed, and more than 1,500 houses were built with support of CEMEX *Vivienda.*

*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 fossil fuels substitution rates to 20.3% in 2010, almost double the 2008 level. We have recently introduced a new target of 35% substitution rate by 2015, by far the most ambitious in our industry.

*Excellence in Environmental and Biodiversity Management.* We are committed to mitigating the impacts that our plants, 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. Overall, we have quarry rehabilitation plans in place at 85% of our active cement and aggregates sites, and we are on track to achieve our target of 100% by 2015. We continued our successful partnership with BirdLife International in 2010 and completed a multi-year, comprehensive scoping study on the biodiversity status of CEMEX's operations worldwide to facilitate a process that aims to enhance biodiversity conservation throughout our operations. The study mapped 543 sites and assessed their proximity to areas of high biodiversity value. In the 131 sites that overlap with areas of high biodiversity value we will implement biodiversity action plans within the next five years.

*Strengthen Local Communities.* By engaging in ongoing dialogue, we understand the needs and concerns of the communities in which we operate. We then leverage our core business strengths, including our institutional knowledge and experience, our employees' talent and time, and our social investments, to support the social and

economic development of those communities. Specifically, we contribute to disaster relief; promote employee volunteering; foster local environmental awareness; and support educational, cultural, and sports activities. In September 2010, the United Nations recognized CEMEX for its contributions towards achieving the Millennium Development Goals. Among the community development programs for which CEMEX is being recognized is Centros Productivos de Autoempleo, an initiative that establishes community centers where low-income families can produce basic building materials for the construction or expansion of their homes. By 2010, *Patrimonio Hoy*, our flagship low-income housing support program, with presence in five countries (Mexico, Colombia, Nicaragua, Costa Rica and the Dominican Republic), has assisted more than 300,000 families to improve their housing conditions.

*Partnership with Key Stakeholders.* We continuously interact with a wide variety of stakeholders to discuss and address society's most 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.

*High Priority to Health and Safety.* The safety, health, and well-being of our employees, contractors, and third parties affected by our operations are our highest priority. That is why we have introduced industry-leading safety systems to identify and address risks, implemented innovative employee health initiatives to promote well-being, and instituted line-manager ownership of health and safety to ensure that programs are implemented and led as effectively as possible.

- Global Safety Leadership Training: In 2009, we developed LEGACY, a two-day safety leadership program, which provides our managers around the world with the tools and skills they need to promote safer operations. As of December 31, 2010, we had trained more than 2,100 supervisors and managers and had 140 employees who served as LEGACY trainers.
- Driving and Contractor Safety: We participate in the Cement Sustainability Initiative and measure our compliance with best practices in driving and contractor safety to reduce fatal injuries from road traffic incidents, one of the leading causes of fatalities within our industry. During 2010, we set a performance baseline and established a five-year plan of preventive action that focuses on achieving 100% compliance with Cement Sustainability Initiative recommended practices for our driving safety performance and the performance of high-risk contractors throughout our operations. In 2010, 98% of our operations had local safety training programs for drivers, compared with 97% in 2009 and 81% in 2008.
- Health Management: During 2010, we increased the percentage of our operations that have implemented a local health management system to 79%, from 76% in 2009 and 52% in 2008. To complement these systems, we developed our global Health Essentials campaign, 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. In 2010, approximately 54% of our employees participated in annual medical exam programs.

In 2010, as a result of our efforts, we decreased total lost-time injuries, or LTIs, for employees by 19%, achieving an LTI rate of approximately 2.6 for the year (based on a per million hours worked). Despite this improvement, 46 people, including employees, contractors and third parties, died in incidents related to our operations in 2010. We are intensifying our safety training and incident prevention measures. In 2011, we are thoroughly changing our approach to safety. Leaders at all levels of the company will be held personally accountable for improving the safety performance of their operations. In addition, we will launch a new Health and Safety Policy and implement our new Health and Safety Management System, which is aligned to Occupational Health and Safety Advisory Services 18001, and which we expect to improve our health and safety performance.

The following table sets forth our performance indicators with respect to safety by geographic location for the year ended December 31, 2010:

| | North America | Europe | South America, Central and the Caribbean | Africa and Middle East | Asia | Total CEMEX |
|---|---|---|---|---|---|---|
| Total fatalities, employees, contractors and other third parties (#) | 25 | 4 | 7 | 7 | 3 | 46 |
| Fatalities employees (#) | 1 | — | 1 | — | — | 2 |
| Fatality rate employees[1] | 0.43 | — | 2.36 | — | — | 0.43 |
| Lost-Time injuries (LTI), employees (#) | 170 | 50 | 39 | 5 | 4 | 268 |
| Lost-Time injuries (LTI), contractors (#) | 64 | 26 | 16 | 14 | 3 | 123 |
| Lost-Time injury (LTI) frequency rate, employees per million hours worked | 3.1 | 1.7 | 3.6 | 0.9 | 1.1 | 2.6 |

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

In conjunction with these priorities, in 2010, CEMEX was both sponsor and participant at COP16, the 16th Conference of the Parties of the United Nations Framework Convention on Climate Change. We hosted a series of events that showcased our efforts at reducing GHG emissions and protecting biodiversity, and also demonstrated the significant role ready-mix concrete can play in a low-carbon world. Our sponsorship funds helped to offset a significant portion of the conference's carbon emissions and support the Mexico-based Environmental Leadership for Competitiveness Program, where more than 500 small and medium size companies were benefited.

We are members of the World Business Council for Sustainable Development's Cement Sustainability Initiative and the Urban Infrastructure Initiative.

**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, 2010, 58 of our 62 operative production plants used the dry process and four used the wet process. Our operative production plants that use the wet process are located in Colombia, 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, 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.

As part of our development and innovation strategy, in April 2011, we launched Promptis, our first global brand of ready-mix concrete. Promptis has been designed to retain workability for over 90 minutes, thus allowing the material to be easily handled before reaching its early compressive strength in as fast as 4 hours, allowing customers to increase efficiency in their projects.

***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, 2010, approximately 11% 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, 2010, we have employed third-parties (i) to review our cement raw materials reserves estimates in the United Kingdom, Germany, Croatia, Poland, Latvia, Philippines, Thailand and Puerto Rico, and (ii) to review our aggregates reserves estimates in Spain, Germany, France, Poland, Latvia, Austria, Czech Republic, Croatia, Hungary, Egypt, Israel, Malaysia, Panama and Nicaragua.

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 2010, our total quarry material production was approximately 210 million tons, of which approximately 62% 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 38% 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, 2010, the total surface of property in our quarries operations (including cement raw materials quarries and aggregates quarries), was approximately 109,380 hectares, of which approximately 73% was owned by us and approximately 27% was managed through lease contracts.

As of December 31, 2010, we operated 144 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 58 years, assuming 2006-2010 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.

| | | | Property Surface (hectares) | | Reserves (Million tons) | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Location | Mineral | Number of Quarries | Owned | Leased | Proven | Probable | Total | Years to Depletion | 2010 Annual Production | 5 years Average Annual Production | Own Use |
| **North America** | | | | | | | | | | | |
| Mexico[1] | Limestone | 18 | 8,920 | 24 | 1,282 | 305 | 1,587 | 70 | 21.0 | 22.7 | 91% |
| | Clay | 16 | 8,445 | — | 149 | 157 | 307 | 89 | 3.5 | 3.4 | 100% |
| United States[2] | Limestone | 13 | 21,972 | — | 1,018 | 287 | 1,305 | 63 | 16.9 | 20.6 | 76% |
| | Clay | 2 | 132 | 7 | 24 | — | 24 | 89 | 0.3 | 0.3 | 100% |
| **Europe** | | | | | | | | | | | |
| Spain | Limestone | 12 | 462 | 117 | 268 | 45 | 313 | 41 | 6.3 | 7.7 | 100% |
| | Clay | 5 | 64 | 12 | 7 | 6 | 14 | 18 | 0.5 | 0.7 | 100% |
| | Others | 2 | 102 | 9 | 1 | 13 | 14 | 65 | 0.1 | 0.2 | 100% |
| United Kingdom | Limestone | 3 | 681 | 107 | 127 | 17 | 144 | 57 | 2.2 | 2.5 | 100% |
| | Clay | 2 | 98 | — | 7 | 29 | 36 | 59 | 0.6 | 0.6 | 100% |
| Germany | Limestone | 3 | 628 | 49 | 34 | 130 | 163 | 42 | 3.6 | 3.8 | 91% |
| Rest of Europe | Limestone | 5 | 930 | 23 | 123 | 45 | 168 | 23 | 6.7 | 7.3 | 97% |
| | Clay | 1 | 70 | — | 9 | 13 | 22 | 110 | 0.3 | 0.4 | 100% |
| **Central and South America and the Caribbean** | | | | | | | | | | | |
| Colombia | Limestone | 9 | 2,896 | — | 44 | 1 | 46 | 11 | 3.5 | 4.2 | 100% |
| | Clay | 2 | 183 | — | 1 | — | 1 | 52 | 0.0 | 0.0 | 100% |
| Rest of Central and South America and the Caribbean | Limestone | 15 | 962 | 134 | 307 | 475 | 782 | 123 | 8.0 | 6.4 | 100% |
| | Clay | 8 | 540 | 60 | 57 | 36 | 94 | 195 | 0.6 | 0.5 | 100% |
| | Others | 1 | — | 1,543 | 3 | — | 3 | 14 | 0.1 | 0.2 | 80% |
| **Africa and the Middle East** | | | | | | | | | | | |

| Location | Mineral | Number of Quarries | Property Surface (hectares) Owned | Leased | Reserves (Million tons) Proven | Probable | Total | Years to Depletion | 2010 Annual Production | 5 years Average Annual Production | Own Use |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Egypt | Limestone | 2 | — | 173 | 300 | — | 300 | 55 | 5.7 | 5.5 | 100% |
| | Clay | 4 | — | 616 | 118 | — | 118 | 75 | 1.5 | 1.6 | 100% |
| | Others | 5 | — | 299 | 27 | — | 27 | 179 | 0.1 | 0.2 | 100% |
| **Asia** | | | | | | | | | | | |
| Philippines | Limestone | 4 | 112 | 33 | 45 | 34 | 79 | 17 | 4.4 | 4.7 | 100% |
| | Clay | 3 | 36 | — | 0 | 3 | 3 | 14 | 0.2 | 0.2 | 100% |
| | Others | 5 | 58 | 25 | 8 | 26 | 35 | 49 | 0.7 | 0.7 | 100% |
| Rest of Asia | Limestone | 1 | 7 | — | 5 | 2 | 7 | 6 | 0.0 | 1.3 | 100% |
| | Clay | 3 | 9 | — | 0.2 | — | 0.2 | 3 | 0.0 | 0.1 | 100% |
| **CEMEX Consolidated** | **Limestone** | **85** | **37,571** | **660** | **3,553** | **1,341** | **4,894** | **56** | **78.4** | **86.7** | |
| | **Clay** | **46** | **9,576** | **695** | **374** | **245** | **619** | **79** | **7.4** | **7.8** | |
| | **Others** | **13** | **160** | **1,875** | **40** | **40** | **80** | **60** | **1.0** | **1.3** | |
| | **Totals** | **144** | **47,307** | **3,230** | **3,967** | **1,626** | **5,593** | **58** | **86.8** | **95.8** | |

(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 two limestone quarries that also produce hard rock aggregates.

As of December 31, 2010, we operated 488 aggregates quarries across our global operations, not including our facilities dedicated to serve 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 26 years, assuming 2006-2010 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 | Leased | Reserves (Million tons) Proven | Probable | Total | Years to Depletion | 2010 Annual Production | 5 years Average Annual Production | Own Use |
|---|---|---|---|---|---|---|---|---|---|---|---|
| **North America** | | | | | | | | | | | |
| Mexico | Hardrock | 4 | 978 | 25 | 82 | — | 82 | 25 | 3.8 | 3.2 | 71% |
| | Others | 10 | 128 | 230 | 21 | 2 | 23 | 5 | 4.6 | 4.7 | 69% |
| United States | Hardrock | 14 | 8,415 | 4,527 | 240 | 115 | 354 | 25 | 7.0 | 14.2 | 27% |
| | Sand & Gravel | 90 | 8,126 | 9,727 | 560 | 151 | 711 | 22 | 19.2 | 32.6 | 37% |
| | Others | 16 | 2,344 | 1,218 | 52 | 158 | 209 | 35 | 4.4 | 5.9 | 18% |
| **Europe** | | | | | | | | | | | |
| Spain | Hardrock | 22 | 164 | 42 | 267 | 30 | 298 | 43 | 5.7 | 7.0 | 56% |
| | Sand & Gravel | 8 | 504 | 162 | 61 | 5 | 66 | 20 | 2.0 | 3.2 | 64% |
| | Others | 1 | — | 48 | 2 | 2 | 4 | 17 | 0.2 | 0.2 | 0% |
| United Kingdom | Hardrock | 30 | 723 | 1,129 | 660 | 57 | 716 | 73 | 10.4 | 9.8 | 51% |
| | Sand & Gravel | 95 | 3,938 | 2,471 | 79 | 215 | 294 | 41 | 6.3 | 7.2 | 51% |
| Germany | Hardrock | 4 | 85 | 55 | 19 | 2 | 21 | 12 | 1.7 | 1.8 | 14% |
| | Sand & Gravel | 40 | 1,931 | 915 | 77 | 50 | 127 | 14 | 10.2 | 9.4 | 40% |
| | Others | 6 | 25 | 645 | 95 | 33 | 128 | 27 | 4.7 | 4.8 | 4% |
| France | Hardrock | 9 | 141 | 571 | 119 | 15 | 133 | 49 | 2.4 | 2.7 | 15% |
| | Sand & Gravel | 31 | 1,415 | 1,685 | 170 | 50 | 219 | 24 | 7.9 | 9.3 | 40% |
| Rest of Europe | Hardrock | 16 | 339 | 669 | 109 | 6 | 115 | 28 | 2.4 | 4.1 | 11% |
| | Sand & Gravel | 45 | 1,608 | 798 | 162 | 50 | 212 | 16 | 11.8 | 13.7 | 41% |
| | Others | 20 | 587 | 61 | 61 | 8 | 69 | 21 | 2.2 | 3.3 | 29% |
| **Central and South America and the Caribbean** | | | | | | | | | | | |
| Colombia | Sand & Gravel | 5 | 557 | — | 16 | 4 | 20 | 11 | 1.2 | 1.9 | 100% |

| 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 | 2010 Annual Production | 5 years Average Annual Production | Own Use |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Rest of Central and South America and the Caribbean | Hardrock | 1 | 150 | — | 16 | 3 | 19 | 47 | 0.4 | 0.4 | 0% |
| | Others | 8 | 53 | 1,161 | 11 | 50 | 61 | 50 | 1.3 | 1.2 | 36% |
| **Africa and the Middle East** | | | | | | | | | | | |
| Egypt | Others | 2 | — | 2 | 1 | — | 1 | 2 | 0.5 | 0.5 | 88% |
| Rest of Africa and Middle East | Hardrock | 6 | — | 341 | 100 | 41 | 141 | 14 | 10.4 | 9.8 | 43% |
| | Sand & Gravel | 2 | — | 43 | 2 | — | 2 | 4 | 0.3 | 0.4 | 27% |
| **Asia** | | | | | | | | | | | |
| Rest of Asia | Others | 3 | 69 | 37 | 18 | 6 | 25 | 12 | 2.1 | 2.1 | 52% |
| **CEMEX Consolidated** | **Hardrock** | **106** | **10,996** | **7,359** | **1,611** | **269** | **1,880** | **36** | **44.1** | **52.89** | |
| | **Sand & Gravel** | **316** | **18,078** | **15,802** | **1,127** | **524** | **1,651** | **21** | **59.0** | **77.7** | |
| | **Others** | **66** | **3,206** | **3,402** | **261** | **259** | **520** | **23** | **20.1** | **22.8** | |
| | **Totals** | **488** | **32,280** | **26,563** | **2,999** | **1,052** | **4,050** | **26** | **123.2** | **153.3** | |

***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.

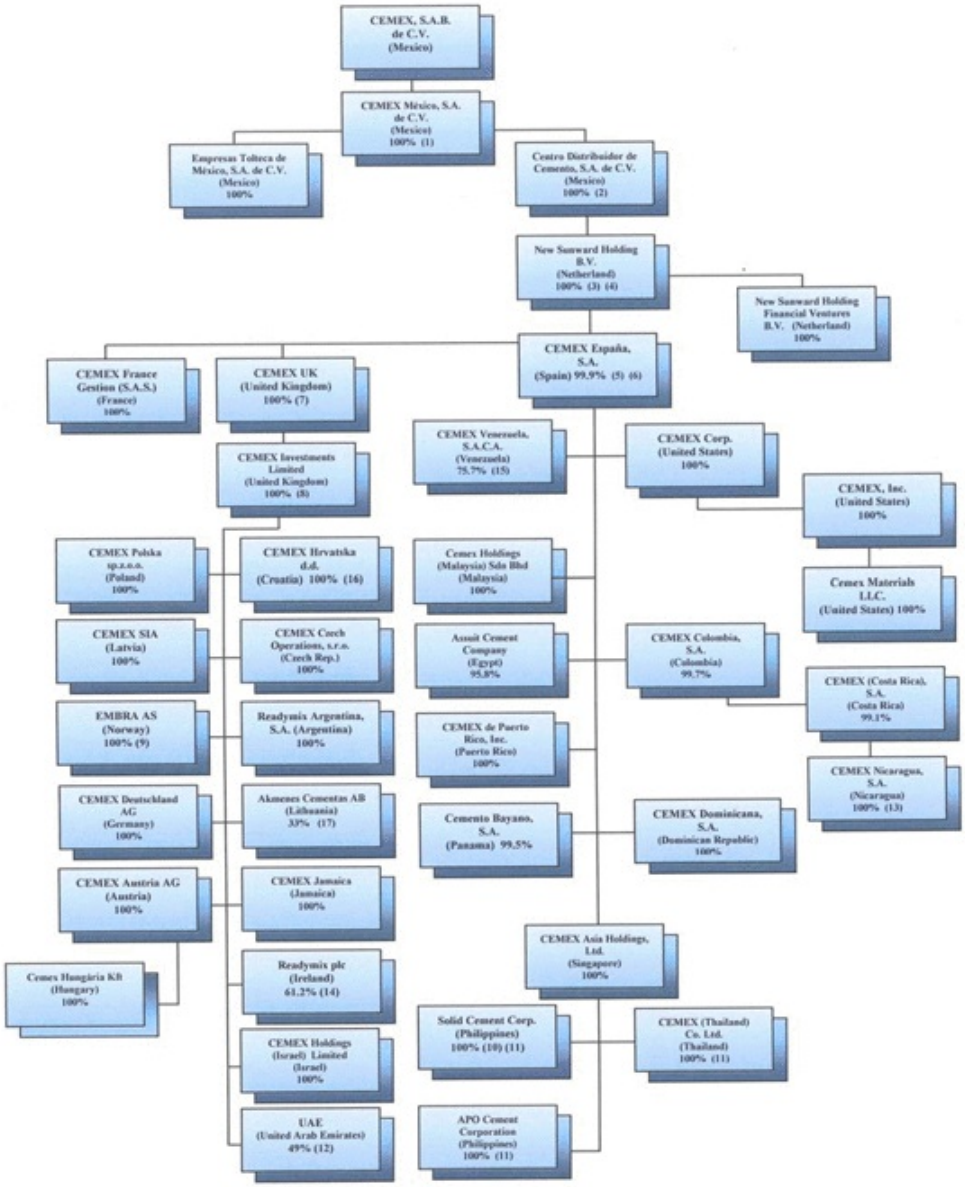
**User Base**

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, 2010. The chart also shows, for each company, our approximate direct or indirect percentage equity or economic ownership 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 our intermediary holding companies and our operating company subsidiaries.

## OUR CORPORATE STRUCTURE AS OF DECEMBER 31, 2010




(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 de Cemento, S.A. de C.V. indirectly hold 100% of New Sunward through other intermediate subsidiaries.
(5) Includes the interest of New Sunward, CEMEX, S.A.B. de C.V. and other subsidiaries of the group.
(6) Includes approximate 99.63% interest pledged as part of the Collateral.
(7) Includes CEMEX España's 69.39% interest and the CEMEX France Gestion (S.A.S.) 30.61% interest.
(8) Formerly RMC.
(9) EMBRA AS is an operational company and also the holding company for operations in Finland, Norway and Sweden.
(10) Includes CEMEX Asia Holdings' 70% economic interest and the 30% interest of CEMEX España.
(11) Represents CEMEX Asia Holdings' indirect economic interest.
(12) 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.
(13) Includes CEMEX (Costa Rica) S.A.'s 98% interest and CEMEX España's 2% indirect interest.
(14) Registered business name is CEMEX Ireland.
(15) On June 18, 2008, the Government of Venezuela promulgated a Nationalization Decree, mandating that the cement production industry in Venezuela be reserved for the Government of Venezuela. On August 18, 2008, an Expropriation Decree was issued by the President of Venezuela.
(16) As of December 4, 2009, Dalmacijacement d.d. changed its name to CEMEX Hrvatska d.d.
(17) Represents our 33.95% interest in ordinary shares and our 11.64% interest in preferred shares.

**North America**

For the year ended December 31, 2010, our business in North America, which includes our operations in Mexico and the United States, represented approximately 40% of our net sales before eliminations. As of December 31, 2010, our business in North America represented approximately 48% of our total installed cement capacity and approximately 55% of our total assets. With the acquisition of Rinker, our North American operations increased significantly.

***Our Operations in Mexico***

*Overview*. Our operations in Mexico represented approximately 23% of our net sales in Peso terms, before eliminations resulting from consolidation, for the year ended December 31, 2010, and approximately 12% of our total assets as of December 31, 2010.

As of December 31, 2010, 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 2013.

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.$303 million in 2008, approximately U.S.$30 million in 2009 and approximately U.S.$1 million in 2010. In addition, we expect to spend approximately U.S.$2 million in 2011 and approximately U.S.$108 million thereafter. We expect that this investment will be fully funded with free cash flow generated during the construction period.

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, 2010, approximately 900 independent concessionaries with more than 2,500 stores were integrated into the Construrama program, with nationwide coverage.

*The Cement Industry in Mexico*. According to INEGI, Mexico's construction GDP remained flat in 2010 compared to 2009. For the full year 2010, total construction investment increased 0.7%, primarily as a result of a 6% increase in infrastructure spending, offset by an estimated decrease in the residential and non-residential sectors of 1.5% and 4.0%, respectively.

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 2010 accounted for approximately 65% 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.

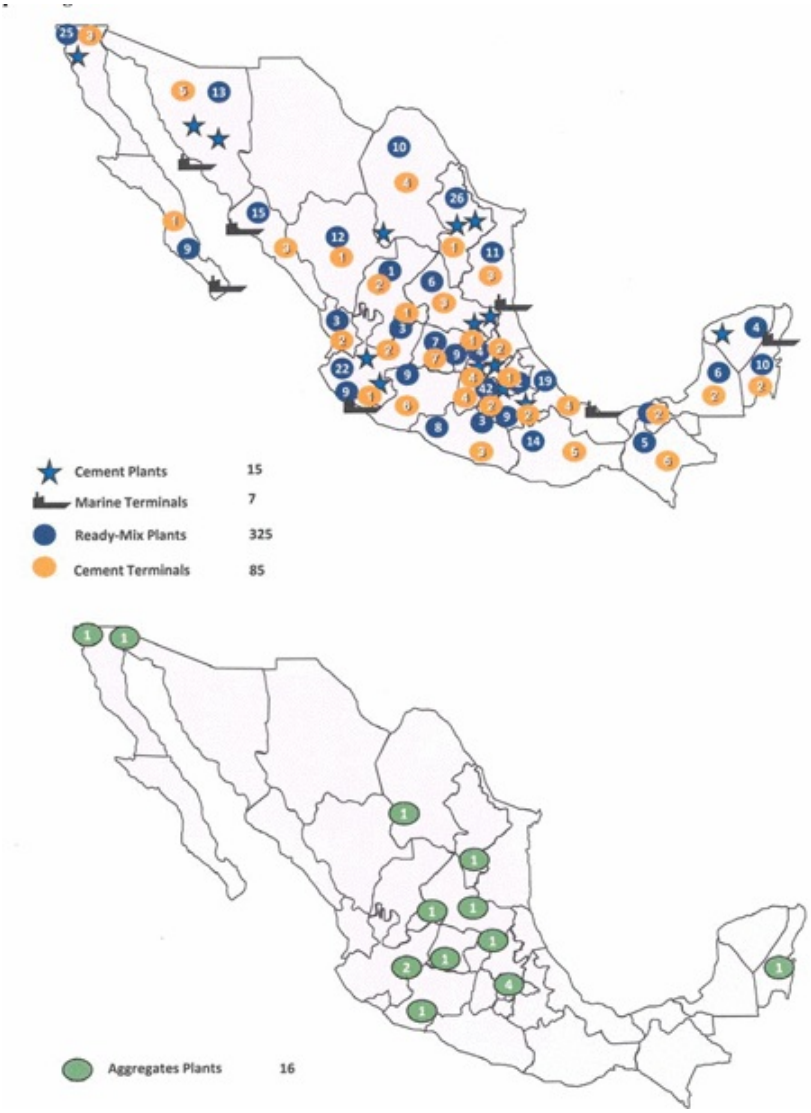
*Competition*. In the early 1970s, the cement industry in Mexico was regionally fragmented. However, over the last 40 years, cement producers in Mexico have increased their production capacity and the Mexican cement industry has consolidated into a national market, thus becoming increasingly competitive. The major cement producers in Mexico are CEMEX; Holcim Apasco, an affiliate of Holcim Ltd.; Sociedad Cooperativa Cruz Azul, a Mexican operator; Cementos Moctezuma, an associate of Ciments Molins; Grupo Cementos Chihuahua, a Mexican operator in which we own a 49% interest; and Lafarge Cementos, a subsidiary of Lafarge. 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 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 2010, we operated 13 out of a total of 15 plants (two were temporarily shut down given market conditions) and 92 distribution centers (including seven marine terminals) located throughout Mexico. We operate

modern plants on the Gulf of Mexico and Pacific coasts, allowing us to take advantage of low-land transportation costs to export to U.S., Caribbean, Central and South American markets.

***Products and Distribution Channels***

*Cement*. Our cement operations represented approximately 54% of net sales for our operations in Mexico before eliminations resulting from consolidation in 2010. Our domestic cement sales volume represented approximately 97% of our total cement sales volume in Mexico for 2010. 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 9% of our total cement sales in Mexico by volume in 2010.

*Ready-Mix Concrete*. Our ready-mix operations represented approximately 22% of net sales for our operations in Mexico before eliminations resulting from consolidation in 2010. 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 3% of net sales for our operations in Mexico before eliminations resulting from consolidation in 2010.

*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 3% of our total cement sales volume in Mexico for 2010. In 2010, approximately 18% of our cement and clinker exports from Mexico were to the United States, 68% to Central America and the Caribbean and 14% to South America.

The cement and clinker exports by our operations in Mexico to the U.S. 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.

Our exports of Mexican gray cement from Mexico to the United States were subject to an anti-dumping order that was imposed by the Commerce Department on August 30, 1990. In March 2006, the Mexican and U.S. governments entered into an agreement to eliminate U.S. anti-dumping duties on Mexican cement imports following a three-year transition period beginning in 2006. In 2006, 2007 and 2008, Mexican cement imports into the U.S. were subject to volume limitations of 3 million tons, 3.1 million and 3.0 million tons per year, respectively. Quota allocations to Mexican companies that import cement into the U.S. are made on a regional basis. The transitional anti-dumping duty during the three-year transition period was lowered to U.S.$3.00 per ton, effective as of April 3, 2006, from the previous amount of approximately U.S.$26.00 per ton. Restrictions imposed by the United States on Mexican cement imports were eliminated in April 2009. For a more detailed description of the terms of the agreement between the Mexican and U.S. governments, please see "Item 4 — Information on the Company — Regulatory Matters and Legal Proceedings — Anti-Dumping."

*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 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 2022 and 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 9% of the total fuel consumption for our operations in Mexico in 2010.

In 1999, we reached an agreement with the TEG consortium for the financing, construction and operation of a 230 megawatt ("MW") 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. As part of the original

agreement, we committed to supply the energy plant with all fuel necessary for its operations, a commitment that has been hedged through a 20-year agreement we entered into with PEMEX. These agreements were reestablished under the same conditions in 2007 with the new operator and the term was extended until 2027. The agreement with PEMEX, however, was not modified and terminates in 2024. Consequently, for the last 3 years of the agreement, we intend to purchase the required fuel in the market. For the years ended December 31, 2008, 2009 and 2010, the power plant has supplied approximately 65%, 74% and 73%, respectively, of our overall electricity needs during such years for our cement plants in Mexico.

In April 2007, we and Acciona formed an alliance to develop a wind farm project for the generation of 250 MW in Juchitan, Oaxaca, Mexico. We acted as sponsors 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 us and Acciona establish that our cement plants in Mexico should 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. The power plant had a cost of approximately U.S.$550 million.

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, 2010, we had 15 wholly-owned cement plants located throughout Mexico, with a total installed capacity of 29.3 million tons per year. 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, 2010, the limestone and clay permitted proven and probable reserves of our operations in Mexico had an average remaining life of approximately 70 and 89 years, respectively, assuming 2006-2010 average annual cement production levels. As of December 31, 2010, all our production plants in Mexico utilized the dry process.

As of December 31, 2010, we had a network of 85 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 325 ready-mix concrete plants throughout 79 cities in Mexico, more than 2,600 ready-mix concrete delivery trucks and 16 aggregates quarries.

As part of our Global Cost-Reduction Program we have made temporary capacity adjustments and rationalizations in four of our cement plants in Mexico. In addition, in 2010, we closed approximately 6% of our production capacity in our ready-mix plants throughout Mexico.

*Capital Expenditures*. We made capital expenditures of approximately U.S.$497 million in 2008, U.S.$84 million in 2009 and U.S.$87 million in 2010 in our operations in Mexico. We currently expect to make capital expenditures of approximately U.S.$84 million in our operations in Mexico during 2011.

### *Our Operations in the United States*

*Overview*. Our operations in the United States represented approximately 17% of our net sales in Peso terms, before eliminations resulting from consolidation, and approximately 43% of our total assets, for the year ended December 31, 2010. As of December 31, 2010, we held 100% of CEMEX, Inc., the main holding company of our operating subsidiaries in the United States.

As of December 31, 2010, we had a cement manufacturing capacity of approximately 17.2 million tons per year in our operations in the United States, including nearly 1.2 million tons in proportional interests through non-controlling holdings. As of December 31, 2010, 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 had 46 rail or water served active cement distribution terminals in the United States. As of December 31, 2010, we had 326 ready-mix concrete plants located in the Carolinas, Florida, Georgia, Texas, New Mexico, Nevada, Arizona, California, Oregon and Washington and aggregates facilities in North Carolina, South Carolina, Arizona, California, Florida, Georgia, New Mexico, Nevada, Oregon, Texas, and Washington, not including the assets of Ready Mix USA LLC, as described below.

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. Under the terms of the limited liability company agreements and related asset contribution agreements, we contributed two cement plants (Demopolis, Alabama and Clinchfield, Georgia) and 11 cement terminals to CEMEX Southeast, LLC, then representing approximately 98% of its contributed capital, while Ready Mix USA contributed cash to CEMEX Southeast, LLC, then representing approximately 2% of its contributed capital. In addition, we contributed our ready-mix concrete, aggregates and concrete block assets in the Florida panhandle and southern Georgia to Ready Mix USA LLC, then representing approximately 9% of its contributed capital, while Ready Mix USA contributed all its ready-mix concrete and aggregates operations in Alabama, Georgia, the Florida panhandle and Tennessee, as well as its concrete block operations in Arkansas, Tennessee, Mississippi, Florida and Alabama to Ready Mix USA LLC, then representing approximately 91% of its contributed capital. We own a 50.01% interest, and Ready Mix USA owns a 49.99% interest, in the profits and losses and voting rights of CEMEX Southeast, LLC, while Ready Mix USA owns a 50.01% interest, and we own a 49.99% interest, in the profits and losses and voting rights of Ready Mix USA LLC. CEMEX Southeast, LLC is managed and fully consolidated by us, and Ready Mix USA LLC is managed by Ready Mix USA and is accounted for by us under the equity method.

Under the Ready Mix USA LLC joint venture, we are required to contribute to the Ready Mix USA joint venture any ready-mix concrete and concrete block assets we acquire inside the joint venture region, while any aggregates assets acquired inside the region may be added to the Ready Mix USA joint venture at the option of the non-acquiring member. Building materials, pipe, transport and storm water treatment assets are not subject to the contribution clause under the Ready Mix USA joint venture. The value of the contributed assets is to be determined based on a formula by the Ready Mix USA joint venture.

On September 1, 2005, we had sold 27 ready-mix concrete plants and four concrete block facilities located in the Atlanta, Georgia metropolitan area to Ready Mix USA LLC for approximately U.S.$125 million.

On January 11, 2008, in connection with the assets acquired from Rinker, and as part of our agreements with Ready Mix USA, CEMEX contributed and sold to Ready Mix USA LLC, certain assets located in Georgia, Tennessee and Virginia, which had a fair value of approximately U.S.$437 million. We received U.S.$120 million in cash for the assets sold to Ready Mix USA LLC and the remaining assets were treated as a U.S.$260 million contribution by us to Ready Mix USA LLC. As part of the same transaction, Ready Mix USA contributed U.S.$125 million in cash to Ready Mix USA LLC, which, in turn, received bank loans of U.S.$135 million. Ready Mix USA LLC made a special distribution in cash to us of U.S.$135 million. Ready Mix USA manages all the assets acquired. Following this transaction, Ready Mix USA LLC continues to be owned 50.01% by Ready Mix USA and 49.99% by CEMEX. The assets contributed and sold by CEMEX include: 11 concrete plants, 12 limestone quarries, four concrete maintenance facilities, two aggregate distribution facilities and two administrative offices in Tennessee; three granite quarries and one aggregates distribution facility in Georgia; and one limestone quarry and one concrete plant in Virginia. All these assets were acquired by us through our acquisition of Rinker.

Beginning on June 30, 2008, Ready Mix USA had a put option right, which, upon exercise, would require us to acquire Ready Mix USA's interest in CEMEX Southeast, LLC and Ready Mix USA LLC at a price equal to the greater of a) eight times the companies' operating cash flow for the trailing twelve months, b) eight times the average of these companies' operating cash flow for the previous three years, or c) the net book value of the combined companies' assets. On September 30, 2010, Ready Mix USA exercised its put option right. As a result, we will acquire Ready Mix USA's interest in CEMEX Southeast, LLC and Ready Mix USA LLC, which have cement, aggregates, ready-mix and block assets located in the southeast region of the U.S. The acquisition will take place upon the closing of the transaction, which is expected in September 2011, after the performance of the obligations by both parties under the put option agreement. CEMEX's purchase price for Ready Mix USA's interests, including a non-compete and a transition services agreement, will be approximately U.S.$355 million. As of March 31, 2011, Ready Mix USA, LLC had approximately $23 million (unaudited) in net debt (debt minus cash and cash equivalents), which is subject to be consolidated upon closing of the transaction. Ready Mix USA will continue to manage Ready Mix USA, LLC, the joint venture in which it has a majority interest, until the closing of the transaction. As of December 31, 2010, CEMEX has not recognized a liability, as the fair value of the net assets

exceeds the purchase price. Had the purchase price exceeded the fair value of the net assets acquired, a loss would have been recognized.

On February 22, 2010, Ready Mix USA LLC completed the sale of 12 active quarries and certain other assets to SPO Partners & Co. for U.S.$420 million. The active quarries, which consist of two granite quarries in Georgia, nine limestone quarries in Tennessee, and one limestone quarry in Virginia, are operated by Ready Mix USA LLC and were deemed non strategic by CEMEX and Ready Mix USA LLC. The proceeds from the sale were partly used to reduce debt held by Ready Mix USA LLC, and to effect a cash distribution of approximately U.S.$100 million to each joint venture partner, including CEMEX.

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 will 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 in 2010. We do not plan to incur capital expenditures in the construction of the Seligman Crossing Plant during 2011. During the first quarter of 2011, due to the low levels of construction activity and increased costs, we have implemented a minimum margin strategy in our Arizona operations, through the closure of under-utilized facilities, the reduction of headcount, among other actions pursuing improvement in the profitability of our operations in the region.

In February 2006, we announced a plan to construct a second kiln at our Balcones cement plant in New Braunfels, Texas in order to increase our cement production capacity to support strong demand amidst a shortfall in regional supplies of cement. The production capacity of the Balcones cement plant was approximately 1.1 million tons per year. The construction of the new kiln, which was designed to increase our total production capacity in the Balcones cement plant to approximately 2.2 million tons per year, was completed in the third quarter of 2008, although minor expenditures were made in 2009 and 2010. We spent a total of approximately U.S.$373 million in the construction of this new kiln, including U.S.$27 million in 2006, U.S.$187 million in 2007, U.S.$147 million in 2008, U.S.$10 million in 2009 and U.S.$2 million in 2010.

In October 2005, Rinker announced that it had commenced detailed plant engineering for the construction of a second kiln at the cement plant in Brooksville, Florida in order to increase the cement production capacity by 50%. The production capacity of the Brooksville South plant was approximately 0.7 million tons per year. The construction of the new kiln was completed in the third quarter of 2008, with minor expenditures made during 2009. We and Rinker together spent approximately U.S.$244 million in the construction of this new kiln, including U.S.$2 million in 2005, U.S.$58 million in 2006, U.S.$121 million in 2007, U.S.$58 million in 2008 and U.S.$5 million during 2009.

With the acquisition of Mineral Resource Technologies, Inc. in August 2003, we believe that we achieved a competitive position 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 four 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.

*The Cement Industry in the United States* . 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, namely, 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 from the residential and industrial and commercial sectors during the current recession.

The construction industry has recently experienced the worst downturn in over 70 years as the fallout from the collapse of the housing sector caused massive losses in the financial sector, which resulted in extremely tight credit conditions and a deep U.S. recession that started in December 2007 and ended in June 2009. Under these conditions, cement demand declined 44% from 2006 to 2009. Expansionary monetary and fiscal policies resulted in

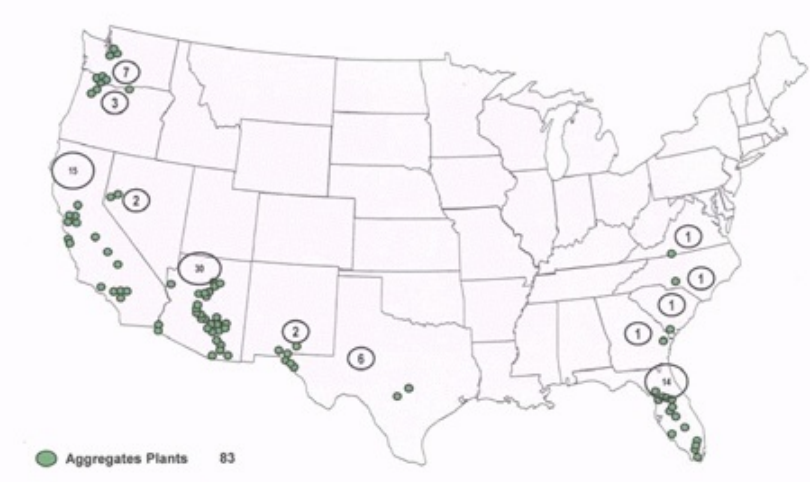
more stable conditions in 2010, with real GDP growth of 2.9%. As a result, cement demand stabilized in 2010, declining, however, 1% from 2009. After a 73% decline in housing starts from 2005 to 2009, the housing sector stabilized in the second half of 2009 and improved slightly in 2010, with housing starts up 6%. Nominal construction spending for the industrial and commercial sector lagged the decline in the economy by a year, with declines of 26% in 2009 and 33% in 2010. Industrial and commercial contract awards, which drive future spending for this segment, declined 19% in 2010, but the pace of its year-over-year decline moderated to 10% in the final quarter of 2010 when compared to 40% in the first quarter of 2010. Nominal construction spending for the public sector remained more resilient during the recession, increasing 9% in 2008 and 1% in 2009 before declining 6% in 2010. Overall, we believe that cement demand should start growing again as the economic recovery leads to more job creation and better credit conditions.

*Competition*. The cement industry in the U.S. is highly competitive. We compete with national and regional cement producers in the U.S. 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 U.S. and about 70,000 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.$30 billion per year. Given that the concrete industry has historically consumed approximately 75% of all cement produced annually in the U.S., many cement companies choose to develop concrete plant capabilities.

Aggregates are widely used throughout the U.S. for all types of construction because they are the most basic materials for building activity. The U.S. aggregates industry is highly fragmented and geographically dispersed. According to the U.S. Geological Survey, during 2010 an estimated 3,900 companies operated approximately 6,000 sand and gravel sites and 1,600 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 (including the assets held through the Ready Mix USA LLC joint venture) as of December 31, 2010.




*Products and Distribution Channels*

*Cement*. Our cement operations represented approximately 31% of our operations in the United States' net sales before eliminations resulting from consolidation in 2010. 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 27% of our operations in the United States' net sales before eliminations resulting from consolidation in 2010. Our ready-mix concrete operations in the U.S. purchase most of their cement requirements from our cement operations in the U.S. and roughly half of their aggregates requirements from our aggregates operations in the U.S. In addition, our 49.99%-owned Ready Mix USA LLC joint venture has purchased most of its cement requirements from our cement operations in the U.S. Our ready-mix concrete products are mainly sold to residential, commercial and public contractors and to building companies.

*Aggregates*. Our aggregates operations represented approximately 18% of our operations in the United States' net sales before eliminations resulting from consolidation in 2010. We estimate that, as of December 31, 2010, the hard rock and sand and gravel permitted proven and probable reserves of our operations in the United States had an average remaining life of approximately 25 and 22 years, respectively, assuming 2006-2010 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. Ready Mix USA LLC has purchased most of its aggregates requirements from third parties.

*Production Costs*. The largest cost components of our plants are electricity and fuel, which accounted for approximately 37% of our U.S. operations' total production costs in 2010. We are currently implementing a program to gradually replace coal with more economic fuels such as petcoke and tires, 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 2010, the use of alternative fuels offset the effect on our fuel costs of a significant increase in coal prices. Power costs in 2010 represented

approximately 16% of our cement operations in the United States' cash manufacturing cost, which represents production cost before depreciation. We have improved the efficiency of our operations in the United States' electricity usage, 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, 2010, we operated 13 cement manufacturing plants in the U.S., with a total installed capacity of 17.2 million tons per year, including nearly 1.2 million tons representing our proportional interests through associates. We estimate that, as of December 31, 2010, the limestone and clay permitted proven and probable reserves of our operations in the United States had an average remaining life of approximately 63 and 89 years, respectively, assuming 2006-2010 average annual cement production levels. As of that date, we operated a distribution network of 46 cement terminals, 4 of which are deep-water terminals. All our cement production facilities in 2010 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, and the Demopolis, Alabama and Clinchfield, Georgia plants, which are owned by CEMEX Southeast, LLC, an entity in which we own a 50.01% interest and Ready Mix USA owns a 49.99% interest. As of December 31, 2010, we had 326 wholly-owned ready-mix concrete plants and 83 aggregates quarries.

As of December 31, 2010, we also had interests in 187 ready-mix concrete plants and 10 aggregates quarries, which are owned by Ready Mix USA LLC.

As of December 31, 2010, we distributed fly ash through 14 terminals and 11 third-party-owned utility plants, which operate both as sources of fly ash and distribution terminals. As of that date, we also owned 150 concrete block, paver, pipe, precast, asphalt and gypsum products distribution facilities, and had interests in 21 concrete block facilities, which are owned by Ready Mix USA LLC.

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 61% of our ready-mix plants capacity, 63% of our block manufacturing capacity and 81% of our aggregates quarries in the U.S.

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. Our state-of-the-art cement facility in Victorville, California will continue to provide cement to this market more efficiently than the Davenport plant, as it has done so since March 2009. Opened in 1906, Davenport was the least efficient of our 14 plants in the United States to operate. We have no other set plans for the Davenport facility at this time.

On February 22, 2010, we announced that our Ready Mix USA LLC joint venture had completed the sale of 12 active quarries to SPO Partners & Co. The active quarries consist of two granite quarries in Georgia, nine limestone quarries in Tennessee, and one limestone quarry in Virginia.

*Capital Expenditures*. We made capital expenditures of approximately U.S.$391 million in 2008, U.S.$60 million in 2009 and U.S.$75 million in 2010 in our operations in the U.S. We currently expect to make capital expenditures of approximately U.S.$55 million in our operations in the U.S. during 2011. We do not expect to be required to contribute any funds with respect to the assets of the companies jointly-owned with Ready Mix USA as capital expenditures during 2011.

**Europe**

For the year ended December 31, 2010, our business in Europe, which includes our operations in Spain, the United Kingdom and our Rest of Europe segment, as described below, represented approximately 34% of our net sales before eliminations resulting from consolidation. As of December 31, 2010, our business in Europe represented approximately 27% of our total installed capacity and approximately 25% of our total assets.

### *Our Operations in Spain*

*Overview*. Our operations in Spain represented approximately 4% of our net sales in Peso terms, before eliminations resulting from consolidation, and approximately 10% of our total assets, for the year ended December 31, 2010.

As of December 31, 2010, we held 99.88% of CEMEX España, our operating subsidiary in Spain. Our cement activities in Spain are conducted by CEMEX España. Our ready-mix concrete activities in Spain are conducted by Hormicemex, S.A., a subsidiary of CEMEX España, and our aggregates activities in Spain are conducted by Aricemex S.A., a subsidiary of CEMEX España. CEMEX España is also a holding company for most of our international operations.

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, including approximately €11 million in 2006, €19 million in 2007, €3 million in 2008, and €0.2 million in 2009. The first phase, which includes the cement mill with production capacity of nearly one million tons of cement per year, was completed in the last 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, is at an initial stage, with no material investments made during 2010 or expected to be made during 2011.

During 2007, we increased our installed capacity for white cement at our Buñol plant, located in the Valencia region, through the installation of a new production line which became operational in the third quarter of 2007.

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. The new cement plant is expected to have an annual capacity in excess of 650,000 tons and will be completed depending on the improvement of market conditions in Spain. Our investment in the construction of the plant is expected to be approximately €138 million, including approximately €28 million in 2007, €58 million in 2008, €30 million in 2009, €3 million in 2010 and an expected €3 million in 2011. We hold a 99.34% interest in Cementos Andorra, and the Burgos family holds a 0.66% interest.

On December 26, 2008, we sold our Canary Islands operations (consisting of cement and ready-mix concrete assets in Tenerife and our 50% equity interest 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).

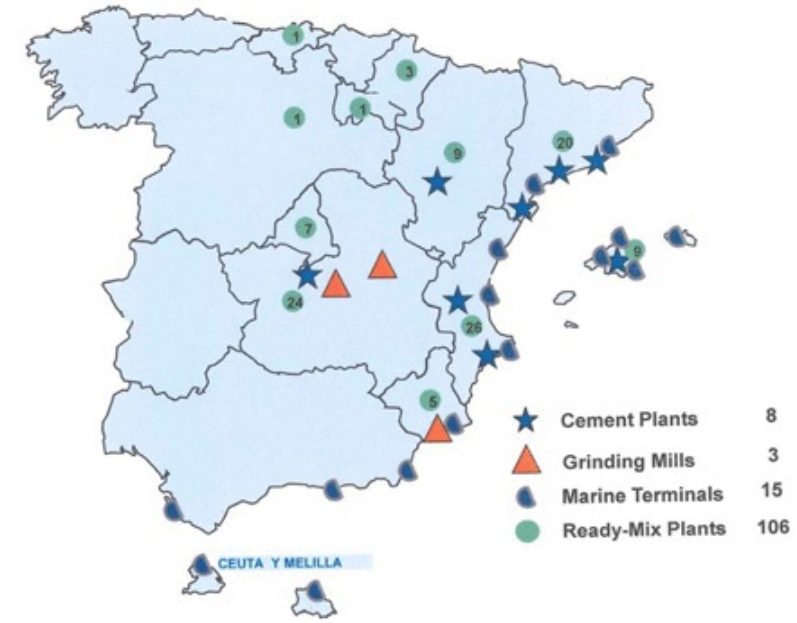
*The Cement Industry in Spain*. According to our latest estimates, in 2010, investment in construction sector in Spain fell by about 12% when compared to 2009, primarily as a result of a severe correction in the housing sector, which fell by about 16%. According to the latest estimates from the Asociación de Fabricantes de Cemento de España, or OFICEMEN, the Spanish cement trade organization, cement consumption in Spain in 2010 decreased 15% compared to 2009.

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 increased 9.5% in 2006 and decreased 10.5% in 2007, 40% in 2008, 62% in 2009 and 17% in 2010. Clinker imports have been significant, with increases of 19.7% in 2006 and 26.8% in 2007, but experienced a sharp decline of 46% in 2008, 60% in 2009 and 36% in 2010. Imports primarily have had an impact on coastal zones, since transportation costs make it less profitable to sell imported cement in inland markets.

Spain has traditionally been one of the leading exporters of cement in the world, exporting up to 13 million tons per year. In recent years, Spanish cement and clinker export volumes have fluctuated, reflecting the rapid changes of demand in the Mediterranean basin as well as the strength of the Euro and the 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.

*Competition*. According to our estimates, as of December 31, 2010, 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 CEMEX España's business strategy.

***Our Operating Network in Spain***




***Products and Distribution Channels***

*Cement*. Our cement operations represented approximately 61% of net sales for our operations in Spain before eliminations resulting from consolidation in 2010. CEMEX España offers various types of cement, targeting specific products to specific markets and users. In 2010, approximately 15% 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 21% of net sales for our operations in Spain before eliminations resulting from consolidation in 2010. Our ready-mix concrete operations in Spain in 2010 purchased almost 91% of their cement requirements from our cement operations in Spain, and approximately 75% of their aggregates requirements from our aggregates operations in Spain.

*Aggregates*. Our aggregates operations represented approximately 8% of net sales for our operations in Spain before eliminations resulting from consolidation in 2010.

*Exports*. Exports of cement by our operations in Spain, which represented approximately 31% of net sales for our operations in Spain before eliminations resulting from consolidation, increased substantially in 2010 compared to 2009, primarily as a result of strategically increased exports to other countries, especially those located in Africa, to mitigate local volume declines. Export prices are usually lower than domestic market prices, and costs are usually higher for export sales. Of our total export sales from Spain in 2010, 3% consisted of white cement, 47% of gray cement and 50% of clinker. In 2010, 10% of our exports from Spain were to Europe and the Middle East, 89% to Africa and 1% to other countries.

*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 2010, we burned organic waste, tires and plastics as fuel, achieving, in 2010, a 33% substitution rate for petcoke in our gray and white clinker kilns for the year. During 2011, we expect to increase the quantity of these alternative fuels and to reach a substitution level of around 45%.

*Description of Properties, Plants and Equipment*. As of December 31, 2010, our operations in Spain included 8 cement plants located in Spain, with an installed cement capacity of 11 million tons, including 1.1 million tons of white cement. As of that date, we also owned two cement mills and operated one mill under a lease contract, 23 distribution centers, including eight land and 15 marine terminals, 106 ready-mix concrete plants, 27 aggregates quarries and 12 mortar plants. As of December 31, 2010, 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, 2010, the limestone and clay permitted proven and probable reserves of our operations in Spain had an average remaining life of approximately 41 and 18 years, respectively, assuming 2006-2010 average annual cement production levels.

As part of our global cost-reduction program we have made temporary capacity adjustments and rationalizations in several cement plants in Spain. During 2010, four out of our eight cement plants have partially stopped cement production. In addition to these partial stoppages, our Villanova plant, located in Tarragona, and our Escombreras grinding mill, located in Cartagena, were closed temporarily during 2009, and will only resume production on a need basis. Moreover, the San Vicente plant, located in Alicante, and the Muel grinding mill, located in Aragón, have been permanently shutdown. Additionally, approximately 7% of our ready-mix concrete plants in Spain have been also temporarily closed.

*Capital Expenditures*. We made capital expenditures of approximately U.S.$177 million in 2008, U.S.$74 million in 2009 and U.S.$46 million in 2010 in our operations in Spain. We currently expect to make capital expenditures of approximately U.S.$39 million in our operations in Spain during 2011, including those related to the construction of the new cement production facility in Teruel, described above.

***Our Operations in the U.K.***

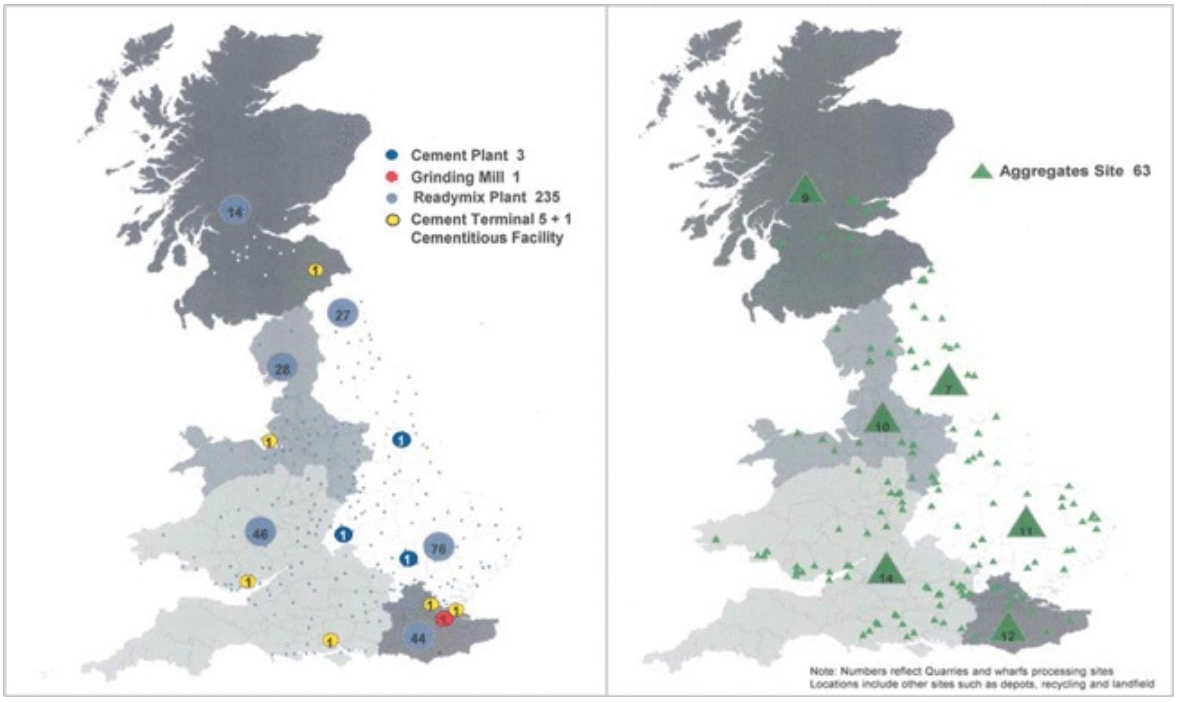
*Overview*. Our operations in the U.K. represented approximately 8% of our net sales in Peso terms, before eliminations resulting from consolidation, and approximately 6% of our total assets, for the year ended December 31, 2010.

As of December 31, 2010, we held 100% of CEMEX Investments Limited (formerly RMC), the main holding company of our operating subsidiaries in the United Kingdom. We are a leading provider of building materials in the U.K. 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, roof tiles, flooring systems and sleepers for rail infrastructure.

*The Construction Industry in the U.K.* According to the U.K.'s Office for National Statistics, the level of GDP in 2010 as a whole in the U.K. was 1.4% higher than in 2009. Total construction output rose 5% in 2010, as compared to a 11% decline in 2009 over the preceding year. Both private and public sector housing grew, as did the rest of the public construction sector and infrastructure construction. According to the British Cement Association, domestic cement demand increased approximately 3% in 2010 compared to 2009. However, activity in the industrial sector was subdued, and commercial construction activity and repair and maintenance activity both experienced a decline.

*Competition*. Our primary competitors in the U.K. are Lafarge, Heidelberg, Tarmac, and Aggregate Industries (a subsidiary of Holcim), each with varying regional and product strengths.

***Our Operating Network in the U.K.***



***Products and Distribution Channels***

*Cement*. Our cement operations represented approximately 16% of net sales for our operations in the U.K. before eliminations resulting from consolidation for the year ended December 31, 2010. About 82% of our U.K. 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 2010, our operations in the U.K. imported approximately 40 thousand metric tons of clinker from our cement operations in Spain.

*Ready-Mix Concrete*. Our ready-mix concrete operations represented approximately 27% of net sales for our operations in the U.K. before eliminations resulting from consolidation in 2010. Special products, including self-compacting concrete, fiber-reinforced concrete, high strength concrete, flooring concrete and filling concrete, represented 15% of our 2010 U.K. sales volume. Our ready-mix concrete operations in the U.K. in 2010 purchased approximately 67% of their cement requirements from our cement operations in the U.K. and approximately 77% of their aggregates requirements from our aggregates operations in the U.K. Our ready-mix concrete products are mainly sold to public, commercial and residential contractors.

*Aggregates*. Our aggregates operations represented approximately 25% of net sales for our operations in the U.K. before eliminations resulting from consolidation in 2010. In 2010, our U.K. aggregates sales were divided as follows: 49% were sand and gravel, 41% limestone and 10% hard stone. In 2010, 15% of our aggregates volumes were obtained from marine sources along the U.K. coast. In 2010, approximately 44% of our U.K. 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 2010, fixed production costs were reduced by 6% and variable costs by 2% in the U.K. We continued to implement our cost reduction programs and increased the use of alternative fuels by 15% in 2010.

*Ready-Mix Concrete*. In 2010, we reduced our total U.K. production costs by approximately 8% by continuing to implement our cost reduction plans and down-sizing to match lower sales.

*Aggregates*. In 2010, we reduced fixed production costs by approximately 8% through ongoing cost reductions initiatives commenced in 2009 in response to the market decline.

*Description of Properties, Plants and Equipment*. As of December 31, 2010, we owned three cement plants and one clinker grinding facility in the U.K. (including Barrington, which remains mothballed since November 2008, but excludes Rochester, which closed permanently in October 2009 and was dismantled during 2010). Assets in operation at year-end 2010 represent an installed cement capacity of 2.8 million tons per year. We estimate that, as of December 31, 2010, the limestone and clay permitted proven and probable reserves of our operations in the U.K. had an average remaining life of approximately 57 and 59 years, respectively, assuming 2006-2010 average annual cement production levels. As of December 31, 2010, we also owned 6 cement import terminals and operated 235 ready-mix concrete plants and 63 aggregates quarries in the U.K. In addition, we had operating units dedicated to the asphalt, concrete blocks, concrete block paving, roof tiles, sleepers and flooring businesses in the U.K.

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 have built a new grinding and blending facility at the Port of Tilbury, located on the Thames River east of London. The new facility, which started operations during May 2009, has an annual grinding capacity of approximately 1.2 million tons per annum. In total, we spent approximately U.S.$93 million in the construction of this new grinding mill: U.S.$28 million in 2007, U.S.$41 million in 2008, U.S.$22 million in 2009 and U.S.$2 million in 2010.

As part of our global cost-reduction program we have made temporary capacity adjustments and rationalizations in our Barrington cement plant, which shut down cement production. In addition, we have closed approximately 5% of our ready-mix concrete plants.

*Capital Expenditures*. We made capital expenditures of approximately U.S.$132 million in 2008, U.S.$58 million in 2009 and U.S.$53 million in 2010 in our operations in the U.K. We currently expect to make capital expenditures of approximately U.S.$37 million in our operations in the U.K. during 2011.

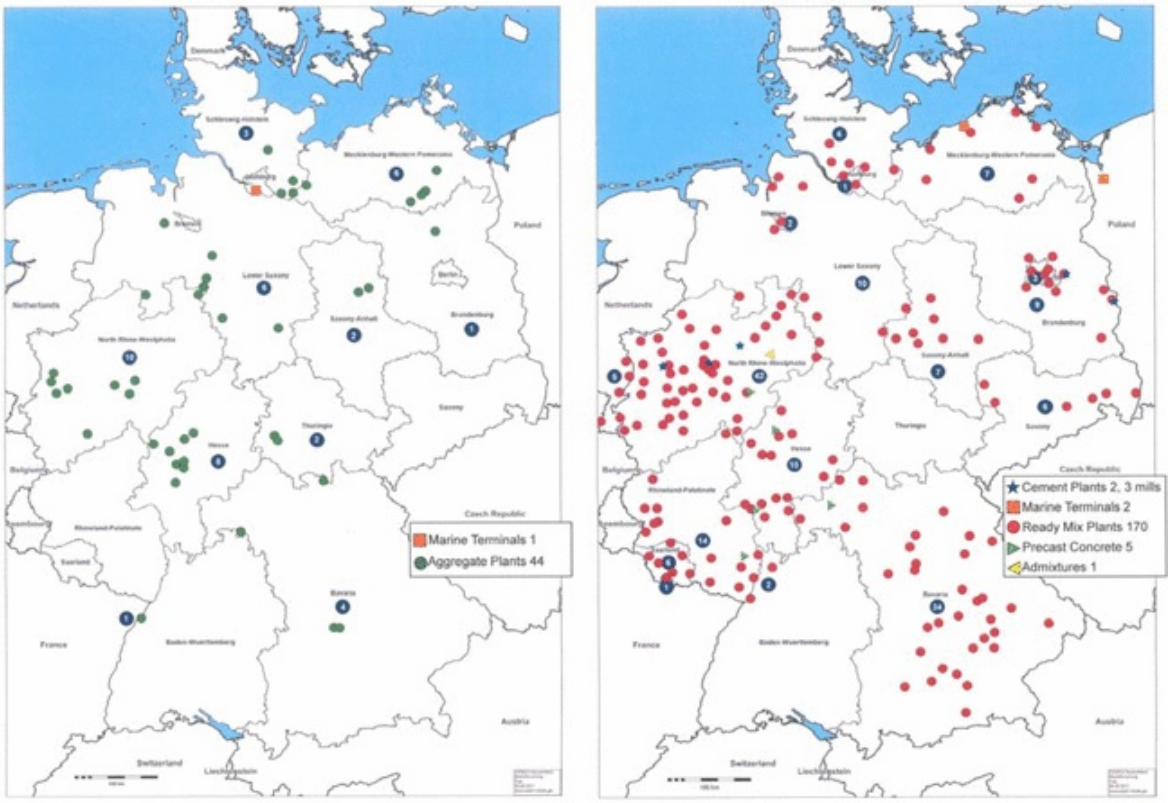
### *Our Operations in Germany*

*Overview*. As of December 31, 2010, 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).

*The Cement Industry in Germany*. According to Euroconstruct, total construction output in Germany increased by 3.4% in 2010. Data from the Federal Statistical Office indicate an increase in construction investments of 2.8% for 2010. Construction in the residential sector also increased by 4.4%. Due to the extremely early and harsh winter in Germany, construction works declined significantly in December 2010. According to preliminary calculations, the national cement consumption in Germany in 2010 dropped by 2.9% to 24.6 million tons, while the ready-mix concrete market showed a decrease of 3.7% and the decrease in the aggregates market was 2.2%.

*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 2009. 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, 2010, we operated two cement plants in Germany (not including the Mersmann plant). As of December 31, 2010, our installed cement capacity in Germany was 4.9 million tons per year (excluding the Mersmann plant cement capacity). We estimate that, as of December 31, 2010, the limestone permitted proven and probable reserves of our operations in Germany had an average remaining life of approximately 42 years, assuming 2006-2010 average annual cement production levels. As of that date, our operations in Germany included three cement grinding mills, 177 ready-mix concrete plants, 44 aggregates quarries, two land distribution centers for cement, fie land distribution centers for aggregates, and three maritime terminals, two for cement and one for aggregates. In 2006, we closed the kiln at the Mersmann cement plant, and we do not contemplate resuming operations at this plant.

*Capital Expenditures*. We made capital expenditures of approximately U.S.$49 million in 2008, U.S.$31 million in 2009 and U.S.$47 million in 2010 in our operations in Germany, and we currently expect to make capital expenditures of approximately U.S.$32 million in 2011.

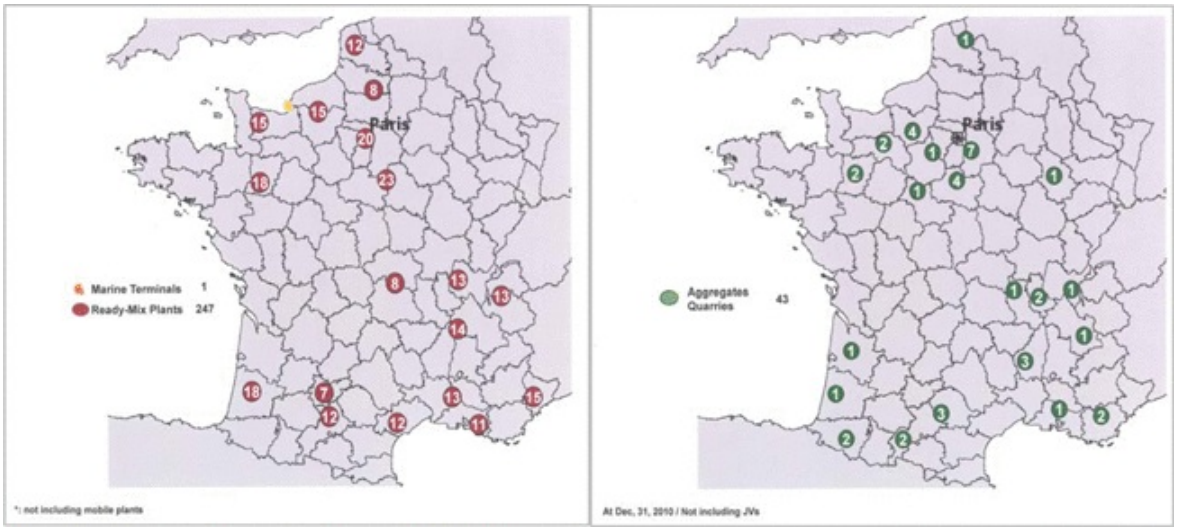
***Our Operations in France***

*Overview*. As of December 31, 2010, 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.

*The Cement Industry in France*. According to INSEE (National Institute of Statistics and Economic Studies in France), total construction output in France declined by 5% in 2010. The decrease was primarily driven by an estimated decrease of 3.7% in the public works sector and a decrease of 17% in the non-residential sector, while residential construction increased approximately 1.2%. According to the French cement producers association, total cement consumption in France reached 19.8 million tons in 2010, a decrease of 3% compared to 2009.

*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 must rely on sourcing cement from third parties.

***Our Operating Network in France***



*Description of Properties, Plants and Equipment*. As of December 31, 2010, we operated 247 ready-mix concrete plants in France, one maritime cement terminal located in LeHavre, on the northern coast of France, 20 land distribution centers and 43 aggregates quarries.

*Capital Expenditures*. We made capital expenditures of approximately U.S.$41 million in 2008, U.S.$15 million in 2009 and U.S.$23 million in 2010 in our operations in France, and we currently expect to make capital expenditures of approximately U.S.$16 million during 2011.

***Our Operations in the Rest of Europe***

Our operations in the Rest of Europe which, as of December 31, 2010, consisted of our operations in Croatia, Poland, Latvia, the Czech Republic, Ireland, Austria, Hungary, Finland, Norway and Sweden, as well as our other European assets and our approximately 33% non-controlling interest in a Lithuanian company. These operations represented approximately 8% of our 2010 net sales in Peso terms, before eliminations resulting from consolidation, and approximately 4% of our total assets in 2010.

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

*Overview.* As of December 31, 2010, we held 61.2% of Readymix plc, our main subsidiary in the Republic of Ireland. 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, 2010, we operated 37 ready-mix concrete plants, 27 aggregates quarries and 15 block plants located in the Republic of Ireland, Northern Ireland and the Isle of Man. We import and distribute cement in the Isle of Man.

*The Construction Industry in the Republic of Ireland.* According to Euroconstruct, total construction output in the Republic of Ireland is estimated to have decreased by 28% in 2010. The decrease reflected the continued contraction in the housing sector. We estimate that total cement consumption in the Republic of Ireland and Northern Ireland reached 2.1 million tons in 2010, a decrease of 25% compared to total cement consumption in 2009.

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

*Capital Expenditures.* We made capital expenditures of approximately U.S.$49 million in 2008, U.S.$0.3 million in 2009 and U.S.$1 million in 2010 in our operations in the Republic of Ireland. We currently expect to make capital expenditures of approximately U.S.$1 million in our Irish operations during 2011.

***Our Operations in Poland***

*Overview.* As of December 31, 2010, 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, 2010, 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, 2010, we also operated 41 ready-mix concrete plants, nine aggregates quarries, ten land distribution centers and two maritime terminals in Poland.

*The Cement Industry in Poland.* According to the Central Statistical Office in Poland, total construction output in Poland increased by 3.5% in 2010. In addition, according to our estimates, total cement consumption in Poland reached approximately 15.7 million tons in 2010, an increase of 2% compared to 2009.

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

*Capital Expenditures.* We made capital expenditures of approximately U.S.$104 million in 2008, U.S.$7 million in 2009 and U.S.$10 million in 2010 in our operations in Poland, and we currently expect to make capital expenditures of approximately U.S.$31 million in Poland during 2011.

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

*Overview.* As of December 31, 2010, 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, 2010, according to our estimates. As of December 31, 2010, we operated three cement plants in Croatia, with an installed capacity of 2.4 million tons per year. As of that date, we also operated 12 land distribution centers, four maritime cement terminals, eight ready-mix concrete facilities and one aggregates quarry in Croatia, Bosnia & Herzegovina, Slovenia, Serbia and Montenegro.

*The Cement Industry in Croatia.* According to our estimates, total cement consumption in Croatia alone reached almost 1.8 million tons in 2010, a decrease of 23% compared to 2009.

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

*Capital Expenditures.* We made capital expenditures of approximately U.S.$14 million in 2008, U.S.$8 million in 2009 and U.S.$10 million in 2010 in our operations in South-East Europe, and we currently expect to make capital expenditures of approximately U.S.$4 million in the region during 2011.

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

*Overview.* As of December 31, 2010, we held 100% of CEMEX Czech Operations, s.r.o., our operating 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, 2010, we operated 54 ready-mix concrete plants and nine 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.

*The Cement Industry in the Czech Republic.* According to the Czech Statistical Office, total construction output in the Czech Republic decreased by 7.8% in 2010. The decrease was primarily driven by a continued slowdown in civil engineering works. According to the Czech Cement Association, total cement consumption in the Czech Republic reached 3.8 million tons in 2010, a decrease of 10% compared to 2009.

*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.$12 million in 2008, U.S.$2 million in 2009 and U.S.$5 million in 2010 in our operations in the Czech Republic, and we currently expect to make capital expenditures of approximately U.S.$10 million in the Czech Republic during 2011.

***Our Operations in Latvia***

*Overview.* As of December 31, 2010, we held 100% of SIA CEMEX, our operating subsidiary in Latvia. We are the only cement producer and a leading ready-mix cement 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, 2010, 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 five 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. We expect our total capital expenditure in the capacity expansion of this plant will be approximately U.S.$411 million, which includes U.S.$11 million, U.S.$86 million, U.S.$174 million, U.S.$113 million and U.S.$22 million invested during 2006, 2007, 2008, 2009 and 2010, respectively; and we expect to incur U.S.$5 million during 2011.

*Capital Expenditures.* In total, we made capital expenditures of approximately U.S.$187 million in 2008, U.S.$115 million in 2009 and U.S.$24 million in 2010 in our operations in Latvia, and we currently expect to make capital expenditures of approximately U.S.$10 million in our operations in Latvia during 2011.

***Our Equity Investment in Lithuania***

*Overview.* As of December 31, 2010, we owned an approximate 33% interest in Akmenes Cementas AB, a cement producer in Lithuania, which operates one cement plant in Lithuania with an installed cement capacity of 1.3 million tons per year.

***Our Operations in Austria***

*Overview.* As of December 31, 2010, we held 100% of CEMEX Austria AG, our main subsidiary in Austria. We are a leading participant in the concrete and aggregates markets in Austria and also produce admixtures. As of December 31, 2010, we owned 38 ready-mix concrete plants and operated seven additional plants through joint ventures. We also owned 23 aggregates quarries, including six quarries which are currently operated by third parties, and had non-controlling interests in three quarries.

*The Cement Industry in Austria.* According to the European Commission, total construction investment in Austria declined by 4.2% in 2010. The decline was primarily driven by a reduction in public and commercial projects. According to our estimates, total cement consumption in Austria decreased by 5% in 2010.

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

*Capital Expenditures.* We made capital expenditures of approximately U.S.$15 million in 2008, U.S.$4 million in 2009 and U.S.$3 million in 2010 in our operations in Austria. We currently expect to make capital expenditures of approximately U.S.$3 million in our operations in Austria during 2011.

See "— Regulatory Matters and Legal Proceedings" for a description of the ongoing arbitration relating to the proposed sale of our operations in Austria and Hungary.

***Our Operations in Hungary***

*Overview.* As of December 31, 2010, we held 100% of CEMEX Hungária Kft., our main subsidiary in Hungary. As of December 31, 2010, we owned 31 ready-mix concrete plants and six aggregates quarries, and we had non-controlling interests in eight other ready-mix concrete plants and two other aggregates quarries.

*The Cement Industry in Hungary.* According to the Hungarian Central Statistical Office, total construction output in Hungary decreased by 84.9% in 2010, as of November 2010. The decrease was primarily driven by a drop in the construction of buildings. Total cement consumption in Hungary was 2.8 million tons in 2010, a decrease of 18% compared to 2009.

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

*Capital Expenditures.* We made capital expenditures of approximately U.S.$4 million in 2008 and U.S.$2 million in 2010. No significant capital expenditures were made in 2009 in our operations in Hungary. We currently expect to make capital expenditures of approximately U.S.$1 million in our operations in Hungary during 2011.

See "— Regulatory Matters and Legal Proceedings" for a description of the ongoing arbitration relating to the proposed sale of our Austrian and Hungarian operations.

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

*Overview.* As of December 31, 2010, we operated ten marine cement terminals in Finland, Norway and Sweden through Embra AS, a leading bulk-cement importer in the Nordic region.

*Capital Expenditures.* We made capital expenditures of approximately U.S.$1 million during 2008, U.S.$0.1 million during 2009 and U.S.$0.5 million during 2010 in our operations in other European countries. We currently do not expect to make any significant capital expenditures during 2011 in our other operations in Europe.

**South America, Central America and the Caribbean**

For the year ended December 31, 2010, our business in South America, Central America and the Caribbean, Colombia, Argentina, Costa Rica, the Dominican Republic, Panama, Nicaragua, Puerto Rico and Jamaica, as well as other assets in the Caribbean, represented approximately 11% of our net sales before eliminations resulting from consolidation. As of December 31, 2010, our business in South America, Central America and the Caribbean represented approximately 13% of our total installed capacity and approximately 6% of our total assets. See "— Regulatory Matters and Legal Proceedings" for a description of the ongoing arbitration relating to our Venezuelan operations.

***Our Operations in Colombia***

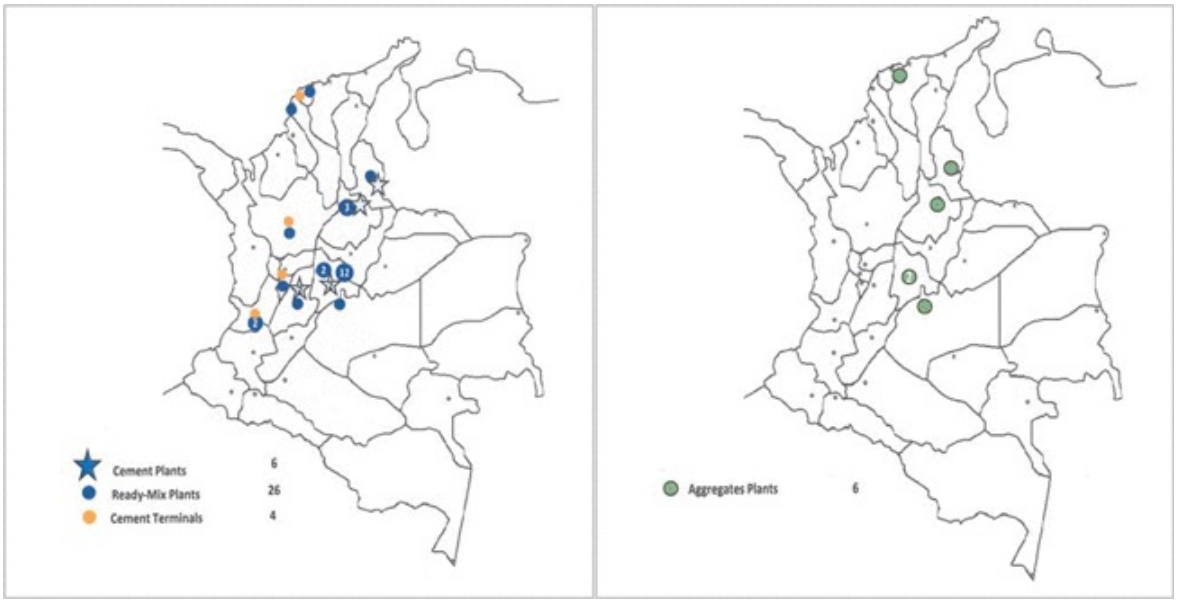
*Overview*. As of December 31, 2010, we owned approximately 99.7% of CEMEX Colombia, S.A., or CEMEX Colombia, our main subsidiary in Colombia. As of December 31, 2010, CEMEX Colombia was the second-largest cement producer in Colombia, based on installed capacity, according to the Institute of Cement Producers in Colombia. For the year ended December 31, 2010, our operations in Colombia represented approximately 4% of our net sales before eliminations resulting from consolidation and approximately 2% 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 2010, these three metropolitan areas accounted for approximately 42.9% of Colombia's cement consumption. CEMEX Colombia's Ibague plant, which uses the dry process and is strategically located in the Urban Triangle, is Colombia's largest and had an installed capacity of 2.6 million tons as of December 31, 2010. 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.

*The Cement Industry in Colombia*. According to the Institute of Cement Producers in Colombia, the installed capacity for cement in Colombia in 2010 was 16.8 million tons. According to the National Statistic Department (DANE), total cement consumption in Colombia reached 8.5 million tons during 2010, an increase of 7.2 % from 2009, while cement exports from Colombia reached 0.7 million tons. We estimate that close to 50% of cement in Colombia is consumed by the self-construction sector, while the housing sector accounts for 30% 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*. The "Grupo Empresarial Antioqueño," or Argos, owns or has interests in 11 of Colombia's 20 cement plants. 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.

***Our Operating Network in Colombia***




***Products and Distribution Channels***

*Cement*. Our cement operations represented approximately 66% of net sales for our operations in Colombia before eliminations resulting from consolidation in 2010.

*Ready-Mix Concrete*. Our ready-mix concrete operations represented approximately 24% of net sales for our operations in Colombia before eliminations resulting from consolidation in 2010.

*Aggregates*. Our aggregates operations represented approximately 3% of net sales for our operations in Colombia before eliminations resulting from consolidation in 2010.

*Description of Properties, Plants and Equipment*. As of December 31, 2010, CEMEX Colombia owned six cement plants, having a total installed capacity of 4.8 million tons per year. Two of these plants utilize the wet process and four plants utilize the dry process. In 2010, we replaced 12% 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, 2010, the limestone and clay permitted proven and probable reserves of our operations in Colombia had an average remaining life of approximately 11 and 52 years, respectively, assuming 2006-2010 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 2006-2010 average annual cement production levels. As of December 31, 2010, CEMEX Colombia owned four land distribution centers, one mortar plant, 26 ready-mix concrete plants, and six aggregates operations. As of that date, CEMEX Colombia also owned five limestone quarries.

*Capital Expenditures*. We made capital expenditures of approximately U.S.$19 million in 2008, U.S.$5 million in 2009 and U.S.$19 million in 2010 in our operations in Colombia. We currently expect to make capital expenditures of approximately U.S.$11 million in our operations in Colombia during 2011.

***Our Operations in Costa Rica***

*Overview.* As of December 31, 2010, we owned a 99.1% interest in CEMEX (Costa Rica), S.A., or CEMEX Costa Rica, our operating subsidiary in Costa Rica and a leading cement producer in the country. As of

December 31, 2010, CEMEX Costa Rica operated one cement plant in Costa Rica, with an installed capacity of 0.9 million tons, and operated a grinding mill in the capital city of San José. As of December 31, 2010, CEMEX Costa Rica operated six ready-mix concrete plants, one aggregates quarry and one land distribution center.

*The Cement Industry in Costa Rica.* Approximately 1.1 million tons of cement were sold in Costa Rica during 2010, 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 over two thirds of cement sold is bagged cement.

*Competition.* The Costa Rican cement industry includes three producers: CEMEX Costa Rica, Holcim Costa Rica and Cementos David.

*Exports*. During 2010, cement exports by our operations in Costa Rica represented approximately 20% of our total production in Costa Rica. In 2010, 9% 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.$7 million in 2008, U.S.$3 million in 2009 and U.S.$10 million in 2010 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 2011.

***Our Operations in the Dominican Republic***

*Overview.* As of December 31, 2010, 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 Macoris, Samana and Bavaro. CEMEX Dominicana also has a 14-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.

*The Cement Industry in the Dominican Republic.* In 2010, cement consumption in the Dominican Republic reached 3.0 million tons.

*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, 2010, 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.$12 million in 2008, U.S.$6 million in 2009 and U.S.$11 million in 2010 in our operations in the Dominican Republic. We currently expect to make capital expenditures of approximately U.S.$7 million in our operations in the Dominican Republic during 2011.

***Our Operations in Panama***

*Overview.* As of December 31, 2010, we 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. As of December 31, 2010, Cemento Bayano operated one cement plant in Panama, with an installed capacity of 2.1 million tons per year. As of that date, Cemento Bayano also owned and operated 15 ready-mix concrete plants, three aggregates quarries and three land distribution centers.

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 due to a change in the scope of the project, and some expenditures are expected to be made in 2011. The new kiln increased our cement installed capacity to 2.1 million tons per year. As of December 31, 2010, we have spent approximately U.S.$239 million on the new kiln, which includes U.S.$31 million in 2007, U.S.$104 million in 2008, U.S.$83 million in 2009 and U.S.$21 million in 2010. We currently expect to make capital expenditures of approximately U.S.$19 million in 2011.

*The Cement Industry in Panama.* Approximately 1.4 million cubic meters of ready-mix concrete were sold in Panama during 2010, according to our estimates. Cement consumption in Panama decreased 7.8% in 2010, according to our estimates.

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

*Capital Expenditures.* We made capital expenditures of approximately U.S.$118 million in 2008, U.S.$88 million in 2009 and U.S.$32 million in 2010 in our operations in Panama, which include those related to the expansion of the Bayano plant described above. We currently expect to make capital expenditures of approximately U.S.$29 million in our operations in Panama during 2011.

***Our Operations in Nicaragua***

*Overview.* As of December 31, 2010, we owned 100% of CEMEX Nicaragua, S.A., or CEMEX Nicaragua, our operating subsidiary in Nicaragua. As of that date, CEMEX Nicaragua leased and operated one cement plant with an installed capacity of 0.6 million tons. Since March 2003, CEMEX Nicaragua has also leased a 100,000 ton milling plant in Managua, which has been used exclusively for petcoke milling.

*The Cement Industry in Nicaragua.* According to our estimates, approximately 0.6 million tons of cement, approximately 103 thousand cubic meters of ready-mix concrete and approximately 3.5 million tons of aggregates were sold in Nicaragua during 2010.

*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, 2010, we operated one fixed ready-mix concrete plant and three mobile plants, three aggregates quarries and one distribution center in Nicaragua.

*Capital Expenditures.* We made capital expenditures of approximately U.S.$4 million in 2008, U.S.$0.7 million in 2009 and U.S.$5 million in 2010 in our operations in Nicaragua. We currently expect to make capital expenditures of approximately U.S.$3 million in our operations in Nicaragua during 2011.

***Our Operations in Puerto Rico***

*Overview.* As of December 31, 2010, we owned 100% of CEMEX de Puerto Rico, Inc., or CEMEX Puerto Rico, our main subsidiary in Puerto Rico. As of December 31, 2010, 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 11 ready-mix concrete plants, one aggregates quarry and two land distribution centers.

*The Cement Industry in Puerto Rico.* In 2010, cement consumption in Puerto Rico reached 0.8 million tons.

*Competition.* The cement industry in Puerto Rico in 2010 was comprised of two cement producers: CEMEX Puerto Rico, and San Juan Cement Co., an affiliate of Italcementi, and Antilles Cement Co., an independent importer.

*Capital Expenditures.* We made capital expenditures of approximately U.S.$5 million in 2008, U.S.$0.9 million in 2009 and U.S.$2 million in 2010 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 2011.

### *Our Operations in Guatemala*

*Overview.* In January 2006, we acquired a 51% equity interest in a cement grinding mill facility in Guatemala for approximately U.S.$17 million. As of December 31, 2010, the cement grinding mill had an installed capacity of 500,000 tons per year. In addition, we also owned and operated three land distribution centers and a clinker silo close to a maritime terminal in the City of Guatemala, as well as four owned ready-mix plants and one rented ready-mix plant.

*Capital Expenditures.* We made capital expenditures of approximately U.S.$4 million in 2008, U.S.$0.4 million in 2009 and U.S.$2 million in 2010 in Guatemala, and we currently expect to make capital expenditures of approximately U.S.$1 million in Guatemala during 2011.

### *Our Operations in Other South American, Central American and Caribbean Countries*

*Overview.* As of December 31, 2010, we held 100% of Readymix Argentina S.A., which operates five ready-mix concrete plants in Argentina.

We believe that the Caribbean region holds considerable strategic importance because of its geographic location. As of December 31, 2010, we operated a network of eight marine terminals in the Caribbean region, which facilitated exports from our operations in several countries, including Mexico, 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, 2010, 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, 2010, 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, 2010, 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 2008, U.S.$1 million in 2009 and U.S.$2 million in 2010. We currently expect to make capital expenditures of approximately U.S.$1 million in our other operations in South America, Central America and the Caribbean during 2011.

On April 8, 2010, we announced our plans to contribute, as an initial investment, up to U.S.$100 million for a non-controlling interest in a new investment vehicle that was named Blue Rock Cement Holdings S.A., which would be managed by Blueprint Management Partners, and which intends to invest in heavy building materials and related assets. On April 19, 2011 this vehicle adopted the form of a S.à.r.l. (private limited liability company) and its name changed to TRG Blue Rock HBM Holdings S.à.r.l. (“TRG—Blue Rock”). TRG—Blue Rock is now managed by entities that are part of The Rohatyn Group, LLC (a privately owned firm that invests in the public equity and fixed income markets across the globe, including emerging markets of Latin America, Asia, Africa and Central and Eastern Europe). As of the date of this annual report, a project in Peru, which consists of the construction of a new cement plant with an initial production capacity of approximately one million metric tons per year, has been identified. According to the proposed project, it is expected that the plant would be completed during 2013, with a total investment of approximately U.S.$230 million. Although we do not anticipate being in a control position to affect the decisions of TRG—Blue Rock’s management, given our investment and industry expertise, we are in discussions with TRG —Blue Rock’s management to enter into an operating contract providing for our assistance in the development, building and operation of the invested assets. Depending on the amount raised from third-party investors and the availability of financing, TRG—Blue Rock’s management may also decide to invest in other assets in the cement industry and/or related industries.

**Africa and the Middle East**

For the year ended December 31, 2010, our business in Africa and the Middle East, which includes our operations in Egypt, the United Arab Emirates and Israel, represented approximately 8% of our net sales before eliminations resulting from consolidation. As of December 31, 2010, our business in Africa and the Middle East represented approximately 6% of our total installed capacity and approximately 3% of our total assets.

***Our Operations in Egypt***

*Overview.* As of December 31, 2010, we had a 95.8% interest in Assiut Cement Company, or CEMEX Egypt, our main subsidiary in Egypt. As of December 31, 2010, we operated one cement plant in Egypt, with an 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, 2010, the limestone and clay permitted proven and probable reserves of our operations in Egypt had an average remaining life of approximately 55 and 75 years, respectively, assuming 2006-2010 average annual cement production levels. In addition, as of December 31, 2010, we operated five ready-mix concrete plants and seven land distribution centers and one maritime terminal in Egypt. For the year ended December 31, 2010, our operations in Egypt represented approximately 5% of our net sales before eliminations resulting from consolidation and approximately 2% of our total assets.

*The Cement Industry in Egypt.* According to our estimates, the Egyptian market consumed approximately 49.5 million tons of cement during 2010, based on government data (local and imported cement). Cement consumption increased by 2.7% in 2010, mainly driven by residential, tourism and commercial construction sectors. As of December 31, 2010, the cement industry in Egypt had a total of 13 cement producers, with an aggregate annual installed cement capacity of approximately 52 million tons. According to the Egyptian Cement Council, during 2010, 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 51% of the total installed capacity in Egypt. Other significant competitors in the Egypt are Aribian Cement, Titan (Alexandria Portland Cement and Beni Suef Cement), Ameriyah (Cimpor), National, Sinai (Vicat), Sinai White cement (Cementir), Saud Valley, Aswan Medcom, Misr Beni Suef and Misr Quena Cement Companies.

*Cement and Ready-Mix Concrete.* For the year ended December 31, 2010, cement represented approximately 86% and ready-mix concrete represented approximately 9% of net sales for our operations in Egypt before eliminations resulting from consolidation.

*Capital Expenditures.* We made capital expenditures of approximately U.S.$59 million in 2008 ,U.S.$23 million in 2009 and U.S.$25 million in 2010 in our operations in Egypt. We currently expect to make capital expenditures of approximately U.S.$17 million in our Egyptian operations during 2011.

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

*Overview.* As of December 31, 2010, 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 purchased 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, 2010, we owned 12 ready-mix concrete plants and a new cement and slag grinding facility in the UAE, serving the markets of Dubai, Abu Dhabi, and Sharjah.

*Capital Expenditures.* We made capital expenditures of approximately U.S.$19 million in 2008, U.S.$3 million in 2009 and U.S.$2 million in 2010 in our operations in the UAE. We currently expect to make capital expenditures of approximately U.S.$1 million in our operations in the UAE during 2011.

***Our Operations in Israel***

*Overview.* As of December 31, 2010, 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, 2010, we operated 54 ready-mix concrete plants, eight aggregates quarries, one concrete products plant, one admixtures plant, one asphalt plant, one lime factory and one blocks factory in Israel.

*Capital Expenditures.* We made capital expenditures of approximately U.S.$7 million in 2008, U.S.$2 million in 2009 and U.S.$6 million in 2010 in our Israeli operations, and we currently expect to make capital expenditures of approximately U.S.$5 million in our Israeli operations during 2011.

## Asia

For the year ended December 31, 2010, our operations in Asia, consisting of our operations in the Philippines, Thailand, Bangladesh, Taiwan, Malaysia, and the operation we acquired from Rinker in China, as well as our other assets in Asia, represented approximately 3% of our net sales before eliminations resulting from consolidation. As of December 31, 2010, our operations in Asia represented approximately 6% of our total installed capacity and approximately 2% of our total assets.

### *Sale of Our Operations in Australia*

On October 1, 2009, we completed the sale of our operations in Australia to a subsidiary of Holcim Ltd. The net proceeds from this sale were approximately $2.02 billion Australian Dollars (approximately U.S.$1.7 billion), of which we used approximately U.S.$1.37 billion to prepay indebtedness under the Financing Agreement and approximately U.S.$248 million to strengthen our liquidity position. In addition, the sale of the operations in Australia resulted in the deconsolidation of approximately U.S.$131 million in debt in connection with a credit facility for our operations in Australia. For the nine months ended September 30, 2009, net sales for our operations in Australia and operating income were approximately Ps13.0 billion (approximately U.S.$964 million) and approximately Ps1.2 billion (approximately U.S.$89 million), respectively, and for the nine-month period ended September 30, 2008, approximately Ps13.9 (approximately U.S.$1.1 billion) billion and Ps1.3 billion (approximately U.S.$99 million), respectively. Our consolidated statements of operations present the results of our operations in Australia, net of income tax, for the nine-month period ended September 30, 2009 and the twelve-month period ended December 31, 2008 in a single line item as “Discontinued operations.” Accordingly, our consolidated statement of cash flows for the year ended December 31, 2008 was reclassified. See note 3B to our consolidated financial statements included elsewhere in this annual report.

### *Our Operations in the Philippines*

*Overview.* As of December 31, 2010, on a consolidated basis through various subsidiaries, we held 100% of the economic benefits of our two operating subsidiaries in the Philippines, Solid and APO Cement Corporation (APO). For the year ended December 31, 2010, our operations in the Philippines represented approximately 2% of our net sales before eliminations resulting from consolidation and approximately 1% 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 15.5 million tons during 2010. Demand for cement in the Philippines increased by approximately 6.8% in 2010 compared to 2009.

As of December 31, 2010, the Philippine cement industry had a total of 18 cement plants. Annual installed clinker capacity is 21 million metric tons, according to CEMAP.

*Competition.* As of December 31, 2010, 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, 2010, our operations in the Philippines included two cement plants with a total capacity of 4.5 million tons per year, one quarry dedicated to supply raw materials to our cement plants, eight land distribution centers and four marine distribution terminals. We estimate that, as of December 31, 2010, the limestone and clay permitted proven and probable reserves of our operations in the Philippines had an average remaining life of approximately 17 and 14 years, respectively, assuming 2006-2010 average annual cement production levels.

*Cement.* For the year ended December 31, 2010, 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.$15 million in 2008, U.S.$6 million in 2009 and U.S.$14 million in 2010 in our operations in the Philippines. We currently expect to make capital expenditures of approximately U.S.$11 million in our operations in the Philippines during 2011.

***Our Operations in Thailand***

*Overview.* As of December 31, 2010, 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, 2010, CEMEX (Thailand) owned one cement plant in Thailand, with an installed capacity of approximately 1.2 million tons.

*The Cement Industry in Thailand.* According to our estimates, at December 31, 2010, the cement industry in Thailand had a total of 12 cement plants, with an aggregate annual installed capacity of approximately 47 million tons, from which the capacity to produce 14 million tons has been temporarily shut down. We estimate that there are six major cement producers in Thailand, four of which represent approximately 97% 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.$3 million in 2008 in our operations in Thailand. We made no significant capital expenditures in our operations in Thailand during 2009, and we made capital expenditures of approximately U.S.$1 million in 2010. We currently expect to make capital expenditures of approximately U.S.$1 million in Thailand during 2011.

***Our Operations in Malaysia***

*Overview.* As of December 31, 2010, 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, 2010, we operated 15 ready-mix concrete plants, four 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.$3 million in 2008, U.S.$1 million in 2009 and U.S.$2 million in 2010 in our operations in Malaysia. We currently expect to make capital expenditures of approximately U.S.$1 million in our operations in Malaysia during 2011.

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

*Overview.* Since April 2001, we have been operating a grinding mill near Dhaka, Bangladesh. As of December 31, 2010, 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.

As of December 31, 2010, 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 in our operations in other Asian countries of approximately less than U.S.$1 million in 2008, U.S.$1 million in 2009 and U.S.$1 million in 2010. We currently expect to make capital expenditures of approximately U.S.$3 million in our operations in other Asian countries during 2011.

### *Our Trading Operations*

In 2010, we traded approximately 8.7 million tons of cementitious materials, including 7.9 million tons of cement and clinker. Approximately 82% of the cement and clinker trading volume in 2010 consisted of exports from our operations in Colombia, Costa Rica, Croatia, the Dominican Republic, Germany, Guatemala, Latvia, Mexico, Philippines, Poland, Puerto Rico, Spain and the U.S. The remaining approximately 18% was purchased from third parties in countries such as Belgium, China, Colombia, Croatia, Greece, Lithuania, Pakistan, Slovakia, South Korea, Taiwan, Thailand and Turkey. As of December 31, 2010, we had trading activities in 101 countries. In 2010, 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 18% of our cement and clinker import volume during 2010.

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 and legal matters 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 from the Dominican Republic. The Jamaica Commission based its determination on a preliminary finding of a "threat" of material injury to the sole domestic cement company (Caribbean Cement Company Limited, or CCCL). A majority of the Jamaica Commission preliminarily found that the case concerning present material injury was "inconclusive." Significantly, 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 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, CCCL may file an appeal to this ruling.

As of April 30, 2011, there was no accrued liability for dumping duties. All liabilities accrued for past anti-dumping duties have been eliminated.

### *Antitrust Proceedings*

*Polish Antitrust Investigation.* Between May 31, 2006 and June 2, 2006, officers of the Polish Competition and Consumer Protection Office, or 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 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 of 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.$43.51 million as of April 30, 2011, based on an exchange rate of Polish Zloty 2.6559 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 court 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. According to the current Polish court practices these two appeal proceedings should take at least three years. On December 31, 2010, the accounting provision created in relation with this proceeding was Polish Zloty 72.3 million (approximately U.S.$27.22 million as of April 30, 2011, based on an exchange rate of Polish Zloty 2.6559 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 from the European Commission.

In conducting these investigations, the European Commission has 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, we have received requests for information from the European Commission in September 2009, October 2010 and December 2010, and we have fully cooperated by providing the relevant information on time.

On December 8, 2010, the European Commission informed us that it has decided to initiate formal proceedings in respect of 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 has indicated that we, as well as seven other companies, will 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.

If the allegations 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.

On April 1, 2011, the European Commission notified CEMEX S.A.B. de C.V. 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). CEMEX is preparing all the requested information in order to provide a timely and complete reply within the deadlines imposed by the European Commission. As of April 18, 2011, CEMEX submitted the reply to one of the questions and is due to submit the rest of the requested information by the end of June 2011.

*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*, "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 us of a proposed decision, summarizing its findings in the investigation. This proposed decision, which suggests the existence of an infringement, has been submitted to the Council of the CNC, together with CEMEX España's opposition to all charges. This body will examine the case and the evidence proposed by all the parties and issue a final decision. On May 17, 2011, the CNC Council decided to accept CEMEX España's request to review the evidence presented by the other parties. As a result, the deadline for the CNC Council to issue a decision, which is 18 months from the formal start of the procedure on December 15, 2009, has been interrupted and will resume once the other parties present the proposed evidence requested by CEMEX España.

Under Spanish law, the maximum fine that could be imposed in this procedure would be 10% of the total turnover of CEMEX España for the calendar year preceding the imposition of the fine. CEMEX España denies any wrongdoing and is fully cooperating and will continue to cooperate with the CNC officials in connection with this matter.

*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, as well as a denial of the allegations, with respect to the first case. The 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 avoid 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 to argue against the reinitiated proceeding. The District Court in Monterrey determined that the order to reinitiate the proceeding and the notice of presumptive responsibility did not affect any of CEMEX's rights; CEMEX filed an appeal before the District Court in Monterrey, which will be sent to the circuit court, to argue against such determination.

With respect to the second case, in April 2009, we filed a constitutional challenge (*juicio de amparo*), and in May 2009, we filed a denial of the CFC's allegations. In November 2010, the Circuit Court in Monterrey, N.L., Mexico, ordered the case to be heard by a District Court in Mexico City claiming that it lacked appropriate jurisdiction. In December 2010, similar to the first case, the District Court in Mexico City 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 concludes its proceeding and issues a final ruling before raising its constitutional challenge again. CEMEX expects to file an appeal before the District Court in Mexico City to argue against such determination. CEMEX filed an appeal before the District Court in Mexico City to argue against such determination.

*Antitrust Cartel Litigation in Germany.* On August 5, 2005, Cartel Damages Claims, SA, or 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.$151.2 million as of April 30, 2011, based on an exchange rate of €0.6745 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.$168.3 million plus interest as of April 30, 2011, based on an exchange rate of €0.6745 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.$194.2 million as of April 30, 2011, based on an exchange rate of €0.6745 to U.S.$1.00). As of April 30, 2011, we had accrued liabilities regarding this matter for a total amount of approximately €20 million (approximately U.S.$29.7 million as of April 30, 2011, based on an exchange rate of €0.6745 to U.S.$1.00).

The District court in Düsseldorf, Germany had called for a hearing on the merits of this case, scheduled for May 26, 2011. This hearing has been cancelled and no new date for a hearing has been notified.

*Antitrust Cases in Egypt.* On October 4, 2007, all Egyptian cement producers (including CEMEX Egypt) were referred to the public prosecutor for an alleged agreement on price fixing. The country manager and director of sales of CEMEX Egypt were both named as defendants. The case was referred to criminal court on February 13, 2008, and the final court hearing was held on August 25, 2008. At this hearing, the court announced its decision imposing the maximum penalty of 10 million Egyptian Pounds (approximately U.S.$1.7 million as of April 30, 2011, based on an exchange rate of Egyptian Pounds 5.9549 to U.S.$1.00) on each entity accused. CEMEX Egypt was required to pay a fine of 20 million Egyptian Pounds (approximately U.S.$3.4 million as of April 30, 2011, based on an exchange rate of Egyptian Pounds 5.9549 to U.S.$1.00), since its two executives named above were found guilty. The case was appealed to the Court of Appeals, which confirmed the fine on December 31, 2008. We decided not to proceed with a further appeal to the Court of Cassation and paid the fine.

On July 29, 2009, two Egyptian contractors filed lawsuits against four cement producers, including CEMEX Egypt, demanding compensation of 20 million Egyptian Pounds (approximately U.S.$3.4 million as of April 30, 2011, based on an exchange rate of Egyptian Pounds 5.9549 to U.S.$1.00) from the four cement producers (5 million Egyptian Pounds or approximately U.S.$839,644 as of April 30, 2011, based on an exchange rate of Egyptian Pounds 5.9549 to U.S.$1.00 from each defendant). The plaintiffs are using as a precedent the case mentioned in the prior paragraph, and as a main proof of their allegation, an Egyptian Court decision convicting all cement producers in Egypt of antitrust activities and price fixing. At the latest hearing for one of the cases, on April 24, 2010 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 the case was dismissed and all charges against CEMEX Egypt have been dropped. The plaintiffs had 60 days to file their appeals, if any, to this ruling. The plaintiffs filed a challenge before the Court of Cassation. The Court has not yet scheduled the first hearing of Cassation. The other case had its last hearing on December 16, 2009, where the claimants requested the court to release CEMEX Egypt from the claim. On May 11, 2010, the court released CEMEX Egypt from the claim, and the case is now closed. 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 a material adverse impact 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. CEMEX 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, CEMEX moved to dismiss the amended complaint filed by the indirect purchaser plaintiffs based on lack of standing. CEMEX 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 CEMEX 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. CEMEX continues to believe that the lawsuits are without merit and intends to defend them vigorously.

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. 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, 2007, our environmental capital expenditures were not material. For the year ended December 31, 2009 and 2010, our sustainability capital expenditures (including our environmental expenditures and investments in alternative fuels and cementitious materials) were approximately U.S.$77 million and approximately U.S.$93 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*, or 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*, or PROFEPA, which is part of SEMARNAT, completed the audit of our 15 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 strictly renewed every two years. As of the date of this annual report, our cement plants have Clean Industry Certificates or are in the process of renewing them. We expect 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 Ensenada and Huichapan plants. By the end of 2006, all our cement plants in Mexico were using tires as an alternative fuel. Municipal collection centers in 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 9.1% of the total fuel used in our 15 operating cement plants in Mexico during 2010 was comprised of alternative fuels.

Between 1999 and April 30, 2011, our operations in Mexico have invested approximately U.S.$54.93 million in the acquisition of environmental protection equipment and the implementation of the ISO 14001 environmental management standards of the International Organization for Standardization, or ISO. The audit to obtain the renewal of the ISO 14001 certification took place during February 2010. All our operating cement plants in Mexico have obtained the renewal of the ISO 14001 certification for environmental management systems.

*United States.* CEMEX, Inc. is 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 CEMEX, Inc.'s various operating facilities or elsewhere. We believe that our current procedures and practices for handling and managing materials are generally consistent with the 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 April 30, 2011, CEMEX, Inc. and its subsidiaries had accrued liabilities specifically relating to environmental matters in the aggregate amount of approximately U.S.$27.6 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.

*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 £130.2 million (approximately U.S.$216.6 million as of April 30, 2011, based on an exchange rate of £0.6010 to U.S.$1.00) as of December 31, 2010, and we made an accounting provision for this amount at December 31, 2010.

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 allowances 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. Despite having already sold a substantial amount of allowances for Phase II, we believe the overall volume of transactions is justified by our most conservative emissions forecast, meaning that the risk of having to buy allowances in the market in the remainder of Phase II is very low. As of April 30, 2011, the price of carbon dioxide allowances for Phase II on the spot market was approximately €16.75 per ton (approximately U.S.$24.83 as of April 30, 2011, based on an exchange rate of €0.6745 to U.S.$1.00). We are taking appropriate measures to minimize our exposure to this market while assuring the supply of our products to our customers.

The Spanish NAP has been approved by the Spanish Government, reflecting the conditions that were set forth by the European Commission. The allocations made to our installations allow us to foresee a reasonable availability of allowances; nevertheless, there remains the uncertainty regarding the allocations that, against the reserve for new entrants, we intend to request for our new cement plant in Andorra (Teruel), whose construction has been postponed.

In the case of the U.K., 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 U.K. authorities to a request we filed in late 2008 to retain the allocation of allowances for our Barrington plant after this facility was closed permanently 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 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'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.

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.

***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 will be 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 amendments. Although we 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. Since the Mexican Supreme Court's decision does not pertain to an amount of taxes due or other tax obligations, we will self-assess any taxes due through the submission of amended tax returns. We have not yet determined the amount of tax or the periods affected, but the amount could be material. If the Mexican tax authorities do not agree with our self-assessment of the taxes due for past periods, they may assess additional amounts of taxes past due, which could be material and may impact our cash flows.

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), or IETU, which is a form of alternative minimum tax.

During 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 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 will require 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 an 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 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.

For the 2010 fiscal year, CEMEX will be required to pay (at the new, 30% tax rate) 25% of the Additional Consolidation Taxes for the period between 1999 and 2004. The remaining 75% will be payable as follows: 25% for 2011, 20% for 2012, 15% for 2013 and 15% for 2014. Additional Consolidation Taxes arising after 2004 will be 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%). Applicable taxes payable as a result of this tax reform will be increased by inflation adjustments as required by Mexican Income Tax Law (*Ley del Impuesto Sobre la Renta*). In connection with the 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.$913.0 million as of April 30, 2011, based on an exchange rate of Ps11.50 to U.S.$1.00), of which approximately Ps8.2 billion (approximately U.S.$713.0 million as of April 30, 2011, based on an exchange rate of Mexican Ps11.50 to U.S.$1.00) were recognized under "Other non-current assets" in connection with the net liability recognized before 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.$191.3 million as of April 30, 2011, based on an exchange rate of Ps11.50 to U.S.$1.00) were recognized under "Retained earnings," considering special provisions under MFRS for the portion, 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 this tax reform. As of June 3, 2011 we were notified of a favorable verdict at the first stage of the trial; the Mexican tax authorities may file an appeal ( *recurso de revisión*) which will be reviewed by the Mexican Supreme Court.

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.$28.3 million as of April 30, 2011, based on an exchange rate of Ps11.50 to U.S.$1.00) of Additional Consolidation Tax. This first payment represents 25% of the Additional Consolidation Tax of the "1999 to 2004" period. The remaining 75% will be paid in the following 4 years according to the proportions mentioned above.

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 the controlled entities for tax purposes and the equity for tax purposes of the consolidated entity. As a result, CEMEX reduced its estimated tax payable by approximately Ps2.9 billion (approximately U.S.$252.2 million as of April 30, 2011, based on an exchange rate of Ps11.50 to U.S.$1.00) against a credit to "Retained earnings." In addition, considering during 2010: a) cash payments of Ps325 million (approximately U.S.$28.3 million as of April 30, 2011, based on an exchange rate of Ps11.50 to U.S.$1.00) ; b) income tax from subsidiaries paid to the Parent Company for Ps2.4 billion (approximately U.S.$208.7 million as of April 30, 2011, based on an exchange rate of Ps11.50 to U.S.$1.00) ; and c) other adjustments of Ps358 million (approximately U.S.$31.1 million as of April 30, 2011, based on an exchange rate of Ps11.50 to U.S.$1.00), the estimated tax payable for tax consolidation in Mexico as of December 31, 2010 amounted to approximately Ps10.1 billion (approximately U.S.$878.3 million as of April 30, 2011, based on an exchange rate of Ps11.50 to U.S.$1.00). In our U.S. GAAP reconciliation of our 2010 and 2009 financial statements, an income of approximately Ps2.9 billion (U.S.$236 million) and an expense of approximately Ps2.2 billion (U.S.$171 million), respectively, recognized under "Retained earnings" under MFRS were reclassified under U.S. GAAP to income tax revenue for the period in 2010 and income tax expense for the period in 2009.

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.$86.6 million as of April 30, 2011 based on an exchange rate of Ps11.50 to U.S.$1.00) 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, instead of deducting purchases the law allows for the cost of goods sold to be deducted, since there were inventories as of December 31, 2004, in a

transition provision 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 of its 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 authority and, therefore on March 29, 2011, CEMEX challenged the assessment before the tax court.

*United States.* As of the date of this annual report, the Internal Revenue Service ("IRS") has issued various Notices of Proposed Adjustment ("NOPAs") for the years 2005 through 2007 proposing a number of adjustments. CEMEX has requested the opportunity to discuss and negotiate these with the IRS field team before they are finalized as formal Revenue Agent Reports. CEMEX anticipates that this process of discussion and negotiation, together with subsequent administrative and legal processes that CEMEX may avail itself of if discussion and negotiation do not produce an acceptable settlement, may take an extended period of time, and management is uncertain that these issues will be settled in the next twelve months. CEMEX believes it has adequately reserved for its uncertain tax positions; however, there can be no assurance that the outcome of the IRS negotiations will not require further provisions for taxes.

*Colombia*. On November 10, 2010, the Colombian Tax Authority (*Dirección de Impuestos*) notified CEMEX Colombia, S.A., or CEMEX Colombia, of a special 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.$24.3 million as of April 30, 2011, based on an exchange rate of 1,768.19 Colombian Pesos to U.S.$1.00) and imposed a penalty in the amount of approximately $69 billion Colombian Pesos (approximately U.S.$39.0 million as of April 30, 2011, based on an exchange rate of 1,768.19 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 percent 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. The Colombian Tax Authority has six months from the time CEMEX Colombia presented such arguments to send a "*Liquidación Oficial*," or final determination, that CEMEX may appeal, if necessary. 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.

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 in its 2009 year-end tax return. The Colombian Tax Authority seeks to increase the due income tax in $89.9 billion Colombian Pesos (approximately U.S.$50.8 million as of April 30, 2011, based on an exchange rate of 1,768.19 Colombian Pesos to U.S.$1.00) and to impose an inaccuracy penalty of $143.9 billion Colombian Pesos (approximately U.S.$81.4 million as of April 30, 2011, based on an exchange rate of 1,768.19 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 plans to respond to the proceeding notice on or before July 1, 2011. Afterwards, the Colombian Tax Authority has six months to send a "*Liquidación Oficial*," or final determination, that CEMEX may appeal, if necessary. 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.

***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. Venezuela has paid no compensation to CEMEX Venezuela's shareholders for such action. 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 ICSID seeking relief for the expropriation of their interest in CEMEX Venezuela. In the ICSID proceedings against Venezuela, CEMEX Caracas is seeking: (a) a declaration that the government of Venezuela is 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. On July 27, 2010, the arbitral tribunal heard arguments on the jurisdictional objections raised by the Republic of Venezuela and issued its decision in favor of jurisdiction on December 30, 2010. Briefing in the merits phase of the arbitration is ongoing, and a hearing on the merits is scheduled for the first quarter of 2012. We are unable at this preliminary stage to estimate the likely range of potential recovery or to determine what position Venezuela will take in these proceedings, the nature of the award that may be issued by the ICSID Tribunal or the likely extent of collection of any possible monetary award issued to CEMEX Caracas.

Separately, the government of Venezuela claims 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 this interim measure 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. The appropriate affiliates of CEMEX will continue to resist any further efforts by the government of Venezuela to assert ownership rights over the vessels.

CEMEX Caracas and the government of Venezuela are currently carrying out settlement negotiations, but there is no assurance as to the outcome of such negotiations.

*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.$56.6 million as of April 30, 2011, based on an exchange rate of $1,768.19 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 10 days to deposit with the court in cash $337.8 billion Colombian Pesos (approximately U.S.$191.0 million as of April 30, 2011, based on an exchange rate of $1,768.19 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.$11.3 million as of April 30, 2011, based on an exchange rate of $1,768.19 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 the potential damages which could be borne by CEMEX Colombia.

*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 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 the 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. We are still waiting for 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.

*Personal Injury Lawsuit in Puerto Rico*. On April 21, 2007, the First Instance Court for the Commonwealth of Puerto Rico issued a summons against our subsidiary Hormigonera Mayagüezana Inc., or "Hormigonera, seeking damages in the amount of U.S.$39 million, after the death of two people in an accident in which a Hormigonera concrete mixer truck was involved. This case was handled by the insurance broker AON, since the claim was covered by CEMEX's insurance policy. The insurance companies MAPFRE and Zurich settled the case in June 2009 for approximately U.S.$1.05 million, which was covered completely by the insurance policies and not by CEMEX Puerto Rico. A final ruling adjudicating the controversy was issued by the court on September 4, 2009. In the ruling the court acknowledged and accepted the settlement agreement reached by the parties, which covered all claims. The settlement agreement awarded a specific amount in compensatory damages to each of the plaintiffs, as well as a full voluntary dismissal and waiver of all filed and future related claims against all defendants in the case.

*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 AMEX/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. 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. Until discovery is significantly underway, 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.

*Panamanian Height Restriction Litigation*. On July 30, 2008, the Panamanian *Autoridad de Aeronáutica Civil* denied a request by our subsidiary Cemento Bayano, S.A. 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, S.A. 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, S.A. 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 the date of this annual report, the *Panamanian Autoridad de Aeronaútica Civil* has 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.

*Australian Takeovers Panel Litigation*. On August 12, 2007, the Australian Takeovers Panel (the "Panel") published a declaration of unacceptable circumstances, namely, that CEMEX's May 7, 2007 announcement that it would allow Rinker shareholders to retain the final dividend of $0.25 Australian Dollars per Rinker share constituted a departure from CEMEX's announcement on April 10, 2007 that its offer of U.S.$15.85 per share was its "best and final offer." On September 27, 2007, the Panel ordered CEMEX to pay compensation of $0.25 Australian Dollars per share to certain Rinker shareholders for the net number of Rinker shares in which they disposed of a beneficial interest during the period from April 10, 2007 to May 7, 2007. CEMEX believes that the market was fully informed by its announcements on April 10, 2007, and notes that the Panel made no finding that CEMEX breached any law. On September 27, 2007, the Panel made an order staying the operation of the orders until further notice pending CEMEX's application for judicial review of the Panel's decision. CEMEX applied to the Federal Court of Australia for such a judicial review. That application was dismissed on October 23, 2008. CEMEX's appeal to the full court of the Federal Court of Australia was dismissed on June 30, 2009, and CEMEX did not seek to appeal to the High Court. Accordingly, the Panel's orders came into effect and CEMEX was required by August 11, 2009 to invite the relevant shareholders to make claims for the compensation ordered by the Panel by August 11, 2009 unless the shareholder was able to demonstrate to the Australian Securities & Investments Commission that special circumstances applied. As of December 31, 2010, CEMEX had deposited a total of approximately $16.62 million Australian Dollars (approximately U.S.$18.2 million as of April 30, 2011, based on an exchange rate of $0.9114 Australian Dollars to U.S.$1.00) into a bank account against which payments to claimants have been made ("Special Purpose Account"). As of December 31, 2010, CEMEX has made payouts for $16.41 million Australian Dollars (approximately U.S.$18.0 million as of April 30, 2011, based on an exchange rate of $0.9114 Australian Dollars to U.S.$1.00) to successful claimants. As all deadlines in relation to making claims under the Panel's orders have expired, CEMEX has no further liability or potential liability to make payments under those orders. CEMEX has withdrawn the remaining balance from the Special Purpose Account, leaving only the amount to account for checks still unpresented.

*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 states that the State is seeking injunctive relief, although the State has not acted on such request. 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 a Motion for Reconsideration that was denied by the court. The court separated 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 in this matter on May 3, 2011. It is not certain when the Court will issue its ruling. CEMEX will continue to vigorously defend the claim.

*Strabag Arbitration*. Following an auction process, we (through our subsidiary RMC Holding B.V.) entered into a share purchase agreement, dated July 30, 2008 (the "SPA"), to sell our operations in Austria (consisting of 26 aggregates and 41 ready-mix concrete plants) and Hungary (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.$459.6 million as of April 30, 2011, based on an exchange rate of €0.6745 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 our 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, we notified Strabag that we considered their purported rescission invalid. In the face of Strabag's continued refusal to cooperate in making a supplementary application to the ACC, we 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 our rescission was lawful and effective and claiming damages in a substantial amount likely to exceed €150 million (approximately U.S.$222.4 million as of April 30, 2011, based on an exchange rate of €0.6745 to U.S.$1.00). On December 23, 2009, Strabag filed its answer to our request for arbitration asking the tribunal to dismiss the claim and also filed a counterclaim for an amount of €800,000 (approximately U.S.$1.2 million as of April 30, 2011, based on an exchange rate of €0.6745 to U.S.$1.00) as damages and applied for security for costs in the amount of €1,000,000 (approximately U.S.$1.5 million as of April 30, 2011, based on an exchange rate of €0.6745 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. We consider Strabag's counterclaim to be unfounded, and we will continue to demand that Strabag respond to CEMEX for the damages caused by Strabag's breach of contract. 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, we submitted our statement of claim and our list of witnesses. On October 29, 2010, Strabag submitted its statement of defense and counterclaim. On January 14, 2011, we submitted our reply and answer to Strabag's counterclaim. On March 7, 2011, Strabag submitted its rejoinder. Pursuant to Article 21 of the ICC Rules, the evidentiary hearing took place from May 2 to May 9, 2011.

*Colombia 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.$169.7 million as of April 30, 2011, based on an exchange rate of $1,768.19 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 or potential damages which could be borne by CEMEX Colombia.

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.

**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;
- the regulatory environment, including environmental, tax and acquisition-related rules and regulations;
- our ability to satisfy our obligations under the Financing Agreement recently entered into with our major creditors;
- 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 consolidated financial statements included elsewhere in this annual report. Our financial statements have been prepared in accordance with MFRS, which differ in certain respects from U.S. GAAP.

Mexico experienced annual inflation rates of 6.4% in 2008, 3.8% in 2009 and 4.0% in 2010. Until December 31, 2007, MFRS required that our consolidated financial statements during the periods presented recognize the effects of inflation. Beginning January 1, 2008, however, under MFRS, inflation accounting is applied only in high inflation environments. See note 2A to our consolidated financial statements included elsewhere in this annual report.

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 and for each of the three years ended December 31, 2008, 2009 and 2010 by principal geographic segment expressed as an approximate percentage of our total consolidated group. Through the Rinker acquisition, we acquired new operations in the United States, which have had a significant impact on our operations in that segment, and we acquired operations in Australia, which we sold in October 2009. The financial information as of and for the years ended December 31, 2008 and 2009 in the table below does not include the consolidation of Rinker's operations for the entire years ended December 31, 2008 and 2009. See note 3B to our consolidated financial statements included elsewhere in this annual report. 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 operations and financial condition 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. Beginning in 2008, MFRS B-10 has eliminated the restatement amounts of financial statements for the period as well as the restatement of the comparative financial statements for prior periods into constant values as of the date of the most recent balance sheet. Beginning in 2008, the amounts of the statement of operations, the statement of cash flows and the statement of changes in stockholders' equity are presented in nominal values. Amounts of financial statements for prior years are presented in constant pesos as of December 31, 2007, the date in which inflationary accounting ceased to be generally applied. This restatement factor was calculated based upon the inflation rates of the countries in which we operate and the changes in the exchange rates of each of these countries, weighted according to the proportion in which our assets in each country represent our total assets.

| | % Mexico | % United States | % Spain | % United Kingdom | % Germany | % France | % Rest of Europe | % South America, Central America and the Caribbean | % Africa and the Middle East | % Asia | % Others | Combined | Eliminations | Consolidated |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Net Sales For the Period Ended(1):** | | | | | | | | | | | | | | |
| December 31, 2008 | 18% | 22% | 8% | 8% | 7% | 6% | 8% | 10% | 5% | 2% | 6% | 235,929 | (10,264) | 225,665 |
| December 31, 2009 | 20% | 19% | 5% | 8% | 8% | 7% | 8% | 10% | 7% | 3% | 5% | 206,339 | (8,538) | 197,801 |
| December 31, 2010 | 23% | 17% | 4% | 8% | 7% | 7% | 8% | 11% | 8% | 3% | 4% | 184,141 | (5,881) | 178,260 |
| **Operating Income For the Period Ended(2):** | | | | | | | | | | | | | | |
| December 31, 2008 | 55% | (2)% | 17% | (6)% | 2% | 2% | 8% | 21% | 10% | 2% | (9)% | 26,088 | — | 26,088 |
| December 31, 2009 | 88% | (46)% | 10% | (5)% | 4% | 5% | 6% | 35% | 27% | 7% | (31)% | 15,840 | — | 15,840 |
| December 31, 2010 | 114% | (83)% | 9% | (7)% | — | 2% | 4% | 41% | 40% | 9% | (29)% | 10,843 | — | 10,843 |
| **Total Assets at(2):** | | | | | | | | | | | | | | |
| December 31, 2009 | 11% | 42% | 11% | 6% | 2% | 3% | 5% | 6% | 3% | 2% | 9% | 582,286 | — | 582,286 |
| December 31, 2010 | 12% | 43% | 10% | 6% | 2% | 3% | 4% | 6% | 3% | 2% | 9% | 515,097 | — | 515,097 |

(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

Identified below are the accounting policies we have applied under MFRS 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 MFRS, 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 more likely than not 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 that we consider the tax authorities would not reject 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 its 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 statement of operations 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 more likely than not 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.

***Foreign currency translation***

Under MFRS, concurrent with the use of nominal amounts during low-inflation periods, beginning January 1, 2008, the translation of foreign currency financial statements into Mexican Pesos is made using the foreign exchange rate at the end of the corresponding reporting period for balance sheet and the exchange rates at the end of each month for the income statement accounts. For subsidiaries operating in high-inflation environments, the financial statements are first restated into constant amounts in their functional currency, and then translated into Mexican Pesos using the exchange rate at the reporting date for balance sheet and income statement accounts.

***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 stock forward contracts, 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 and (ii) 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 to 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. Some of our instruments have been designated as cash flow hedges. For the years ended December 31, 2010, 2009 and 2008, we have not designated any fair value hedges. See note 12C to our consolidated financial statements included elsewhere in this annual report.

Interest accruals generated by interest rate swaps and/or cross-currency swaps are recognized as financial expense, adjusting the effective interest rate of the related debt.

Pursuant to their recognition at fair value under MFRS, our balance sheets and statements of operations are subject to volatility arising from variations in interest rates, exchange rates, share prices and other conditions established in our derivative instruments. The estimated fair value under MFRS represents the amount at which a financial asset could be bought or sold, or a financial liability could be extinguished at the reporting date, between willing parties in an arm's length transaction. Occasionally, there is a reference market that provides the estimated fair value; in the absence of a market, such value is determined by the net present value of projected cash flows or through mathematical valuation models. The estimated fair values of derivative instruments determined by us and used by us for recognition and disclosure purposes in the financial statements and their notes are supported by the confirmations of these values received from the counterparties to these financial instruments, which act as valuation agents in these transactions; nonetheless, significant judgment is required to appropriately account for the effects of

derivative financial instruments in the financial statements. Beginning in 2008, the definition of fair value under U.S. GAAP was redefined by ASC 820, *Fair Value Measurements and Disclosure* (formerly SFAS 157, *Fair Value Measurements*), as an "Exit Value," which created a difference between MFRS and U.S. GAAP. An "Exit Value" 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. The difference between the fair value under MFRS, which is equivalent to a settlement amount at the balance sheet date, and the Exit Value under U.S. GAAP, is that the latter considers the counterparty's credit risk in the valuation. See notes 12C and 24(h) to our consolidated financial statements included elsewhere in this annual report.

The estimated fair values of derivative financial instruments fluctuate over time, and are based on estimated settlement costs or quoted market prices. 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 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 and other intangible assets of indefinite life, 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 value in use of the reporting units, which consists of 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. An impairment loss under MFRS is recognized if such discounted cash flows are lower than the net book value of the reporting unit. In applying the value in use method, we determine the discounted amount of estimated future cash flows over a period of five years, unless a longer period is justified in a specific country considering its economic cycle and the situation of the industry.

For the years ended December 31, 2008, 2009 and 2010, the geographic segments we reported in note 3A to our consolidated financial statements included elsewhere in this annual report, each integrated by multiple cash generating units, also represent 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 value in use of our reporting units. Impairment evaluations are significantly sensitive to, among other factors, the estimation of future prices of our products, the development of operating 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 after-tax discount rates for each reporting unit, which are applied to after-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 fourth quarter of 2008, the global economic environment was negatively affected by the intensification of the turmoil in several major financial institutions, which caused a liquidity shortage for companies in almost all productive sectors which, in turn, resulted in a significant decrease in overall economic activity and a downturn in global equity markets. These situations generated a reduction of growth expectations in the countries in which we operate, motivated by the cancellation or deferral of several investment projects, particularly affecting the construction industry. Although in 2009 and 2010 most global macroeconomic variables have stabilized, the construction industry has remained depressed in certain countries mainly as a result of the high level of inventories existing at the beginning of the financial crisis, and the lack of investment projects considering the reaction of investors to the liquidity problems in countries like Greece, Spain, Ireland and Portugal, among others.

During the last quarter of 2010, 2009 and 2008, we performed our annual goodwill impairment test. Based on these 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, whereas, in 2008, we determined impairment losses of goodwill for a total of approximately Ps18.3 billion (U.S.$1.3 billion), associated with CEMEX's reporting units in the United States, Ireland and Thailand for approximately Ps16.8 billion (U.S.$1.2 billion), Ps233 million (U.S.$17 million) and Ps453 million (U.S.$33 million), respectively. The estimated impairment loss in the United States in 2008 was mainly attributable to our acquisition of Rinker in 2007, and overall such losses were attributable to the economic environment described in the paragraph above. In addition, considering that our investment in Venezuela is expected to be recovered through different means other than use, we recognized in 2008 an impairment loss of approximately Ps838 million (U.S.$61 million) associated with cancellation of the goodwill of this investment. For the year 2009, based on our goodwill impairment tests, we did not determine any impairment losses of goodwill. See notes 11 and 11B to our consolidated financial statements included elsewhere in this annual report.

The discount rate and the cash flows from each country include their respective income tax rates. Discount rates and growth rates in perpetuity used in the reporting units that represent most of the consolidated balance of goodwill under MFRS in 2010 and 2009 are as follows:

| | Discount rates | | Growth rates | |
|---|---|---|---|---|
| Reporting units | 2010 | 2009 | 2010 | 2009 |
| United States | 8.7% | 8.5% | 2.5% | 2.9% |
| Spain | 10.2% | 9.4% | 2.5% | 2.5% |
| Mexico | 10.0% | 10.0% | 2.5% | 2.5% |
| Colombia | 10.0% | 10.2% | 2.5% | 2.5% |
| France | 9.6% | 9.6% | 2.5% | 2.5% |
| United Arab Emirates | 11.5% | 11.4% | 2.5% | 2.5% |
| United Kingdom | 9.7% | 9.4% | 2.5% | 2.5% |
| Egypt | 11.1% | 10.0% | 2.5% | 2.5% |
| Range of discount rates in other countries | 10.3% – 13.9% | 9.6% – 14.6% | 2.5% | 2.5% |

In addition, during 2010, 2009 and 2008, we recognized impairment losses of property, plant and equipment in connection with the permanent closing of operating assets for an aggregate amount of approximately Ps1,161 million (U.S.$92 million), Ps503 million (U.S.$38 million) and Ps1.0 billion (U.S.$76 million), respectively. See note 10 to our consolidated financial statements included elsewhere in this annual report.

***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 statement of operations 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 statement of operations 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 material 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 13 and 20 to our 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 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 statement of operations. 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 notes 16, 16A and 16B to our consolidated financial statements included elsewhere in this annual report.

***Emission rights***

In some countries where we operate, such as member countries of the European Union ("EU"), governments have established mechanisms aimed to reduce carbon-dioxide emissions ("$CO_2$"), by means of which industries releasing $CO_2$ must submit to the environmental authority at the end of a compliance period, emission rights for a volume equivalent to the tons of $CO_2$ released. In addition, the United Nations Framework Convention on Climate Change ("UNFCCC") grants Certified Emission Reductions ("CERs") to qualified $CO_2$ emission reduction projects. CERs may be used in specified proportions to settle emission rights obligations in the EU. We actively participate in the development of projects aimed to reduce $CO_2$ emissions. Some of these projects have been awarded with CERs.

In the absence of a specific MFRS or an IFRS that defines the accounting treatment for these schemes, we account for the effects associated with $CO_2$ 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 $CO_2$ 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 $CO_2$ 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 transactions for trading purposes.

The combined effect of the use of alternate fuels that help reduce the emission of $CO_2$ and the downturn in produced cement volumes in the EU has generated a surplus of emission rights held over the estimated $CO_2$ emissions. From the consolidated surplus of emission rights, during 2010, 2009 and 2008, we sold an aggregate amount of approximately 19.4 million certificates, receiving revenues of approximately Ps1,417 million (U.S.$112 million), Ps961 million (U.S.$71 million) and Ps3,666 million (U.S.$327 million), respectively.

***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 transactions between related parties. 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) the probability that the economic benefits associated with the contract will flow to us.

**Status of our IFRS Migration Process**

Based on requirements issued in 2009 by the Mexican National Banking and Securities Commission, or CNBV, all entities that trade their securities in the Mexican Stock Exchange must adopt IFRS, as issued by the International Accounting Standards Board, or IASB, for the preparation of their consolidated financial statements no later than January 1, 2012. We will adopt IFRS, as issued and interpreted by the IASB, beginning on January 1, 2012. We began the planning of our IFRS migration process during the last quarter of 2009. In summary, the status of our IFRS migration process as of the date of this annual report, is as follows:

***Stage 1. Communication to the organization and IFRS training***

These activities were undertaken and finalized between November 2009 and June 2010. Jointly with our external consultant for the IFRS migration project, we designed and implemented specific IFRS training programs for the team involved directly in the generation of financial information, the corporate support team, and the personnel in our business units. These training programs consisted of: a) obligatory self-training based on a specialized Intranet; b) training based in webcasts oriented to a wide-range of personnel, by means of which, experts covered a variety of significant topics; and c) face-to-face training sessions for key personnel directly involved in the determination and quantification of the main differences between IFRS and Mexican FRS.

***Stage 2. Evaluation of accounting and business impacts***

We concluded the documentation phase of this stage in November 2010. We elected to prepare our initial balance sheet under IFRS as of January 1, 2010, in order to report three years of operations under IFRS at the 2012 year end. Based on IFRS 1, "IFRS First Time Adoption," for purposes of the initial balance sheet, external appraisers are currently finalizing the valuation of our main fixed assets at fair value. As permitted under IFRS 1, we elected not to revisit the accounting treatment of business acquisitions made before January 1, 2010. We expect to conclude our initial balance sheet under IFRS at the end of the second quarter of 2011, and to complete the adaptation of our transactional systems for the ongoing generation of information under IFRS during the third quarter of 2011.

***Stage 3. Parallel financial information generation under IFRS***

During the third quarter of 2011, we will begin to prepare our financial statements under IFRS for the years 2010 and 2011. Although we have not yet finished the calculation of our initial IFRS balance sheet amounts, as a result of the revaluation of our main fixed assets to fair value as of the migration date, we anticipate changes in the non-cash depreciation and depletion amounts in our IFRS financial statements for the year 2010 and each year thereafter, as compared to those previously reported under Mexican FRS. In connection with the migration to IFRS, we expect that our programs for the sale of accounts receivable ("securitization programs") under IFRS will not qualify for derecognition of the trade receivables sold; consequently, any resources obtained from such sales under these programs will be recognized against a liability.

**Results of Operations**

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

Our consolidated financial statements, included elsewhere in this annual report, 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.

Until December 31, 2008, financial statements of joint ventures, which are those entities in which we and other third-party investors have agreed to exercise joint control of the entity's administrative, financial and operating policies, were consolidated through the proportional integration method, considering our interest in the results of operations, assets and liabilities of such entities, based on International Accounting Standard No. 31, "Interest in Joint Ventures." Beginning in 2009, based on MFRS B-8 "Consolidated or Combined Financial Statements," the financial statements of joint ventures are recognized by the equity method. No significant effects resulted from the adoption of MFRS B-8 in 2009, considering that CEMEX sold its joint venture investments in Spain during 2008 (see note 11A to our consolidated financial statements included elsewhere in this annual report).

Investments in associates are accounted for by the equity method, when we have significant influence, which is presumed with an equity interest between 10% and 50% in public companies and between 20% and 50% in non-public companies 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, 2008, 2009 and 2010, our consolidated results reflect the following transactions:

- 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. 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), generating a gain of approximately €8 million (U.S.$12 million), which was recognized within "Other expenses, net."
- On January 11, 2008, in connection with the assets acquired from Rinker, and as part of our agreements with Ready Mix USA, Inc., or Ready Mix USA, CEMEX contributed and sold to Ready Mix USA LLC, our ready-mix concrete joint venture with Ready Mix USA, certain assets located in Georgia, Tennessee and Virginia, which had a fair value of approximately U.S.$437 million. We received U.S.$120 million in cash for the assets sold to Ready Mix USA LLC, and the remaining assets were treated as a U.S.$260 million contribution by us to Ready Mix USA LLC. As part of the same transaction, Ready Mix USA contributed U.S.$125 million in cash to Ready Mix USA LLC, which in turn received bank loans of U.S.$135 million. Ready Mix USA LLC made a special distribution in cash to us of U.S.$135 million. Ready Mix USA manages all the assets acquired. Following this transaction, Ready Mix USA LLC continues to be owned 50.01% by Ready Mix USA and 49.99% by CEMEX.

***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, 2008, 2009 and 2010 expressed as a percentage of net sales.

| | Year Ended December 31, | | |
|---|---|---|---|
| | 2008 | 2009 | 2010 |
| Net sales | 100.0 | 100.0 | 100.0 |
| Cost of sales | (68.2) | (70.6) | (72.0) |
| Gross profit | 31.8 | 29.4 | 28.0 |
| Administrative and selling expenses | (14.3) | (14.5) | (14.5) |
| Distribution expenses | (5.9) | (6.9) | (7.4) |
| Total operating expenses | (20.2) | (21.4) | (21.9) |
| Operating income | 11.6 | 8.0 | 6.1 |
| Other expenses, net | (9.5) | (2.8) | (3.7) |
| **Comprehensive financing result:** | | | |
| Financial expense | (4.6) | (6.8) | (9.1) |
| Financial income | 0.2 | 0.2 | 0.2 |

| | Year Ended December 31, | | |
|---|---|---|---|
| | 2008 | 2009 | 2010 |
| Results from financial instruments | (6.7) | (1.1) | (0.5) |
| Foreign exchange result | (1.7) | (0.1) | 0.5 |
| Monetary position result | 0.2 | 0.2 | 0.1 |
| Net comprehensive financing result | (12.6) | (7.6) | (8.8) |
| Equity in income of associates | 0.4 | 0.1 | (0.3) |
| Loss before income tax | (10.1) | (2.3) | (6.7) |
| Income taxes | 10.2 | 5.3 | (2.5) |
| Income (loss) before discontinued operations | 0.1 | 3.0 | (9.2) |
| Discontinued operations | 0.9 | (2.2) | — |
| Consolidated net income (loss) | 1.0 | 0.8 | (9.2) |

***Year Ended December 31, 2010 Compared to Year Ended December 31, 2009***

Summarized in the table below are the percentage (%) increases (+) and decreases (-) for the year ended December 31, 2010 compared to the year ended December 31, 2009 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 financial information in the table below does not include volume and price data of our operations in Australia which were sold on October 1, 2009.

| | Domestic Sales Volumes | | Export Sales Volumes | Average Domestic Prices in Local Currency(1) | |
|---|---|---|---|---|---|
| Geographic Segment | Cement | Ready-Mix Concrete | Cement | Cement | Ready-Mix Concrete |
| **North America** | | | | | |
| Mexico | -4% | -4% | +6% | Flat | +3% |
| United States(2)(3) | Flat | -7% | — | -8% | -11% |
| Europe | | | | | |
| Spain | -22% | -20% | +80% | -7% | -9% |
| United Kingdom | +1% | -3% | — | -4% | -3% |
| Germany | -2% | -10% | — | -1% | -1% |
| France | N/A | +1% | — | N/A | -1% |
| Rest of Europe(4) | -3% | -7% | — | -1% | -2% |
| **South/Central America and the Caribbean** | | | | | |
| Colombia | +5% | +1% | 100% | -6% | -8% |
| Rest of South/Central America and the Caribbean(5) | -8% | -5% | — | +3% | -5% |
| Africa and the Middle East | | | | | |
| Egypt | +2% | +11% | — | +5% | -3% |
| Rest of Africa and the Middle East(6) | -35% | -6% | — | -29% | -7% |
| Asia | | | | | |
| Philippines | +8% | — | -55% | +2% | — |
| Rest of Asia(7) | +13% | -2% | — | +1% | +7% |

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 Dollar terms (except for the Rest of Europe region, 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 Dollar terms (except for the Rest of Europe region, which represent the weighted average change of prices in Euros) based on total sales volumes in the region.

(2) 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.
(3) On August 27, 2010, we sold seven aggregates quarries, three resale aggregate distribution centers and one concrete block manufacturing facility all located in Kentucky.
(4) Our Rest of Europe segment includes our operations in Croatia, Poland, Latvia, the Czech Republic, Ireland, Austria, Hungary, Finland, Norway and Sweden, as well as our other European assets.
(5) Our Rest of South/Central America and the Caribbean segment includes our operations in Costa Rica, Panama, the Dominican Republic, Nicaragua, Puerto Rico, Jamaica and Argentina and our trading activities in the Caribbean.
(6) Our Rest of Africa and the Middle East segment includes our operations in the UAE and Israel.
(7) Our Rest of Asia segment includes our operations in Malaysia, Thailand, Bangladesh, China and other assets in the Asia region.

On a consolidated basis, our cement sales volumes increased approximately 1%, from 65.1 million tons in 2009 to 65.6 million tons in 2010, and our ready-mix concrete sales volumes decreased approximately 5%, from 54 million cubic meters in 2009 to 51 million cubic meters in 2010. Our net sales decreased approximately 10%, from Ps197.8 billion in 2009 to Ps178.2 billion in 2010, and our operating income decreased approximately 32%, from Ps15.8 billion in 2009 to Ps10.8 billion in 2010.

The following tables present selected condensed financial information of net sales and operating income for each of our geographic segments for the years ended December 31, 2010 and 2009. 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, 2009 | 2010 |
|---|---|---|---|---|---|
| | | | | (in millions of Pesos) | |
| **North America** | | | | | |
| Mexico | +1% | — | +1% | Ps 42,339 | Ps 42,907 |
| United States(2)(3) | -12% | -6% | -18% | 38,472 | 31,575 |
| **Europe** | | | | | |
| Spain | -20% | -9% | -29% | 11,308 | 8,013 |
| United Kingdom | -3% | -8% | -11% | 16,126 | 14,320 |
| Germany | -6% | -12% | -18% | 16,492 | 13,524 |
| France | — | -12% | -12% | 13,866 | 12,179 |
| Rest of Europe(4) | -6% | -9% | -15% | 16,174 | 13,682 |
| **South/Central America and the Caribbean** | | | | | |
| Colombia | -3% | +6% | +3% | 6,766 | 6,964 |
| Rest of South/Central America and the Caribbean(5) | -6% | -5% | -11% | 13,857 | 12,380 |
| **Africa and Middle East** | | | | | |
| Egypt | +9% | -6% | +3% | 8,372 | 8,608 |
| Rest of Africa and the Middle East(6) | -12% | -6% | -18% | 6,425 | 5,248 |
| **Asia** | | | | | |
| Philippines | +5% | -1% | +4% | 3,867 | 4,014 |
| Rest of Asia(7) | +5% | -7% | -2% | 2,566 | 2,512 |
| Others(8) | -9% | -6% | -15% | 9,709 | 8,215 |
| Net sales before eliminations | | | -11% | 206,339 | 184,141 |
| Eliminations from consolidation | | | | (8,538) | (5,881) |

| 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, 2009 | 2010 |
|---|---|---|---|---|---|
| | | | | (in millions of Pesos) | |
| **Consolidated net sales** | | | -10% | Ps197,801 | Ps178,260 |

| Geographic Segment | Variations in Local Currency(1) | Approximate Currency Fluctuations, Net of Inflation Effects | Variations in Mexican Pesos | Operating Income For the Year Ended December 31, 2009 | 2010 |
|---|---|---|---|---|---|
| | | | | (in millions of Pesos) | |
| **North America** | | | | | |
| Mexico | -11% | — | -11% | Ps13,965 | Ps12,380 |
| United States(2)(3) | -40% | +17% | -23% | (7,290) | (8,990) |
| **Europe** | | | | | |
| Spain | -33% | -8% | -41% | 1,667 | 984 |
| United Kingdom | +31% | -22% | +9% | (859) | (780) |
| Germany | -67% | -29% | -96% | 658 | 26 |
| France | -66% | -6% | -72% | 786 | 221 |
| Rest of Europe(4) | -46% | -13% | -59% | 976 | 399 |
| **South/Central America and the Caribbean** | | | | | |
| Colombia | -23% | +6% | -17% | 2,672 | 2,226 |
| Rest of South/Central America and the Caribbean(5) | -16% | -4% | -20% | 2,784 | 2,222 |
| **Africa and Middle East** | | | | | |
| Egypt | +34% | -14% | +20% | 3,465 | 4,146 |
| Rest of Africa and the Middle East(6) | -70% | -3% | -73% | 830 | 228 |
| **Asia** | | | | | |
| Philippines | -6% | -3% | -9% | 996 | 909 |
| Rest of Asia(7) | -33% | +5% | -28% | 102 | 73 |
| Others(8) | +31% | +4% | +35% | (4,912) | (3,201) |
| Operating income | | | -32% | Ps 15,840 | Ps 10,843 |

N/A = Not Applicable

(1) For purposes of a geographic segment consisting of a region, the net sales and operating income data in local currency terms for each individual country within the region are first translated into Dollar terms at the exchange rates in effect as of the end of the reporting period. Variations for a region represent the weighted average change in Dollar terms based on net sales and operating income for the region.

(2) 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.

(3) On August 27, 2010, we sold seven aggregates quarries, three resale aggregate distribution centers and one concrete block manufacturing facility all located in Kentucky.

(4) Our Rest of Europe segment includes our operations in Croatia, Poland, Latvia, the Czech Republic, Ireland, Austria, Hungary, Finland, Norway and Sweden, as well as our other European assets.

(5) Our Rest of South/Central America and the Caribbean segment includes our operations in Costa Rica, Panama, the Dominican Republic, Nicaragua, Puerto Rico, Jamaica and Argentina and our trading activities in the Caribbean.

(6) Our Rest of Africa and the Middle East segment includes our operations in the UAE and Israel.

(7) Our Rest of Asia segment includes our operations in Malaysia, Thailand, Bangladesh, China and other assets in the Asian region.
(8) Our Others segment includes our worldwide maritime trade operations, our information solutions company and other minor subsidiaries.

*Net sales*. Our consolidated net sales decreased approximately 10%, from approximately Ps197.8 billion in 2009 to Ps178.2 billion in 2010. The decrease in net sales was primarily attributable to lower 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.

***Mexico***

Our domestic cement sales volumes from our operations in Mexico decreased approximately 4% in 2010 compared to 2009, and ready-mix concrete sales volumes decreased approximately 4% during the same period. Our net sales from our operations in Mexico represented approximately 23% of our total net sales in 2010, in Peso terms, before eliminations resulting from consolidation. The decreases in domestic cement and ready-mix concrete sales volumes were primarily attributable to a modest decline in demand from the formal residential construction sector and the self-construction sector in 2010. Investment in cement-intensive infrastructure projects contracted in 2010, and demand from the industrial and commercial sectors decreased, primarily during the second half of 2010. Our cement export volumes of our operations in Mexico, which represented approximately 3% of our Mexican cement sales volumes in 2010, increased approximately 6% in 2010 compared to 2009, primarily as a result of higher export volumes to the South America region. Of our total cement export volumes during 2010 of our operations in Mexico, 18% was shipped to the United States, 68% to Central America and the Caribbean and 14% to South America. Our average domestic sales price of cement for our operations in Mexico remained flat in Peso terms in 2010 compared to 2009, and the average sales price of ready-mix concrete increased approximately 3% in Peso terms over the same period. For the year ended December 31, 2010, cement represented approximately 54%, ready-mix concrete approximately 22% 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 ready-mix concrete average sales prices, partially offset by the decrease in domestic cement and ready-mix concrete sales volumes, our net sales in Mexico, in Peso terms, increased slightly in 2010 compared to 2009.

***United States***

Our domestic cement sales volumes from our operations in the U.S., which include cement purchased from our other operations, remained flat in 2010 compared to 2009, and ready-mix concrete sales volumes decreased approximately 7% during the same period. The decreases in our ready-mix concrete sales volumes of our operations in the U.S. resulted primarily from the slower than expected economic recovery, slower job creation, reduced consumer confidence and weaker infrastructure spending. Also, industrial-and-commercial construction sector activity remained depressed. Our United States operations represented approximately 17% of our total net sales in 2010 in Peso terms, before eliminations resulting from consolidation. Our average sales price of domestic cement of our operations in the United States decreased approximately 8% in Dollar terms in 2010 compared to 2009, and the average sales price of ready-mix concrete decreased approximately 11% in Dollar terms over the same period. For the year ended December 31, 2010, cement represented approximately 31%, ready-mix concrete approximately 27% 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 decreases in domestic cement and ready-mix concrete average sales prices and ready-mix concrete sales volumes, net sales from our United States operations, in Dollar terms, decreased approximately 12% in 2010 compared to 2009.

***Spain***

Our domestic cement sales volumes from our operations in Spain decreased approximately 22% in 2010 compared to 2009, while ready-mix concrete sales volumes decreased approximately 20% during the same period.

The decreases in domestic cement and ready-mix concrete sales volumes were the result of significantly weaker demand in all of our regions, especially Levante and Centro. Overall economic activity continues to worsen and has negatively affected overall domestic cement demand. No particular segment in the construction sector is experiencing growth. Additionally, infrastructure projects continue to be on hold given the lack of liquidity and overall tighter credit conditions. Our 2010 net sales of our operations in Spain represented approximately 4% of our total net sales in Peso terms, before eliminations resulting from consolidation. Our cement export volumes of our operations in Spain, which represented approximately 31% of our cement sales volumes in 2010 in Spain, increased by approximately 80% in 2010 compared to 2009, primarily as a result of higher export volumes to Africa and Europe. Of our total cement export volumes in 2010 of our operations in Spain, 10% was shipped to Europe and the Middle East, 89% to Africa, and 1% to other countries. Our average domestic sales price of cement of our operations in Spain decreased approximately 7% in Euro terms in 2010 compared to 2009, and the average price of ready-mix concrete decreased approximately 9% in Euro terms over the same period. For the year ended December 31, 2010, cement represented approximately 61%, ready-mix concrete approximately 21% and our aggregates and other businesses approximately 18% 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, our net sales in Spain, in Euro terms, decreased approximately 20% in 2010 compared to 2009.

***United Kingdom***

Our domestic cement sales volumes from our operations in the United Kingdom increased approximately 1% in 2010 compared to 2009, and ready-mix concrete sales volumes decreased approximately 3% during the same period. The decreases in ready-mix concrete sales volumes resulted primarily from slower economic growth and fragile consumer confidence in the industrial-and-commercial sector. In addition, harsh weather conditions throughout the United Kingdom had a negative effect on sales volumes. Our 2010 net sales from our operations in the United Kingdom represented approximately 8% of our total net sales in Peso terms, before eliminations resulting from consolidation. Our average domestic sales price of cement from our operations in the United Kingdom decreased approximately 4% in Pound terms in 2010 compared to 2009, and the average price of ready-mix concrete decreased approximately 3% in Pound terms over the same period. For the year ended December 31, 2010, cement represented approximately 16%, ready-mix concrete approximately 27% and our aggregates and other businesses approximately 57% 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 decreases in domestic cement and ready-mix concrete average sales prices and ready-mix concrete sales volumes, net sales from our operations in the United Kingdom, in Pound terms, decreased approximately 3% in 2010 compared to 2009.

***Germany***

Our domestic cement sales volumes from our operations in Germany decreased approximately 2% in 2010 compared to 2009, and ready-mix concrete sales volumes in those operations decreased approximately 10% during the same period. The residential construction sector performed positively during the year, supported by low mortgage rates, shrinking unemployment and higher wages. The decrease in domestic cement and ready-mix concrete sales volumes resulted primarily from lower demand as a result of an unusually long and harsh winter. Our 2010 net sales of our operations in Germany represented approximately 7% of our total net sales 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 2010 compared to 2009, and the average price of ready-mix concrete decreased approximately 1% in Euro terms over the same period. For the year ended December 31, 2010, cement represented approximately 26%, ready-mix concrete approximately 34% and our aggregates and other businesses represented approximately 40% 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 decreases in domestic cement and ready-mix concrete average sales prices and sales volumes, net sales in Germany, in Euro terms, decreased approximately 6% in 2010 compared to 2009.

### *France*

Our ready-mix concrete sales volumes from our operations in France increased approximately 1% in 2010 compared to 2009. The residential sector was the main driver of demand, which was supported by continuing tax incentives. Construction spending from the infrastructure sector remained low given the limited financial resources. In addition, activity from the industrial and commercial sectors continued to be weak in 2010. Our 2010 net sales from our operations in France represented approximately 7% of our total net sales in Peso terms, before eliminations resulting from consolidation. Our average sales price of ready-mix concrete from our operations in France decreased approximately 1% in Euro terms in 2010 compared to 2009. For the year ended December 31, 2010, 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 increase in domestic ready-mix concrete sales volumes, partially offset by a decrease in ready-mix concrete average sales prices, net sales in France, in Euro terms, remained flat in 2010 compared to 2009.

### *Rest of Europe*

Our operations in our Rest of Europe segment in 2010 consisted of our operations in Croatia, Poland, Latvia, the Czech Republic, Ireland, Italy, Austria, Hungary, Portugal, Denmark, Finland, Norway and Sweden. Our domestic cement sales volumes of our operations in the Rest of Europe decreased approximately 3% in 2010 compared to 2009, and ready-mix concrete sales volumes decreased approximately 7% during the same period. The decrease in domestic cement and ready-mix concrete sales volumes resulted primarily from a slowdown in the housing sector and delays in infrastructure projects as a result of the harsh early winter. Our net sales from our operations in the Rest of Europe for the year ended December 31, 2010 represented approximately 8% of our total net sales in Peso terms, before eliminations resulting from consolidation. Our average domestic sales price of cement from our operations in the Rest of Europe decreased approximately 1% in Euro terms in 2010 compared to 2009, and the average price of ready-mix concrete decreased approximately 2% in Euro terms over the same period. For the year ended December 31, 2010, cement represented approximately 44%, ready-mix concrete approximately 36% and our aggregates and other businesses approximately 20% of net sales from our operations in the Rest of Europe 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 average sales prices and sales volumes, net sales in the Rest of Europe, in Euro terms, decreased approximately 6% in 2010 compared to 2009.

### *South America, Central America and the Caribbean*

Our operations in South America, Central America and the Caribbean in 2010 consisted of our operations in Colombia, the most significant operation in this geographic segment, Costa Rica, the Dominican Republic, Panama, Nicaragua, Puerto Rico, Jamaica and Argentina, as well as several cement terminals and other assets in other Caribbean countries and our trading operations in the Caribbean region. Most of these trading operations consist of the resale in the Caribbean region of cement produced by our operations in Mexico.

Our domestic cement sales volumes from our operations in South America, Central America and the Caribbean decreased approximately 3% in 2010 compared to 2009, and ready-mix concrete sales volumes decreased approximately 2% over the same period. The decrease in domestic cement and ready-mix concrete sales volumes is primarily attributable to decreases in sales volumes in most of our markets, partially offset by an increase in sales volumes in our Colombian Operations. For the year ended December 31, 2010, our operations in South America, Central America and the Caribbean represented approximately 11% of our total net sales in Peso terms, before eliminations resulting from consolidation. Our average domestic sales price of cement for our operations in South America, Central America and the Caribbean increased approximately 4% in Dollar terms in 2010 compared to 2009, while the average sales price of ready-mix concrete decreased approximately 1% in Dollar terms over the same period. As a result of the decreases in domestic cement and ready-mix concrete sales volumes, fully offset by the increase in the average domestic cement sales price, net sales in our operations in South America, Central America and the Caribbean, in Dollar terms, remained flat in 2010 compared to 2009. For the year ended December 31, 2010, cement represented approximately 71%, ready-mix concrete approximately 21% and our aggregates and other businesses approximately 8% of our net sales for our operations in South America, Central America and the

Caribbean before intra-sector eliminations within the segment and before eliminations from consolidation, as applicable.

Our domestic cement volumes from our operations in Colombia increased approximately 5% in 2010 compared to 2009, and ready-mix concrete sales volumes increased approximately 1% during the same period. In 2010, the residential sector was the main driver of demand, supported by low- and middle-income housing development. Infrastructure spending, resulting from Colombia's countercyclical public policy, positively affected construction. For the year ended December 31, 2010, Colombia represented approximately 4% of our total net sales in Peso terms, before eliminations resulting from consolidation. Our average domestic sales price of cement from our operations in Colombia decreased approximately 4% in Colombian Peso terms in 2010 compared to 2009, while the average price of ready-mix concrete decreased approximately 8% in Colombian Peso terms over the same period. As a result of the decreases in domestic cement and ready-mix concrete average sales prices, partially offset by the increases in domestic cement and ready-mix concrete sales volumes, net sales of our operations in Colombia, in Colombian Peso terms, decreased approximately 3% in 2010 compared to 2009. For the year ended December 31, 2010, cement represented approximately 66%, ready-mix concrete approximately 24% and our aggregates and other businesses approximately 10% of net sales for our operations in Colombia before intra-sector eliminations within the segment and before eliminations from consolidation, as applicable.

Our cement volumes from our operations in the Rest of South America, Central America and the Caribbean decreased approximately 8% in 2010 compared to 2009, and ready-mix concrete sales volumes decreased approximately 5% during the same period. For the year ended December 31, 2010, the Rest of South and Central America and the Caribbean represented approximately 7% of our total net sales in Peso terms, before eliminations resulting from consolidation. Our average domestic sales price of cement for our operations in South America, Central America and the Caribbean increased approximately 3% in Dollar terms in 2010 compared to 2009, and the average sales price of ready-mix concrete decreased approximately 5% in Dollar terms over the same period. For these reasons, net sales of our operations in the Rest of South and Central America and the Caribbean, in Dollar terms, decreased approximately 6% in 2010 compared to 2009. For the year ended December 31, 2010, cement represented approximately 74%, ready-mix concrete approximately 20% and our other businesses approximately 6% of net for our operations in the Rest of South America, Central America and the Caribbean before intra-sector eliminations within the segment and before eliminations from consolidation, as applicable.

For the reasons mentioned above, net sales before eliminations resulting from consolidation in our operations in South and Central America and the Caribbean, in Dollar terms, remained flat in 2010 compared to 2009.

***Africa and the Middle East***

Our operations in Africa and the Middle East consist of our operations in Egypt, the most significant operations in this geographic segment, the UAE and Israel. Our domestic cement sales volumes from our operations in Africa and Middle East decreased approximately 1% in 2010 compared to 2009, and ready-mix concrete sales volumes decreased approximately 4% during the same period. The decrease in domestic cement sales volumes was primarily a result of the decrease in sales volumes in our operations in the UAE, partially offset by the increase in domestic cement sales volumes in our operations in Egypt. For the year ended December 31, 2010, Africa and the Middle East represented approximately 8% of our total net sales in Peso terms, before eliminations resulting from consolidation. Our average domestic sales price of cement from our operations Africa and Middle East increased approximately 2% in Dollar terms in 2010, and the average price of ready-mix concrete decreased approximately 7% in Dollar terms over the same period. For the year ended December 31, 2010, cement represented approximately 52%, ready-mix concrete approximately 33% and our other businesses approximately 15% of net sales for our operations in Africa and Middle East before intra-sector eliminations within the segment and before eliminations from consolidation, as applicable.

Our domestic cement sales volumes for our operations in Egypt increased approximately 2% in 2010 compared to 2009, and Egyptian ready-mix concrete sales volumes increased approximately 11% during the same period. The increases in volume resulted primarily from the positive trend in the informal residential sector during the year, which led to higher sales volumes of building materials, partially offset by reduced government spending in the infrastructure sector. For the year ended December 31, 2010, Egypt represented approximately 5% of our total net sales in Peso terms, before eliminations resulting from consolidation. The average domestic sales price of

cement increased approximately 5% in Egyptian pound terms in 2010 compared to 2009, and ready-mix concrete sales prices decreased approximately 3% in Egyptian pound terms. During 2010, our operations in Egypt did not export any cement as production was only directed to meet increased domestic demand. As a result of the increases in domestic cement and ready-mix concrete sales volumes and domestic cement average sales price, net sales of our operations in Egypt, in Egyptian pound terms, increased approximately 9% in 2010 compared to 2009. For the year ended December 31, 2010, cement represented approximately 86%, ready-mix concrete approximately 9% and our other businesses approximately 5% of net sales for our operations in Egypt before intra-sector eliminations within the segment and before eliminations from consolidation, as applicable.

Our ready-mix concrete sales volumes from our operations in the Rest of Africa and the Middle East decreased approximately 6% in 2010 compared to 2009 primarily as a result of a decrease in sales volumes in our operations in the UAE, and the average ready-mix concrete sales price decreased approximately 7%, in Dollar terms, in 2010 compared to 2009. For the year ended December 31, 2010, Rest of Africa and the Middle East represented approximately 3% of our total net sales in Peso terms, before eliminations resulting from consolidation. As a result of the decreases in ready-mix concrete average sales price and sales volumes, net sales from our operations in the Rest of Africa and the Middle East, in Dollar terms, decreased approximately 12% in 2010 compared to 2009. The decrease in net sales, in Dollar terms, in our operations in the Rest of Africa and the Middle East was due to a 58% decrease in net sales in the UAE, partially offset by a 11% increase in net sales in Israel. The UAE and Israel represented 16% and 84%, respectively, of net sales in 2010 of our operations in the Rest of Africa and the Middle East. For the year ended December 31, 2010, cement represented approximately 6%, ready-mix concrete represented approximately 66% and our other businesses approximately 28% of net sales of our operations in the Rest of Africa and the Middle East before intra-sector eliminations within the segment and before eliminations from consolidation, as applicable.

As a result of the decreases in ready-mix concrete average sales price and sales volumes in our operations in the Rest of Africa and Middle East, partially offset by the increase in sales volumes in our operations in Egypt, net sales of our operations in the Rest of Africa and the Middle East before eliminations resulting from consolidation, in Dollar terms, decreased approximately 1% in 2010 compared to 2009.

***Asia***

Our operations in Asia in 2010 consisted of our operations in the Philippines, Thailand, Bangladesh, Taiwan, Malaysia, and the operations we acquired from Rinker in China. Our domestic cement sales volumes in our operations in Asia increased approximately 9% in 2010 compared to 2009, primarily due to an increase in our sales volumes in our operations in the Philippines. Our ready-mix concrete sales volumes of our operations in Asia decreased approximately 2% in 2010 compared to 2009. The main driver of demand for the year was the residential construction sector. For the year ended December 31, 2010, Asia represented approximately 3% of our total net sales in Peso terms, before eliminations resulting from consolidation. Our cement export volumes of our operations in Asia, which represented approximately 6% of our cement sales volumes in 2010 of our Asian operations, decreased approximately 55% in 2010 compared to 2009 primarily due to lower export volumes to Europe and Africa. Of our total cement export volumes from our operations in Asia during 2010, approximately 15% was shipped to Europe and 85% to Southeast Asia. The average sales price of domestic cement increased 7%, and the average sales price of ready-mix concrete increased 7% in Dollar terms in our operations in Asia in 2010 compared to 2009. For the year ended December 31, 2010, cement represented approximately 72%, ready-mix concrete approximately 22% and our other businesses approximately 6% of our net sales for our operations in Asia before intra-sector eliminations within the segment and before eliminations from consolidation, as applicable.

Our domestic cement volumes from our operations in the Philippines increased approximately 8% in 2010 compared to 2009. Our sales volumes from our operations in the Philippines increased primarily as a result of an increase in the demand in the residential construction sector, supported by the growth in remittances from overseas workers. Infrastructure spending moderated after mid-year elections, with spending projects in this sector expected to improve during 2011. For the year ended December 31, 2010, the Philippines represented approximately 2% of our total net sales in Peso terms, before eliminations resulting from consolidation. Our average domestic sales price of cement from our operations in the Philippines increased approximately 2% in Philippine Peso terms in 2010 compared to 2009. As a result, net sales of our operations in the Philippines, in Philippine Peso terms, increased approximately 5% in 2010 compared to 2009. For the year ended December 31, 2010, cement represented

approximately 99%, and our other businesses approximately 1%, of net sales for our operations in the Philippines before intra-sector eliminations within the segment and before eliminations from consolidation, as applicable.

Our ready-mix concrete sales volumes in our operations in the Rest of Asia, which include our operations in Malaysia and China (representing nearly all our ready-mix concrete sales volumes in the Rest of Asia region), decreased approximately 2% in 2010 compared to 2009. Our domestic cement volumes in the region increased 13% in 2010 compared to 2009. For the year ended December 31, 2010, the Rest of Asia represented approximately 2% of our total net sales in Peso terms, before eliminations resulting from consolidation. The average sales price of ready-mix concrete increased approximately 7% in Dollar terms during 2010, and our average sales price of domestic cement increased 1% in Dollar terms during 2010. For the reasons mentioned above, net sales of our operations in the Rest of Asia, in Dollar terms, increased approximately 5% in 2010 compared to 2009. For the year ended December 31, 2010, cement represented approximately 30%, ready-mix concrete approximately 57% and our other businesses approximately 13% of net sales for our operations in the Rest of Asia before intra-sector eliminations within the segment and before eliminations from consolidation, as applicable.

For the reasons described above, our net sales for our operations in the Rest of Asia before eliminations resulting from consolidation, in Dollar terms, increased approximately 9% in 2010 compared to 2009.

***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 9% before eliminations resulting from consolidation in 2010 compared to 2009 in Dollar terms, primarily as a result of a decrease of approximately 8% in our worldwide cement, clinker and slag trading operations. For the year ended December 31, 2010, our trading operations' net sales represented approximately 44%, and our information technology solutions company 34%, of our Others segment's net sales.

*Cost of Sales*. Our cost of sales, including depreciation, decreased approximately 8%, from Ps139.7 billion in 2009 to Ps128.3 billion in 2010, primarily due to lower sales volumes. As a percentage of net sales, cost of sales increased from 71% in 2009 to 72% in 2010, mainly as a result of lower economies of scale due to lower volumes and higher fuel prices. 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 Ps9.3 billion in 2009 and Ps7.9 billion in 2010; 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, 2009 and 2010, represented Ps13.7 billion and Ps13.2 billion, respectively.

*Gross Profit*. For the reasons explained above, our gross profit decreased approximately 14%, from approximately Ps58.1 billion in 2009 to approximately Ps50.0 billion in 2010. As a percentage of net sales, gross profit decreased from approximately 29% in 2009 to 28% in 2010. 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 Ps13.7 billion in 2009 and approximately Ps13.2 billion in 2010.

*Operating Expenses*. Our operating expenses decreased approximately 8%, from approximately Ps42.3 billion in 2009 to approximately Ps39.1 billion in 2010, mainly as a result of savings from cost reduction initiatives. As a percentage of net sales, our operating expenses increased from approximately 21% in 2009 to 22% in 2010, as a result of lower economies of scale due to lower volumes and higher transportation cost, partially mitigated by savings from our cost-reduction initiatives. Operating expenses include administrative, selling and distribution expenses. See note 2Q to our consolidated financial statements included elsewhere in this annual report.

*Operating Income*. For the reasons mentioned above, our operating income decreased approximately 32%, from approximately Ps15.8 billion in 2009 to approximately Ps10.8 billion in 2010. As a percentage of net sales,

operating income decreased from approximately 8% in 2009 to approximately 6% in 2010. Additionally, set forth below is a quantitative and qualitative analysis of the effects of the various factors affecting our operating income on a geographic segment basis.

***Mexico***

Our operating income from our operations in Mexico decreased approximately 11%, from approximately Ps14.0 billion in 2009 to approximately Ps12.4 billion in 2010 in Peso terms. The decrease in operating income was primarily attributable to the decreases in domestic cement and ready-mix concrete sales volumes, partially offset by the increase in ready-mix concrete average sales prices explained above.

***United States***

Our operating loss from our operations in the U.S. increased approximately 23%, from an operating loss of Ps7.3 billion in 2009 to an operating loss of Ps9.0 billion in 2010 in Peso terms. As mentioned above, the increase in operating loss resulted primarily from a slower than expected economic recovery and decreases in our local average cement and ready-mix concrete average sales prices.

***Spain***

Our operating income from our operations in Spain decreased approximately 41%, from approximately Ps1.7 billion in 2009 to Ps984 million in 2010 in Peso terms. The decrease in operating income resulted primarily from decreases in cement and ready-mix concrete sales volumes and average sales prices given the depressed Spanish economy, as well as cuts in the national budget.

***United Kingdom***

Our operating loss from our operations in the United Kingdom decreased approximately 9%, from a loss of Ps859 million in 2009 to a loss of Ps780 million in 2010 in Peso terms. The decrease in the operating loss of our operations in the United Kingdom during 2010 compared to 2009 resulted primarily from our cost reduction initiatives.

***Germany***

Our operating income from our operations in Germany decreased approximately 96%, from Ps658 million in 2009 to Ps26 million in 2010 in Peso terms. The decrease resulted primarily from a decrease in cement sales volumes due to lower demand for building materials, which were also affected by poor winter weather conditions.

***France***

Our operating income from our operations in France decreased approximately 72%, from approximately Ps786 million in 2009 to approximately Ps221 million in 2010 in Peso terms. The decrease resulted primarily from lower aggregates sale volumes and lower ready-mix and aggregates average sales prices, along with higher energy costs.

***Rest of Europe***

Our operating income from our operations in the Rest of Europe decreased approximately 59%, from approximately Ps976 million in 2009 to approximately Ps399 million in 2010 in Peso terms. The decrease in our operating income from our operations in the Rest of Europe resulted from lower sales volumes in our ready-mix and aggregates sectors, along with higher energy costs.

***South America, Central America and the Caribbean***

Our operating income from our operations in South America, Central America and the Caribbean decreased approximately 18%, from approximately Ps5.5 billion in 2009 to approximately Ps4.4 billion in 2010 in Peso terms. The decrease in operating income was primarily attributable to the decreases in domestic cement and ready-mix concrete sales volumes.

In Colombia, operating income decreased approximately 17%, from approximately Ps2.7 billion in 2009 to approximately Ps2.2 billion in 2010 in Peso terms. The decrease resulted primarily from higher energy costs and sale expenses.

***Africa and the Middle East***

Our operating income from our operations in Africa and the Middle East increased approximately 2%, from approximately Ps4.3 billion in 2009 to approximately Ps4.4 billion in 2010 in Peso terms. The increase in operating income resulted primarily from our Egyptian operations due to an increase in domestic cement sales volumes, partially offset by weaker operating results in the UAE.

Operating income from our operations in Egypt increased approximately 20%, from approximately Ps3.5 billion in 2009 to approximately Ps4.1 billion in 2010 in Peso terms, primarily as a result of improved results in our cement operations. Our operations in the Rest of Africa and the Middle East decreased approximately 73%, from an operating income of Ps830 million in 2009 to an operating income of Ps228 million in 2010 in Peso terms. The decrease in operating income in the Rest of Africa and the Middle East resulted primarily from weaker results in the UAE, particularly in cement.

***Asia***

Our operating income from our operations in Asia decreased approximately 11%, from approximately Ps1.1 billion in 2009 to approximately Ps982 million in 2010 in Peso terms. The decrease in operating income resulted primarily from weaker operating results in China and Malaysia, along with exchange rate effects.

Our operating income from our operations in the Philippines decreased approximately 9%, from approximately Ps996 million in 2009 to approximately Ps909 million in 2010 in Peso terms. The decrease in operating income resulted primarily from exchange rate effects.

***Others***

Operating loss in our Others segment improved by approximately 35%, from a loss of approximately Ps4.9 billion in 2009 to a loss of approximately Ps3.2 billion in 2010 in Peso terms, primarily explained by a substantial increase in our worldwide cement, clinker and slag trading operations.

*Other Expenses, Net*. Our other expenses, net, increased, from approximately Ps5.5 billion in 2009 to approximately Ps6.7 billion in 2010, primarily due to higher asset impairments and loss on the sale of assets, as well as amortization of fees related to the early redemption of debt.

The most significant items included under this caption in 2009 and 2010 are as follows:

| | 2009 | 2010 |
|---|---|---|
| | (in millions of Pesos) | |
| Impairment losses | Ps (889) | Ps (1,904) |
| Restructuring costs | (1,100) | (897) |
| Charitable contributions | (264) | (385) |
| Results from sales of assets and others, net | (3,276) | (3,486) |
| | Ps(5,529) | Ps(6,672) |

*Comprehensive Financing Result*. Pursuant to MFRS, the comprehensive financing result should measure the real cost (gain) of an entity's financing, net of the foreign currency fluctuations and the inflationary effects on monetary assets and liabilities. In periods of high inflation or currency depreciation, significant volatility may arise and is reflected under this caption. Comprehensive financing income (expense) includes:

- financial or interest expense on borrowed funds;
- financial income on cash and temporary investments;

- appreciation or depreciation resulting from the valuation of financial instruments, including derivative instruments and marketable securities, as well as the realized gain or loss from the sale or liquidation of such instruments or securities;
- foreign exchange gains or losses associated with monetary assets and liabilities denominated in foreign currencies; and
- beginning in 2008, gains and losses resulting from having monetary liabilities or assets exposed to inflation (monetary position result) in countries under high inflation environments.

| | Year Ended December 31, | |
|---|---|---|
| | 2009 | 2010 |
| | (in millions of Pesos) | |
| **Comprehensive financing result:** | | |
| Financial expense | Ps (13,513) | Ps (16,302) |
| Financial income | 385 | 439 |
| Results from financial instruments | (2,127) | (956) |
| Foreign exchange result | (266) | 926 |
| Monetary position result | 415 | 266 |
| Comprehensive financing result | Ps(15,106) | Ps(15,627) |

Our comprehensive financing result in 2010 was a loss of approximately Ps15.6 billion, an increase from the loss of approximately Ps15.1 billion in 2009. The components of the change are shown above. Our financial expense increased approximately 21%, from approximately Ps13.5 billion in 2009 to approximately Ps16.3 billion in 2010. The increase was primarily attributable to interest rates, partially offset by lower debt levels. Our financial income increased 14%, from Ps385 million in 2009 to Ps439 million in 2010. Our results from financial instruments improved approximately 55%, from a loss of approximately Ps2.1 billion in 2009 to a loss of approximately Ps1.0 billion in 2010. This loss resulted primarily from negative valuations of equity derivatives related to CEMEX and Axtel shares, as discussed below. Our net foreign exchange result improved from a loss of approximately Ps266 million in 2009 to a gain of approximately Ps926 million in 2010, mainly due to the appreciation of the Mexican Peso against the Dollar during 2010. Our monetary position result (generated by the recognition of inflation effects over monetary assets and liabilities) decreased approximately 36%, from a gain of Ps415 million during 2009 to a gain of Ps266 million during 2010, primarily attributable to our operations in Egypt.

During 2010 and 2009, certain financing costs associated with the Financing Agreement were capitalized under MFRS as deferred financing costs. For the years ended December 31, 2010 and 2009 some of these financing costs were expensed as incurred in our income reconciliation to U.S. GAAP.

In connection with the 2010 Optional Convertible Subordinated Notes, the portion of the issuance costs associated with the equity component that were recognized within other equity reserves under MFRS, were reclassified and treated as deferred financing costs in our reconciliation to U.S. GAAP as of December 31, 2010.

*Derivative Financial Instruments*. For the years ended December 31, 2009 and 2010, our derivative financial instruments that had a potential impact on our comprehensive financing result consisted of equity forward contracts, a forward instrument over the Total Return Index of the Mexican Stock Exchange and interest rate derivatives related to energy projects as discussed in note 12C to our consolidated financial statements included elsewhere in this annual report.

For the year ended December 31, 2010, we had a net loss of approximately Ps956 million in the item “Results from financial instruments” as compared to a net loss of approximately Ps2,127 million in 2009. The loss in 2010 is mainly attributable to changes in the fair value of derivative instruments related to our own and Axtel shares.

*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 income of approximately Ps10.6 billion in 2009 to an expense of Ps4.5 billion in 2010, mainly attributable to an increase in taxable earnings in our Mexican, South American and Egyptian operations. Our current income tax expense decreased 8%, from approximately Ps8.7 billion

in 2009 to Ps8.0 billion in 2010. Our deferred tax benefit decreased from approximately Ps19.3 billion in 2009 to Ps3.5 billion in 2010. The decrease was primarily attributable to the utilization of tax loss carryforwards during the period in certain countries, such as Spain, as well as to the increase in valuation allowances relating to tax loss carryforwards. For the years ended December 31, 2009 and 2010, our statutory income tax rate was 28% and 30%, respectively. Our effective tax rate in 2009 resulted in a tax rate of 227.7% considering a loss before income tax of approximately Ps4.6 billion, while our effective tax rate in 2010 resulted in a negative tax rate of 37.6%, considering a loss before income tax of approximately Ps12.0 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 Income (Loss).* For the reasons described above, our consolidated net income (loss) (before deducting the portion allocable to non-controlling interest) for 2010 decreased significantly, from a consolidated net income of approximately Ps1.7 billion in 2009 to a consolidated net loss of approximately Ps16.5 billion.

*Controlling Interest Net Income (Loss).* Controlling interest net income (loss) represents the difference between our consolidated net income (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 income (loss) decreased significantly, from a net income of approximately Ps1.4 billion in 2009 to a controlling interest net loss of approximately Ps16.5 billion in 2010. As a percentage of revenues, controlling interest net income represented 1% in 2009.

*Non-controlling Interest Net Income.* 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 decreased approximately 89%, from Ps240 million in 2009 to Ps27 million in 2010, mainly as a result of a significant decrease in the net income of the consolidated entities in which others have a non-controlling interest. As a result, the percentage of our consolidated net income (loss) allocable to non-controlling interests decreased from 15% in 2009 to 0.2% in 2010.

***Year Ended December 31, 2009 Compared to Year Ended December 31, 2008***

Summarized in the table below are the percentage (%) increases (+) and decreases (-) for the year ended December 31, 2009 compared to the year ended December 31, 2008 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.

| | Domestic Sales Volumes | | Export Sales Volumes | Average Domestic Prices in Local Currency(1) | |
|---|---|---|---|---|---|
| Geographic Segment | Cement | Ready-Mix Concrete | Cement | Cement | Ready-Mix Concrete |
| **North America** | | | | | |
| Mexico | -4% | -14% | -61% | +2% | +1% |
| United States(2) | -32% | -38% | N/A | -6% | -8% |
| **Europe** | | | | | |
| Spain(3) | -40% | -44% | +77% | -10% | -8% |
| United Kingdom | -19% | -25% | N/A | +8% | +2% |
| Germany | -18% | -9% | N/A | +10% | +4% |
| France | N/A | -18% | N/A | N/A | +3% |
| Rest of Europe(4) | -14% | -22% | N/A | -11% | -12% |
| **South/Central America and the Caribbean** | | | | | |
| Colombia | -6% | -17% | N/A | +10% | -6% |
| Rest of South/Central America and the Caribbean(5) | -40% | -43% | N/A | +8% | +6% |
| **Africa and the Middle East** | | | | | |
| Egypt | +13% | +9% | N/A | +13% | +12% |
| Rest of Africa and the Middle East(6) | +204% | -17% | N/A | -24% | -3% |

| Geographic Segment | Domestic Sales Volumes | | Export Sales Volumes | Average Domestic Prices in Local Currency(1) | |
|---|---|---|---|---|---|
| | Cement | Ready-Mix Concrete | Cement | Cement | Ready-Mix Concrete |
| **Asia** | | | | | |
| Philippines | +9% | N/A | -12% | +7% | N/A |
| Rest of Asia(7) | -21% | -18% | N/A | -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 Dollar terms (except for the Rest of Europe region, 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 Dollar terms (except for the Rest of Europe region, which represent the weighted average change of prices in Euros) based on total sales volumes in the region.

(2) 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.

(3) 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.).

(4) Our Rest of Europe segment includes our operations in Croatia, Poland, Latvia, the Czech Republic, Ireland, Austria, Hungary, Finland, Norway and Sweden, as well as our other European assets.

(5) Our Rest of South/Central America and the Caribbean segment includes our operations in Costa Rica, Panama, the Dominican Republic, Nicaragua, Puerto Rico, Jamaica and Argentina and our trading activities in the Caribbean.

(6) Our Rest of Africa and the Middle East segment includes the operations in the UAE and Israel.

(7) Our Rest of Asia segment includes our operations in Malaysia, Thailand, Bangladesh, China and other assets in the Asian region.

On a consolidated basis, our cement sales volumes decreased approximately 17%, from 78.5 million tons in 2008 to 65.1 million tons in 2009, and our ready-mix concrete sales volumes decreased approximately 24%, from 71.0 million cubic meters in 2008 to 53.9 million cubic meters in 2009. Our revenues decreased approximately 12%, from Ps225.7 billion in 2008 to Ps197.8 billion in 2009, and our operating income decreased approximately 39%, from Ps26.1 billion in 2008 to Ps15.8 billion in 2009.

The following tables present selected condensed financial information of net sales and operating income for each of our geographic segments for the years ended December 31, 2008 and 2009. 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 | Net Sales | | | For the Year Ended December 31, | |
|---|---|---|---|---|---|
| | Variations in Local Currency(1) | Approximate Currency Fluctuations, Net of Inflation Effects | Variations in Mexican Pesos | 2008 | 2009 |
| | | | | (in millions of Pesos) | |
| **North America** | | | | | |
| Mexico | -1% | — | -1% | Ps42,857 | Ps42,339 |
| United States(2) | -40% | +14% | -26% | 52,040 | 38,472 |
| **Europe** | | | | | |
| Spain(3) | -44% | +9% | -35% | 17,493 | 11,308 |

| Geographic Segment | Net Sales: Variations in Local Currency(1) | Net Sales: Approximate Currency Fluctuations, Net of Inflation Effects | Net Sales: Variations in Mexican Pesos | For the Year Ended December 31, 2008 | For the Year Ended December 31, 2009 |
|---|---|---|---|---|---|
| | | | | (in millions of Pesos) | |
| United Kingdom | -19% | +3% | -16% | 19,225 | 16,126 |
| Germany | -11% | +15% | +4% | 15,883 | 16,492 |
| France | -16% | +13% | -3% | 14,266 | 13,866 |
| Rest of Europe(4) | -29% | +13% | -16% | 19,343 | 16,174 |
| **South/Central America and the Caribbean** | | | | | |
| Venezuela | — | — | — | 4,443 | — |
| Colombia | -9% | +10% | +1% | 6,667 | 6,766 |
| Rest of South/Central America and the Caribbean(5) | -39% | +45% | +6% | 13,035 | 13,857 |
| **Africa and Middle East** | | | | | |
| Egypt | +27% | +33% | +60% | 5,218 | 8,372 |
| Rest of Africa and the Middle East(6) | -23% | +17% | -6% | 6,850 | 6,425 |
| **Asia** | | | | | |
| Philippines | +15% | +17% | +32% | 2,928 | 3,867 |
| Rest of Asia(7) | -18% | +29% | +11% | 2,313 | 2,566 |
| **Others(8)** | -45% | +12% | -27% | 13,368 | 9,709 |
| Net sales before eliminations | | | -13% | 235,929 | 206,339 |
| Eliminations from consolidation | | | | (10,264) | (8,538) |
| **Consolidated net sales** | | | -12% | Ps225,665 | Ps197,801 |

| Geographic Segment | Operating Income: Variations in Local Currency(1) | Operating Income: Approximate Currency Fluctuations, Net of Inflation Effects | Operating Income: Variations in Mexican Pesos | For the Year Ended December 31, 2008 | For the Year Ended December 31, 2009 |
|---|---|---|---|---|---|
| | | | | (in millions of Pesos) | |
| **North America** | | | | | |
| Mexico | -2% | — | -2% | Ps14,254 | Ps13,965 |
| United States(2) | N/A | N/A | N/A | (461) | (7,290) |
| **Europe** | | | | | |
| Spain(3) | -55% | -6% | -61% | 4,325 | 1,667 |
| United Kingdom | +39% | — | +39% | (1,411) | (859) |
| Germany | +18% | +34% | +52% | 434 | 658 |
| France | +24% | +32% | +56% | 505 | 786 |
| Rest of Europe(4) | -59% | +8% | -51% | 2,009 | 976 |
| **South/Central America and the Caribbean** | | | | | |
| Venezuela | — | — | — | 958 | — |
| Colombia | +13% | +13% | +26% | 2,116 | 2,672 |
| Rest of South/Central America and the Caribbean(5) | -8% | +20% | +12% | 2,481 | 2,784 |
| **Africa and Middle East** | | | | | |
| Egypt | +34% | +25% | +59% | 2,176 | 3,465 |
| Rest of Africa and the Middle East(6) | +20% | +29% | +49% | 558 | 830 |
| **Asia** | | | | | |
| Philippines | +58% | +31% | +89% | 528 | 996 |

| Geographic Segment | Variations in Local Currency(1) | Approximate Currency Fluctuations, Net of Inflation Effects | Variations in Mexican Pesos | Operating Income For the Year Ended December 31, 2008 | 2009 |
|---|---|---|---|---|---|
| | | | | (in millions of Pesos) | |
| Rest of Asia(7) | +35% | +44% | +79% | 57 | 102 |
| Others(8) | -223% | +122% | -101% | (2,441) | (4,912) |
| **Consolidated operating income** | | | -39% | Ps26,088 | Ps15,840 |

N/A = Not Applicable

(1) For purposes of a geographic segment consisting of a region, the net sales and operating income data in local currency terms for each individual country within the region are first translated into Dollar terms at the exchange rates in effect as of the end of the reporting period. Variations for a region represent the weighted average change in Dollar terms based on net sales and operating income for the region.

(2) 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.

(3) 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.).

(4) Our Rest of Europe segment includes our operations in Croatia, Poland, Latvia, the Czech Republic, Ireland, Austria, Hungary, Finland, Norway and Sweden, as well as our other European assets.

(5) Our Rest of South/Central America and the Caribbean segment includes our operations in Costa Rica, Panama, the Dominican Republic, Nicaragua, Puerto Rico, Jamaica and Argentina and our trading activities in the Caribbean.

(6) Our Rest of Africa and the Middle East segment includes our operations in the UAE and Israel.

(7) Our Rest of Asia segment includes our operations in Malaysia, Thailand, Bangladesh, China and other assets in the Asian region.

(8) Our Others segment includes our worldwide maritime trade operations, our information solutions company and other minor subsidiaries.

*Net Sales.* Our consolidated net sales decreased approximately 12%, from Ps225.7 billion in 2008 to Ps197.8 billion in 2009. The decrease in net sales was primarily attributable to lower volumes and prices mainly from our operations in the United States and Spain. The infrastructure sector continues to be the main driver of demand in most of our markets. Our consolidated statement of operations present the results of our operations in Australia, net of income tax, for the nine-month period ended September 30, 2009 and the twelve-month period ended December 31, 2008 in a single line item as "Discontinued operations." Accordingly, our consolidated statement of cash flows for the year ended December 31, 2008 was reclassified. See note 3B to our consolidated financial statements included elsewhere in this annual report. 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.

***Mexico***

Our domestic cement sales volumes from our operations in Mexico decreased approximately 4% in 2009 compared to 2008, and ready-mix concrete sales volumes decreased approximately 14% during the same period. The residential and infrastructure sectors continue to be the main drivers of cement demand in the country. In 2009, activity from other construction sectors softened as they were affected by the overall challenging macroeconomic environment. Our cement export volumes from our operations in Mexico, which represented approximately 3% of our Mexican cement sales volumes in 2009, decreased approximately 61% in 2009 compared to 2008, primarily as a result of lower export volumes to the United States. Of our total cement export volumes during 2009 from our operations in Mexico, 19% was shipped to the United States, 71% to Central America and the Caribbean and 10% to

South America. Our net sales from our operations in Mexico represented approximately 20% of our total net sales in 2009, in Peso terms, before eliminations resulting from consolidation. Our average domestic sales price of cement from our operations in Mexico increased approximately 2% in Peso terms in 2009 compared to 2008, and the average sales price of ready-mix concrete increased approximately 1% in Peso terms over the same period. For the year ended December 31, 2009, cement represented approximately 56%, ready-mix concrete approximately 23% and our aggregates and other businesses approximately 21% 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 decreases in domestic cement and ready-mix concrete sales volumes, partially offset by the increase in domestic cement and ready-mix concrete sales prices, our Mexican net sales, in Peso terms, declined slightly in 2009 compared to 2008.

***United States***

Our domestic cement sales volumes from our operations in the U.S., which include cement purchased from our other operations, decreased approximately 32% in 2009 compared to 2008, and ready-mix concrete sales volumes decreased approximately 38% during the same period. The decreases in our domestic cement and ready-mix concrete sales volumes from our operations in the U.S. resulted primarily from significantly weaker demand in all our U.S. markets, as decreased confidence and lower activity across all sectors resulted in lower volumes. Overall construction activity weakened further as economic conditions continued to worsen and credit availability became extremely scarce. Our operations in the United States represented approximately 19% of our total net sales in 2009 in Peso terms, before eliminations resulting from consolidation. Our average sales price of domestic cement from our operations in the U.S. decreased approximately 6% in Dollar terms in 2009 compared to 2008, and the average sales price of ready-mix concrete decreased approximately 8% in Dollar terms over the same period. The decreases in average prices were primarily due to decreased demand as a result of recessionary economic conditions and tight credit availability. For the year ended December 31, 2009, 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 decreases in cement and ready-mix concrete sales volumes and average sales prices, net sales from our operations in the United States, in Dollar terms, decreased approximately 40% in 2009 compared to 2008. The decrease in net sales in the United States during 2009 compared to 2008 resulted from weaker demand in our U.S. markets, the recessionary economic conditions and tight credit availability.

***Spain***

Our domestic cement sales volumes from our operations in Spain decreased approximately 40% in 2009 compared to 2008, while ready-mix concrete sales volumes decreased approximately 44% during the same period. The decreases in domestic cement and ready-mix concrete sales volumes were the result of the country's continued challenging economic environment. Overall economic activity continues to worsen and has negatively affected overall cement demand. No particular segment in the construction sector is experiencing growth. Additionally, infrastructure projects continue to be on hold given the lack of liquidity and overall tighter credit conditions. Our 2009 net sales from our operations in Spain represented approximately 5% of our total net sales in Peso terms, before eliminations resulting from consolidation. Our cement export volumes from our operations in Spain, which represented approximately 14% of our cement sales volumes in 2009 from our operations in Spain, increased by approximately 77% in 2009 compared to 2008, primarily as a result of lower domestic sales and higher export volumes to Africa. Of our total cement export volumes in 2009 from our operations in Spain, 7% was shipped to Europe and the Middle East, 90% to Africa, and 3% to other countries. Our average domestic sales price of cement from our operations in Spain decreased approximately 10% in Euro terms in 2009 compared to 2008, and the average price of ready-mix concrete decreased approximately 8% in Euro terms over the same period. For the year ended December 31, 2009, cement represented approximately 59%, ready-mix concrete approximately 22% and our aggregates and other businesses approximately 19% 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 sales volumes and ready-mix concrete sales volumes, our net sales from our operations in Spain, in Euro terms, decreased approximately 44% in 2009 compared to 2008.

***United Kingdom***

Our domestic cement sales volumes from our operations in the United Kingdom decreased approximately 19% in 2009 compared to 2008, and ready-mix concrete sales volumes decreased approximately 25% during the same period. The decreases in domestic cement and ready-mix concrete sales volumes resulted primarily from a deteriorating macroeconomic environment in the United Kingdom. Lower liquidity has affected construction spending and the initiation of new projects in all construction market segments. The decrease in domestic cement demand during 2009 was primarily driven by less construction spending and fewer new projects. Our 2009 net sales from our operations in the United Kingdom represented approximately 8% of our total net sales in Peso terms, before eliminations resulting from consolidation. Our average domestic sales price of cement from our operations in the United Kingdom increased approximately 8% in Pound terms in 2009 compared to 2008, and the average price of ready-mix concrete increased approximately 2% in Pound terms over the same period. For the year ended December 31, 2009, cement represented approximately 16%, ready-mix concrete approximately 27% and our aggregates and other businesses approximately 57% of our net sales for 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, net sales from our operations in the United Kingdom, in Pound terms, decreased approximately 19% in 2009 compared to 2008.

***Germany***

Our domestic cement sales volumes from our operations in Germany decreased approximately 18% in 2009 compared to 2008, and ready-mix concrete sales volumes in those operations decreased approximately 9% during the same period. The decrease in domestic cement and ready-mix concrete sales volumes resulted primarily from lower demand in the non-residential and infrastructure sectors. Our 2009 net sales from our operations in Germany represented approximately 8% of our total net sales in Peso terms, before eliminations resulting from consolidation. Our average domestic sales price of cement from our operations in Germany increased approximately 10% in Euro terms in 2009 compared to 2008, and the average price of ready-mix concrete increased approximately 4% in Euro terms over the same period. For the year ended December 31, 2009, cement represented approximately 26%, ready-mix concrete approximately 36% and our aggregates and other businesses approximately 38% of our net sales for 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, net sales in Germany, in Euro terms, decreased approximately 11% in 2009 compared to 2008.

***France***

Our ready-mix concrete sales volumes from our operations in France decreased approximately 18% in 2009 compared to 2008, primarily as a result of the continued challenging situation in the building materials sector. Activity from the residential and industrial and commercial sectors continues to be very weak. Our 2009 net sales from our operations in France represented approximately 7% of our total net sales in Peso terms, before eliminations resulting from consolidation. Our average sales price of ready-mix concrete from our operations in France increased approximately 3% in Euro terms in 2009 compared to 2008. For the year ended December 31, 2009, ready-mix concrete represented approximately 73% and our aggregates and other businesses represented approximately 27% of 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 lower ready-mix concrete volumes, despite improved pricing, net sales in France, in Euro terms, decreased approximately 16% in 2009 compared to 2008.

***Rest of Europe***

Our operations in our Rest of Europe segment in 2009 consisted of our operations in Croatia, Poland, Latvia, the Czech Republic, Ireland, Italy, Austria, Hungary, Portugal, Denmark, Finland, Norway and Sweden. Our domestic cement sales volumes from our operations in the Rest of Europe decreased approximately 14% in 2009 compared to 2008, and ready-mix concrete sales volumes decreased approximately 22% during the same period. The

decrease in domestic cement and ready-mix concrete sales volumes resulted primarily from a slowdown in the housing sector and delays in infrastructure projects as a result of the harsh winter. Our net sales from our operations in the Rest of Europe for the year ended December 31, 2009 represented approximately 8% of our total net sales in Peso terms, before eliminations resulting from consolidation. Our average domestic sales price of cement from our operations in the Rest of Europe decreased approximately 11% in Euro terms in 2009 compared to 2008, and the average price of ready-mix concrete decreased approximately 12% in Euro terms over the same period. For the year ended December 31, 2009, cement represented approximately 40%, ready-mix concrete approximately 38% and our aggregates and other businesses approximately 22% of net sales for our operations in the Rest of Europe 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 prices and sales volumes, net sales in the Rest of Europe, in Euro terms, decreased approximately 29% in 2009 compared to 2008.

***South America, Central America and the Caribbean***

Our operations in South America, Central America and the Caribbean in 2009 consisted of our operations in Colombia, Costa Rica, the Dominican Republic, Panama, Nicaragua, Puerto Rico, Jamaica and Argentina, as well as several cement terminals and other assets in other Caribbean countries and our trading operations in the Caribbean region. Most of these trading operations consist of the resale in the Caribbean region of cement produced by our operations in Mexico.

Our domestic cement sales volumes from our operations in South America, Central America and the Caribbean decreased approximately 30% in 2009 compared to 2008, and ready-mix concrete sales volumes decreased approximately 34% over the same period. The decrease in domestic cement and ready-mix concrete sales volumes is primarily attributable to lower economic activity and the consolidation of the results of operations from our operations in Venezuela for the seven-month period ended July 31, 2008 (prior to its expropriation by the Venezuelan government). For the year ended December 31, 2009, our operations in South America, Central America and the Caribbean represented approximately 10% of our total net sales in Peso terms, before eliminations resulting from consolidation. Our average domestic sales price of cement from our operations in South America, Central America and the Caribbean increased approximately 8% in Dollar terms in 2009 compared to 2008, while the average sales price of ready-mix concrete decreased approximately 8% in Dollar terms over the same period. As a result of the decreases in domestic cement and ready-mix concrete sales volumes, net sales in our operations in South America, Central America and the Caribbean, in Dollar terms, decreased approximately 32% in 2009 compared to 2008. For the year ended December 31, 2009, cement represented approximately 71%, ready-mix concrete approximately 22% and our aggregates and other businesses approximately 7% of net sales for our operations in South America, Central America and the Caribbean before intra-sector eliminations within the segment and before eliminations from consolidation, as applicable.

Our cement volumes from our operations in Colombia decreased approximately 6% in 2009 compared to 2008, and ready-mix concrete sales volumes decreased approximately 17% during the same period. The decreases in sales volumes resulted primarily from lower economic activity, especially in the self-construction and low income sectors. For the year ended December 31, 2009, Colombia represented approximately 3% of our total net sales 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 2009 compared to 2008, while the average price of ready-mix concrete decreased approximately 6% in Colombian Peso terms over the same period. As a result of the decreases in domestic cement and ready-mix concrete sales volumes, partially offset by the increase in domestic cement and ready-mix concrete sales prices, net sales of our operations in Colombia, in Colombian Peso terms, decreased approximately 9% in 2009 compared to 2008. For the year ended December 31, 2009, cement represented approximately 65%, ready-mix concrete approximately 25% and our aggregates and other businesses approximately 10% of net sales for our operations in Colombia before intra-sector eliminations within the segment and before eliminations from consolidation, as applicable.

Our cement volumes from our operations in our Rest of South and Central America and the Caribbean segment decreased approximately 40% in 2009 compared to 2008, and ready-mix concrete sales volumes decreased approximately 43% during the same period, mainly as a result of the expropriation of CEMEX Venezuela in 2008. For the year ended December 31, 2008, our net sales from our operations in the Rest of South and Central America and the Caribbean included the results of operations from our operations in Venezuela for the seven-month period

ended July 31, 2008 (prior to its expropriation by the Venezuelan government). For the year ended December 31, 2009, the Rest of South and Central America and the Caribbean represented approximately 7% of our total net sales in Peso terms, before eliminations resulting from consolidation. Our average domestic sales price of cement from our operations in the Rest of South and Central America and the Caribbean increased approximately 8% in Dollar terms in 2009 compared to 2008, and the average sales price of ready-mix concrete increased approximately 6% in Dollar terms over the same period. For these reasons, net sales of our operations in the Rest of South and Central America and the Caribbean, in Dollar terms, decreased approximately 39% in 2009 compared to 2008. For the year ended December 31, 2009, cement represented approximately 74%, ready-mix concrete approximately 21% and our other businesses approximately 5% of our net sales of our operations in the Rest of South and Central America and the Caribbean 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 mentioned above, revenues in our operations in South America, Central America and the Caribbean, in Dollar terms, decreased approximately 32% in 2009 compared to 2008.

***Africa and the Middle East***

Our operations in Africa and the Middle East consist of our operations in Egypt, the most significant operations in this geographic segment, and the United Arab Emirates (UAE) and Israel. Our domestic cement sales volumes from our operations in Africa and the Middle East increased approximately 22% in 2009 compared to 2008, and ready-mix concrete sales volumes decreased approximately 14% during the same period. The increase in domestic cement sales volumes was primarily a result of the increase in sales volumes in our operations in Egypt. For the year ended December 31, 2009, Africa and the Middle East represented approximately 7% of our total net sales in Peso terms, before eliminations resulting from consolidation. Our average domestic sales price of cement from our operations in Africa and the Middle East increased approximately 8% in Dollar terms in 2009, and the average price of ready-mix concrete decreased approximately 8% in Dollar terms over the same period. For the year ended December 31, 2009, cement represented approximately 52%, ready-mix concrete approximately 37% and our other businesses approximately 11% of our net sales of our operations in Africa and the Middle East before intra-sector eliminations within the segment and before eliminations from consolidation, as applicable.

Our domestic cement sales volumes from our operations in Egypt increased approximately 13% in 2009 compared to 2008, and Egyptian ready-mix concrete sales volumes increased approximately 9% during the same period. The increases in volumes resulted primarily from the positive trend in the informal residential and infrastructure sectors, which led to higher sales volumes of building materials. The high-income housing sector started to slow down in response to the macroeconomic situation, while the self-construction sector maintained its stability. For the year ended December 31, 2009, Egypt represented approximately 4% of our total net sales in Peso terms, before eliminations resulting from consolidation. The average domestic sales price of cement increased approximately 13% in Egyptian pound terms in 2009 compared to 2008, and ready-mix concrete sales prices increased approximately 12% in Egyptian pound terms. During 2009, our operations in Egypt did not export any cement as production was only directed to meet increased domestic demand. As a result of the increases in domestic cement and ready-mix concrete sales volumes and sales prices, net sales of our operations in Egypt, in Egyptian pound terms, increased approximately 27% in 2009 compared to 2008. For the year ended December 31, 2009, cement represented approximately 89%, ready-mix concrete approximately 9% and our other businesses approximately 2% of net sales for our operations in Egypt before intra-sector eliminations within the segment and before eliminations from consolidation, as applicable.

Our ready-mix concrete sales volumes from our operations in the Rest of Africa and the Middle East decreased approximately 17% in 2009 compared to 2008 primarily as a result of economic conditions, which have had a negative effect on the commercial and residential sectors, and the average ready-mix concrete sales price decreased approximately 3%, in Dollar terms, in 2009 compared to 2008. For the year ended December 31, 2009, Rest of Africa and the Middle East represented approximately 3% of our total net sales in Peso terms, before eliminations resulting from consolidation. As a result of the decreases in ready-mix concrete average sales price and sales volumes, net sales of our operations in the Rest of Africa and the Middle East, in Dollar terms, decreased approximately 23% in 2009 compared to 2008. The decrease in net sales, in Dollar terms, in our operations in the Rest of Africa and the Middle East was due to a 4% decrease in net sales in Israel and a 36% decrease in net sales in the UAE. They represent 66% and 34%, respectively, of our operations in the Rest of Africa and the Middle East.

For the year ended December 31, 2009, cement represented approximately 12%, ready-mix concrete represented approximately 66% and our other businesses approximately 22% of our net sales of our operations in the Rest of Africa and the Middle East before intra-sector eliminations within the segment and before eliminations from consolidation, as applicable.

As a result of the decreases in ready-mix concrete average sales price and sales volumes in our operations in the Rest of Africa and the Middle East, partially offset by the increase in average sales price and sales volumes in our operations in Egypt, net sales before eliminations resulting from consolidation in our operations in Africa and the Middle East, in Dollar terms, decreased approximately 2% in 2009 compared to 2008.

***Asia***

Our operations in Asia in 2009 consisted of our operations in the Philippines, Thailand, Bangladesh, Taiwan, Malaysia, and the operations we acquired from Rinker in China. Our domestic cement sales volumes from our operations in Asia remained flat in 2009 compared to 2008. Our ready-mix concrete sales volumes from our operations in Asia decreased approximately 18% in 2009 compared to 2008, primarily as a result of the decrease in our ready-mix concrete sales volumes in our operations in Malaysia. Our cement export volumes from our operations in Asia, which represented approximately 16% of our cement sales volumes in 2009 from our operations in Asia, decreased approximately 12% in 2009 compared to 2008 primarily due to decreased cement demand in the Europe region. Of our total cement export volumes during 2009 from our operations in Asia, approximately 21% was shipped to Africa, 57% to Europe and 22% to the Southeast Asia region. For the year ended December 31, 2009, Asia represented approximately 3% of our total net sales in Peso terms, before eliminations resulting from consolidation. The average sales price of domestic cement increased 1% and the average sales price of ready-mix concrete in our operations in Asia remained flat in Dollar terms in 2009 compared to 2008. The main drivers of demand in the segment continue to be the commercial and infrastructure sectors.

For the year ended December 31, 2009, cement represented approximately 70%, ready-mix concrete approximately 24% and our other businesses approximately 6% of our net sales of our operations in Asia before intra-sector eliminations within the segment and before eliminations from consolidation, as applicable.

Our domestic cement volumes from our operations in the Philippines increased approximately 9% in 2009 compared to 2008. For the year ended December 31, 2009, the Philippines represented approximately 2% of our total net sales in Peso terms, before eliminations resulting from consolidation. Our average domestic sales price of cement from our operations in the Philippines increased approximately 7% in Philippine Peso terms in 2009 compared to 2008. As a result, net sales of our operations in the Philippines, in Philippine Peso terms, increased approximately 15% in 2009 compared to 2008. For the year ended December 31, 2009, cement represented 100% of net sales for our operations in the Philippines before intra-sector eliminations within the segment and before eliminations from consolidation, as applicable.

Our ready-mix concrete sales volumes from our operations in the Rest of Asia, which include our operations in Malaysia and China (representing nearly all our ready-mix concrete sales volumes in the Rest of Asia region), decreased approximately 18% in 2009 compared to 2008 due to the finalization of large infrastructure projects and reduced exports. The average sales price of ready-mix concrete remained flat, in Dollar terms, during 2009. For the reasons mentioned above, net sales of our operations in the Rest of Asia, in Dollar terms, decreased approximately 18% in 2009 compared to 2008. For the year ended December 31, 2009, cement represented approximately 28%, ready-mix concrete approximately 58% and our other businesses approximately 14% of our net sales of our operations in the Rest of Asia before intra-sector eliminations within the segment and before eliminations from consolidation, as applicable.

For the reasons described above, net sales from our operations in Asia before eliminations resulting from consolidation, in Dollar terms, decreased approximately 4% in 2009 compared to 2008.

On October 1, 2009, we completed the sale of our operations in Australia to a subsidiary of Holcim Ltd. for approximately $2.02 billion Australian Dollars (approximately U.S.$1.7 billion). Our consolidated statement of operations present the results of our operations in Australia, net of income tax, for the nine-month period ended September 30, 2009 and the twelve-month period ended December 31, 2008 in a single line item as “Discontinued

operations." Accordingly, our consolidated statement of cash flows for the year ended December 31, 2008 was reclassified. See note 3B to our consolidated financial statements included elsewhere in this annual report.

***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 45% before eliminations resulting from consolidation in 2009 compared to 2008 in Dollar terms, primarily as a result of a decrease of approximately 54% in our worldwide cement, clinker and slag trading operations and a decrease of approximately 17% in sales of our information technology solutions company. For the year ended December 31, 2009, our trading operations' net sales represented approximately 48%, and our information technology solutions company 32%, of our Others segment's net sales.

*Cost of Sales*. Our cost of sales, including depreciation, decreased approximately 9%, from Ps154.0 billion in 2008 to Ps139.7 billion in 2009, primarily due to the decrease in sales volumes mentioned above. As a percentage of revenues, cost of sales increased from 68% in 2008 to 71% in 2009, mainly as a result of lower economies of scale due to lower volumes, especially in the United States, Spain and Mexico. 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 Ps11.1 billion in 2008 and Ps9.3 billion in 2009; 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, 2008 and 2009, represented expenses of approximately Ps13.4 billion and Ps13.7 billion, respectively.

*Gross Profit.* For the reasons explained above, our gross profit decreased approximately 19%, from Ps71.7 billion in 2008 to Ps58.1 billion in 2009. As a percentage of revenues, gross profit decreased from approximately 32% in 2008 to 29% in 2009. 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 Ps24.4 billion in 2008 and Ps23.0 billion in 2009.

*Operating Expenses*. Our operating expenses decreased approximately 7%, from Ps45.6 billion in 2008 to Ps42.3 billion in 2009, mainly as a result of cost reduction initiatives. As a percentage of revenues, our operating expenses decreased approximately 1%, reflecting our cost reduction initiatives, partially mitigated by lower volumes in our operations year over year. Operating expenses include administrative, selling and distribution expenses. See note 2Q to our consolidated financial statements included elsewhere in this annual report.

*Operating Income*. For the reasons mentioned above, our operating income decreased approximately 39%, from Ps26.1 billion in 2008 to Ps15.8 billion in 2009. As a percentage of revenues, operating income decreased from approximately 12% in 2008 to 8% in 2009. Additionally, set forth below is a quantitative and qualitative analysis of the effects of the various factors affecting our operating income on a geographic segment basis.

***Mexico***

Our operating income from our operations in Mexico decreased approximately 2%, from Ps14.3 billion in 2008 to Ps14.0 billion in 2009 in Peso terms. The decrease in operating income was primarily attributable to the decreases in domestic cement and ready-mix concrete sales volumes explained above.

***United States***

Our operating loss from our operations in the U.S. increased substantially, from an operating loss of Ps461 million in 2008 to an operating loss of Ps7.3 billion in 2009 in Peso terms. As mentioned above, the decrease in operating income resulted primarily from a significantly weaker demand in all our U.S. markets, as decreased

confidence and lower activity across all sectors resulted in lower volumes. Overall construction activity weakened further as economic conditions continued to worsen and credit availability became extremely scarce.

***Spain***

Our operating income from our operations in Spain decreased approximately 61%, from Ps4.3 billion in 2008 to Ps1.7 billion in 2009 in Peso terms. The decrease in operating income resulted primarily from the country's continued challenging economic environment. Overall economic activity continues to worsen and has negatively affected overall cement demand. No particular segment in the construction sector is experiencing growth. Additionally, infrastructure projects continue to be on hold given the lack of liquidity and overall tighter credit conditions.

***United Kingdom***

Our operating loss from our operations in the United Kingdom decreased approximately 39%, from a loss of Ps1.4 billion in 2008 to a loss of Ps859 million in 2009 in Peso terms. The decrease in the operating loss of our operations in the United Kingdom during 2009 compared to 2008 resulted primarily from a decrease in cost of sales (variable and fixed) of 21% in Pound terms (from £716 million in 2008 to £564 million in 2009). Also in 2009, operating expenses decreased 17% in Pound terms as a result of cost and expense reductions to adjust our operations to the current market conditions.

***Germany***

Our operating income from our operations in Germany increased approximately 52%, from Ps434 million in 2008 to Ps658 million in 2009 in Peso terms. The increase resulted primarily from a decrease in cost of sales of 12% in Euro terms. Additionally, in 2009, operating expenses decreased 11% in Euro terms, primarily as a result of our cost reduction efforts to adjust our operations to then current market conditions.

***France***

Our operating income from our operations in France increased approximately 56%, from Ps505 million in 2008 to Ps786 million in 2009 in Peso terms. The increase resulted primarily from our cost reduction efforts.

***Rest of Europe***

Our operating income from our operations in the Rest of Europe decreased approximately 51%, from Ps2.0 billion in 2008 to Ps976 million in 2009 in Peso terms. The decrease in our operating income of our operations in the Rest of Europe resulted from lower domestic cement and ready-mix concrete sales volumes and average sales prices, especially in our Poland operations.

***South America, Central America and the Caribbean***

Our operating income from our operations in South America, Central America and the Caribbean decreased approximately 2%, from Ps5.5 billion in 2008 to Ps5.4 billion in 2009 in Peso terms. The decrease in operating income was primarily attributable to the decreases in domestic cement and ready-mix concrete sales volumes, which was primarily attributable to lower economic activity and the consolidation of the results of operations from our operations in Venezuela for the seven-month period ended July 31, 2008 (prior to its expropriation by the Venezuelan government).

In Colombia, operating income increased approximately 26%, from Ps2.1 billion in 2008 to Ps2.6 billion in 2009 in Peso terms. The increase resulted primarily from our cost reduction efforts to adjust our operations to the existing market conditions.

***Africa and the Middle East***

Our operating income from our operations in Africa and the Middle East increased approximately 57%, from Ps2.7 billion in 2008 to Ps4.3 billion in 2009 in Peso terms. The increase in operating income resulted

primarily from the increase in domestic cement and ready-mix concrete sales prices and sales volumes in our operations in Egypt.

Operating income from our operations in Egypt increased approximately 59%, from Ps2.1 billion in 2008 to Ps3.5 billion in 2009, primarily as a result of increases in the average domestic cement and ready-mix concrete sales prices and sales volumes. Our operations in the Rest of Africa and the Middle East increased approximately 49%, from an operating income of Ps558 million in 2008 to an operating income of Ps830 million in 2009 in Peso terms. The increase in operating income in the Rest of Africa and the Middle East resulted primarily from a decrease in cost of sales and operating expenses in Israel and UAE.

***Asia***

Our operating income from our operations in Asia increased approximately 88%, from Ps585 million in 2008 to Ps1.1 billion in 2009 in Peso terms. The increase in operating income resulted primarily from the increase in our net sales of our operations in the Philippines, while cost of sales remained flat and operating expenses decreased 8% in Dollar terms as a result of our global cost-reduction efforts.

Our operating income from our operations in the Philippines increased approximately 89%, from Ps528 million in 2008 to Ps996 million in 2009 in Peso terms.

On October 1, 2009, we completed the sale of our operations in Australia to a subsidiary of Holcim Ltd. for approximately $2.02 billion Australian Dollars (approximately U.S.$1.7 billion). Our consolidated statement of operations present the results of our operations in Australia, net of income tax, for the nine-month period ended September 30, 2009 and the twelve-month period ended December 31, 2008 in a single line item as “Discontinued operations.” Accordingly, our consolidated statement of cash flows for the year ended December 31, 2008 was reclassified. See note 3B to our consolidated financial statements included elsewhere in this annual report.

***Others***

Operating loss in our Others segment increased approximately 101%, from a loss of Ps2.4 billion in 2008 to a loss of Ps4.9 billion in 2009 in Peso terms, primarily explained by a decrease in operating income of 83% in our worldwide cement, clinker and slag trading operations.

*Other Expenses, Net*. Our other expenses, net, decreased significantly, from Ps21.4 billion in 2008 to Ps5.5 billion in 2009, primarily due to the 2008 impairment losses of goodwill and other long-lived assets in the amount of approximately Ps21.1 billion as described in notes 10 and 11B to our consolidated financial statements included elsewhere in this annual report.

The most significant items included under this caption in 2008 and 2009 are as follows:

| | 2008 | 2009 |
|---|---|---|
| | (in millions of Pesos) | |
| Impairment losses | Ps(21,125) | Ps (889) |
| Restructuring costs | (3,141) | (1,100) |
| Charitable contributions | (174) | (264) |
| Current and deferred ESPS | 2,283 | (8) |
| Results from sales of assets and others, net | 754 | (3,268) |
| | Ps (21,403) | Ps(5,529) |

*Comprehensive Financing Result*. Pursuant to MFRS, the comprehensive financing result should measure the real cost (gain) of an entity’s financing, net of the foreign currency fluctuations and the inflationary effects on monetary assets and liabilities. In periods of high inflation or currency depreciation, significant volatility may arise and is reflected under this caption. Comprehensive financing income (expense) includes:

- financial or interest expense on borrowed funds;
- financial income on cash and temporary investments;

- appreciation or depreciation resulting from the valuation of financial instruments, including derivative instruments and marketable securities, as well as the realized gain or loss from the sale or liquidation of such instruments or securities;
- foreign exchange gains or losses associated with monetary assets and liabilities denominated in foreign currencies; and
- beginning in 2008, gains and losses resulting from having monetary liabilities or assets exposed to inflation (monetary position result) in countries under high inflation environments. Until December 31, 2007, monetary position results were calculated on each country's net monetary position despite the level of inflation.

| | Year Ended December 31, | |
|---|---|---|
| | 2008 | 2009 |
| | (in millions of Pesos) | |
| **Comprehensive Financing Result:** | | |
| Financial expense | Ps(10,199) | Ps (13,513) |
| Financial income | 513 | 385 |
| Results from financial instruments | (15,172) | (2,127) |
| Foreign exchange result | (3,886) | (266) |
| Monetary position result | 418 | 415 |
| Comprehensive financing result | Ps(28,326) | Ps(15,106) |

Our comprehensive financing result improved from a loss of Ps28.3 billion in 2008 to a loss of Ps15.1 billion in 2009. The components of the change are shown above. Our financial expense increased approximately 32%, from Ps10.2 billion in 2008 to Ps13.5 billion in 2009. The increase was primarily attributable to the change in interest rates and the recognition of fees related to the Financing Agreement. Our financial income decreased 25%, from Ps513 million in 2008 to Ps385 million in 2009, primarily attributable to significantly lower interest rates. Our results from financial instruments improved significantly from a loss of Ps15.2 billion in 2008 to a loss of Ps2.1 billion in 2009. The decrease in our loss from financial instruments was primarily attributable to the closing of a significant portion of our derivatives instruments explained below. Our net foreign exchange result improved from a loss of Ps3.9 billion in 2008 to a loss of Ps266 million in 2009, mainly due to the appreciation of the Mexican Peso and the Euro against the Dollar. Our monetary position result (generated by the recognition of inflation effects over monetary assets and liabilities) decreased approximately 1%, from a gain of Ps418 million during 2008 to a gain of Ps415 million during 2009.

During 2009, certain financing costs associated with the Financing Agreement were capitalized under MFRS. See note 12 to our consolidated financial statements included elsewhere in this annual report. In the U.S. GAAP reconciliation of our 2009 financial statements, we include a reconciliation item, as some of these financing costs under U.S. GAAP should be expensed as incurred and recognized in our statement of operations.

*Derivative Financial Instruments*. For the year ended December 31, 2008, our derivative financial instruments that had a potential impact on our comprehensive financing result consisted of foreign exchange derivative instruments (excluding our foreign exchange forward contracts designated as hedges of our net investment in foreign subsidiaries), interest rate swaps, cross-currency swaps, including our derivative instruments related to the issuance of perpetual debentures by consolidated entities, equity forward contracts and interest rate derivatives related to energy projects as discussed in note 12C to our consolidated financial statements included elsewhere in this annual report.

As required in the context of our renegotiation with our major lenders prior to entering into the Financing Agreement, during the first half of 2009, we closed a significant portion of our derivative instruments. Furthermore, during July 2009, we closed the Japanese Yen cross-currency swap derivatives associated with our perpetual debentures. Therefore, as of December 31, 2009, our derivative financial instruments that had a potential impact on our comprehensive financing result consisted of equity forward contracts, a forward instrument over the Total Return Index (TRI) of the Mexican Stock Exchange and interest rate derivatives related to energy projects as discussed in note 12C to our consolidated financial statements included elsewhere in this annual report.

For the year ended December 31, 2009, we had a net loss of approximately Ps2.1 billion in the item "Results from financial instruments" as compared to a net loss of Ps15.2 billion in 2008. The loss in 2009 is mainly attributable to the currency derivatives we held and closed during the year, offset by the positive result from changes in market value of the equity derivatives remaining in our portfolio.

*Income Taxes*. Our income tax effect in the statement of operations, which is primarily comprised of income taxes plus deferred income taxes, decreased from an income of Ps23.0 billion in 2008 to an income of Ps10.6 billion in 2009, mainly attributable to an increase in taxable earnings in our Mexican and South American operations. Our current income tax expense increased 9%, from Ps8.0 billion in 2008 to Ps8.7 billion in 2009. Our deferred tax benefit decreased from Ps31.0 billion in 2008 to Ps19.3 billion in 2009. The decrease was primarily attributable to the utilization of tax loss carryforwards during the period, the increases in the statutory income tax rate in Mexico from 28% to 30% in future periods, as well as the increase in valuation allowances relating to tax loss carryforwards. For the years ended December 31, 2008 and 2009, our statutory income tax rate was 28%. Our effective tax rate in 2008 resulted in a tax rate of 101.0%, considering a loss before income tax of approximately Ps22.7 billion, while our effective tax rate in 2009 resulted in a tax rate of 227.7%, considering a loss before income tax of approximately Ps4.6 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 Income.* For the reasons described above, our consolidated net income (before deducting the portion allocable to non-controlling interest) for 2009 decreased approximately Ps674 million, or 29%, from Ps2.3 billion in 2008 to Ps1.6 billion in 2009. As a percentage of revenues, consolidated net income remained flat at approximately 1% in 2008 and 2009.

*Controlling Interest Net Income*. Controlling interest net income represents the difference between our consolidated net income and non-controlling interest net income, which is the portion of our consolidated net income attributable to those of our subsidiaries in which non-associated third parties hold interests. Controlling interest net income decreased by approximately 38%, from Ps2.3 billion in 2008 to Ps1.4 billion in 2009. As a percentage of revenues, controlling interest net income remained flat in 2009 compared to 2008.

*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 income attributable to those subsidiaries. Non-controlling interest net income increased substantially, from Ps45 million in 2008 to Ps240 million in 2009, mainly as a result of a significant increase in the net income of the consolidated entities in which others have a non-controlling interest. As a result, the percentage of our consolidated net income allocable to non-controlling interests increased from 2% in 2008 to 15% in 2009.

**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 from continuing operations were approximately Ps38.5 billion in 2008, Ps33.7 billion in 2009 and Ps21.8 billion in 2010. See our Statement of Cash Flows included elsewhere in this annual report.

***Sources and Uses of Cash***

Beginning in 2008, the new MFRS B-2, Statement of Cash Flows ("MFRS B-2"), established the incorporation of a new cash flow statement, included elsewhere in this annual report, which presents cash inflows

and outflows in nominal currency as part of the basic financial statements, replacing the statement of changes in financial position, which included inflation effects and foreign exchange effects not realized.

Our review of sources and uses of resources presented below refers to nominal amounts included in our statement of cash flows for 2008, 2009 and 2010.

Our primary sources and uses of cash during the years ended December 31, 2008, 2009 and 2010 were as follows:

| | 2008 | 2009 | 2010 |
|---|---|---|---|
| | | (in millions of Pesos) | |
| **Operating activities** | | | |
| Controlling interest net income (loss) | 2,323 | 1,649 | (16,489) |
| Discontinued operations | 2,097 | (4,276) | — |
| Net income (loss) from continuing operations | 226 | 5,925 | (16,489) |
| Non-cash items | 40,555 | 34,603 | 42,537 |
| Changes in working capital, excluding income taxes | 1,299 | (2,599) | 100 |
| Net cash flows provided by continuing operations before taxes | 42,080 | 37,929 | 26,148 |
| Income taxes paid in cash | (3,625) | (4,201) | (4,310) |
| Net cash flows provided by continuing operations | 38,455 | 33,728 | 21,838 |
| Net cash flow provided by discontinued operations | 2,817 | 1,023 | — |
| Net cash flows provided by operating activities | 41,272 | 34,751 | 21,838 |
| **Investing activities** | | | |
| Property, machinery and equipment, net | (20,511) | (6,655) | (4,726) |
| Disposal of subsidiaries and associates, net | 10,845 | 21,115 | 1,172 |
| Other investments | (3,597) | (8,254) | 1,692 |
| Net cash flows (used in) provided by investing activities of continuing operations | (13,263) | 6,206 | (1,862) |
| Net cash flows used in investing activities of discontinued operations | (1,367) | (491) | — |
| Net cash flows (used in) provided by investing activities | (14,630) | 5,715 | (1,862) |
| **Financing activities** | | | |
| Repayment of debt, net | (3,611) | (35,812) | (9,615) |
| Financial expense paid in cash including coupons on perpetual debentures | (11,784) | (14,607) | (14,968) |
| Issuance of common stock | — | 23,953 | 5 |
| Dividends paid | (215) | — | — |
| Financing derivative instruments | (9,909) | (8,513) | 69 |
| Non-current liabilities and others, net | 1,471 | (2,795) | 122 |
| Net cash flows used in financing activities of continuing operations | (24,048) | (37,774) | (24,387) |
| Net cash flows provided by financing activities of discontinued operations | 359 | 628 | — |
| Net cash flows used in financing activities | (23,689) | (37,146) | (24,387) |
| Conversion effects | 1,277 | (2,116) | (1,339) |
| Increase (decrease) in cash and investments of continuing operations | 1,144 | 2,160 | (4,411) |
| Increase in cash and investments of discontinued operations | 1,809 | 1,160 | — |
| Cash and investments at beginning of year | 8,670 | 12,900 | 14,104 |
| Cash and investments at end of year | Ps 12,900 | Ps 14,104 | Ps 8,354 |

*2010*. During 2010, in nominal Peso terms, and 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 continuing operations of approximately Ps4.4 billion. This decrease was generated by net resources used in financing activities of approximately Ps24.4 billion and by net resources used in investing activities of approximately Ps1.9 billion, partially offset by our net cash flows provided by operating activities, which after income taxes paid in cash of approximately Ps4.3 billion, amounted to approximately Ps21.8 billion.

For the year ended December 31, 2010, our net resources provided by operating activities included a net reduction in working capital of approximately Ps100 million, which was primarily generated by increases in trade payables, other accounts payables and accrued expenses and decreases in trade receivables and inventories of an

aggregate amount of approximately Ps2.8 billion, partially offset by increases in other accounts receivables and other assets for an aggregate amount of approximately Ps2.7 billion.

During 2010, our net resources used in financing activities of approximately Ps24.4 billion included payments of debt of approximately Ps9.6 billion. The net resources provided by operating activities were disbursed mainly in connection with: a) repayments of debt, as described above; b) capital expenditures of approximately Ps4.7 billion; and c) financial expenses paid in cash, including perpetual instruments, of approximately Ps15.0 billion.

*2009.* During 2009, in nominal Peso terms and including the negative foreign currency effect of our initial balances of cash and investments generated during the period of approximately Ps2.1 billion, there was an increase in cash and investments of continuing and discontinued operations of Ps2.2 billion and Ps1.2 billion, respectively. This increase was generated by net cash flows provided by operating activities, which after income taxes paid in cash of approximately Ps4.2 billion, amounted to approximately Ps34.8 billion, and by net resources provided by investing activities of approximately Ps5.7 billion, which were partially offset by net resources used in financing activities of approximately Ps37.1 billion.

For the year ended December 31, 2009, our net resources provided by operating activities included a net increase in working capital of approximately Ps2.6 billion, which was mainly generated by decreases in trade payables and other accounts payable and accrued expenses for an aggregate amount of approximately Ps10.6 billion, partially offset by decreases in trade receivables and other accounts receivable and decreases in inventories for an aggregate amount of approximately Ps8.0 billion.

During 2009, our net resources used in financing activities of approximately Ps37.1 billion included new borrowings of approximately Ps40.2 billion which, in conjunction with net resources provided by operating activities and resources obtained from the sale of subsidiaries and affiliates of approximately Ps21.1 billion and the equity issuance of approximately Ps24.0 billion, were disbursed mainly in connection with: a) debt repayments of approximately Ps76.0 billion; b) net losses realized in derivative financial instruments of approximately Ps8.5 billion; c) capital expenditures of approximately Ps8.7 billion; d) financial expenses, including perpetual instruments, for approximately Ps14.6 billion; and e) restructuring fees for approximately Ps8.4 billion.

The resources obtained during 2009 from the sale of subsidiaries and associates for approximately Ps21.1 billion principally consisted of the sale of our Australian operations (see note 3B to our consolidated financial statements included elsewhere in this annual report).

*2008.* During 2008, in nominal Peso terms and including the positive foreign currency effect of our initial balances of cash and investments generated during the period of approximately Ps1.3 billion, there was an increase in cash and investments of continuing and discontinued operations of Ps1.1 billion and Ps1.8 billion, respectively. This increase was generated by net cash flows provided by operating activities, which after income taxes paid in cash of approximately Ps3.6 billion, amounted to approximately Ps41.3 billion, which was partially offset by net resources used in investing activities of approximately Ps14.6 billion and by net resources used in financing activities for approximately Ps23.7 billion.

For the year ended December 31, 2008, our net resources provided by operating activities included a net reduction in working capital of approximately Ps1.3 billion, which was mainly generated by decreases in trade receivables resulting from our securitization programs in Mexico and the U.S. and decreases in other accounts receivable and other assets for an aggregate amount of approximately Ps4.7 billion, partially offset by increases in inventories and decreases in trade payables and other accounts payable and accrued expenses for an aggregate amount of approximately Ps3.4 billion.

During 2008, our net resources used in financing activities of approximately Ps23.7 billion included new borrowings of approximately Ps59.6 billion, which in conjunction with net resources provided by operating activities and resources obtained from the sale of subsidiaries and affiliates of approximately Ps10.8 billion, were disbursed mainly in connection with: a) debt repayments of approximately Ps63.2 billion; b) net losses realized in derivative financial instruments of approximately Ps9.9 billion; c) capital expenditures for approximately Ps23.2 billion; and d) financial expenses, including perpetual instruments, for approximately Ps11.8 billion.

The resources obtained during 2008 from the sale of subsidiaries and affiliates for approximately Ps10,845 million principally consisted of the sale of a 9.5% interest in Axtel, S.A.B. de C.V. ("AXTEL"), the sale/contribution of assets to our associate, Ready Mix USA LLC, the sale of our operations in the Canary Islands and the sale of our operations in Italy, all of which occurred in 2008 and are detailed in notes 9A and 11A to our consolidated financial statements included elsewhere in this annual report.

***Capital Expenditures***

As of December 31, 2010, in connection with our significant projects, we had contractually committed capital expenditures of approximately U.S.$625 million, including our capital expenditures estimated to be incurred during 2011. This amount is expected to be incurred over the next 3 years, according to the evolution of the related projects. Our capital expenditures incurred for the years ended December 31, 2009 and 2010, and our expected capital expenditures during 2011, which include an allocation to 2011 of a portion of our total future committed amount, are as follows:

| | Actual | | Estimated |
|---|---|---|---|
| | 2009 | 2010 | in 2011 |
| | (in millions of Dollars) | | |
| North America(1) | U.S.$ 144 | 162 | 140 |
| Europe(2) | 314 | 224 | 194 |
| Central and South America and the Caribbean(3) | 104 | 82 | 74 |
| Africa and the Middle East | 28 | 33 | 23 |
| Asia | 8 | 19 | 19 |
| Others(4) | 38 | 35 | 20 |
| Total consolidated | U.S.$ 636 | 555 | 470 |
| **Of which:** | | | |
| Expansion capital expenditures(5) | U.S.$ 401 | 126 | 120 |
| Base capital expenditures(6) | 235 | 429 | 350 |

(1) In North America, our estimated capital expenditures during 2011 include amounts related to the expansion of the Tepeaca plant in Mexico.
(2) In Europe, our estimated capital expenditures during 2011 include amounts related to the construction of the new cement production facility in Teruel, Spain, and the expansion of our cement plant in Latvia.
(3) In Central and South America and the Caribbean, our estimated capital expenditures during 2011 include the construction of the new kiln in Panama.
(4) Our "Others" capital expenditures expected during 2011 include our trading activities as well as our corporate requirements.
(5) Expansion capital expenditures refer to the acquisition or construction of new assets intended to increase our current operating infrastructure and which are expected to generate additional amounts of operating cash flows.
(6) Base capital expenditures refer to the acquisition or construction of new assets that would replace portions of our operating infrastructure and which are expected to maintain our operating continuity.

For the year ended December 31, 2010, we recognized U.S.$555 million in capital expenditures. As of the date of this annual report, plans for 2011 capital expenditures totaled U.S.$470 million. Pursuant to the Financing Agreement, we (i) were prohibited from making aggregate capital expenditures in excess of U.S.$700 million for the year ended December 31, 2010 and (ii) are prohibited from making aggregate capital expenditures in excess of U.S.$800 million for the year ended December 31, 2011 and each year thereafter until the debt under the Financing Agreement has been repaid in full.

***Our Indebtedness***

As of December 31, 2010, we had approximately Ps202,818 million (U.S.$16,409 million) of total debt, not including approximately Ps16,310 million (U.S.$1,320 million) of Perpetual Debentures, which are not accounted for as debt under MFRS but are considered to be debt for purposes of U.S. GAAP. See notes 12A, 16D

and 24 to our consolidated financial statements included elsewhere in this annual report. As of December 31, 2010, after giving *pro forma* effect to (1) the issuance of the January 2011 Notes, the 2011 Optional Convertible Subordinated Notes and the April 2011 Notes, (2) the 2011 Prepayments and (3) the 2011 Private Exchange, we had approximately Ps208,100 million (U.S.$16,837 million) of total debt of which approximately 1% was short-term (including current maturities of long-term debt) and 99% was long-term. As of December 31, 2010, after giving *pro forma* effect to (1) the issuance of the January 2011 Notes, the 2011 Optional Convertible Subordinated Notes and the April 2011 Notes, (2) the 2011 Prepayments and (3) the 2011 Private Exchange, approximately 75% of our consolidated debt was Dollar-denominated, approximately 4% was Peso-denominated, approximately 21% was Euro-denominated and immaterial amounts were denominated in other currencies; the weighted average interest rates of our debt in our main currencies were 6.4% on our Dollar-denominated debt, 8.0% on our Peso-denominated debt and 5.8% on our Euro-denominated debt.

On March 10, 2009, our credit ratings were downgraded below investment grade by Standard & Poor's and by Fitch. The loss of our investment grade ratings has negatively impacted and will continue to negatively impact the availability of financing and the terms on which we could refinance our debt, including the imposition of more restrictive covenants and higher interest rates.

On August 14, 2009, we entered into the Financing Agreement. The Financing Agreement extended the maturities of approximately U.S.$15.1 billion in syndicated and bilateral bank and private placement obligations, providing for a semi-annual amortization schedule, with a final amortization payment of approximately U.S.$6.8 billion on February 14, 2014, based on prevailing exchange rates as of December 31, 2010.

As of December 31, 2010, after giving *pro forma* effect to (1) the issuance of the January 2011 Notes, the 2011 Optional Convertible Subordinated Notes and the April 2011 Notes, (2) the 2011 Prepayments and (3) the 2011 Private Exchange, we had approximately Ps208,100 million (U.S.$16,837 million) of total debt, not including approximately Ps14,342 million (U.S.$1,160 million) of Perpetual Debentures, which are not accounted for as debt under MFRS but are considered to be debt for purposes of U.S. GAAP. As of December 31, 2010, after giving *pro forma* effect to (1) the issuance of the January 2011 Notes, the 2011 Optional Convertible Subordinated Notes and the April 2011 Notes and (2) the 2011 Prepayments, our indebtedness under the Financing Agreement was approximately Ps92,271 million (U.S.$7,465 million), and our other debt not subject to the Financing Agreement, which remains payable pursuant to its original maturities, was approximately Ps115,829 million (U.S.$9,372 million). As of December 31, 2010, after giving *pro forma* effect to (1) the issuance of the January 2011 Notes, the 2011 Optional Convertible Subordinated Notes and the April 2011 Notes and (2) the 2011 Prepayments, we had reduced indebtedness under the Financing Agreement by approximately U.S.$7.5 billion (thereby satisfying all required amortization payments under the Financing Agreement through December 2013), and we had an aggregate principal amount of outstanding debt under the Financing Agreement of approximately Ps8,605 million (U.S.$696 million) maturing during 2013; and approximately Ps83,666 million (U.S.$6,769 million) maturing during 2014. See "Item 3 — Key Information — Risk Factors — We have a substantial amount of debt maturing in the next several years, including a significant portion of debt not subject to the Financing Agreement and, 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" for a description of our total debt and related maturities.

As part of the Financing Agreement, we pledged the Collateral and all proceeds of such Collateral to secure our payment obligations under the Financing Agreement and under a number of other financing arrangements for the benefit of the participating creditors and holders of debt and other obligations that benefit from provisions in their instruments requiring that their obligations be equally and ratably secured. In addition, the guarantors under our existing bank facilities (other than CEMEX, Inc. (one of our subsidiaries in the United States)) have guaranteed the obligations to the participating creditors under the Financing Agreement. See "Item 3 — Key Information — Risk Factors — We pledged the capital stock of the subsidiaries that represent substantially all of our business as collateral to secure our payment obligations under the Financing Agreement, the Senior Secured Notes and other financing arrangements."

The Financing Agreement requires us to comply with several financial ratios and tests, including a consolidated coverage ratio of EBITDA to consolidated interest expense of not less than (i) 1.75:1 for each semi-annual period beginning on June 30, 2010 through the period ending December 31, 2012 and (ii) 2.00:1 for the remaining semi-annual periods to December 31, 2013. In addition, the Financing Agreement allows us a maximum consolidated leverage ratio of total debt (including our perpetual debentures) to EBITDA for each semi-annual

period of 7.75:1 for the period beginning on June 30, 2010 and ending June 30, 2011, decreasing to 7:00:1 for the period ending December 31, 2011, and decreasing gradually thereafter for subsequent semi-annual periods to 4.25:1 for the period ending December 31, 2013.

On November 11, 2009, we launched an exchange offer in Mexico, in transactions exempt from registration pursuant to Regulation S under the Securities Act, directed to holders of CBs maturing on or before December 31, 2012, in order to exchange such CBs for mandatory convertible securities of CEMEX, S.A.B. de C.V., or the Mandatory Convertible Securities. After giving effect to any dilution adjustments in respect of the recapitalization of earnings approved by shareholders at the 2010 shareholders' meeting, the conversion price for the Mandatory Convertible Securities is approximately Ps22.12 (402.3552 CPOs per Ps8,900 of principal amount of Mandatory Convertible Securities), as of the date hereof. Under MFRS, the Mandatory Convertible Securities represent a combined instrument with liability and equity components. The liability component, approximately Ps1,994 million as of December 31, 2010, corresponds to the net present value of interest payments due under the Mandatory Convertible Securities, assuming no early conversion, and was recognized under "Other Financial Obligations" in our balance sheet. The equity component, approximately Ps1,971 million as of December 31, 2010, represents the difference between principal amount and the liability component and was recognized within "Other equity reserves" net of commissions in our balance sheet.

On March 30, 2010, we closed the offering of U.S.$715 million of our 4.875% Convertible Subordinated Notes due 2015, 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 has been adjusted to 79.5410 ADSs per U.S.$1,000 principal amount of 2010 Optional Convertible Subordinated Notes, reflecting the issuance of CPOs in connection with the recapitalization of earnings approved by shareholders at the 2010 annual shareholders' meeting.

On October 8, 2010, we announced that, pursuant to the exercise of a put option by Ready Mix USA, we will acquire our joint venture partner's interests in the two joint ventures between CEMEX and Ready Mix USA which have cement, aggregates, ready-mix and block assets located in the southeast region of the U.S. The purchase price will be determined jointly by CEMEX and Ready Mix USA based on a pre-determined methodology. We currently estimate the purchase price for our partner's interests will be approximately U.S.$355 million. At closing, we will also consolidate the net debt held by one of the joint ventures, which was approximately U.S.$27 million as of December 31, 2010. Closing is expected to take place in September 2011. The exercise of the put option by Ready Mix USA represents a commitment of CEMEX to acquire its joint venture partner's interests in CEMEX Southeast LLC and Ready Mix USA LLC. However, as prescribed in the agreements with Ready Mix USA, CEMEX has not transferred the consideration or acquired the ownership interests, which is anticipated to occur at a closing date on or before September 30, 2011. As of December 31, 2010, the estimated fair value of the net assets to be acquired exceeds the expected purchase price; therefore, CEMEX has not recognized a liability. CEMEX will recognize the acquisition at the closing date of the transaction. In the meantime, CEMEX will monitor the estimated fair value of the related net assets and will record a loss to the extent the expected purchase price exceeds the fair value of the net assets to be assumed. See note 9A to our consolidated financial statements included elsewhere in this annual report.

Some of our major subsidiaries provide guarantees of certain of our indebtedness, as indicated in the table below.

| | April 2011 Notes | January 2011 Notes | May 2010 Notes | December 2009 Notes | Financing Agreement | Perpetual Debentures(1) | CBs(2) | CEMEX España Euro Notes(3) |
|---|---|---|---|---|---|---|---|---|
| Amount outstanding as of December 31, 2010(4) | U.S.$ 0.8 billion (Ps9.9 billion) | U.S.$ 1.0 billion (Ps12.4 billion) | U.S.$ 1.3 billion (Ps16.6 billion) | U.S.$ 2.2 billion (Ps27.4 billion) | U.S.$ 7.5 billion (Ps92.3 billion) | U.S.$ 1.2 billion (Ps14.3 billion) | U.S.$ 0.4 billion (Ps5.1 billion) | U.S.$ 1.2 billion (Ps14.8 billion) |
| CEMEX, S.A.B. de C.V. | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | |
| CEMEX México | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | |
| New Sunward | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | |
| CEMEX España. | ✓ | ✓ | ✓ | ✓ | ✓ | | | ✓ |
| CEMEX Corp. | | | | ✓ | ✓ | | | |
| CEMEX Finance LLC | | | | ✓ | ✓ | | | |

| | | | |
|---|---|---|---|
| CEMEX Concretos, S.A. de C.V. | ✓ | ✓ | |
| Empresas Tolteca de México, S.A. de C.V. | ✓ | ✓ | ✓ |

(1) CEMEX, S.A.B. de C.V., CEMEX México, and New Sunward provide guarantees in connection with approximately U.S.$1.2 billion (approximately Ps14.3 billion as of December 31, 2010, after giving *pro forma* effect to the 2011 Private Exchange) in Perpetual Debentures issued by special purpose vehicles, which are accounted for as non-controlling interest under MFRS, but which are considered to be debt for purposes of U.S. GAAP and under the Financing Agreement and the indentures governing the Senior Secured Notes.
(2) Includes short-term unsecured CBs, long-term secured CBs maturing during 2011 and long-term secured CBs maturing thereafter.
(3) Issued by CEMEX Finance Europe B.V., a special purpose vehicle and wholly-owned subsidiary of CEMEX España, the sole guarantor of the CEMEX España Euro Notes.
(4) After giving *pro forma* effect to (1) the issuance of the January 2011 Notes, the 2011 Optional Convertible Subordinated Notes and the April 2011 Notes, (2) the 2011 Prepayments, and (3) the 2011 Private Exchange.

From time to time, as part of our financing activities, we and our subsidiaries have entered into various financing agreements, including bank loans, credit facilities, sale-leaseback transactions, forward contracts, forward lending facilities and equity swap transactions. Additionally, we and our subsidiaries have issued notes, commercial paper, bonds, preferred equity and puttable capital securities.

Most of our outstanding indebtedness has been incurred to finance our acquisitions and to finance our capital expenditure programs. CEMEX México, our principal Mexican subsidiary and indirect owner of our international operations, has indebtedness or has provided guarantees of our indebtedness, including under the Financing Agreement and the Senior Secured Notes, but excluding under the perpetual debentures, in the amount of approximately Ps166,000 million (U.S.$13,430 million) as of December 31, 2010, after giving *pro forma* effect to (1) the issuance of the January 2011 Notes and the April 2011 Notes, (2) the 2011 Prepayments and (3) the 2011 Private Exchange. CEMEX España, a holding company for most of our international operations outside Mexico and our main operating subsidiary in Spain, has indebtedness or has provided guarantees of our indebtedness, including under the Financing Agreement, the Senior Secured Notes and the CEMEX España Euro Notes, but excluding the Perpetual Debentures, in the amount of approximately Ps173,594 million (U.S.$14,045 million) as of December 31, 2010, after giving *pro forma* effect to (1) the issuance of the January 2011 Notes and the April 2011 Notes, (2) the 2011 Prepayments and (3) the 2011 Private Exchange.

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, proceeds of debt and equity offerings and proceeds from asset sales.

As of December 31, 2010, we had U.S.$561 million in outstanding short-term working capital and receivables financing facilities, which consisted of four securitization programs with a combined funded amount of U.S.$539 million and U.S.$22 million outstanding in short-term CBs. Our accounts receivable securitization program in Spain, which had a funded amount of U.S.$117 million as of December 31, 2010, was extended for five years on May 5, 2011 and now expires on May 5, 2016. On May 19, 2010, we entered into a one-year accounts receivable securitization program for our U.S. operations for up to U.S.$300 million in funded amounts. As of December 31, 2010, we had U.S.$231million in funded amounts under this program. On May 17, 2011, we extended this program for two years and now expires on May 17, 2013. The scheduled maturity for the securitization program in France, which had a funded amount of U.S.$57 million as of December 31, 2010, has been extended to September 30, 2011. The securitization program in Mexico, which had a funded amount of U.S.$134 million at December 31, 2010, expires on December 29, 2011, with the first principal payment (equal to approximately 16.66% of the program) due in August 2011 and the remainder in five equal monthly installments through the program's expiration date. We cannot ensure that, going forward, we will be able to roll over or renew these programs, which could adversely affect our liquidity.

The global equity and credit markets in the last few years have experienced significant price volatility, dislocations and liquidity disruptions, which have caused market prices of many stocks to fluctuate substantially and

the spreads on prospective and outstanding debt financings to widen considerably. This volatility and illiquidity has materially and adversely affected a broad range of fixed income securities. As a result, the market for fixed income securities has experienced decreased liquidity, increased price volatility, credit downgrade events and increased defaults. Global equity markets have also been experiencing heightened volatility and turmoil, with issuers exposed to the credit markets being most seriously affected. The disruptions in the financial and credit markets may continue to adversely affect our credit rating and the market value of our common stock, our CPOs and our ADSs. If the current pressures on credit continue or worsen, and alternative sources of financing continue to be limited, we may be dependent on the issuance of equity as a source to repay our existing indebtedness, including meeting amortization requirements under the Financing Agreement. Although we have been able to raise debt, equity and equity linked capital following our entry into the Financing Agreement in August 2009, as capital markets recovered, 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, there is no guarantee that we will be able to successfully raise additional debt or equity capital at all or on terms that are favorable. See "Item 3 — Key Information — Risk Factors — 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."

If the economic environment in the countries where we operate deteriorates and our operating results worsen significantly, we are unable to complete debt or equity offerings or 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 payment maturities under our indebtedness or refinance our indebtedness.

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 high 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, 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.

***Financing Activities***

As of December 31, 2010, after giving *pro forma* effect to (1) the issuance of the January 2011 Notes, the 2011 Optional Convertible Subordinated Notes and the April 2011 Notes, (2) the 2011 Prepayments and (3) the 2011 Private Exchange, we had approximately Ps208,100 (U.S.$16,837 million) of total outstanding debt, not including approximately Ps14,342 million (U.S.$1,160 million) of Perpetual Debentures issued by special purpose vehicles, which are not accounted for as debt under MFRS but are considered to be debt for purposes of U.S. GAAP. Our financing activities through December 31, 2009 are described in our 2009 annual report. The following is a description of our financings in 2010:

- On December 22, 2010, the required lenders and our major creditors under the Financing Agreement consented to extend the CB Prepayment Period so that we are permitted to allocate proceeds from the offering of the January 2011 Notes to a CB reserve to be used to repay, prepay or early redeem the January 2012 CBs.
- On December 15, 2010, we made a voluntary prepayment of U.S.$100 million to reduce the principal amount due under the Financing Agreement.
- On October 25, 2010, the required lenders and our major creditors under the Financing Agreement consented to amendments that will provide us with increased flexibility in relation to our activities going forward and that we believe will assist us in refinancing existing financial indebtedness and reducing leverage.
- On June 17, 2010, we announced the exercise of our call option with respect to certain CBs otherwise maturing in March 2011 for an aggregate principal amount of approximately Ps 1.4 billion (U.S.$110 million).

- On June 2, 2010, we announced the early payment of approximately Ps2.6 billion (approximately U.S.$202 million) in CBs, following a public cash tender offer in Mexico to redeem outstanding CBs for up to approximately Ps6.1 billion (approximately U.S.$467 million).
- On May 12, 2010, our subsidiary, 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 in exchange for a majority in principal amount of our then outstanding perpetual debentures.
- On April 5, 2010, we commenced an exchange offer and consent solicitation directed to the holders of the 6.196% Fixed-to-Floating Rate Callable Perpetual Debentures, 6.640% Fixed-to-Floating Rate Callable Perpetual Debentures, 6.722% Fixed-to-Floating Rate Callable Perpetual Debentures and 6.277% Fixed-to-Floating Rate Callable Perpetual Debentures. Pursuant to the terms of the 2010 Exchange Offer, we offered the holders of each series of the perpetual debentures May 2010 Notes in exchange for their U.S. Dollar-denominated and Euro-denominated perpetual debentures, in private placement transactions exempt from registration pursuant to Section 4(2) of the Securities Act and Regulation S under the Securities Act.
- On March 30, 2010, we closed the offering of U.S.$715 million of 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.
- On January 19, 2010, our subsidiary, CEMEX Finance LLC, issued an additional U.S.$500 million aggregate principal amount of its 9.50% Dollar-denominated Notes, which were originally issued on December 14, 2009 in the amount of U.S.$1,250 million, in transactions exempt from registration pursuant to Rule 144A and Regulation S under the Securities Act.

For a description of our financing activities after December 31, 2010, see "Item 3 — Key Information —Summary of our Recent Financial History" and "— Recent Developments — Recent Developments Relating to our Indebtedness."

***Our Equity Forward Arrangements***

In connection with the sale of CPOs of AXTEL (note 9A to our 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, CEMEX 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, CEMEX 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. Changes in the fair value of this instrument generated a loss of approximately U.S.$43 million (Ps545 million) in 2010, a gain of approximately U.S.$32 million (Ps435 million) in 2009 and a loss of approximately U.S.$196 million (Ps2,197 million) in 2008.

***Our Perpetual Debentures***

As of December 31, 2008, 2009 and 2010, non-controlling interest stockholders' equity included approximately U.S.$3,020 million (Ps41,495 million), U.S.$3,045 million (Ps39,859 million) and U.S.$1,320 million (Ps16,310 million), respectively, representing the principal amount of perpetual debentures. These debentures have no fixed maturity date and do not represent a contractual payment obligation for us. Based on their characteristics, these debentures, issued through special purpose vehicles, or SPVs, qualify as equity instruments under MFRS 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 debentures do not have any maturity date, meaning that they were issued to perpetuity, and we have the unilateral right to defer indefinitely the payment of interest due on the debentures. The classification of the debentures as equity instruments for accounting purposes under MFRS was made under applicable International Financial Reporting Standards, or

IFRS, which were applied to these transactions in compliance with the supplementary application of IFRS in Mexico. 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 Ps1,624 million in 2010, Ps2,704 million in 2009 and Ps2,596 million in 2008. The different SPVs were established solely for purposes of issuing the perpetual debentures and are included in our consolidated financial statements. As of December 31, 2010, our perpetual debentures were as follows:

| Issuer | Issuance Date | Nominal Amount (in millions) | Nominal Amount Outstanding as of December 31, 2010 (in millions) | Repurchase Option | Interest Rate |
|---|---|---|---|---|---|
| C5 Capital (SPV) Ltd (1). | December 2006 | U.S.$350 | U.S.$146.9 | Fifth anniversary | 6.196% |
| C8 Capital (SPV) Ltd. | February 2007 | U.S.$750 | U.S.$368.9 | Eighth anniversary | 6.640% |
| C10 Capital (SPV) Ltd. | December 2006 | U.S.$900 | U.S.$448.9 | Tenth anniversary | 6.722% |
| C10-EUR Capital (SPV) Ltd. | May 2007 | €730 | €266.1 | Tenth anniversary | 6.277% |

(1) If we do not exercise our repurchase option by December 31, 2011, the annual interest rate of this series will change 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 debentures under the Financing Agreement. As of December 31, 2010, 3-month LIBOR was approximately 0.30%.

For a description of the 2011 Private Exchange, see "Item 3 — Key Information —Summary of our Recent Financial History."

Under U.S. GAAP, these perpetual debentures are recognized as debt and interest payments are included as financing expense, as part of the comprehensive financial result in the statement of operations.

As described below and in note 12C to our financial statements included elsewhere in this annual report, there were derivative instruments associated with the debentures issued by C5 Capital (SPV) Limited, C8 Capital (SPV) Limited, C10 Capital (SPV) Limited and C10-EUR Capital (SPV) Limited through which we have changed the risk profile associated with interest rates and foreign exchange rates in respect of these debentures. In order to eliminate our exposure to Yen and to Yen interest rates, on May 22, 2009, we delivered the required notices under the documentation governing the dual-currency notes and the related perpetual debentures, informing debenture holders our decision to exercise our right to defer by one day the scheduled interest payment otherwise due and payable on June 30, 2009. As a result, during July 2009, the interest rate on the dual-currency notes converted from a Yen floating rate into a Dollar or Euro fixed rate, as applicable, as of June 30, 2009, and the associated Yen cross-currency swap derivatives were unwound, and the notes trustees received approximately U.S.$94 million that are being used to pay future coupons on the perpetual debentures, as adjusted by the 2010 Exchange Offer. After certain coupon payments, as of December 31, 2010 and 2009, the balance of the investment placed with the trustees amounted to approximately Ps902 million (U.S.$73 million) and Ps1,011 million (U.S.$77 million), respectively.

***Our Receivables Financing Arrangements***

Our subsidiaries in Spain, the United States, Mexico and France have established sales of trade accounts receivable programs with financial institutions, referred to as securitization programs. Through the securitization programs, our subsidiaries effectively surrender control, risks and the benefits associated with the accounts receivable sold; therefore, the amount of receivables sold is recorded as a sale of financial assets and the balances are removed from the balance sheet at the moment of sale, except for the amounts that the counterparties have not paid, which are reclassified to other accounts receivable. See notes 5 and 6 to our consolidated financial statements included elsewhere in this annual report. The balances of receivables sold pursuant to these securitization programs as of December 31, 2008, 2009 and 2010 were Ps14,667 million (U.S.$1,068 million), Ps9,624 million (U.S.$735 million) and Ps9,968 million (U.S.$807 million), respectively, of which, the funded amount as of December 31, 2010 was Ps6,662 (U.S.$539 million). Unfunded amounts of receivables sold are not derecognized but are reclassified from trade receivables to other accounts receivable in the balance sheet (see notes 5 and 6 to our

consolidated financial statements included elsewhere in this annual report). The accounts receivable qualifying for sale do not include amounts over specified days past due or concentrations over specified limits to any one customer, according to the terms of the programs. Expenses incurred under these programs, originated by the discount granted to the acquirers of the accounts receivable, are recognized in the statement of operations as financial expense and were approximately Ps656 million (U.S.$58 million) in 2008, Ps645 million (U.S.$47 million) in 2009 and Ps368 million (U.S.$29 million) in 2010. The proceeds obtained through these programs have been used primarily to reduce net debt. On May 5, 2011, we extended for five years our securitization program for accounts receivable for our operations in Spain until May 5, 2016. On May 17, 2011, we extended for two years our accounts receivable securitization program for our U.S. operations until May 17, 2013.

***Stock Repurchase Program***

Under Mexican law, our shareholders may authorize a stock repurchase program at our annual 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 our 2008, 2009 and 2010 annual shareholders' meetings held on April 23, 2009, April 29, 2010 and February 24, 2011, respectively, no stock repurchase program was proposed between April 2009 and April 2010, between April 2010 and April 2011 and between February 2011 and February 2012, respectively. Subject to certain exceptions, we are not permitted to repurchase shares of our capital stock under the Financing Agreement.

**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 is responsible for developing new products for our cement and ready-mix concrete businesses that respond to our clients' needs. The department of the Vice President of Energy has the responsibility for developing new processes, equipment and methods to optimize operational efficiencies and reduce our costs. For example, we have developed processes and products that allow us to reduce heat consumption in our kilns, which in turn reduces energy costs. Other products have also been developed to provide our customers a better and broader offering of products in a sustainable manner. We believe this has helped us to keep or increase our market share in many of the markets in which we operate.

We have 10 laboratories dedicated to our R&D efforts. Nine 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 information technology and energy management. We have several patent registrations and pending applications in many of the countries in which we operate. These patent registrations and applications relate primarily to different materials used in the construction industry and the production processes related to them, as well as processes to 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 four years.

In 2008, 2009 and 2010, the combined total expense of the departments of the Vice President of Energy and the Vice President of Technology, which includes R&D activities, amounted to approximately Ps348 million (U.S.$31 million), Ps408 million (U.S.$30 million) and Ps519 million (U.S.$41 million), respectively.

**Summary of Material Contractual Obligations and Commercial Commitments**

***The Financing Agreement***

On August 14, 2009, we entered into the Financing Agreement. The Financing Agreement extended the maturities of approximately U.S.$15.1 billion in syndicated and bilateral bank facilities and private placement obligations, providing for a semi-annual amortization schedule, with a final amortization payment of approximately U.S.$6.8 billion on February 14, 2014, based on prevailing exchange rates as of December 31, 2010. The Financing Agreement is secured by a first-priority security interest over the Collateral and all proceeds of such Collateral.

The Financing Agreement, as amended on December 1, 2009, March 18, 2010 and October 25, 2010, requires us to comply with several financial ratios and tests, including a consolidated coverage ratio of EBITDA to consolidated interest expense of not less than (i) 1.75:1 for each semi-annual period beginning on June 30, 2010 through the period ending December 31, 2012 and (ii) 2.00:1 for the remaining semi-annual periods to December 31, 2013. In addition, the Financing Agreement allows us a maximum consolidated leverage ratio of total debt (including the perpetual debentures) to EBITDA for each semi-annual period of 7.75:1 for the period beginning June 30, 2010 and ending June 30, 2011, decreasing to 7.00:1 for the period ending December 31, 2011, and decreasing gradually thereafter for subsequent semi-annual periods to 4.25:1 for the period ending December 31, 2013. Our ability to comply with these ratios may be affected by current global economic conditions and high volatility in foreign exchange rates and the financial and capital markets.

***The Mandatory Convertible Securities***

On December 10, 2009, we issued approximately Ps4.1 billion (approximately U.S.$315 million) in Mandatory Convertible Securities, 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 Securities 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 giving effect to any dilution adjustments in respect of the recapitalization of earnings approved by shareholders at the 2010 shareholders' meeting, the conversion ratio for the Mandatory Convertible Securities as of the date of this annual report is 402.3552 CPOs per Ps8,900 of principal amount of Mandatory Convertible Securities.

***The 9.50% Senior Secured Notes due 2016 and the 9.625% Senior Secured Notes due 2017***

On December 14, 2009, our subsidiary, CEMEX Finance LLC, issued U.S.$1,250 million aggregate principal amount of the 9.50% Dollar-denominated Notes, and €350 million aggregate principal amount of the 9.625% Euro-denominated Notes. On January 19, 2010, our subsidiary, CEMEX Finance LLC, issued an additional U.S.$500 million aggregate principal amount of the 9.50% Dollar-denominated Notes. CEMEX, S.A.B. de C.V., CEMEX México, CEMEX España, CEMEX Corp., CEMEX Concretos, S.A. de C.V., Empresas Tolteca de México, S.A. de C.V. and New Sunward have fully and unconditionally guaranteed the performance of all obligations of CEMEX Finance LLC under the 9.50% Dollar-denominated Notes and the 9.625% Euro-denominated Notes on a senior basis. The 9.50% Dollar-denominated Notes and the 9.625% Euro-Denominated Notes are secured by a first-priority security interest over the Collateral and all proceeds of such Collateral.

***The 4.875% Convertible Subordinated Notes due 2015***

On March 30, 2010, we closed the offering of U.S.$715 million of our 4.875% Convertible Subordinated Notes due 2015, 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 has been adjusted to 79.5410 ADSs per U.S.$1,000 principal amount of 2010 Optional Convertible Subordinated Notes, reflecting the issuance of CPOs in connection with the recapitalization of earnings approved by shareholders at the 2010 annual shareholders' meeting.

***The 9.25% Senior Secured Notes due 2020 and the 8.875% Senior Secured Notes due 2017***

On May 12, 2010, our subsidiary CEMEX España, acting through its Luxembourg branch, issued U.S.$1,067,665,000 aggregate principal amount of the 9.25% Dollar-denominated Notes and €115,346,000 aggregate principal amount of the 8.875% Euro-denominated Notes, in exchange for a majority in principal amount of our then outstanding perpetual debentures, pursuant to the 2010 Exchange Offer, 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 U.S.$125,331,000 aggregate principal amount of the Additional 2020 Notes in exchange for €119,350,000 aggregate principal amount of 6.277% Fixed-to-Floating Rate Callable Perpetual Debentures issued by C-10 EUR Capital (SPV) Limited pursuant to a private exchange. The exchange was effected in reliance upon the exemption from U.S. securities law registration provided by Regulation S under the Securities Act. CEMEX, S.A.B. de C.V., CEMEX México and New Sunward have fully and unconditionally guaranteed the performance of all obligations of CEMEX España under the 9.25% Dollar-denominated Notes, including the Additional 2020 Notes, and the 8.875% Euro-denominated Notes on a senior basis. The payment of principal, interest and premium, if any, on the 9.25% Dollar-denominated Notes and the 8.875% Euro-denominated Notes is secured by a first-priority security interest over the Collateral and all proceeds of such Collateral.

***The 9.000% Senior Secured Notes due 2018***

On January 11, 2011, we closed the offering of U.S.$1.0 billion aggregate principal amount of 9.000% Senior Secured Notes due 2018, in a transaction 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 9.000% Senior Secured Notes are fully and unconditionally guaranteed by CEMEX México, New Sunward and CEMEX España. The 9.000% Senior Secured Notes are secured by a first-priority security interest over the Collateral and all proceeds of such Collateral. The 9.000% Senior Secured Notes were issued at a price of U.S.$99.364 per U.S.$100 principal amount plus accrued interest from January 11, 2011. The net proceeds from the offering, of approximately U.S.$981 million, were used for general corporate purposes and the repayment of indebtedness, including (i) a prepayment of approximately U.S.$256 million of CBs, that had been due in September 2011, (ii) a prepayment of approximately U.S.$218 million of CBs that had been due in January 2012, (iii) a prepayment of approximately U.S.$56 million of CBs that had been due in September 2011, and (iv) a repayment of U.S.$50 million of indebtedness under the Financing Agreement.

***The 3.25% Convertible Subordinated Notes due 2016 and the 3.75% Convertible Subordinated Notes due 2018***

On March 15, 2011, we closed the offering of U.S.$977.5 million aggregate principal amount of 3.25% convertible subordinated notes due 2016 and U.S.$690 million aggregate principal amount of 3.75% convertible subordinated notes due 2018, 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. The conversion rate has been adjusted to 92.1659 ADSs per U.S.$1,000 principal amount of 2011 Optional Convertible Subordinated Notes, reflecting the issuance of CPOs in connection with the recapitalization of earnings approved by shareholders at the 2010 annual shareholders' meeting. 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. Of the remaining net proceeds, we used approximately U.S.$128 million to prepay CBs maturing on March 8, 2012, and approximately U.S.$1,287 million to repay indebtedness under the Financing Agreement.

***The Floating Rate Senior Secured Notes due 2015***

On April 5, 2011, we closed the offering of U.S.$800 million aggregate principal amount of Floating Rate Senior Secured Notes due 2015 (the "April 2011 Notes") in a transaction 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 April 2011 Notes is fully and unconditionally guaranteed by CEMEX México, New Sunward and CEMEX España.

The April 2011 Notes are secured by a first-priority security interest over the Collateral and all proceeds of such Collateral. The April 2011 Notes were issued at a price of U.S.$99.001 per U.S.$100 principal amount. The net proceeds from the offering, approximately U.S.$788 million, were used to repay indebtedness under the Financing Agreement.

***Senior Secured Notes—General***

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.

***Commercial Commitments***

As of December 31, 2009 and 2010, we had commitments for the purchase of raw materials for an approximate amount of U.S.$172 million and U.S.$288 million, respectively.

In 2006, in order to take advantage of the high wind potential in the "Tehuantepec Isthmus," CEMEX and Acciona, S.A., or Acciona, a Spanish company, formed an alliance to develop a wind farm project, which was named EURUS, for the generation of 250 Megawatts in the Mexican state of Oaxaca. CEMEX acted as sponsor of the project, and 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 establish that CEMEX's plants in Mexico should 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.

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 Petróleos Mexicanos, or 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, 2008, 2009 and 2010, the power plant has supplied approximately 60%, 74% and 73%, 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, 2009 and 2010, we had the following material contractual obligations:

| | 2009 | 2010 | | | | |
|---|---|---|---|---|---|---|
| Obligations | Total | Less than 1 year | 1-3 Years | 3-5 Years | More than 5 Years | Total |
| | (in millions of Dollars) | | | | | |
| Long-term debt | U.S.$15,851 | 407 | 1,160 | 10,500 | 4,289 | 16,356 |
| Capital lease obligation | 15 | 2 | 2 | 1 | 1 | 6 |
| Total long-term debt and capital lease obligation(1) | 15,866 | 409 | 1,162 | 10,501 | 4,290 | 16,362 |
| Operating leases(2) | 920 | 199 | 297 | 124 | 111 | 731 |

| | | | | | | |
|---|---|---|---|---|---|---|
| Interest payments on debt(3) | 5,144 | 964 | 2,131 | 1,068 | 454 | 4,617 |
| Pension plans and other benefits(4) | 1,670 | 154 | 306 | 306 | 813 | 1,579 |
| Total contractual obligations(5) | U.S.$ 23,600 | 1,726 | 3,896 | 11,999 | 5,668 | 23,289 |
| Total contractual obligations (Pesos) | Ps 308,924 | 21,333 | 48,155 | 148,308 | 70,056 | 287,852 |

(1) The scheduling 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 similar nature.

(2) The amounts of operating leases have been determined on the basis of nominal cash flows. We have operating leases, primarily for operating facilities, cement storage and distribution facilities and certain transportation and other equipment, under which we are required to make annual rental payments plus the payment of certain operating expenses. Rental expense was approximately U.S.$198 million (Ps2.2 billion), U.S.$243 million (Ps3.3 billion) and U.S.$199 million (Ps2.5 billion), in 2008, 2009 and 2010, respectively.

(3) For purposes of determining future estimated interest payments on our floating rate debt, we used the interest rates in effect as of December 31, 2009 and 2010.

(4) Amounts relating to planned funding of pensions and other post-retirement benefits represent estimated annual payments under these benefits for the next 10 years, determined in local currency and translated into U.S. Dollars at the effective exchange rates as of December 31, 2009 and 2010. Future payments include the estimate of new retirees during such future years. See note 14 to our consolidated financial statements included elsewhere in this annual report.

(5) Excludes our contractual obligation to acquire Ready Mix USA's interests in two joint ventures between CEMEX and Ready Mix USA pursuant to the exercise of a put option by Ready Mix USA. See note 9A to our consolidated financial statements included elsewhere in this annual report.

**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**

As of and for the periods ended December 31, 2007 and July 31, 2008, measured in Pesos, our Venezuelan operations accounted for approximately 2.9% and 3.0% of our consolidated revenues, respectively, and 2.1% at the end of both periods of our consolidated total assets. In the event our affiliates receive compensation as a result of proceedings they have initiated against Venezuela for the expropriation of their investment in CEMEX Venezuela, it is expected that the award of such relief will enable us to reduce consolidated debt and/or to expand total installed capacity. Accordingly, we believe that the expropriation of our affiliates' investment in CEMEX Venezuela will not have a material impact on our consolidated financial position, liquidity or results of operations. At the present time, however, it is not possible to predict the timing or amount of any award of restitution and/or compensation, the extent to which any order of restitution can be enforced, or the extent to which any monetary relief can be collected following an award. Until restitution and/or compensation is received, we will be negatively affected, although we do not expect such negative effect to be significant in light of our overall consolidated financial position.

We consolidated the income statement of CEMEX Venezuela in our results of operations for the seven-month period ended July 31, 2008. For balance sheet purposes, as of December 31, 2008, our investment in Venezuela was presented within "Other investments and non current accounts receivable." As of December 31, 2009 and 2010, the net book value of our investment in Venezuela was approximately Ps6,147 million and Ps6,203 million, respectively, corresponding to the interest of our affiliates of approximately 75.7%.

See note 11A to our consolidated financial statements included elsewhere in this annual report.

See "Item 4 — Information on the Company — Regulatory Matters and Legal Proceedings — Other Legal Proceedings — Expropriation of CEMEX Venezuela and ICSID Arbitration."

**Qualitative and Quantitative Market Disclosure**

***Our Derivative Financial Instruments***

For the year ended December 31, 2008, 2009 and 2010, we had a net loss from financial instruments of approximately Ps15,172 million, Ps2,127 million and Ps956 million, respectively.

Since the beginning of 2009, with the exception of our capped call transaction entered into in March 2010, 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 12C to our consolidated financial statements included elsewhere in this annual report), which we finalized during April 2009. The Financing 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 can not 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, 2009 | | At December 31, 2010 | | |
|---|---|---|---|---|---|
| | Notional amount | Estimated fair value | Notional amount | Estimated fair value | Maturity Date |
| | (in millions of Dollars) | | | | |
| Equity forward contracts | 54 | 54 | 53 | 15 | October 2011 |
| Other forward contracts | 55 | 1 | 16 | 1 | October 2011 |
| Other Equity Derivatives | 860 | (79) | 1,575 | (71) | April 2015 |
| Derivatives related to energy | 202 | 27 | 196 | 35 | September 2022 |

*Our Equity Derivative Forward Contracts*. In connection with the sale of shares of AXTEL (see note 12C to our consolidated financial statements included elsewhere in this annual report) and in order to benefit from a future increase in the prices of such entity, on March 31, 2008, CEMEX entered into a forward contract with cash settlement over the price of 119 million CPOs of AXTEL. The fair value of such contract as of December 31, 2010, represented an asset of approximately U.S.$15 million (Ps185 million). Changes in the fair value of this instrument generated a loss in the 2010 statement of operations of approximately U.S.$43 million (Ps545 million). Fifty percent of the notional amount of this forward contract matures in October 2011 and the remainder matures in April 2012.

*Our Other Forward Contracts*. During 2008, CEMEX negotiated a forward contract over the TRI of the Mexican Stock Exchange, maturing in October 2009 through which CEMEX maintains exposure to increases or decreases of such index. At maturity in 2009, CEMEX renegotiated this contract and extended its maturity until October 2010 and subsequently further extended it until October 2011. During 2010, changes in the fair value of this instrument generated a gain in the statement of operations of approximately U.S.$5 million (Ps63 million). See note 12C to our consolidated financial statements included elsewhere in this annual report.

*Our Other Equity Derivative Contracts*. These derivatives are described as options over the CPO price. In June 2008, CEMEX entered into a structured transaction, with a final maturity of approximately three years, under which it issued debt for U.S.$500 million (Ps6,870 million) paying an interest expense of LIBOR plus 132.5 bps., which includes options over the price of CEMEX's ADSs. In case the ADS price exceeds U.S.$30.4, the net interest

rate under the issuance is considered to be zero. This rate increases as the price of the share decreases, with a maximum rate of 12% when the ADS price is below approximately U.S.$20.50, after adjustments made as of December 31, 2010. CEMEX measures the option over the price of the ADS at fair value, recognizing the amount in the statement of operations. The fair value of such contract, as of December 31, 2010, was a loss of approximately U.S.$71 million (ps878 million), including a deposit in margin accounts of U.S.$105 million (Ps1,298 million), which is presented net within liabilities as a result of an offsetting agreement with the counterparty. See note 12C to our consolidated financial statements included elsewhere in this annual report.

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 U.S.$38 million. 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 U.S.$38 million, 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. At closing, the put options gave Citibank the right to require the trust to purchase, in April 2013, approximately 112 million CPOs at a price of U.S.$3.2086 per CPO (120% of the initial CPO price in Dollars). If the value of the assets held in the trust (32.1 million CPOs and the securities that track the performance of the Mexican Stock Exchange) are insufficient to cover the obligations of the trust, a guarantee will be triggered and CEMEX, S.A.B. de C.V. will be required to purchase in April 2013 the total CPOs at a price per CPO equal to the difference between the CPO purchase price in Dollars 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. After giving effect to the dividend adjustments as of December 31, 2010, and after giving effect to any dilution adjustments in respect of the recapitalization of earnings approved by shareholders at the 2010 shareholders' meeting, the number of CPOs subject to this transaction is approximately 130.6 million and the purchase price has been adjusted to U.S.$2.7558. As of December 31, 2010, this item includes a nominal amount of approximately U.S.$360 million in relation to the guarantee granted by CEMEX, S.A.B. de C.V. The fair value of such contract as of December 31, 2010 was a loss of approximately U.S.$95 million (Ps1,174 million), an amount that was recognized as a provision against the statement of operations within "Results from financial instruments," including a deposit in margin accounts of U.S.$55 million (Ps680 million).

*Our Capped Call Transaction.* On March 30, 2010, in connection with the offering of the 2010 Optional Convertible Subordinated Notes, we entered into a capped call transaction with an affiliate of Citigroup Global Markets Inc., the sole global coordinator and sole structuring agent of the 2010 Optional Convertible Subordinated Notes. The capped call transaction covers, subject to customary anti-dilution adjustments, approximately 54.7 million ADSs. The capped call transaction was designed to effectively increase the conversion price of the 2010 Optional Convertible Subordinated Notes for CEMEX. The capped call transaction had a cap price 80% higher than the closing price of our ADSs on March 24, 2010 (the pricing date for the 2010 Optional Convertible Subordinated Notes) and will be cash-settled. Because the capped call transaction is cash-settled, it does not provide an offset to any ADSs we may deliver to holders upon conversion of the 2010 Optional Convertible Subordinated Notes. The fair value of such contract as of December 31, 2010 represented an asset of approximately U.S.$95 million (Ps1,174 million). During 2010, the changes in the fair value of this instrument generated a loss of approximately U.S.$11 million (Ps139 million). This result was recognized in earnings for the year ended December 31, 2010. We have recently entered into capped call transactions with several financial institutions in connection with the issuance of the 2011 Optional Convertible Subordinated Notes. See "— Recent Developments — Recent Developments Relating to Our Indebtedness."

*Our Derivatives Related to Energy Projects*. As of December 31, 2010, we had an interest rate swap maturing in September 2022, for notional amounts of U.S.$196 million, negotiated to exchange floating for fixed interest rates, in connection with agreements we entered into for the acquisition of electric energy for a 20-year period commencing in 2003. During the life of the derivative contract and over its notional amount, we will pay LIBOR and receive a 5.4% fixed rate until maturity in September 2022. As of December 31, 2010, the fair value of

the swap represented an asset of U.S.$35 million (Ps433 million), the change in the fair value of this instrument generated a gain of approximately U.S.$9 million (Ps114 million). Changes in fair value of these contracts were recognized in earnings during the respective period. See note 12C part I to our consolidated financial statements included elsewhere in this annual report.

*Our Derivative Instruments Related to Perpetual Equity Instruments* . In connection with the issuance of the debentures by C5 Capital (SPV) Limited and C10 Capital (SPV) Limited in December 2006 described above, pursuant to which we pay a fixed Dollar rate of 6.196% on a notional amount of U.S.$350 million and a fixed Dollar rate of 6.722% on a notional amount of U.S.$900 million, respectively, we decided to change the foreign exchange exposure on the coupon payments from Dollars to Yen. In order to do so, we contemporaneously entered into two cross-currency swaps: a U.S.$350 million notional amount five-year cross-currency swap, pursuant to which we received a fixed rate in Dollars of 6.196% of the notional amount and paid six-month Yen LIBOR multiplied by a factor of 4.3531, and a U.S.$900 million notional amount ten-year cross-currency swap, pursuant to which we received a fixed rate in Dollars of 6.722% of the notional amount and paid six-month Yen LIBOR multiplied by a factor of 3.3878. Each cross-currency swap included an extinguishable swap, which provided that if the relevant debentures were extinguished for certain stated conditions but before the maturity of the cross-currency swap, such cross-currency swap would be automatically extinguished, with no amounts payable by the swap counterparties. In addition, in order to eliminate variability during the first two years in the Yen-denominated payments due under the cross-currency swaps, we entered into foreign exchange forwards for a notional amount of U.S.$89 million, under which we paid Dollars and received payments in Yen. Changes in fair value of all the derivative instruments associated with the perpetual debentures were recognized in the statement of operations as part of the comprehensive financing result.

In connection with the issuance of the debentures by C8 Capital (SPV) Limited and C10-EUR Capital (SPV) Limited in February and May 2007 described above, pursuant to which we pay a fixed Dollar rate of 6.640% on a notional amount of U.S.$750 million and a fixed Euro rate of 6.277% on a notional amount of €730 million, respectively, we decided to change the foreign exchange exposure on the coupon payments from Dollars and Euros to Yen. In order to do so, we contemporaneously entered into two cross-currency swaps: a U.S.$750 million notional amount eight-year cross-currency swap, pursuant to which we received a fixed rate in Dollars of 6.640% of the notional amount and paid six-month Yen LIBOR multiplied by a factor of 3.55248, and a €730 million notional amount ten-year cross-currency swap, pursuant to which we received a fixed rate in Euros of 6.277% of the notional amount and paid twelve-month Yen LIBOR multiplied by a factor of 3.1037. Each cross-currency swap included an extinguishable swap, which provided that if the relevant debentures are extinguished for certain stated conditions but before the maturity of the cross-currency swap, such cross-currency swap would be automatically extinguished, with no amounts payable by the swap counterparties. In addition, in order to eliminate variability during the first two years in the Yen-denominated payments due under the cross-currency swaps, we entered into foreign exchange forwards for notional amounts of U.S.$273 million, under which CEMEX paid Dollars and received payments in Yen. Changes in fair value of all the derivative instruments associated with the perpetual debentures were recognized in the statement of operations as part of the comprehensive financing result.

During 2009, we terminated all the above-described derivative instruments related to the perpetual debentures.

*Our Inactive Derivative Instruments* . In order to eliminate the derivative instrument portfolio exposure to fluctuations in the foreign exchange rate of the Mexican Peso against foreign currencies and to the price drop of CEMEX's ADSs and CPOs, and considering contractual limitations to extinguish contracts before their maturity date, between October 14 and 16, 2008, CEMEX contracted new derivative instruments with the same counterparties. These instruments represented the opposite position to the original derivative instruments, effectively offsetting the volatility of these instruments in the statement of operations. As of December 31, 2008, derivative instruments involved in the restructuring are disclosed as inactive positions and their valuation effects are presented within "Other financial obligations" in the balance sheet and represented a net liability of U.S.$385 million (Ps5,290 million).

As of December 31, 2009 and 2010, CEMEX had no inactive positions in its derivative portfolio. As of December 31, 2008, inactive derivative instruments are presented as follows:

| | 2008 | |
|---|---|---|
| | Notional amount* | Fair value |
| | (in millions of Dollars) | |
| Short-term Cross-currency Swaps ("CCS") original derivative position(1) | U.S.$ 460 | (48) |
| Short-term CCS offsetting derivative position | 460 | 18 |
| Long-term CCS original derivative position(2) | 1,299 | (257) |
| Long-term CCS offsetting derivative position | 1,299 | 58 |
| Original CCS net of its offsetting derivative position | | (229) |
| Deposit in margin accounts | | 126 |
| Fair value of CCS, net of margin account deposit | | (103) |
| Short-term foreign exchange forward contracts original position(3) | 2,616 | (599) |
| Short-term foreign exchange forward contracts original position | 2,616 | 270 |
| Long-term foreign exchange forward contracts original position(4) | 110 | (30) |
| Long-term foreign exchange forward contracts net offsetting position | 110 | 15 |
| Original foreign exchange forward contract, net of its offsetting position | | (344) |
| Deposit in margin accounts | | 72 |
| Fair value of foreign exchange forward contracts, net of margin account deposit | | (272) |
| CCS related to original debt position(5) | 900 | 2 |
| Forward contracts related to new offsetting debt position | 900 | (12) |
| Original CCS net of its forward contract offsetting debt position | | (10) |
| Total | | U.S.$ (385) |

* Notional amounts of original derivative positions and net offsetting derivative positions are not cumulative, considering that the effects of an instrument are proportionally inverse to the effect of other instrument, therefore, eliminated.

(1) The original derivative position refers to short-term CCS that exchanged Ps4,938 million for U.S.$460 million, receiving an average rate of 9.0% in Mexican Pesos and paying a rate of 2.3% in Dollars, whose scheduled maturity was in May 2009.

(2) The original derivative position refers to long-term CCS that exchanged Ps628 million *Unidades de Inversión*, or UDIs, and Ps11,450 million for U.S.$1,299 million, receiving an average rate of 4.0% in UDIs and 8.9% in Pesos, and paying a rate of 1.8% in Dollars, whose last scheduled maturity was in November 2017.

(3) The original derivative position refers to short-term foreign exchange with a notional amount of U.S.$1,759 million of Peso/Euro contracts and U.S.$857 million of Peso/Dollar contracts, whose last scheduled maturity was in September 2009 related to the hedges of some foreign investments.

(4) The original derivative position refers to foreign exchange forward contracts for a notional amount of U.S.$110 million, related, as in the paragraph above, to hedges of stockholders' equity. They related to forward Peso/Euro contracts, whose last maturity was in January 2010.

(5) The original derivative position refers to CCS with maturity in June 2011 which exchanged Dollar per Japanese Yen, receiving a rate in Dollars of 2.8113% and paying a rate in Japanese Yen of 1.005%.

***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, 2010. See note 12A to our consolidated financial statements

included elsewhere in this annual report. Average floating interest rates are calculated based on forward rates in the yield curve as of December 31, 2010. 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, 2010 and is summarized as follows:

| | Expected maturity dates as of December 31, 2010 | | | | | | |
|---|---|---|---|---|---|---|---|
| Long-Term Debt(1) | 2011 | 2012 | 2013 | 2014 | After 2015 | Total | Fair Value |
| Variable rate | 313 | 1,008 | 2,262 | 6,472 | 14 | 10,069 | 10,039 |
| Average interest rate | 4.44% | 6.38% | 7.27% | 5.54% | 6.39% | | |
| Fixed rate | 96 | 155 | 152 | 1,615 | 4,275 | 6,294 | 6,271 |
| Average interest rate | 8.29% | 8.24% | 9.16% | 9.29% | 5.98% | | |

(1) The information above includes the current maturities of the long-term debt. Total long-term debt as of December 31, 2010 does not include the perpetual debentures for an aggregate amount of U.S.$1,320 million (approximately Ps16,310 million), issued by consolidated entities. See note 16D to our consolidated financial statements included elsewhere in this annual report.

As of December 31, 2010, we were subject to the volatility of the floating interest rates, which, if such rates were to increase, may adversely affect our financing cost and our net income. As of December 31, 2010, 62% of our foreign currency-denominated long-term debt bears floating rates at a weighted average interest rate of LIBOR plus 418 basis points.

*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 Dollar/Peso exchange rate. For the year ended December 31, 2010, approximately 23% of our net sales, before eliminations resulting from consolidation, were generated in Mexico, 17% in the United States, 4% in Spain, 8% in the United Kingdom, 7% in Germany, 7% in France, 7% in our Rest of Europe geographic segment, 11% in South America, Central America and the Caribbean, 8% in Africa and the Middle East, 4% in Asia and 4% from other regions and our cement and clinker trading activities. As of December 31, 2010, after giving *pro forma* effect to (1) the issuance of the January 2011 Notes, the 2011 Optional Convertible Subordinated Notes and the April 2011 Notes, (2) the 2011 Prepayments and (3) the 2011 Private Exchange, approximately 75% of our consolidated debt was Dollar-denominated, approximately 4% was Peso-denominated, approximately 21% was Euro-denominated and immaterial amounts were denominated in other currencies, without including approximately U.S.$1,160 million (Ps14,342 million) of notes issued in connection with the Perpetual Debentures; therefore, we had a foreign currency exposure arising from the Dollar-denominated debt, and the Euro-denominated debt, versus the currencies in which our revenues are settled in most countries in which we operate. See "— Liquidity and Capital Resources — Our Indebtedness" and "Item 3 — Key Information — Risk Factors — We have to service our Dollar-denominated obligations with revenues generated in Pesos or other currencies, as we do not generate sufficient revenue in Dollars from our operations to service all our Dollar-denominated obligations. 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 Dollar. In addition, our consolidated reported results and outstanding indebtedness are significantly affected by fluctuations in exchange rates between the Peso and other currencies." In addition, as of December 31, 2010, our Euro-denominated debt, after giving *pro forma* effect to (1) the issuance of the January 2011 Notes, the 2011 Optional Convertible Subordinated Notes and the April 2011 Notes, (2) the 2011 Prepayments, and (3) the 2011 Private Exchange, represented approximately 21% of our total debt, not including approximately €147 million aggregate principal amount of the 6.277% Perpetual Debentures outstanding after the completion of the 2010 Exchange Offer and the 2011 Private Exchange. We cannot guarantee that we will generate sufficient revenues in Euros from our operations in Spain and the Rest of Europe to service these obligations. As of December 31, 2010, 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 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, 2010, 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.$7 million (Ps87 million).

In addition, we have entered into forward contracts on the TRI of the Mexican Stock Exchange through which we maintain exposure to changes of such index, until maturity in October 2011. Upon liquidation, these forward contracts provide a 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.

As of December 31, 2010, 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 (Ps12 million).

As of December 31, 2010, we were subject to the volatility of the market price of the CPOs in relation to our options over the CPO price and our put option transactions on the CPOs, as described in "— Qualitative and Quantitative Market Disclosure — Our Derivative Financial Instruments — Our Other Equity Derivative Contracts." A decrease in the market price of the CPOs may adversely affect our result from financial instruments and our net income.

As of December 31, 2010, 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 the CPOs would be a loss of approximately U.S.$31 million (Ps383 million).

In connection with the offering of the 2010 Optional Convertible Subordinated Notes issued in March 2010, we entered into a capped call transaction with an affiliate of Citigroup Global Markets Inc., the sole global coordinator and sole structuring agent of the 2010 Optional Convertible Subordinated Notes. See "— Qualitative and Quantitative Market Disclosure — Our Derivative Financial Instruments — Our Capped Call Transaction." We have recently entered into capped call transactions with several financial institutions in connection with the issuance of the 2011 Optional Convertible Subordinated Notes. See "— Recent Developments — Recent Developments Relating to Our Indebtedness."

**Investments, Acquisitions and Divestitures**

The transactions described below represent our principal investments, acquisitions and divestitures completed during 2008, 2009 and 2010.

***Investments and Acquisitions***

Our net investment in property, machinery and equipment, as reflected in our consolidated financial statements (see note 10 to our consolidated financial statements included elsewhere in this annual report), excluding acquisitions of equity interests in subsidiaries and associates, was approximately Ps23.2 billion (U.S.$2.1 billion) in 2008, Ps8.7 billion (U.S.$636 million) in 2009 and Ps6.9 billion (U.S.$555 million) in 2010. This net investment in property, machinery and equipment has been applied to the construction and upgrade of plants and equipment, to the maintenance of plants and equipment, including environmental controls and technology updates.

As of the date of this annual report, we have allocated over U.S.$470 million in our 2011 budget to continue with this effort.

***Divestitures***

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 operations in Australia to a subsidiary of Holcim Ltd for A$2.02 billion (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).

On July 31, 2008, we agreed to sell our operations in Austria (consisting of 26 aggregates and 41 ready-mix concrete plants) and Hungary (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, for €310 million (approximately U.S.$433 million). See "Item 4 — Information on the Company — Regulatory Matters and Legal Proceedings — Other Legal Proceedings — Strabag Arbitration." for a description of the ongoing arbitration relating to the proposed sale of our Austrian and Hungarian operations.

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).

See note 11A to our consolidated financial statements included elsewhere in this annual report.

**Recent Developments**

***Recent Developments Relating to Our Indebtedness***

*Offering of 2018 Senior Secured Notes.* On January 11, 2011, we issued U.S.$1.0 billion aggregate principal amount of 9.000% Senior Secured Notes due 2018, or the January 2011 Notes, in a transaction 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 January 2011 Notes is fully and unconditionally guaranteed by CEMEX México, New Sunward and CEMEX España. The January 2011 Notes are secured by a first-priority security interest over the Collateral and all proceeds of such Collateral. The January 2011 Notes were issued at a price of U.S.$99.364 per U.S.$100 principal amount. The net proceeds from the offering, of approximately U.S.$981 million, were used for general corporate purposes and the repayment of indebtedness, including (i) a prepayment of approximately U.S.$256 million of CBs, that had been due in September 2011, (ii) a prepayment of approximately U.S.$218 million of CBs that had been due in January 2012, (iii) a prepayment of approximately U.S.$56 million of CBs that had been due in September 2011, and (iv) a repayment of U.S.$50 million of indebtedness under the Financing Agreement, as described below.

*Prepayment of CBs*. On January 19, 2011, we prepaid approximately U.S.$256 million of CBs otherwise maturing on September 22, 2011, for which we had created a CB reserve with the proceeds from the offering of the January 2011 Notes. In addition, on January 27, 2011, we prepaid approximately U.S.$218 million of CBs maturing on January 26, 2012, or the January 2012 CBs, for which we had created a CB reserve with the proceeds from the offering of the January 2011 Notes.

*Prepayment to the Financing Agreement.* On February 10, 2011, we made a prepayment of U.S.$50 million to reduce the principal amount due under the Financing Agreement. We made this prepayment with proceeds from the offering of the January 2011 Notes.

*Private Exchange of Perpetual Debentures*. On March 4, 2011, we closed a private exchange, or the 2011 Private Exchange, of €119,350,000 aggregate principal amount of 6.277% Fixed-to-Floating Rate Callable Perpetual Debentures, or the 6.277% Perpetual Debentures, issued by C-10 EUR Capital (SPV) Limited and held by an investor for U.S.$125,331,000 aggregate principal amount of new 9.25% U.S. Dollar-Denominated Senior Secured Notes due 2020, issued by CEMEX España, acting through its Luxembourg branch, and guaranteed by CEMEX, CEMEX México and New Sunward, or the Additional 2020 Notes. As a result of the 2011 Private Exchange, €119,350,000 in aggregate principal amount of the 6.277% Perpetual Debentures and an equal corresponding aggregate principal amount of underlying dual-currency notes were cancelled. The Additional 2020 Notes are secured by a first-priority security interest over the Collateral and all proceeds of such Collateral. The exchange was

effected in reliance upon the exemption from U.S. securities law registration provided by Regulation S under the Securities Act.

*Offering of 2016 and 2018 Optional Convertible Subordinated Notes.* On March 15, 2011, we closed the offering of U.S.$977.5 million aggregate principal amount of 3.25% Convertible Subordinated Notes due 2016 (the "2016 Notes") and U.S.$690 million aggregate principal amount of 3.75% Convertible Subordinated Notes due 2018 (the "2018 Notes" and, together with the 2016 Notes, the "2011 Optional Convertible Subordinated Notes"), in transactions exempt from registration pursuant to Rule 144A and Regulation S under the Securities Act. The aggregate principal amount of the 2011 Optional Convertible Subordinated Notes issued reflects the full exercise of the U.S.$177.5 million over-allotment option granted to the relevant initial purchasers with respect to the 2016 Notes and the U.S.$90 million over-allotment option granted to the relevant initial purchasers with respect to the 2018 Notes. The 2011 Optional Convertible Subordinated Notes are convertible into CEMEX's American Depositary Shares, or 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. The conversion rate has been adjusted to 92.1659 ADSs per U.S.$1,000 principal amount of 2011 Optional Convertible Subordinated Notes, reflecting the issuance of CPOs in connection with the recapitalization of earnings approved by shareholders at the 2010 annual shareholders' meeting. 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. Of the remaining net proceeds, we used approximately U.S.$128 million to prepay CBs maturing on March 8, 2012, and approximately U.S.$1,287 million to repay indebtedness under the Financing Agreement. On March 15, 2011, in connection with the offering of the 2011 Optional Convertible Subordinated Notes, we entered into capped call transactions with affiliates of certain of the initial purchasers of the 2011 Optional Convertible Subordinated Notes. The capped call transactions cover, subject to customary anti-dilution adjustments, approximately 148 million ADSs. The capped call transactions with respect to the 2016 Notes had a cap price 90% higher than the closing price of our ADSs on March 9, 2011 (the pricing date for the 2011 Optional Convertible Subordinated Notes) and the capped call transactions with respect to the 2018 Notes had a cap price 110% higher than such closing price. Because the capped call transactions are cash-settled, they do not provide an offset to any ADSs we may deliver to holders upon conversion of the 2011 Optional Convertible Subordinated Notes.

*Private Cash Tender Offer to Holders of CBs*. In March 2011, we used cash deposited in a CB reserve created with proceeds from the offering of the January 2011 Notes to prepay approximately Ps691 million (approximately U.S.$56 million based on prevailing exchange rates as of December 31, 2010) of CBs, in connection with a private cash tender offer to holders of CBs in Mexico for up to approximately Ps999 million (approximately U.S.$81 million based on prevailing exchange rates as of December 31, 2010). After these prepayments, we had approximately Ps308 million (approximately U.S.$25 million based on prevailing exchange rates as of December 31, 2010) of CBs outstanding, which are due on September 15, 2011 and for which we have created a CB reserve.

*2011 Amendments to the Financing Agreement*. On April 12, 2011, we obtained consents from the required lenders and our major creditors under the Financing Agreement to make certain amendments to the Financing Agreement to allow us to retain funds in the CB reserve from disposal proceeds, permitted fundraisings and cash in hand, to meet CBs maturing in April and September 2012.

*Offering of 2015 Floating Rate Senior Secured Notes.* On April 5, 2011, we closed the offering of U.S.$800 million aggregate principal amount of Floating Rate Senior Secured Notes due 2015, in a transaction 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 April 2011 Notes is fully and unconditionally guaranteed by CEMEX México, New Sunward and CEMEX España. The April 2011 Notes are secured by a first-priority security interest over the Collateral and all proceeds of such Collateral. The April 2011 Notes were issued at a price of U.S.$99.001 per U.S.$100 principal amount. The net proceeds from the offering, approximately U.S.$788 million, were used to repay indebtedness under the Financing Agreement.

***Recent Developments Relating to Changes in Our Senior Management Team***

On April 11, 2011, we announced changes to our senior management team effective April 12, 2011. Our operations, now organized under six regions, will be led by the following executives, all of whom have served previously in various senior level operating positions within the company:

- Jaime Elizondo, President of CEMEX South America and Caribbean, who will also oversee Global Procurement;
- Joaquin Estrada, President of CEMEX Asia, who will also oversee Global Trading;
- Ignacio Madridejos, President of CEMEX Northern Europe, who will also oversee Global Energy and Sustainability;
- Jaime Muguiro, President of CEMEX Mediterranean;
- Juan Romero, President of CEMEX Mexico, who will also oversee Global Technology; and
- Karl Watson, Jr., President of CEMEX USA.

Additionally, Fernando A. González was appointed Executive Vice President of Finance and Administration and also assumed the role of Chief Financial Officer; Juan Pablo San Agustin assumed the role of Executive Vice President for Strategic Planning and Business Development; and Luis Hernandez assumed the role of Executive Vice President for Organization and Human Resources.

These nine executives will report directly to CEMEX's Chairman and Chief Executive Officer, Lorenzo H. Zambrano, and, with him, comprise the company's ten member Executive Committee.

In addition, two long serving executives left their operating functions, and continue to work for the Company in other roles. Francisco Garza, former President for CEMEX Americas, now serves as Vice Chairman of the Board of CEMEX Mexico, Chairman of the newly created CEMEX Latin America Advisory Board, and continues supporting CEMEX's high-level Public Affairs activities both in Mexico and in Latin America. Víctor Romo, former Executive Vice President of Administration, continues to participate in CEMEX as Advisor to the Chairman and coordinate Board Committees, as well as support other strategic initiatives.

Finally, we also announced the early retirement of Rodrigo Treviño, former Chief Financial Officer.

We believe these changes will result in an organizational structure that is more effective in its decision-making processes and more focused on our customers and markets.

***Recent Developments Relating to Our Securitization Programs***

On May 5, 2011, we extended our accounts receivable securitization program for our operations in Spain five years for up to €100 million in funded amounts. As a result, this program will expire on May 5, 2016.

On May 17, 2011, we extended our accounts receivable securitization program for our operations in the United States two years for up to U.S.$275 million in funded amounts. As a result, this program will expire on May 17, 2013.

**Item 6 - Directors, Senior Management and Employees**

**Senior Management and Directors**

### *Senior Management*

On February 9, 2010, we announced changes to our senior management team effective as of March 1, 2010. Fernando A. González was appointed Executive Vice President of Planning and Finance. We also announced the retirement of Héctor Medina, former Executive Vice President of Finance and Legal, and Armando J. García, former Executive Vice President of Technology, Energy and Sustainability. Mr. Medina and Mr. García each participated in an early retirement program for senior executives. Mr. García remains a member of CEMEX's board of directors, on which he has served since 1983. As of December 31, 2010, the members of our senior management team and their positions were the following: Lorenzo H. Zambrano, Chief Executive Officer; Fernando A. Gonzalez, Executive Vice President of Planning and Finance; Francisco Garza, President of the Americas Region; Juan Romero Torres, President of the Europe, Middle East, Africa, Asia and Australia Region; Rodrigo Treviño, Chief Financial Officer; Ramiro G. Villarreal, General Counsel; and Rafael Garza, Chief Accounting Officer. On April 11, 2011, we announced new changes to our senior management team effective April 12, 2011. See "Item 5 — Operating and Financial Review and Prospects — Recent Developments — Recent Developments Relating to Changes in Our Senior Management Team." 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 |
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| Lorenzo H. Zambrano Treviño, Chief Executive Officer (67) | 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 IBM and the international advisory board of Citigroup. He is also a member of the board of directors of Fomento Económico Mexicano, S.A.B. de C.V. Mr. Zambrano is chairman of the board of directors of Consejo de Enseñanza e Investigación Superior, A.C., which manages ITESM, and a member of the board of directors of 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. 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 Grupo Financiero Banamex, S.A. de C.V. until April 2009 and of the board of directors of Fomento Económico Mexicano, S.A.B. de C.V. until 2011.<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, the America's Society Gold Medal Distinguished Service Award, and Stanford University's Graduate School of Business Alumni Association's Ernest C. Arbuckle Award. |

| Name, Position (Age) | Experience |
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| | Mr. Zambrano is a first cousin of Lorenzo Milmo Zambrano and Rogelio Zambrano Lozano, both members of our board of directors, He is also a second cousin of Roberto Luis Zambrano Villarreal and second uncle of Tomas Milmo Santos, both members of our board of directors. |
| Jaime Gerardo Elizondo Chapa, President CEMEX South America and the Caribbean (47) | 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 (Camara Nacional del Cemento) and president of the Transformation Industry of Nuevo León Chamber (Camara de la Industria de la Transformación de Nuevo León). He graduated with a BS and an MBA from ITESM. |
| Joaquin Miguel Estrada Suarez, President, CEMEX Asia (47) | Joined CEMEX in 1992 and has held several executive positions, including head of operations in Egypt and Spain, as well as of Trading for Europe, the Middle East, and Asia. He is currently President of CEMEX Asia, and is also responsible for the company's global Trading area. 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 MBA from the Instituto de Empresa. |
| Francisco Garza, Vice Chairman of the Board of CEMEX Mexico, Chairman of CEMEX Latin America Advisory Board and Advisor to the CEO on Institutional Relations (56) | 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 North American region and trading from 1998 to 2009 and in 2009 he was appointed president of the 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. 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. See "Item 5 — Operating and Financial Review and Prospects — Recent Developments — Recent Developments Relating to Changes in Our Senior Management Team." |
| Rafael Garza Lozano, Chief Accounting Officer (47) | 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 member of the boards of directors of Consejo Mexicano para la Investigación y Desarrollo de Normas de Información Financiera, or CINIF, of Universidad Regiomontana, |

| Name, Position (Age) | Experience |
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| | A.C., and of Grupo Cementos Chihuahua, S.A.B. de C.V. |
| Fernando A. González Olivieri, Executive Vice President of Finance and Administration and Chief Financial Officer (56) | 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 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 the 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. Mr. González earned his B.A. and M.B.A. degrees from ITESM. |
| Luis Hernández Echávez, Executive Vice President of Organization and Human Resources (47) | 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 MBA from the University of Texas at Austin. |
| Ignacio Madridejos Fernández, President CEMEX Northern Europe (45) | Joined CEMEX in 1996 and after holding management positions in the Strategic Planning area, he headed CEMEX operations in Egypt, Spain, and Western Europe. He is currently President of CEMEX Northern Europe, and is also responsible of the company's 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), 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 of CEMBUREAU (European Cement Association). He graduated with a degree in Civil Engineering from the Polytechnic University of Madrid and holds an MBA from Stanford University. |
| Jaime Muguiro Dominguez, President CEMEX Mediterranean (42) | 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 operations in Egypt. He is currently President of 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 MBA from the Massachusetts Institute of Technology. |
| Juan Romero Torres, President CEMEX México (54) | Joined CEMEX in 1989 and has occupied several senior management positions, including president of CEMEX Colombia, president of CEMEX Mexico, and president of the South America and Caribbean region, and the Europe, Middle East, Africa, and Asia Region. He is currently President of CEMEX in Mexico and is algo in charge of the company's global Technology area. Mr. Romero graduated from Universidad de Comillas in Spain, where he studied Law and Economic and Enterprise Sciences. |

| Name, Position (Age) | Experience |
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| Victor M. Romo,<br>Executive Advisor to the Chairman and CEO<br>(53) | 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 the South American and 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 CEO. 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. See "Item 5 — Operating and Financial Review and Prospects — Recent Developments — Recent Developments Relating to Changes in Our Senior Management Team." |
| Juan Pablo San Agustín Rubio,<br>Executive Vice President of Strategic Planning and New Business Development (42) | 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 BS from the Universidad Metropolitana and holds an International MBA from the Instituto de Empresa. |
| Karl H. Watson Jr.,<br>President CEMEX USA (46) | He formally 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 the company's 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 USA 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 National Ready Mix Concrete Association from 2010 to 2011 and member of the Executive Committee of the Portland Cement Association from 2011 to 2013. He holds a BS from the Palm Beach Atlantic University and an MBA degree from the University of Nova Southeastern, both in Florida. |
| Ramiro G. Villarreal Morales,<br>General Counsel (63) | 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.<br><br>Mr. Villarreal is a member of the board of directors of Grupo Acosta Verde and Viviendas Integrales S.A., both real estate development companies, and an alternate member of the boards of directors of Grupo Cementos de Chihuahua and AXTEL. |

### *Board of Directors*

Set forth below are the names of the current members of our board of directors, elected at our 2010 special shareholders' general meeting held on February 24, 2011. At this shareholders' meeting, no alternate directors were elected. Members of our board of directors serve for one-year terms.

| Name (Age) | Experience |
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| Lorenzo H. Zambrano Treviño, Chairman (67) | See "— Senior Management." |
| Lorenzo Roberto Milmo Zambrano (74) | Has been a member of our board of directors since 1977. He is also chief executive officer of Inmobiliaria Ermiza, S.A. de C.V. He is a first cousin of Lorenzo H. Zambrano, chairman of our board of directors and our chief executive officer, a first cousin of Rogelio Zambrano Lozano, and an uncle of Tomas Milmo Santos, both members of our board of directors. He earned his B.A. degree from ITESM. |
| Armando J. García Segovia (59) | Mr. García has been a member of our 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 1, 2009 to March 31, 2010. 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 Grupo Cementos de Chihuahua, S.A.B. de C.V., 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 Sostenible), 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, Universidad de Monterrey, Unidos para la Conservación, Pronatura Noreste, A.C., Consejo Consultvo de Flora y Fauna del Estado de N.L., and Parques y Vida 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 (65) | Has been a member of our board of directors since 1985 and member of our 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 |

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| | holds a degree in electric mechanical engineering from the Universidad Iberoamericana. He is a first cousin of Armando J. García Segovia, a member of our board of directors. |
| Rogelio Zambrano Lozano (54) | Has been a member of our board of directors since 1987 and president of our finance committee since 2009. He is also a member of the advisory board of Grupo Financiero Banamex Accival, S.A. de C.V., 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 MBA from the Wharton Business School of Pennsylvania University. He is a first cousin of Lorenzo H. Zambrano, chairman of our board of directors and our chief executive officer, a first cousin of Lorenzo Milmo Zambrano, a member of our board of directors and uncle of Tomás Milmo Santos, a member of our board of directors. |
| Roberto Luis Zambrano Villarreal (65) | Has been a member of our board of directors since 1987. He was president of our audit committee from 2002 to 2006, President of our corporate practices and audit committee from 2006 to 2009, and president of our new audit committee since 2009. He is also a member of the board of directors of CEMEX México, S.A. de C.V. 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 our board of directors. |
| Bernardo Quintana Isaac (69) | Has been a member of our board of directors since 1990 and of our corporate practices committee since 2009. He is chairman of the board of directors of Empresas ICA, S.A.B. de C.V., where he was also chief executive officer until December, 2006. Mr. Quintana Isaac was a member of Patronato UNAM until May 2009. Mr. Quintana Isaac is president of Grupo Aeroportuario del Centro Norte, S.A.B. de C.V., Fundación ICA and of the Foundation for Mexican Letters (*Fundación para las Letras Mexicanas*), and member of the board of GRUMA, S.A.B. de C.V., Grupo Financiero Banamex, S.A. de C.V., and Banco Nacional de México, S.A. He is also a member of the Mexican Council of Businessmen ( *Consejo Mexicano de Hombres de Negocios*) and Fundación UNAM. |
| Dionisio Garza Medina (57) | Has been a member of our board of directors since 1995 and president of our corporate practices committee since 2009. He is honorary chairman and 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 member of the advisory board of the Mexican Minister 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. |

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| | Additionally, Mr. Garza Medina is chairman of the board of the Universidad de Monterrey. Mr. Garza Medina holds an industrial engineering degree and a master degree in industrial engineering from Stanford University and an MBA from Harvard University. |
| Alfonso Carlos Romo Garza (60) | Has been a member of our board of directors since 1995, member of our audit committee from 2002 to 2006, member of our corporate practices and audit committee from 2006 to 2009, member of our new audit committee since 2009, and member of our finance committee since 2009. He is chairman of the board and chief executive officer of Savia, S.A. de C.V. and member of the boards of Grupo Maseca, S.A.B. de C.V., The Donald Danforth Plant Science Center, and Synthetic Genomics, among others. Mr. Romo is a graduate of ITESM, with a degree in agricultural engineering and administration. |
| Tomás Milmo Santos (46) | Has been a member of our board of directors since 2006 and member of our finance committee since 2009. Mr. Milmo Santos served as an alternate member of our board of directors from 2001 to 2006. He is chief executive officer and president 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 México S.A. de C.V., Promotora Ambiental, S.A., ITESM and JAVER. 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 our board of directors and the nephew of Lorenzo Milmo Zambrano, member of our board of directors. |
| José Manuel Rincón Gallardo Purón (68) | Has been a member of our board of directors since 2003. He is also a member of our 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 Grupo Financiero Banamex, S.A. de C.V., 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 a Certified Public Accountant from the Universidad Nacional Autonoma de México. |
| José Antonio Fernández Carbajal (57) | Has been a member of our board of directors and member of our corporate practices committee since 2009. He is chairman of the board of directors of Fomento Económico Mexicano S.A.B. de C.V. (“FEMSA”) since 2001 and its chief executive officer since 1995, chairman of the board of directors of Coca-Cola Femsa, S.A.B. de C.V., and vice president of the board of directors of ITESM. He is also a member of the board of directors of Grupo Financiero BBVA Bancomer, S.A. de C.V., BBVA Bancomer, S.A., Industrias Peñoles, S.A.B. de C.V., Grupo Industrial Bimbo, S.A.B. de C.V., Grupo Televisa, S.A.B. de C.V., Grupo Xignux S.A. de C.V. and Controladora Vuela Compañía de Aviación, S.A. de C.V. Mr. Fernández is also chairman of the board of Fundación FEMSA and of the U.S.-Mexico Foundation, and co-directs the Mexican Chapter of the Woodrow Wilson Center as president since 2003. He is also a member of the |

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| | board of directors, the supervisory board and some of the committees of Heineken Holding NV since 2010. Mr. Fernandez earned his B.A. and MBA degrees from ITESM. |
| Rafael Rangel Sostmann (69) | Has been a member of our board of directors and member of our corporate practices committee since 2009 and member of our audit committee since 2010. Mr. Rangel Sostmann has been president of ITESM since 1985. 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 graduated with a degree in electric mechanical engineering from ITESM and also holds a masters degree in mechanical engineering from Wisconsin University. |

**Board Practices**

In compliance with the new Mexican securities markets law ( *Ley del Mercado de Valores*), which was enacted on December 28, 2005 and became effective on June 28, 2006, our shareholders approved, at a general extraordinary meeting of shareholders held on April 27, 2006, a proposal to amend various articles of our 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 our 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 new 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 new surveillance duties, our board of directors is no longer in charge of managing CEMEX; instead, this is the responsibility of our chief executive officer.

Pursuant to the new law and our by-laws, at least 25% of our directors must qualify as independent directors.

We have not entered into any service contracts with our directors that provide for benefits upon termination of employment.

***The Audit Committee, the Corporate Practices Committee and the Finance Committee***

The new Mexican securities market law required us to create a corporate practices committee comprised entirely of independent directors, in addition to our then existing audit committee. In compliance with this new requirement, in 2006 we increased the responsibilities of our audit committee and changed its name to "corporate practices and audit committee." To further enhance the effectiveness of our corporate governance, at our annual shareholders meeting of April 23, 2009, our shareholders approved the division of this committee into two distinct committees with different members and responsibilities, the audit committee and the corporate practices committee. In addition, at a meeting held on May 28, 2009, our board of directors approved the creation of the finance committee.

Our 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 our 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 our 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 our independent auditors, accounting, internal control and process assessment areas.

Our corporate practices committee is responsible for:

- evaluating the hiring, firing and compensation of our chief executive officer;
- reviewing the hiring and compensation policies for our 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.

Our finance committee is responsible for:

- evaluating the company's financial plans; and
- reviewing the company's financial strategy and its implementation.

Under our bylaws and Mexican securities laws, 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 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 our 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."

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| *Audit Committee:* | |
| Roberto Zambrano Villarreal, President | See "— Board of Directors." |
| José Manuel Rincón Gallardo | See "— Board of Directors." |
| Alfonso Romo Garza | See "— Board of Directors." |
| Rafael Rangel Sostmann | See "— Board of Directors." |
| *Corporate Practices Committee:* | |
| Dionisio Garza Medina, President | See "— Board of Directors." |
| Bernardo Quintana Isaac | See "— Board of Directors." |
| José Antonio 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." |
| Alfonso Romo Garza | See "— Board of Directors." |
| Tomás Milmo Santos | See "— Board of Directors." |

**Compensation of Our Directors and Members of Our Senior Management**

For the year ended December 31, 2010, 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.$11.2 million. Approximately U.S.$8.8 million of this amount was paid as base compensation and approximately U.S.$2.4 million corresponding to the compensation expense of 2.4 million CPOs issued during 2010 pursuant to the Restricted Stock Incentive Plan, or RSIP, described below under "— Restricted Stock Incentive Plan (RSIP)." In addition, for the year ended December 31, 2010, we set aside or accrued approximately U.S.$0.5 million to provide pension, retirement or similar benefits for all members of our board of directors, alternate members of our board of directors and senior managers, as a group.

In addition, our key executives, including our senior management, participate in a bonus plan that distributes a bonus pool based on our operating performance. This bonus is calculated and paid annually, a portion in cash and another portion in restricted CPOs under a RSIP, according to responsibility level. During 2010, no performance bonuses were paid to our senior managers.

***Employee Stock Option Plan (ESOP)***

In 1995, we adopted an employee stock option plan, or ESOP, under which we were authorized to grant members of our board of directors, members of our senior management and other eligible employees options to acquire our CPOs. Our obligations under the plan are covered by shares held in a trust created for such purpose (initially 216,300,000 shares). As of December 31, 2010, options to acquire 2,760,842 CPOs remained outstanding under the original ESOP, with a weighted average exercise price of approximately Ps5.85 per CPO, and a weighted average remaining tenure of approximately 0.5 years. Exercise prices and the number of underlying CPOs are technically adjusted for the dilutive effect of stock dividends and recapitalization of retained earnings.

***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 for the purchase of our ADSs. The options

granted under the program have a fixed exercise price in 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, 2010, considering the options granted since 2001, and the exercise of options that has occurred through that date, options to acquire 1,429,236 ADSs remained outstanding under this program. These options have a weighted average exercise price of approximately U.S.$1.36 per CPO, or U.S.$13.60 per ADS as each ADS currently represents 10 CPOs.

***The November 2001 Voluntary Exchange Program***

In November 2001, we implemented a voluntary exchange program to offer participants in our ESOP new options in exchange for their existing options. The new options had an escalating strike price in Dollars at a 7% annual rate, while the old options had a fixed strike price in Pesos. As of December 31, 2010, considering the options granted under the program, the exercise of options through that date, the result of the February 2004 exchange program described below and the 2004 voluntary early exercise program, options to acquire 7,119,529 CPOs remained outstanding under this program, with a weighted average exercise price of approximately U.S.$1.52 per CPO. As of December 31, 2010, the outstanding options under this program had a remaining tenure of approximately 1.3 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 February 2004 Voluntary Exchange Program***

In February 2004, we implemented a voluntary exchange program to offer ESOP participants, as well as holders of options granted under our existing voluntary employee stock option plan, or VESOP, new options in exchange for their existing options. The strike price of the new options increased annually at a 7% rate. 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, which was scheduled to grow annually at a 10% rate. Exercise prices and the number of underlying CPOs were technically adjusted for the dilutive effect of stock dividends and recapitalization of retained earnings.

The new options were automatically exercised when the closing CPO market price reached U.S.$7.50. Any gain realized through the exercise of these options was required to be invested in restricted CPOs at a 20% discount to market. The restrictions would be removed gradually within a period of between two and four years, depending on the exercise date.

As a result of the voluntary exchange offer, 122,708,146 new options were issued in exchange for 114,121,358 existing options, which were subsequently cancelled. All options not exchanged in the offer maintained their existing terms and conditions.

On January 17, 2005, the closing CPO market price reached U.S.$7.50 and, as a result, all existing options under this program were automatically exercised. Holders of these options received the corresponding gain in restricted CPOs, as described above.

***The 2004 Voluntary Early Exercise Program***

In December 2004, we offered ESOP and VESOP participants new options, conditioned on the participants exercising and receiving the intrinsic value of their existing options. As a result of this program, 120,827,370 options from the February 2004 voluntary exchange program, 16,580,004 options from other ESOPs, and 399,848 options from VESOP programs were exercised, and 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, 2010, options to acquire 70,481,496 CPOs remained outstanding under this program, with an exercise price of approximately U.S.$2.00 per CPO and a remaining tenure of approximately 1.5 years.

For accounting purposes under MFRS and U.S. GAAP, as of December 31, 2010, we accounted for the options granted under the February 2004 voluntary exchange program by means of the fair value method through earnings. See notes 2T and 17 to our consolidated financial statements included elsewhere in this annual report.

***Consolidated ESOP Information***

Stock options activity during 2009 and 2010, the balance of options outstanding as of December 31, 2009 and 2010 and other general information regarding our stock option programs, is presented in note 17 to our consolidated financial statements included elsewhere in this annual report.

As of December 31, 2010, the following ESOP 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 (Pesos) | 2,760,842 | 2011 | Ps 4.5-7.8 |
| CPOs (Dollars) (may be instantly cash-settled) | 7,119,529 | 2011-2013 | U.S.$1.2-1.7 |
| CPOs (Dollars) (receive restricted CPOs) | 70,481,496 | 2012 | U.S.$ 2.0 |
| CEMEX, Inc. ESOP | 14,292,360 | 2011-2015 | U.S.$1.0-1.9 |

As of December 31, 2010, our senior management and directors held the following ESOP options to acquire our securities:

| 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 (Dollars) (receive restricted CPOs) | 31,376,637 | 2012 | U.S.$ 2 |

As of December 31, 2010, our employees and former employees, other than senior management and directors, held the following ESOP options to acquire our securities:

| 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 (Pesos) | 2,760,842 | 2011 | Ps 4.5-7.8 |
| CPOs (Dollars) (may be instantly cash-settled) | 7,119,529 | 2011-2013 | U.S.$1.2-1.7 |
| CPOs (Dollars) (receive restricted CPOs) | 39,104,859 | 2012 | U.S.$ 2 |
| CEMEX, Inc. ESOP | 14,292,360 | 2011-2015 | U.S.$ 1-1.9 |

***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 Restricted Stock Incentive Plan, or 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 were 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 2010 was approximately 37 million, of which approximately .8 million were related to senior management and the board of directors. In 2010, approximately 25.7 million CPOs were issued, representing the first 25% of the 2010 program and the second 25% of the 2009 program. Of these 25.7 million CPOs, 1.4 million corresponded to senior management and the board of directors. See note 17 to our consolidated financial statements included elsewhere in this annual report.

**Employees**

As of December 31, 2010, we had approximately 46,533 employees worldwide, which represented a decrease of approximately 2.3% from year-end 2009. We reduced our headcount by 24% 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 and increase our efficiency and lower costs.

The following table sets forth the number of our full-time employees and a breakdown of their geographic location at the end of each of the last three fiscal years (excludes personnel in Venezuela and Australia in all periods):

| | 2008 | 2009 | 2010 |
|---|---|---|---|
| North America | | | |
| Mexico | 13,972 | 12,411 | 13,082 |
| United States | 12,532 | 10,107 | 8,910 |
| Europe | | | |
| Spain | 3,314 | 2,671 | 2,595 |
| United Kingdom | 4,205 | 3,794 | 3,580 |
| Rest of Europe | 10,706 | 9,748 | 9,387 |
| South America, Central America and the Caribbean | 5,296 | 4,930 | 5,318 |
| Africa and the Middle East | 2,633 | 2,390 | 2,211 |
| Asia | 1,277 | 1,573 | 1,450 |

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 2010, more than 130 contracts with different labor unions were renewed.

Approximately 29% 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 at many of our U.S. plants and have various expiration dates from January 31, 2011 through June 30, 2016.

Our Spanish union employees have collective bargaining agreements that are renewable every two to three years on a company-by-company basis. Employees in the ready-mix concrete, mortar, aggregates and transport sectors have collective bargaining agreements by sector. Executive compensation in Spain is subject to our institutional policies and influenced by the local labor market.

In the United Kingdom, our cement, roof tiles and cement logistics operations have collective bargaining agreements with the Unite union (following the merger of the Transport & General Workers union and Amicus 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 (Britain's general labor 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 9% of our employees are members of one of the five main unions. Each union is represented in our French subsidiary, mainly in Paris, Lyon and in Southern France. 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 elections were held in April 2010.

In Colombia, a single union represents the union employees of the Bucaramanga and Cúcuta cement plants. There are also collective agreements with non-union workers at the Caracolito/Ibagué cement plant, Santa Rosa cement plant and all ready-mix concrete plants in Colombia.

Overall, we consider our relationships with labor unions representing our employees to be satisfactory

**Share Ownership**

As of March 31, 2011, our senior management and directors and their immediate families owned, collectively, approximately 2.91% of our 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, 2011, no individual director or member of our senior management beneficially owned one percent or more of any class of our outstanding capital stock.

**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 February 8, 2011 as of December 31, 2010, Southeastern Asset Management, Inc., an investment adviser registered under the U.S. Investment Advisers Act of 1940, as amended, beneficially owned 132,803,723 ADSs and 41,360,476 CPOs, representing a total 1,369,397,706 CPOs or approximately 13.7% of our then outstanding capital stock. Southeastern Asset Management, Inc. does not have voting rights different from our other non-Mexican holders of CPOs.

Based upon information contained in a statement on Schedule 13G filed with the SEC on February 10, 2011, as of December 31, 2010, Dodge & Cox, an investment adviser registered under the U.S. Investment Advisers Act of 1940, as amended, beneficially owned 62,402,994 ADSs, representing 624,029,940 CPOs or approximately 6.2% of our then outstanding capital stock. Dodge & Cox does not have voting rights different from our other non-Mexican holders of CPOs.

Other than Southeastern Asset Management, Inc. and Dodge & Cox 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 our voting securities.

As of March 31, 2011, our outstanding capital stock consisted of 20,845,346,272 Series A shares and 10,422,673,136 Series B shares, in each case including shares held by our subsidiaries.

As of March 31, 2011, a total of 20,398,270,154 Series A shares and 10,199,135,077 Series B shares 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 in accordance

with the vote cast by holders of the majority of A shares held by Mexican nationals and B shares voted at that meeting of shareholders.

As of March 31, 2011, through our subsidiaries, we owned approximately 17 million CPOs, representing approximately 0.2% of our outstanding CPOs and approximately 0.2% of our outstanding voting stock. These CPOs are voted at the direction of our management. From time to time, our subsidiaries are active participants in the trading market for our capital stock; as a result, the levels of our CPO and share ownership by those subsidiaries are likely to fluctuate. Our 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.

Our by-laws, or *estatutos sociales*, provide that our board of directors must authorize in advance any transfer of voting shares of our capital stock that would result in any person's, or group's acting in concert, becoming a holder of 2% or more of our voting shares.

Mexican securities regulations provide that our majority-owned subsidiaries may neither directly or indirectly invest in our CPOs nor other securities representing our 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 our capital stock by our subsidiaries, in most cases, negatively affects the interests of our 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 our subsidiaries does not violate any provisions of our bylaws or the bylaws of our subsidiaries. The holders of these CPOs or of other securities representing our capital stock are entitled to exercise the same rights relating to their CPOs or their other securities representing our capital stock, including all voting rights, as any other holder of the same series.

As of March 1, 2011, we had 101,177 ADS holders of record in the United States, holding approximately 51.9% of our outstanding CPOs as of such date.

On April 27, 2006, our shareholders approved a stock split, which occurred on July 17, 2006. In connection with the stock split, each of our existing series A shares was surrendered in exchange for two new series A shares, and each of our 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 our 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**

Bernardo Quintana Isaac, a member of our board of directors and chairman of the board of directors of Grupo ICA, S.A.B. de C.V., or Grupo ICA, a large Mexican construction company. In the ordinary course of business, we extend financing to Grupo ICA for varying amounts at market rates, as we do for our other customers.

Jose Antonio Fernandez Carbajal, a member of our board of directors, is president and chief executive officer of Fomento Económico Mexicano S.A.B. de C.V. or FEMSA, a large multinational beverage company. 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. Mr. Fernandez Carbajal is also vice-chairman of the board of Consejo de Enseñanza e Investigación Superior, A.C. (the managing entity of ITESM,) of which Lorenzo H. Zambrano, our chief executive officer and chairman of our board of directors, is chairman of the board, and which in 2009 and 2010 received contributions by CEMEX for amounts that were not material.

Rafael Rangel Sostmann, a member of our board of directors, is the Dean of ITESM.

During 2010 and as of May 1, 2011, we did not have any 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 our shareholders at a general ordinary meeting. Any dividend declaration is usually based upon the recommendation of our board of directors. However, the shareholders are not obligated to approve the board's recommendation. We may only pay dividends from retained earnings included in financial statements that have been approved by our shareholders and after all losses have been paid for, a legal reserve equal to 5% of our paid-in capital has been created and our shareholders have approved the relevant dividend payment. According to 1999 Mexican tax reforms, 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 we conduct our operations through our subsidiaries, we have no significant assets of our own except for our investments in those subsidiaries. Consequently, our ability to pay dividends to our shareholders is dependent upon our ability to receive funds from our subsidiaries in the form of dividends, management fees, or otherwise. The Financing Agreement effectively prohibits us from declaring and paying cash dividends or making other cash distributions to our shareholders. See "Item 3 — Key Information — Risk Factors — Our ability to repay debt and pay dividends depends on our subsidiaries' ability to transfer income and dividends to us."

The recommendation of our 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 our ADSs are issued, we 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, as we did in connection with the dividend for the 2006 and 2007 fiscal years, as described below. 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 Pesos into Dollars and, after deduction or after payment of expenses of the ADS depositary, to pay those dividends to holders of ADSs in Dollars. We cannot assure holders of our ADSs that the ADS depositary will be able to convert dividends received in Pesos into Dollars.

The following table sets forth the amounts of annual cash dividends paid in Pesos, on a per share basis, and a convenience translation of those amounts into Dollars based on the CEMEX accounting rate as of December 31, 2010:

| | Dividends Per Share | |
|---|---|---|
| | Constant Pesos | Dollars |
| 2006 | 0.27 | 0.02 |
| 2007 | 0.28 | 0.03 |
| 2008 | 0.29 | 0.03 |
| 2009 | N/A | N/A |
| 2010 | N/A | N/A |

Dividends declared at each year's annual shareholders' meeting are in respect of dividends for the preceding year. With the exception of the 2010, 2009 and 2008 fiscal years, in previous years, our board of directors has proposed, and our shareholders have approved, dividend proposals, whereby our shareholders have had a choice between stock dividends or cash dividends declared in respect of the prior year's results, with the stock issuable to shareholders who receive the stock dividend being issued at a 20% discount from then current market prices. The dividends declared per share or per CPO in these years, expressed in Pesos as of December 31, 2010 were as follows: 2006, Ps0.84 per CPO (or Ps0.28 per share); and 2007, Ps0.87 per CPO (or Ps0.29 per share). As a result of dividend elections made by shareholders, in 2006, Ps161 million in cash was paid and approximately 212 million additional CPOs were issued in respect of dividends declared for the 2005 fiscal year; in 2007, Ps147 million in cash was paid and approximately 189 million additional CPOs were issued in respect of dividends declared for the 2006 fiscal year; and in 2008, Ps214 million in cash was paid and approximately 284 million additional CPOs were issued in respect of dividends declared for the 2007 fiscal year.

We did not declare a cash dividend for fiscal year 2008. At our 2008 annual shareholders' meeting, held on April 23, 2009, our shareholders approved a recapitalization of retained earnings. New CPOs issued pursuant to the recapitalization were allocated to shareholders on a pro-rata basis. As a result, shares equivalent to approximately 334 million CPOs were issued and paid. 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.

We did not declare a dividend for fiscal year 2009. At our 2009 annual shareholders' meeting, held on April 29, 2010, our shareholders approved a recapitalization of retained earnings. New CPOs issued pursuant to the recapitalization were allocated to shareholders on a pro-rata basis. As a result, shares equivalent to approximately 384 million CPOs were issued and paid. CPO holders received one new CPO for each 25 CPOs held and ADS holders received one new ADS for each 25 ADS held. There was no cash distribution and no entitlement to fractional shares.

We did not declare a dividend for fiscal year 2010. At our 2010 annual shareholders' meeting, held on February 24, 2011, our shareholders approved a recapitalization of retained earnings. New CPOs issued pursuant to the recapitalization were allocated to shareholders on a pro-rata basis. As a result, shares equivalent to approximately 401 million CPOs were issued and paid. 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.

**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**

Our CPOs are listed on the Mexican Stock Exchange and trade under the symbol "CEMEX.CPO." Our ADSs, each of which currently represents ten CPOs, are listed on the New York Stock Exchange and trade under the symbol "CX." The following table sets forth, for the periods indicated, the reported highest and lowest market quotations in nominal Pesos for CPOs on the Mexican Stock Exchange and the high and low sales prices in Dollars for ADSs on the NYSE. The information below gives effect to the two-for-one stock split in our CPOs and ADSs approved by our shareholders on April 27, 2006, which occurred on July 17, 2006, and prior stock splits.

| Calendar Period | CPOs(1) | | ADSs | |
|---|---|---|---|---|
| | High | Low | High | Low |
| **Yearly** | | | | |
| 2006 | 39.35 | 27.25 | 36.04 | 23.78 |
| 2007 | 44.50 | 27.23 | 41.34 | 24.81 |
| 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 |
| **Quarterly** | | | | |
| 2009 | | | | |
| First quarter | 14.36 | 6.16 | 10.74 | 3.94 |
| Second quarter | 15.31 | 8.51 | 11.39 | 6.17 |
| Third quarter | 19.19 | 10.40 | 14.58 | 7.63 |
| Fourth quarter | 18.24 | 13.50 | 13.96 | 10.03 |
| 2010 | | | | |
| First quarter | 16.16 | 11.72 | 12.58 | 8.83 |
| Second quarter | 15.30 | 12.45 | 12.60 | 9.61 |
| Third quarter | 12.82 | 9.83 | 10.10 | 7.46 |
| Fourth quarter | 13.49 | 9.59 | 10.94 | 7.65 |
| 2011 | | | | |
| First quarter | 13.60 | 10.13 | 11.15 | 8.35 |
| **Monthly** | | | | |
| 2010-2011 | | | | |
| December | 13.49 | 11.37 | 10.94 | 9.12 |
| January | 13.60 | 11.36 | 11.15 | 9.34 |
| February | 11.91 | 10.76 | 9.93 | 8.79 |
| March | 11.00 | 10.13 | 9.23 | 8.35 |
| April | 10.96 | 9.85 | 9.28 | 8.41 |
| May | 10.09 | 9.25 | 8.77 | 7.86 |
| June(2) | 9.97 | 8.99 | 8.55 | 7.55 |

Source: Based on data of the Mexican Stock Exchange and the NYSE.

(1) As of December 31, 2010, approximately 97.8% of our outstanding share capital was represented by CPOs.

(2) CPO and ADS prices are through June 13, 2011.

On June 13, 2011, the last reported closing price for CPOs on the Mexican Stock Exchange was Ps9.04 per CPO, and the last reported closing price for ADSs on the NYSE was U.S.$7.59 per ADS.

**Item 10 - Additional Information**

**Articles of Association and By-laws**

### *General*

Pursuant to the requirements of Mexican corporation law, our 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.

We are a holding company engaged, through our operating subsidiaries, primarily in the production, distribution, marketing and sale of cement, ready-mix concrete and clinker. Our objectives and purposes can be found in article 2 of our by-laws.

We have 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. Our 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. Our by-laws also state that the A shares shall at all times account for a minimum of 64% of our total outstanding voting stock and that our B shares shall at all times account for a minimum of 36% of our 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, we changed from a fixed capital corporation to a variable capital corporation in accordance with Mexican corporation law. As a result, we 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 (*Ley del Mercado de Valores*) and our 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, our shareholders approved a stock split, and for every one of our shares of any series we issued two Series A shares and one Series B share. Concurrently with this stock split, we also consummated an exchange offer to exchange new CPOs and new ADSs representing the new CPOs for our then existing A shares, B shares and ADSs, and converted our 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 our by-laws to incorporate additional provisions to comply with the new provisions of the Mexican securities law. Following approval from our shareholders at our 2002 annual shareholders' meeting, we amended and restated our 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 our by-laws, the expiration of our 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 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, our shareholders approved changes to our by-laws, incorporating additional provisions and removing some restrictions. The changes that are still in force are as follows:

- The limitation on our variable capital was removed. Formerly, our variable capital was limited to ten times our minimum fixed capital.

- Increases and decreases in our variable capital now require the notarization of the minutes of the ordinary general 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 ( *Ley del Mercado de Valores*), we were required to adopt specific amendments to our by-laws within 180 days of the effective date of the new law. Following approval from our shareholders at our 2005 annual shareholders' meeting held on April 27, 2006, we amended and restated our by-laws to incorporate these amendments. The amendments to our by-laws became effective on July 3, 2006. The most significant of these amendments were as follows:

- The change of our corporate name from CEMEX, S.A. de C.V. to CEMEX, S.A.B. de C.V., which means that we are 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 our board of directors and which is comprised exclusively of independent directors.
- The elimination of the position of statutory examiner (c *omisario*) 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 our 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 our 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, our shareholders approved a two-for-one stock split, which became effective on July 1, 2005. In connection with this stock split, each of our existing Series A shares was surrendered in exchange for two new Series A shares, and each of our 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 our existing CPOs, with each new CPO representing two new Series A shares and one new Series B share. The number of our 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 shareholders' meeting held on April 27, 2006, our 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 our existing Series A shares was surrendered in exchange for two new Series A shares, and each of our 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 our 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, we 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, we 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 Securities. Pursuant to the exchange offer, on December 10, 2009, we issued approximately Ps4.1 billion (approximately U.S.$334 million at the Peso/Dollar CX accounting rate on December 31, 2010) in Mandatory Convertible Securities in exchange for CBs. On March 30, 2010, we closed the offering of U.S.$715 million of our 4.875% Convertible Subordinated Notes due 2015.

As of December 31, 2010, our capital stock consisted of 33,433,149,546 issued shares. As of December 31, 2010, Series A shares represented approximately 67% of our capital stock, or 22,288,766,364 shares, of which 20,043,602,184 shares were subscribed and paid, 3,415,076 shares were treasury shares, 345,164,180 shares were issued pursuant to our employee stock option plans and subscribed to by Banamex as trustee thereunder but had not yet been paid (these shares have been and will continue to be gradually paid upon exercise of the corresponding stock options), 374,960,064 shares that guarantee the conversion of the Mandatory Convertible Securities and 1,521,624,860 shares that guarantee the conversion of the Optional Convertible Subordinated Notes. As of December 31, 2010, Series B shares represented approximately 33% of our capital stock, or 11,144,383,182 shares, of which 10,021,801,092 shares were subscribed and paid, 1,707,538 shares were treasury shares, 172,582,090 shares were issued pursuant to our employee stock option plans and subscribed to by Banamex, as trustee thereunder, but had not yet been paid (these shares have been and will continue to be gradually paid upon exercise of the corresponding stock options), 187,480,032 shares that guarantee the conversion of the Mandatory Convertible Securities and 760,812,430 shares that guarantee the conversion of the Optional Convertible Subordinated Notes. Of the total of our A shares and B shares outstanding as of December 31, 2010, 13,068,000,000 shares corresponded to the fixed portion of our capital stock and 20,365,149,546 shares corresponded to the variable portion of our capital stock.

On February 24, 2011, we held an extraordinary shareholders' meeting in which our shareholders approved an increase in the variable portion of our capital stock of up to 6 billion shares (equivalent to 2 billion CPOs or 200 million ADSs). Pursuant to the resolution approved by our 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 the company's treasury. In addition, on February 24, 2011, we held our annual shareholders' meeting in which our shareholders approved an increase in the variable portion of our capital stock of up to 60 million shares (equivalent to 20 million CPOs or 2 million ADSs). These shares will be kept in the company's treasury and will be used to preserve the rights of note holders pursuant to the company's issuance of convertible notes.

We did not declare a cash dividend for fiscal year 2008. At our 2008 annual shareholders' meeting, held on April 23, 2009, our shareholders approved a recapitalization of retained earnings. New CPOs issued pursuant to the

recapitalization were allocated to shareholders on a pro-rata basis. As a result, shares equivalent to approximately 334 million CPOs were issued and paid. 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.

We did not declare a dividend for fiscal year 2009. At our 2009 annual shareholders' meeting, held on April 29, 2010, our shareholders approved a recapitalization of retained earnings. New CPOs issued pursuant to the recapitalization were allocated to shareholders on a pro-rata basis. As a result, shares equivalent to approximately 384 million CPOs were issued and paid. CPO holders received one new CPO for each 25 CPOs held and ADS holders received one new ADS for each 25 ADS held. There was no cash distribution and no entitlement to fractional shares.

We did not declare a dividend for fiscal year 2010. At our 2010 annual shareholders' meeting, held on February 24, 2011, our shareholders approved a recapitalization of retained earnings. New CPOs issued pursuant to the recapitalization were allocated to shareholders on a pro-rata basis. As a result, shares equivalent to approximately 401 million CPOs were issued and paid. 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, our by-laws allow for a decrease or increase in our capital stock if it is approved by our shareholders at a shareholders' meeting. Additional shares of our capital stock, having no voting rights or limited voting rights, are authorized by our by-laws and may be issued upon the approval of our shareholders at a shareholders' meeting, with the prior approval of the Mexican securities authority.

Our 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 ( *Ley del Mercado de Valores*), this preemptive right to subscribe is not applicable to increases of our 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 our 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)* .

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 our by-laws, significant acquisitions of shares of our capital stock and changes of control of CEMEX require prior approval from our board of directors. Our board of directors must authorize in advance any transfer of, or creation of any encumbrance or lien on, voting shares of our capital stock that would result in any person or group becoming a holder of 2% of more of our shares. Our 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 our 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 our board of directors denies the authorization, or the requirements established in our 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 the 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 our capital stock representing 30% or more of our capital stock by a person or group of persons requires prior approval from our 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 our capital stock. In the event the requirements for significant acquisitions of shares of our 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, we will not record such persons as holders of such shares in our share registry, and the registry undertaken by the Indeval shall not have any effect.

Our by-laws require the stock certificates representing shares of our capital stock to make reference to the provisions in our by-laws relating to the prior approval of the board of directors for significant share transfers and the requirements for recording share transfers in our share registry. In addition, shareholders are responsible for informing us within five business days whenever their shareholdings exceed 5%, 10%, 15%, 20%, 25% and 30% of the outstanding shares of a particular class of our capital stock. We are 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 us 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 our share registry, and such transaction will have no legal effect and will not be binding on us.

Our by-laws also require that our 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, we are obligated to make a public offer for the purchase of stock to our shareholders if our registration with the Mexican securities registry (*Registro Nacional de Valores*) is canceled, either by resolution of our 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 our 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.

Our 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 and audit 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 our registration with the Mexican securities registry, we 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:

- our board of directors or the corporate practices committee or the audit committee;

- shareholders representing at least 10% of the then outstanding shares of our capital stock, by requesting that the chairman of our board of directors or our 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 General Law of Commercial Companies *(Ley General de Sociedades Mercantiles)* 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 our board of directors or the corporate practices and audit committee do not comply with the valid shareholders' request described above.

Notice of shareholders' meetings must be published in the official gazette for the State of 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, our 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 our fiscal years to consider the approval of a report of our board of directors regarding our performance and our financial statements for the preceding fiscal year and to determine the allocation of profits from the preceding year. In addition, our annual general ordinary shareholders' meeting must:

- review the annual reports of our corporate practices committee and audit committee, our chief executive officer, and our board of directors;
- elect, remove, or substitute the members of our board of directors;
- determine the level of independence of the members of our board of directors;
- approve any transaction that represents 20% or more of our 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 General Law of Commercial Companies, which include, among other things:

- extending our corporate existence;
- our voluntary dissolution;
- increasing or reducing our fixed capital stock;
- changing our corporate purpose;
- changing our country of incorporation;
- changing our form of organization;
- a proposed merger;

- issuing preferred shares;
- redeeming our own shares;
- any amendment to our by-laws; and
- any other matter for which a special quorum is required by law or by our 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 our offices or in a Mexican credit institution or brokerage house, or foreign bank approved by our board of directors to serve this function. The certificate of deposit with respect to the share certificates must be presented to our company secretary at least 48 hours before a meeting of shareholders. Our company secretary verifies that the person in whose favor any certificate of deposit was issued is named in our share registry and issues an admission pass authorizing that person's attendance at the meeting of shareholders.

Our by-laws provide that a shareholder may only be represented by proxy in a shareholders' meeting with a duly completed form provided by us authorizing the proxy's presence. In addition, our 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 our board of directors) of our 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 is 50% of our outstanding and fully paid shares, and for the second ordinary meeting is any number of our 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 our outstanding and fully paid shares represented at the meeting. The quorum for the first extraordinary shareholders' meeting is 75% of our outstanding and fully paid shares, and for the second extraordinary meeting is 50% of our outstanding and fully paid shares.

***Rights of Minority Shareholders***

At our annual general shareholders' meeting, any shareholder or group of shareholders representing 10% or more of our voting stock has the right to appoint or remove one member of our 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.

Our by-laws provide that holders of at least 10% of our 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 our 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 our 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 our by-laws, shareholders representing 5% or more of our outstanding capital stock may initiate actions exclusively on behalf of CEMEX against members of our board of directors, our corporate practices committee and audit committee, our 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 and not merely the damage suffered by the plaintiffs. Actions initiated on these grounds have a five-year statute of limitations.

Any recovery of damages with respect to these actions will be for our benefit and not that of the shareholders bringing the action.

### *Registration and Transfer*

Our 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. We maintain a stock registry, and, in accordance with Mexican law, only those holders listed in the stock registry and those holding certificates issued by Indeval and by Indeval participants indicating ownership are recognized as our shareholders.

Pursuant to Mexican law, any transfer of shares must be registered in our stock registry, if effected physically, or through book entries that may be tracked back from our stock registry to the records of Indeval.

### *Redemption*

Our capital stock is subject to redemption upon approval of our shareholders at an extraordinary shareholders' meeting.

### *Share Repurchases*

If approved by our shareholders at a general shareholders' meeting, we may purchase our outstanding shares for cancellation. 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 our 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 our outstanding shares during a period of twenty 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 our 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 us 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 us 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, our directors may not represent shareholders in our shareholders' meetings.

***Withdrawal Rights***

Whenever our 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 and receive an amount equal to the book value (in accordance with the latest balance sheet approved by the annual ordinary general 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 ordinary general shareholders' meeting, our board of directors submits, for approval by our shareholders, our financial statements together with a report on them prepared by our board of directors and the statutory auditors. Our 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 our 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 we are liquidated, the surplus assets remaining after payment of all our creditors will be divided among our shareholders in proportion to the respective shares held by them. The liquidator may, with the approval of our shareholders, distribute the surplus assets in kind among our shareholders, sell the surplus assets and divide the proceeds among our shareholders or put the surplus assets to any other uses agreed to by a majority of our 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 our corporate governance practices differ from those required of domestic companies under NYSE standards, please visit our website at www.cemex.com (under the heading "Investor Center/Corporate Governance").

**Material Contracts**

On March 17, 2006, we registered a Ps5 billion revolving promissory note program ( *programa dual revolvente de certificados burstátiles*) with the Mexican securities authority. We have 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. For a description of recent activity under this program, see "Item 5 — Operating and Financial Review and Prospects — Liquidity and Capital Resources — Financing Activities."

On December 6, 2006, CEMEX España entered into a U.S.$9 billion committed facilities agreement, to partially fund the acquisition of Rinker. The first facility was a U.S.$3 billion 364-day multicurrency revolving loan denominated in Dollars or Euros with two optional 6-month extensions. The second facility is a multicurrency three-year U.S.$3 billion term loan denominated in Dollars or Euros. The third facility is a multicurrency five-year U.S.$3 billion term loan denominated in Dollars or Euros. On December 21, 2006, the facilities agreement was amended to

include new lenders. The first facility was canceled on June 19, 2007, effective as of June 22, 2007. The facilities agreement was amended and restated on December 19, 2008, to incorporate, among other things, amendments to the leverage ratios and other technical amendments as well as to extend part of the maturities under the second facility; the facilities agreement was further amended and restated on January 27, 2009, to extend, re-tranche and re-denominate commitments under the second facility. On August 14, 2009, the facilities agreement was overridden by the Financing Agreement.

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 in Perpetual Debentures under the first tranche, with the issuer having the option to redeem the debentures on December 31, 2011 and on each interest payment date thereafter. C10 Capital (SPV) Limited issued U.S.$900 million in original principal amount of Perpetual Debentures under the second tranche, with the issuer having the option to redeem the debentures on December 31, 2016 and on each interest payment date thereafter. Both tranches pay coupons denominated in 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 Perpetual Debentures. C8 Capital (SPV) Limited issued U.S.$750 million in original principal amount of Perpetual Debentures under this third tranche, with the issuer having the option to redeem the debentures on December 31, 2014 and on each interest payment date thereafter. This third tranche also pays coupons denominated in 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 in original principal amount of Perpetual Debentures under this fourth tranche, with the issuer having the option to redeem the debentures on June 30, 2017 and on each interest payment date thereafter. 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 MFRS, qualify as equity. On May 22, 2009, we notified the debenture holders of our decision to exercise our option to defer, by one day, the scheduled interest payments otherwise due and payable on June 30, 2009. See “Item 5 — Operating and Financial Review and Prospects — Liquidity and Capital Resources — Our Perpetual Debentures.”

On March 5, 2007, CEMEX Finance Europe B.V., issued €900 million in notes paying a fixed coupon of 4.75% and maturing in 2014. The notes have been listed for trading on the London Stock Exchange’s Professional Securities Market. The notes are guaranteed by CEMEX España.

On June 2, 2008, CEMEX, through one of its subsidiaries, closed two identical U.S.$525 million facilities with a group of relationship banks. Each facility allowed the principal amount to be automatically extended for consecutive six month periods indefinitely after a period of three years by CEMEX and included an option of CEMEX to defer interest at any time (except in limited situations), subject to the absence of an event of default under the facility. The amounts outstanding under the facilities, because of the interest deferral provision and the option of CEMEX to extend the maturity of the principal amounts indefinitely, had been treated as equity for accounting purposes in accordance with MFRS and as debt under U.S. GAAP, in the same manner as CEMEX’s outstanding Perpetual Debentures. Obligations of CEMEX under each facility rank *pari-passu* with CEMEX’s obligations under the Perpetual Debentures and its senior unsecured indebtedness. Within the first three years that each facility is in place, CEMEX, subject to the satisfaction of specified conditions, had options to convert all (and not part) of the respective amounts outstanding under the respective facilities into maturity loans, each with a fixed maturity date of June 30, 2011. CEMEX exercised its conversion options under both facilities on December 31, 2008. The two facilities were amended on January 22, 2009. On August 14, 2009, the two facilities were overridden by the Financing Agreement.

In June 2008, CEMEX entered into a structured transaction comprised of: (i) a U.S.$500 million Credit Agreement, dated June 25, 2008 and amended on December 18, 2008 and January 22, 2009, among CEMEX, S.A.B. de C.V., as borrower, CEMEX México, as guarantor, and Banco Bilbao Vizcaya Argentaria, S.A. New York Branch, as lender; (ii) a U.S.$500 million aggregate notional amount of Put Spread Option Confirmations, dated June 3, 2008 and June 5, 2008, between Centro Distribuidor de Cemento, S.A. de C.V. and Banco Santander, S.A., Institución de Banca Múltiple, Grupo Financiero Santander; and (iii) a Framework Agreement, dated June 25, 2008, by and among CEMEX, S.A.B. de C.V., CEMEX México, Banco Santander (Mexico), S.A., Institución de Banca Múltiple, Grupo Financiero Santander and Banco Bilbao Vizcaya Argentaria, S.A. New York Branch. On August 14, 2009, the structured transaction was overridden by the Financing Agreement.

On January 27, 2009, CEMEX entered into a U.S.$437.50 million and Ps4.77 billion joint bilateral facility. The credit agreement is guaranteed by CEMEX México and CEMEX Concretos, S.A. de C.V. On August 14, 2009, the joint bilateral facility was overridden by the Financing Agreement.

On January 27, 2009, CEMEX España, entered into a U.S.$617.5 million and €587.5 million joint bilateral facility. The joint bilateral facility is guaranteed by CEMEX, Inc. The joint bilateral facility was amended on January 30, 2009 to incorporate a number of minor technical modifications. On August 14, 2009, the joint bilateral facility was overridden by the Financing Agreement.

On August 14, 2009, we entered into the Financing Agreement. The Financing Agreement extended the maturities of approximately U.S.$15.1 billion in syndicated and bilateral bank facilities and private placement obligations, providing for a semi-annual amortization schedule, with a final amortization payment of approximately U.S.$6.8 billion on February 14, 2014, based on prevailing exchange rates as of December 31, 2010. For a description of recent activity with respect to the Financing Agreement. See "Item 5 — Operating and Financial Review and Prospects — Recent Developments — Recent Developments Relating to Our Indebtedness."

On September 28, 2009, we sold 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.

On November 11, 2009, we launched an exchange offer in Mexico, in transactions exempt from registration pursuant to Regulation S under the Securities Act, directed to holders of CBs maturing on or before December 31, 2012, in order to exchange such CBs for the Mandatory Convertible Securities. Pursuant to the exchange offer, on December 10, 2009, we issued approximately Ps4.1 billion (approximately U.S.$315 million) in Mandatory Convertible Securities in exchange for CBs with original maturities of approximately Ps325 million, Ps1.7 billion and Ps2.1 billion in 2010, 2011 and 2012, respectively, that were canceled. The Mandatory Convertible Securities are mandatorily convertible into newly issued CPOs at an initial conversion price of Ps23.92 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 giving effect to any dilution adjustments in respect of the recapitalization of earnings approved by shareholders at the 2010 shareholders' meeting, the conversion price for the Mandatory Convertible Securities is approximately Ps22.12 (402.3552 CPOs per Ps8,900 of principal amount of Mandatory Convertible Securities), as of the date hereof. Under MFRS, the Mandatory Convertible Securities represent a combined instrument with liability and equity components. The liability component, approximately Ps1,994 million as of December 31, 2010, corresponds to the net present value of interest payments due under the Mandatory Convertible Securities, assuming no early conversion, and was recognized under "Other Financial Obligations" in our balance sheet. The equity component, approximately Ps1,971 million as of December 31, 2010, represents the difference between principal amount and the liability component and was recognized within "Other equity reserves" net of commissions in our balance sheet. See notes 12A and 16B in our consolidated financial statements included elsewhere in this annual report.

On December 14, 2009, our subsidiary, CEMEX Finance LLC, issued U.S.$1,250 million aggregate principal amount of 9.50% Dollar-denominated Notes, and €350 million aggregate principal amount of 9.625% Euro-denominated Notes, in transactions exempt from registration pursuant to Rule 144A and Regulation S under the Securities Act. On January 19, 2010, our subsidiary, CEMEX Finance LLC, issued U.S.$500 million additional aggregate principal amount of the 9.50% Dollar-denominated Notes. The payment of principal, interest and premium, if any, on the 9.50% Dollar-denominated Notes and the 9.625% Euro-denominated Notes are fully and unconditionally guaranteed by CEMEX, S.A.B. de C.V., CEMEX México, CEMEX España, CEMEX Corp., CEMEX Concretos, S.A. de C.V., Empresas Tolteca de México, S.A. de C.V. and New Sunward. The 9.50% Dollar-denominated Notes and 9.625% Euro-denominated Notes are secured by a first-priority security interest over the Collateral and all proceeds of such Collateral, unless and until the Collateral shall have been released as provided for in the 9.50% Dollar-denominated Notes and the 9.625% Euro-denominated Notes Indentures and under the Intercreditor Agreement. We used the net proceeds from the offerings of the 9.50% Dollar-denominated Notes and 9.625% Euro-denominated Notes to repay indebtedness under the Financing Agreement and for general corporate purposes.

On March 30, 2010, we closed the offering of U.S.$715 million of our 4.875% Convertible Subordinated Notes due 2015, 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 and has been adjusted to 76.4818 ADSs per U.S.$1,000 principal amount of 2010 Optional Convertible Subordinated Notes, reflecting the issuance of CPOs in connection with the recapitalization of earnings approved by shareholders at the 2010 annual shareholders meeting.

On May 12, 2010, our subsidiary CEMEX España, acting through its Luxembourg branch, issued U.S.$1,067,665,000 aggregate principal amount of the 9.25% Dollar-denominated Notes and €115,346,000 aggregate principal amount of the 8.875% Euro-denominated Notes, in exchange for the Perpetual Debentures, pursuant to the 2010 Exchange Offer, in private transactions exempt from registration pursuant to Section 4(2) of the Securities Act and Regulation S under the Securities Act. CEMEX, S.A.B. de C.V., CEMEX México and New Sunward have fully and unconditionally guaranteed the performance of all obligations of CEMEX España under the 9.25% Dollar-denominated Notes and the 8.875% Euro-denominated Notes on a senior basis. The payment of principal, interest and premium, if any, on the 9.25% Dollar-denominated Notes and the 8.875% Euro-denominated Notes is secured by a first-priority security interest over the Collateral and all proceeds of such Collateral.

On January 11, 2011, we closed the offering of U.S.$1.0 billion aggregate principal amount of 9.000% Senior Secured Notes due 2018, in a transaction 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 9.000% Senior Secured Notes are fully and unconditionally guaranteed by CEMEX México., New Sunward and CEMEX España. The 9.000% Senior Secured Notes are secured by a first-priority security interest over the Collateral and all proceeds of such Collateral. The 9.000% Senior Secured Notes were issued at a price of U.S.$99.364 per U.S.$100 principal amount plus accrued interest from January 11, 2011. The net proceeds from the offering, approximately U.S.$981 million were used for general corporate purposes including repayment of indebtedness, including indebtedness under the Financing Agreement.

On March 15, 2011, we closed the offering of U.S.$977.5 million aggregate principal amount of 3.25% Convertible Subordinated Notes due 2016 and U.S.$690 million aggregate principal amount of 3.75% Convertible Subordinated Notes due 2018, 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. The conversion rate has been adjusted to 92.1659 ADSs per U.S.$1,000 principal amount of 2011 Optional Convertible Subordinated Notes, reflecting the issuance of CPOs in connection with the recapitalization of earnings approved by shareholders at the 2010 annual shareholders' meeting. 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. Of the remaining net proceeds, we used approximately U.S.$128 million to prepay CBs maturing on March 8, 2012, and approximately U.S.$1,287 million to repay indebtedness under the Financing Agreement.

On April 5, 2011, we closed the offering of U.S.$800 million aggregate principal amount of Floating Rate Senior Secured Notes due 2015 (the "April 2011 Notes") in a transaction 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 April 2011 Notes is fully and unconditionally guaranteed by CEMEX México, New Sunward and CEMEX España. The April 2011 Notes are secured by a first-priority security interest over the Collateral and all proceeds of such Collateral. The April 2011 Notes were issued at a price of U.S.$99.001 per U.S.$100 principal amount. The net proceeds from the offering, approximately U.S.$788 million, were used to repay indebtedness under the Financing Agreement.

**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 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 for U.S. federal income tax purposes;
- 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 Pesos will be includible in the income of a U.S. Shareholder in a Dollar amount calculated by reference to the exchange rate in effect the day the Pesos are received by the CPO trustee or successor thereof whether or not the Pesos are converted into 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 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 15 percent 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 before January 1, 2011, 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. There can be no assurance, 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 before January 1, 2011 generally will be subject to a maximum United States federal income tax rate of 15 percent. 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 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, 2010

In 2010, we received approximately U.S.$2 million 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, 2010.

**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, 2010.

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**

We have not identified changes in our internal control over financial reporting during 2010 that 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.

### 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: (011-5281) 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 Ps228 million in fiscal year 2010 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 2009, KPMG Cárdenas Dosal, S.C. in Mexico and KPMG firms worldwide billed us approximately Ps205 million for these services.

*Audit-Related Fees:* KPMG Cárdenas Dosal, S.C. in Mexico and KPMG firms worldwide billed us approximately Ps33 million in fiscal year 2010 for assurance and related services reasonably related to the performance of our audit. In fiscal year 2009, KPMG Cárdenas Dosal, S.C. in Mexico and KPMG firms worldwide charged us approximately Ps66 million for audit-related services.

*Tax Fees*: KPMG Cárdenas Dosal, S.C. in Mexico and KPMG firms worldwide charged us approximately Ps24 million in fiscal year 2010 for tax compliance, tax advice and tax planning. KPMG Cárdenas Dosal, S.C. in Mexico and KPMG firms worldwide billed us approximately Ps11 million for tax-related services in fiscal year 2009.

*All Other Fees*: KPMG Cárdenas Dosal, S.C. in Mexico and KPMG firms worldwide billed us Ps21 million in fiscal year 2010 for products and services other than those comprising audit fees, audit-related fees and tax fees. In fiscal year 2009, KPMG Cárdenas Dosal, S.C. in Mexico and KPMG firms worldwide charged us approximately Ps10 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 2010, 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**

In connection with our 2006 annual shareholders' meetings held April 26, 2007, our shareholders approved stock repurchase programs in an amount of up to Ps6.0 billion (nominal amount) implemented between April 2006 and April 2008. No shares were purchased under these programs.

In connection with our 2007 shareholders' meeting held on April 24, 2008, our shareholders approved a stock repurchase program in an amount of up to Ps6.0 billion (nominal amount) to be implemented between April 2008 and April 2009. No shares were repurchased under this program.

In connection with our 2008, 2009 and 2010 shareholders' meetings held on April 23, 2009, April 29, 2010, and February 24, 2011, respectively, no stock repurchase programs were submitted for the approval of our shareholders.

**Item 16F - Change in Registrant's Certifying Accountant**

Not applicable.

**Item 16G - Corporate Governance**

Section 303A.11 of the New York Stock Exchange ("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 |
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| **303A.01** | |
| Listed companies must have a majority of independent directors. | Pursuant to the Mexican Securities Market Law, we are 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 our directors is made upon their election by our shareholders at the corresponding meeting. Currently, our Board of Directors has 12 members and 3 alternate members, of which more than 25% are independent under the Mexican Securities Market Law.<br><br>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 |

| NYSE LISTING STANDARDS | CEMEX CORPORATE GOVERNANCE PRACTICE |
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| | 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 our 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 our 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 our bylaws. Our Corporate Practices Committee is composed of four 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 our bylaws and by the Mexican Laws and Regulations. |
| **303A.05** | |
| Listed companies must have a compensation committee composed of independent directors. | Under our bylaws and the Mexican Laws and Regulations, we are not required to have a compensation committee. We do not have such committee. |
| **303A.06** | |
| Listed companies must have an audit committee that satisfies the requirements of Rule 10A-3 under the Exchange Act. | Our Audit Committee operates pursuant to the provisions of the Mexican Securities Market Law and our bylaws.<br><br>Our Audit Committee is composed of four members. According to our by-laws, all of the members must be independent.<br><br>Our 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, |

| NYSE LISTING STANDARDS | CEMEX CORPORATE GOVERNANCE PRACTICE |
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| | 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>Our 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>Our Audit Committee meets as required by our bylaws and by the Mexican Laws and Regulations. |
| **303A.09**<br><br>Listed companies must adopt and disclose corporate governance guidelines. | Under our 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 *Bolsa Mexicana de Valores* (the "Mexican Stock Exchange") regarding our compliance with the Mexican Code of Best Corporate Practices. |
| **303A.10**<br><br>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. | We have 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**<br><br>Equity compensation plans require shareholder approval, subject to limited exemptions. | Shareholder approval is not expressly required under our bylaws for the adoption and amendment of an equity compensation plan. No equity compensation plans have been submitted for approval by our shareholders. |

## PART III

### Item 17 - Financial Statements

Not applicable.

### Item 18 - Financial Statements

See pages F-1 through F-82, incorporated herein by reference.

### Item 19 - Exhibits

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| 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. (j) |
| 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. (j) |
| 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. (j) |
| 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) |
| 4.1 | €250,000,000 and ¥19,308,000,000 Amended and Restated Term and Revolving Facilities Agreement, originally dated March 30, 2004, amended on October 10, 2006 and April 7, 2009, among CEMEX España, as borrower, Banco Bilbao Vizcaya Argentaria, S.A. and Société Générale, as mandated lead arrangers, and the several banks and other financial institutions named therein, as lenders. (i) |

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| 4.2 | U.S.$700,000,000 Amended and Restated Credit Agreement, dated June 6, 2005, among CEMEX, S.A.B. de C.V., as borrower and CEMEX México, S.A. de C.V. and Empresas Tolteca de México, S.A. de C.V., as guarantors, Barclays Bank PLC, as issuing bank and documentation agent, ING Bank N.V., as issuing bank, Barclays Capital, as joint bookrunner, and ING Capital LLC, as joint bookrunner and administrative agent. (g) |
| 4.2.1 | Amendment No. 1 to U.S.$700,000,000 Amended and Restated Credit Agreement, dated June 21, 2006. (g) |
| 4.2.2 | Amendment and Waiver Agreement to U.S.$700,000,000 Amended and Restated Credit Agreement, dated December 1, 2006. (g) |
| 4.2.3 | Amendment No. 3 to U.S.$700,000,000 Amended and Restated Credit Agreement, dated May 9, 2007. (g) |
| 4.2.4 | Amendment No. 4 to U.S.$700,000,000 Amended and Restated Credit Agreement, dated December 19, 2008. (i) |
| 4.2.5 | Amendment No. 5 to U.S.$700,000,000 Amended and Restated Credit Agreement, dated January 22, 2009. (i) |
| 4.3 | U.S.$2,300,000,000 Amended and Restated Term and Revolving Facilities Agreement, originally dated September 24, 2004, amended on November 8, 2004, February 25, 2005, July 7, 2005, June 30, 2006, December 18, 2008, for CEMEX España, S.A., as borrower, arranged by Citigroup Global Markets Limited and Goldman Sachs International with Citibank International PLC, as agent. (i) |
| 4.7 | U.S.$1,200,000,000 Term Credit Agreement, dated May 31, 2005, among CEMEX, S.A.B. de C.V., as borrower, CEMEX México, S.A. de C.V. and Empresas Tolteca de México, S.A. de C.V., as guarantor, Barclays Bank PLC, as administrative agent, Barclays Capital, as joint lead arranger and joint bookrunner, and Citigroup Global Markets Inc., as documentation agent, joint lead arranger and joint bookrunner. (f) |
| 4.7.1 | Amendment No. 1 to U.S.$1,200,000,000 Term Credit Agreement, dated June 19, 2006. (g) |
| 4.7.2 | Amendment and Waiver Agreement to U.S.$1,200,000,000 Term Credit Agreement, dated November 30, 2006. (g) |
| 4.7.3 | Amendment No. 3 to U.S.$1,200,000,000 Term Credit Agreement, dated May 9, 2007. (g) |
| 4.7.4 | Amendment No. 4 to U.S.$1,200,000,000 Term Credit Agreement, dated December 19, 2008. (i) |
| 4.7.5 | Amendment No. 5 to U.S.$1,200,000,000 Term Credit Agreement, dated January 22, 2009. (i) |
| 4.8 | U.S.$700,000,000 Amended and Restated Term and Revolving Facilities Agreement, originally dated June 27, 2005, amended on June 22, 2006, November 30, 2006, December 19, 2008 and January 23, 2009, for New Sunward Holding B.V., as borrower, CEMEX, S.A.B. de C.V., CEMEX México, S.A. de C.V. and Empresas Tolteca De México, S.A. de C.V., as guarantors, arranged by Banco Bilbao Vizcaya Argentaria, S.A., BNP Paribas and Citigroup Global Markets Limited, as mandated lead arrangers and joint bookrunners, the several financial institutions named therein, as Lenders, and Citibank, N.A., as agent. (i) |
| 4.9 | Amended and Restated Limited Liability Company Agreement of CEMEX Southeast LLC, dated July 1, 2005, among CEMEX Southeast LLC, CEMEX Southeast Holdings, LLC, Ready Mix USA, Inc. and CEMEX, Inc. (f) |
| 4.9.1 | Amendment No. 1 to Amended and Restated Limited Liability Company Agreement of CEMEX Southeast LLC, dated September 1, 2005, among CEMEX Southeast LLC, CEMEX Southeast Holdings, LLC, Ready Mix USA, Inc. and CEMEX, Inc. (f) |

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| 4.10 | Limited Liability Company Agreement of Ready Mix USA, LLC, dated July 1, 2005, among Ready Mix USA, LLC, CEMEX Southeast Holdings, LLC, Ready Mix USA, Inc. and CEMEX, Inc. (f) |
| 4.10.1 | Amendment No. 1 to Limited Liability Company Agreement of Ready Mix USA, LLC, dated September 1, 2005, among Ready Mix USA, LLC, CEMEX Southeast Holdings, LLC, Ready Mix USA, Inc. and CEMEX, Inc. (f) |
| 4.11 | Asset and Capital Contribution Agreement, dated July 1, 2005, among Ready Mix USA, Inc., CEMEX Southeast Holdings, LLC, and CEMEX Southeast LLC. (f) |
| 4.12 | Asset and Capital Contribution Agreement, dated July 1, 2005, among Ready Mix USA, Inc., CEMEX Southeast Holdings, LLC, and Ready Mix USA, LLC. (f) |
| 4.13 | Asset Purchase Agreement, dated September 1, 2005, between Ready Mix USA, LLC and RMC Mid-Atlantic, LLC. (f) |
| 4.14 | U.S.$1,200,000,000 Acquisition Facility Agreement, dated October 24, 2006, between CEMEX S.A.B. de C.V., as borrower, CEMEX México, S.A. de C.V. and Empresas Tolteca de México, S.A. de C.V., as guarantors, and BBVA Bancomer, S.A. Institución de Banca Múltiple, Grupo Financiero BBVA Bancomer, as agent. (g) |
| 4.15 | U.S.$6,000,000,000 Amended and Restated Acquisition Facilities Agreement, originally dated December 6, 2006, amended on January 27, 2007, December 19, 2008 and January 27, 2009, between CEMEX España, S.A., as borrower, Citigroup Global Markets Limited, The Royal Bank of Scotland PLC, and Banco Bilbao Vizcaya Argentaria, S.A. as mandated lead arrangers and joint bookrunners, as amended on December 21, 2006. (i) |
| 4.16 | Debenture Purchase Agreement, dated December 11, 2006, among C5 Capital (SPV) Limited, as issuer, CEMEX S.A.B. de C.V., CEMEX México, S.A. de C.V., New Sunward Holding B.V., New Sunward Holding Financial Ventures B.V., and J.P. Morgan Securities Inc, as representative of the several initial institutional purchasers named therein, in connection with the issuance by C5 Capital (SPV) Limited of U.S.$350,000,000 aggregate principal amount of 6.196% Fixed-to-Floating Rate Callable Perpetual Debentures. (g) |
| 4.17 | Debenture Purchase Agreement, dated December 11, 2006, among C10 Capital (SPV) Limited, as issuer, CEMEX S.A.B. de C.V., CEMEX México, S.A. de C.V., New Sunward Holding B.V., New Sunward Holding Financial Ventures B.V., and J.P. Morgan Securities Inc, as representative of the several initial institutional purchasers named therein, in connection with the issuance by C10 Capital (SPV) Limited (CEMEX, S.A.B. de C.V.) of U.S.$900,000,000 aggregate principal amount of 6.722% Fixed-to-Floating Rate Callable Perpetual Debentures. (g) |
| 4.18 | 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. (j) |
| 4.18.1 | 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 México, 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. (j) |
| 4.18.2 | 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 México, 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 México, 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. (j)

4.19 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. (j)

4.19.1 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 México, 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. (j)

4.19.2 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 México, 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 México, 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. (j)

4.20 Debenture Purchase Agreement, dated February 6, 2007, among C8 Capital (SPV) Limited, as issuer, CEMEX S.A.B. de C.V., CEMEX México, S.A. de C.V., New Sunward Holding B.V., New Sunward Holding Financial Ventures B.V., and J.P. Morgan Securities Inc, as representative of the several initial institutional purchasers named therein, in connection with the issuance by C8 Capital (SPV) Limited of U.S.$750,000,000 aggregate principal amount of 6.640% Fixed-to-Floating Rate Callable Perpetual Debentures. (g)

4.21 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. (j)

4.21.1 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 México, 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. (j)

4.21.2 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 México, 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 México, 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

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| | Dual-Currency Notes. (j) |
| 4.22 | Trust Deed, dated February 28, 2007, among CEMEX Finance Europe B.V., as issuer, and several institutional purchasers, relating to the issuance by CEMEX Finance Europe B.V. of €900,000,000 aggregate principal amount of 4.75% Notes due 2014. (g) |
| 4.23 | Bid Agreement, dated April 9, 2007, among CEMEX, S.A.B. de C.V., CEMEX Australia Pty Ltd and Rinker Group Limited. (g) |
| 4.24 | Debenture Purchase Agreement, dated May 3, 2007, among C10-EUR Capital (SPV) Limited, as issuer, CEMEX S.A.B. de C.V., CEMEX México, S.A. de C.V., New Sunward Holding B.V., New Sunward Holding Financial Ventures B.V., and the institutional purchasers named therein, in connection with the issuance by C10-EUR Capital (SPV) Limited of €730,000,000 aggregate principal amount of 6.277% Fixed-to-Floating Rate Callable Perpetual Debentures. (g) |
| 4.25 | 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. (j) |
| 4.25.1 | 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 México, 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. (j) |
| 4.25.2 | 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 México, 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 México, 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. (j) |
| 4.26 | U.S.$525,000,000 Senior Unsecured Maturity Loan "A" Agreement, dated December 31, 2008, among New Sunward Holding B.V. as borrower, CEMEX S.A.B. de C.V. and CEMEX México, S.A. de C.V., as guarantors, and a group of banks as lenders, HSBC Securities (USA) Inc., Banco Santander S.A. and The Royal Bank of Scotland Plc, as joint lead arrangers and Joint Bookrunners, and ING Capital LLC, as administrative agent. (i) |
| 4.27.1 | Amendment No. 1 to U.S.$525,000,000 Senior Unsecured Maturity Loan "A" Agreement, dated January 22, 2009. (i) |
| 4.27.2 | U.S.$525,000,000 Senior Unsecured Maturity Loan "B" Agreement, dated December 31, 2008, among New Sunward Holding B.V. as borrower, CEMEX S.A.B. de C.V. and CEMEX México, S.A. de C.V., as guarantors, and a group of banks as lenders, HSBC Securities (USA) Inc., Banco Santander S.A. and The Royal Bank of Scotland Plc, as joint lead arrangers and Joint Bookrunners, and ING Capital LLC, as administrative agent. (i) |
| 4.27.3 | Amendment No. 1 to U.S.$525,000,000 Senior Unsecured Maturity Loan "B" Agreement, dated January 22, 2009. (i) |

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| 4.28 | Forward Transaction (CEMEX Shares) Confirmation, Forward Transaction (NAFTRAC Shares) and Put Option Transaction Confirmation, with Credit Support Annex, each dated April 23, 2008, between Citibank, N.A. and a Mexican trust established by CEMEX on behalf of CEMEX's Mexican pension fund and certain of CEMEX's directors and current and former employees. (h) |
| 4.29 | Structured Transaction, dated June 2008, comprised of: (i) U.S.$500 million Credit Agreement, dated June 25, 2008, among CEMEX, S.A.B. de C.V., as borrower, CEMEX México S.A. de C.V, as guarantor, and Banco Bilbao Vizcaya Argentaria, S.A. New York Branch, as lender; (ii) U.S.$500 million aggregate notional amount of Put Spread Option Confirmations, dated June 3, 2008 and June 5, 2008, between Centro Distribuidor de Cemento, S.A. de C.V. and Banco Santander, S.A., Institución de Banca Múltiple, Grupo Financiero Santander; and (iii) Framework Agreement, dated June 25, 2008, by and among CEMEX, S.A.B. de C.V., CEMEX México S.A. de C.V, Banco Santander (Mexico), S.A., Institución de Banca Múltiple, Grupo Financiero Santander and Banco Bilbao Vizcaya Argentaria, S.A. New York Branch. (h) |
| 4.30.1 | Amendment No. 1 to U.S.$500 million Credit Agreement, dated December 18, 2008. (i) |
| 4.30.2 | Amendment No. 2 to U.S.$500 million Credit Agreement, dated January 22, 2009. (i) |
| 4.31 | U.S.$437,500,000.00 and Ps4,773,282,950.00 Credit Agreement, dated January 27, 2009 among CEMEX, S.A.B. de C.V., as borrower, CEMEX México, S.A. de C.V. and CEMEX Concretos, S.A. de C.V., as guarantors, and a group of banks, as lenders, BBVA Bancomer, S.A., Institución de Banca Múltiple, Grupo Financiero BBVA Bancomer, as administrative agent, and BBVA Bancomer, S.A., Institución De Banca Múltiple, Grupo Financiero BBVA Bancomer, Citigroup Global Markets Inc., HSBC Securities (USA) Inc., Santander Investment Securities Inc., and The Royal Bank of Scotland PLC, each a joint arranger and joint bookrunner. (i) |
| 4.32 | U.S.$617,500,000 and €587,500,000 Facilities Agreement dated January 27, 2009, and among CEMEX España, S.A., as the obligors and original guarantors; Banco Santander, S.A. and The Royal Bank of Scotland PLC, as coordinators, financial institutions, as lenders; and The Royal Bank of Scotland PLC, as agent. (i) |
| 4.33 | Financing Agreement for CEMEX, S.A.B. de C.V., dated August 14, 2009, with the financial institutions and noteholders named therein as Participating Creditors and Citibank International plc acting as Administrative Agent and Wilmington Trust (London) Limited acting as Security Agent. (j) |
| 4.33.1 | Amendment Agreement, dated December 1, 2009, between CEMEX, S.A.B. de C.V. acting for itself and as agent on behalf of each Obligor and Citibank International plc acting for itself and as Administrative Agent on behalf of the Financing Parties, related to the Financing Agreement, dated August 14, 2009. (j) |
| 4.33.2 | Amendment Agreement, dated March 18, 2010, between CEMEX, S.A.B. de C.V. acting for itself and as agent on behalf of each Obligor and Citibank International plc acting for itself and as Administrative Agent on behalf of the Financing Parties, related to the Financing Agreement, dated August 14, 2009. (j) |
| 4.33.3 | Amendment Agreement, dated October 25, 2010, between CEMEX, S.A.B. de C.V. acting for itself and as agent on behalf of each Obligor and Citibank International plc acting for itself and as Administrative Agent on behalf of the Financing Parties, related to the Financing Agreement, dated August 14, 2009. (k) |
| 4.33.4 | Amendment Agreement, dated April 13, 2011, between CEMEX, S.A.B. de C.V. acting for itself and as agent on behalf of each Obligor and Citibank International plc acting for itself and as Administrative Agent on behalf of the Financing Parties, related to the Financing Agreement, dated August 14, 2009. (k) |
| 4.33.5 | Amended and Restated Financing Agreement for CEMEX, S.A.B. de C.V., dated August 14, 2009, with the financial institutions and noteholders named therein as Participating Creditors and Citibank International plc acting as Administrative Agent and Wilmington Trust (London) Limited acting as Security Agent. (k) |

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| 4.34 | Omnibus Amendment and Waiver Agreement, dated August 14, 2009, by and among CEMEX, S.A.B. de C.V., New Sunward Holding B.V. CEMEX Materials, LLC, as borrowers, CEMEX México, S.A. de C.V., Empresas Tolteca de México, S.A. de C.V., CEMEX Concretos, S.A. de C.V., CEMEX España, S.A. as guarantors, the financial institutions listed therein in their capacities as lenders under certain Existing Agreements (as defined therein) and the financial institutions listed in therein in their capacity as administrative agents under certain Existing Agreements. (j) |
| 4.35 | Intercreditor Agreement, dated August 14, 2009, by and among Citibank International plc as Administrative Agent, The Participating 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 Wilmington Trust (London) Limited acting as Security Agent and others. (j) |
| 4.35.1 | Conformed copy of the Intercreditor Agreement dated August 14, 2009 incorporating amendments agreed on December 1, 2009 between CEMEX S.A.B. de C.V. acting for itself and as agent for each Obligor, and Citibank International plc acting for itself and as Administrative Agent on behalf of the Financing Parties, and Wilmington Trust (London) Limited acting as Security Agent. (j) |
| 4.35.2 | Conformed copy of the Intercreditor Agreement dated August 14, 2009 incorporating amendments agreed on December 1, 2009 and October 25, 2010 between CEMEX S.A.B. de C.V. acting for itself and as agent for each Obligor, and Citibank International plc acting for itself and as Administrative Agent on behalf of the Financing Parties, and Wilmington Trust (London) Limited acting as Security Agent. (k) |
| 4.36 | Consolidated Amended and Restated Note Purchase Agreement, dated August 14, 2009, relating to CEMEX España Finance LLC's U.S.$882,407,495.57 8.91% Senior Notes, Series A, due 2014 and ¥1,185,389,696.06 6.625% Senior Notes, Series B, due 2014. (j) |
| 4.37 | Amended and Restated Consolidated Note Guarantee, dated August 14, 2009, relating to CEMEX España Finance LLC's U.S.$882,407,495.57 8.91% Senior Notes, Series A, due 2014 and ¥1,185,389,696.06 6.625% Senior Notes, Series B, due 2014. (j) |
| 4.38 | Deed of Pledge of Registered Shares, dated August 14, 2009, by and among CEMEX Dutch Holdings B.V., Sunward Holdings B.V., Sunward Acquisitions N.V., CEMEX International Finance Company, Corporación Gouda S.A. de C.V, Mexcement Holdings S.A. de C.V, New Sunward Holding B.V, and Wilmington Trust (London) Limited as Security Agent concerning the she shares of New Sunward Holding B.V. (j) |
| 4.38.1 | Deed of Supplemental Pledge of Registered Shares, dated October 23, 2009, by and among CEMEX Dutch Holdings B.V., Sunward Holdings B.V., Sunward Acquisitions N.V., CEMEX International Finance Company, Corporación Gouda S.A. de C.V,, Mexcement Holdings S.A. de C.V, New Sunward Holding B.V, and Wilmington Trust (London) Limited as Security Agent concerning the she shares of New Sunward Holding B.V. (j) |
| 4.39 | Share Pledge Agreement, dated August 14, 2009, by and among CEMEX S.A.B. de C.V., CEMEX México, S.A. de C.V., Interamerican Investments Inc., Empresas Tolteca de México, S.A. de C.V. as Pledgors and Wilmington Trust (London) Limited as Security Agent concerning 99.57% of the shares of CEMEX Trademarks Holding Ltd. (j) |
| 4.40 | Deed of Pledge of Registered Shares, dated September 4, 2009, by and among CEMEX S.A.B. de C.V., CEMEX México, S.A. de C.V. , Interamerican Investments Inc., Empresas Tolteca de México, S.A. de C.V. as Pledgors and Wilmington Trust (London) Limited as Security Agent concerning 99.57% of the shares of CEMEX Trademarks Holding Ltd. (j) |
| 4.41 | Irrevocable Mexican Security Trust Agreement, dated September 3, 2009, 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., and Centro Distribuidor de Cemento, S.A. de C.V., as settlors; CEMEX México, S.A. de C.V., 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; Banco Nacional de México, S.A., Integrante del Grupo |

Financiero Banamex, División Fiduciaria, in its capacity as trustee; and Wilmington Trust (London) Limited, on its own behalf and in its capacity as Security Agent. (j)

4.41.1 Accession Letter, dated December 14, 2009, among 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., and Centro Distribuidor de Cemento, S.A. de C.V, Banco Nacional de México, S.A., Integrante del Grupo Financiero Banamex, División Fiduciaria, and Wilmington Trust (London) Limited, relating to CEMEX Finance LLC's U.S.$1,250,000,000 of 9.50% senior secured notes due December 14, 2016, and €350,000,000 of 9.625% senior secured notes due December 14, 2017, guaranteed by CEMEX SAB, CEMEX México, Tolteca, CEMEX Concretos, S.A. de C.V., CEMEX España, S.A., CEMEX Corp. and New Sunward Holding B.V. (j)

4.41.2 Accession Letter, dated January 19, 2010, among 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., and Centro Distribuidor de Cemento, S.A. de C.V, Banco Nacional de México, S.A., Integrante del Grupo Financiero Banamex, División Fiduciaria, and Wilmington Trust (London) Limited, relating to CEMEX Finance LLC's U.S.$500,000,000 of 9.50% senior secured notes due December 14, 2016, guaranteed by CEMEX SAB, CEMEX México, Tolteca, CEMEX Concretos, S.A. de C.V., CEMEX España, S.A., CEMEX Corp. and New Sunward Holding B.V. (j)

4.41.3 Accession Letter, dated May 12, 2010, among 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., and Centro Distribuidor de Cemento, S.A. de C.V, Banco Nacional de México, S.A., Integrante del Grupo Financiero Banamex, División Fiduciaria, and Wilmington Trust (London) Limited, relating to CEMEX España, S.A., acting through its Luxembourg Branch's, U.S.$1,067,665,000 of 9.25% senior secured notes due 2020, and €115,346,000 of 8.875% senior secured notes due 2017. (j)

4.41.4 Accession Letter, dated January 11, 2011, among 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., and Centro Distribuidor de Cemento, S.A. de C.V, Banco Nacional de México, S.A., Integrante del Grupo Financiero Banamex, División Fiduciaria, and Wilmington Trust (London) Limited, relating to the issuance by CEMEX of U.S.$1,000,000,000 9.000% Senior Secured Notes due 2018. (k)

4.41.5 Accession Letter, dated March 4, 2011, among 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., and Centro Distribuidor de Cemento, S.A. de C.V, Banco Nacional de México, S.A., Integrante del Grupo Financiero Banamex, División Fiduciaria, and Wilmington Trust (London) Limited relating to the private placement offer to exchange €119,350,000 aggregate principal amount of 6.277% Fixed-to-Floating Rate Callable Perpetual Debentures issued by C-10 EUR Capital (SPV) Limited for an additional U.S.$125,331,000 aggregate principal amount of the Company's 9.25% U.S. Dollar-Denominated Senior Secured Notes due 2020 to be issued under the Indenture, dated as of May 12, 2010. (k)

4.41.6 Accession Letter, dated April 5, 2011, among 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., and Centro Distribuidor de Cemento, S.A. de C.V, Banco Nacional de México, S.A., Integrante del Grupo Financiero Banamex, División Fiduciaria, and Wilmington Trust (London) Limited relating to the issuance by CEMEX of U.S.$800,000,000 Floating Rate Senior Secured Notes due 2015. (k)

4.42 Underwriting Agreement, dated September 22, 2009, by and among CEMEX, S.A.B. de C.V. and J.P. Morgan Securities Inc, Citigroup Global Markets Inc., and Santander Investment Securities, as Representatives of the several Underwriters listed in Schedule 1 thereto, relating to CEMEX, S.A.B. de C.V.'s 975,000,000 CPOs. (j)

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| 4.43 | Underwriting Agreement, dated September 22, 2009, by and among Acciones y Valores Banamex, S.A. de C.V., Casa de Bolsa, a company of Grupo Financiero Banamex,, J.P. Morgan Casa de Bolsa, S.A. de C.V., J.P. Morgan Grupo Financiero, Casa de Bolsa Santander, S.A. de C.V., Grupo Financiero Santander, Casa de Bolsa BBVA Bancomer, S.A. de C.V., Grupo Financiero BBVA Bancomer, and HSBC Casa de Bolsa, S.A. de C.V., Grupo Financiero HSBC , CEMEX, S.A.B. de C.V., Centro Distribuidor de Cemento, S.A. de C.V., Empresas Tolteca de Mexico, S.A. de C.V. and Petrocemex, S.A. de C.V, relating to CEMEX, S.A.B. de C.V.'s 1,495,000,000 CPOs. (j) |
| 4.44 | Share Pledge Agreement, dated September 29, 2009, by and among New Sunward Holding B.V., CEMEX, S.A.B. de C.V., Sunward Acquisitions N.V. as Pledgors, Wilmington Trust (London) Limited, as Security Agent and the Secured Parties concerning the shares of CEMEX España, S.A. (j) |
| 4.44.1 | Accession Deed, dated December 2, 2009, 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 Finance LLC of U.S.$1,250,000,000 9.5% Senior Secured Notes due 2016. (j) |
| 4.44.2 | Accession Deed, dated December 14, 2009, 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 Finance LLC of €350,000,000 9.625% Senior Secured Notes due 2017. (j) |
| 4.44.3 | Accession Deed, dated January 19, 2010, 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 Finance LLC of U.S.$500,000,000 9.50% Senior Secured Notes due 2016. (j) |
| 4.44.4 | Accession Deed, dated May 12, 2010, concerning the shares of CEMEX España, S.A., issued by The Bank of New York Mellon, as Trustee, and CEMEX España, S.A., relating to 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. (j) |
| 4.44.5 | Extension and Creation of Share Pledge Agreement, dated December 23, 2010 by among New Sunward Holding B.V., CEMEX, S.A.B. de C.V., Sunward Acquisitions N.V. as Pledgors, Wilmington Trust (London) Limited, as Security Agent and the Secured Parties concerning the shares of CEMEX España, S.A. (k) |
| 4.44.6 | Accession Deed, dated January 11, 2011, 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 of U.S.$1,000,000,000 9.000% Senior Secured Notes due 2018. (k) |
| 4.44.7 | Accession Deed, dated March 4, 2011, 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 private placement offer to exchange €119,350,000 aggregate principal amount of 6.277% Fixed-to-Floating Rate Callable Perpetual Debentures issued by C-10 EUR Capital (SPV) Limited for an additional U.S.$125,331,000 aggregate principal amount of the Company's 9.25% U.S. Dollar-Denominated Senior Secured Notes due 2020 to be issued under the Indenture, dated as of May 12, 2010. (k) |
| 4.44.8 | Accession Deed, dated April 5, 2011, 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 of U.S.$800,000,000 Floating Rate Senior Secured Notes due 2015. (k) |
| 4.45 | Underwriting Agreement (*Contrato de Colocación*), dated as of December 3, 2009, by and among CEMEX, S.A.B. de C.V. as issuer, Casa de Bolsa Santander, S.A. de C.V., Grupo Financiero Santander, HSBC Casa de Bolsa, S.A. de C.V., Grupo Financiero HSBC, Acciones y Valores Banamex, S.A. de C.V., Casa de Bolsa, Integrante del Grupo Financiero Banamex, Casa de Bolsa BBVA Bancomer, S.A. de C.V., Grupo Financiero BBVA, as underwriters in connection with the issuance by CEMEX, S.A.B. de C.V. of Mandatory Convertible Bonds. (j) |

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| 4.46 | Purchase Agreement, dated December 9, 2009, between CEMEX Finance LLC, as issuer, the Note Guarantors party thereto and several institutional purchasers named therein, in connection with the issuance by CEMEX Finance LLC of U.S.$1,250,000,000 9.5% Senior Secured Notes due 2016. (j) |
| 4.47 | Purchase Agreement, dated December 9, 2009, between CEMEX Finance LLC, as issuer, the Note Guarantors party thereto and several institutional purchasers named therein, in connection with the issuance by CEMEX Finance LLC of €350,000,000 9.625% Senior Secured Notes Due 2017. (j) |
| 4.48 | 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 by CEMEX, S.A.B. de C.V., of Mandatory Convertible Bonds. (j) |
| 4.49 | Indenture, dated December 14, 2009, among CEMEX Finance LLC, the Note Guarantors party thereto and the Bank of New York Melon, as Trustee relating to the issuance by CEMEX Finance LLC of €350,000,000 9.625% Senior Secured Notes Due 2017. (j) |
| 4.50 | Indenture, dated December 14, 2009, among CEMEX Finance LLC, the Note Guarantors party thereto and the Bank of New York Melon, as Trustee relating to the issuance by CEMEX Finance LLC of U.S.$1,250,000,000 9.5% Senior Secured Notes due 2016. (j) |
| 4.50.1 | Supplemental Indenture No. 1, dated January 19, 2010, among CEMEX Finance LLC, the Note Guarantors party thereto, and The Bank of New York Mellon, as trustee relating to the issuance by CEMEX Finance LLC of U.S.$500,000,000 9.5% Senior Secured Notes due 2016. (j) |
| 4.51 | Purchase Agreement, dated January 13, 2010, among CEMEX Finance LLC, as issuer, and several institutional purchasers named therein, in connection with the issuance by CEMEX Finance LLC of U.S.$500,000,000 9.50% Senior Secured Notes due 2016. (j) |
| 4.52 | Purchase Agreement, dated March 24, 2010, among CEMEX, S.A.B. de C.V. as issuer, and several institutional purchasers named therein, in connection with the issuance by CEMEX, S.A.B. de C.V. of U.S.$715,000,000 4.875% Convertible Subordinated Notes due 2015. (j) |
| 4.53 | 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. (j) |
| 4.55 | 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. (j) |
| 4.56 | 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.(j) |
| 4.57 | Amended and Restated Dealer Manager Agreement, dated May 6, 2010, among CEMEX, S.A.B. de C.V., CEMEX México, S.A. de C.V., New Sunward Holding B.V., 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) Ltd., C8 Capital (SPV) Ltd., C10 Capital (SPV) Ltd., and C-10 Capital (SPV) Ltd. (collectively, the Capital SPVs) in connection with the offers to exchange any and all of the outstanding fixed-to-floating rate callable perpetual debentures, issued by the Capital SPVs, for 9.25% U.S. Dollar-denominated senior secured notes due 2020, in the case of the USD Exchange Offers and 8.875% Euro-denominated senior secured notes due 2017, issued by CEMEX España, S.A., acting through its Luxembourg branch. (j) |

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| 4.58 | Indenture, dated May 12, 2010, among CEMEX España acting through its 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, with respect to 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. (j) |
| 4.59 | Purchase Agreement, dated January 4, 2011, among CEMEX, S.A.B de C.V., as issuer, the Note Guarantors party thereto and several institutional purchasers named therein, in connection with the issuance by CEMEX S.A.B. de C.V. of U.S.$1,000,000,000 9.000% Senior Secured Notes due 2018. (k) |
| 4.60 | Indenture, dated January 11, 2011, among CEMEX, S.A.B. de C.V., the Note Guarantors party thereto and the Bank of New York Melon, as Trustee relating to the issuance by CEMEX, S.A.B. de C.V. of U.S.$1,000,000,000 9.000% Senior Secured Notes due 2018. (k) |
| 4.61 | Purchase Agreement, dated March 9, 2011, among CEMEX, S.A.B. de C.V. as issuer, and several institutional purchasers named therein, in connection with the issuance by CEMEX, S.A.B. de C.V. of U.S.$800,000,000 3.25% Convertible Subordinated Notes due 2016. (k) |
| 4.62 | Purchase Agreement, dated March 9, 2011, among CEMEX, S.A.B. de C.V. as issuer, and several institutional purchasers named therein, in connection with the issuance by CEMEX, S.A.B. de C.V. of U.S.$600,000,000 3.75% Convertible Subordinated Notes due 2018. (k) |
| 4.63 | 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. (k) |
| 4.64 | 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. (k) |
| 4.65 | 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. (k) |
| 4.66 | 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. (k) |
| 4.67 | 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. (k) |
| 4.68 | 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. (k) |
| 4.69 | 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. (k) |

| | |
|---|---|
| 4.70 | Purchase Agreement, dated March 29, 2011, among CEMEX, S.A.B de C.V., as issuer, the Note Guarantors party thereto and several institutional purchasers named therein, in connection with the issuance by CEMEX S.A.B. de C.V. of U.S.$800,000,000 Floating Rate Senior Secured Notes due 2015. (k) |
| 4.71 | Indenture, dated April 5, 2011, among CEMEX, S.A.B. de C.V., the Note Guarantors party thereto and the Bank of New York Melon, as Trustee relating to the issuance by CEMEX, S.A.B. de C.V. of U.S.$800,000,000 Floating Rate Senior Secured Notes due 2015. (k) |
| 8.1 | List of subsidiaries of CEMEX, S.A.B. de C.V. (k) |
| 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. (k) |
| 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. (k) |
| 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. (k) |
| 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 1933 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. (k) |

(a) Incorporated by reference to Form 6-K of CEMEX, S.A.B. de C.V., filed with the Securities and Exchange Commission on March 3, 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 Securities and Exchange Commission 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 Securities and Exchange Commission on April 8, 2003.
(d) Incorporated by reference to the 2003 annual report on Form 20-F of CEMEX, S.A.B. de C.V. filed with the Securities and Exchange Commission on May 11, 2004.
(e) Incorporated by reference to the 2004 annual report on Form 20-F of CEMEX, S.A.B. de C.V. filed with the Securities and Exchange Commission on May 27, 2005.
(f) Incorporated by reference to the 2005 annual report on Form 20-F of CEMEX, S.A.B. de C.V. filed with the Securities and Exchange Commission on June 8, 2006.
(g) Incorporated by reference to the 2006 annual report on Form 20-F of CEMEX, S.A.B. de C.V. filed with the Securities and Exchange Commission on June 27, 2007.
(h) Incorporated by reference to the 2007 annual report on Form 20-F of CEMEX, S.A.B. de C.V. filed with the Securities and Exchange Commission on June 30, 2008.
(i) Incorporated by reference to the 2008 annual report on Form 20-F of CEMEX, S.A.B. de C.V. filed with the Securities and Exchange Commission on June 30, 2009.
(j) Incorporated by reference to the 2009 annual report on Form 20-F of CEMEX, S.A.B. de C.V. filed with the Securities and Exchange Commission on June 30, 2010.
(k) 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.

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## 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: June 16, 2011

## INDEX TO AUDITED CONSOLIDATED FINANCIAL STATEMENTS

## 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, 2010 and 2009, and the related consolidated statements of operations, stockholders' equity, and cash flows for each of the years in the three-year period ended December 31, 2010. 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) and with auditing standards generally accepted in Mexico. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement and are prepared in accordance with Mexican Financial Reporting Standards. 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, 2010 and 2009, and the results of their operations, the changes in their stockholders' equity, and their cash flows for each of the years in the three-year period ended December 31, 2010, in conformity with Mexican Financial Reporting Standards.

Mexican Financial Reporting Standards vary in certain significant respects from U.S. generally accepted accounting principles. Information relating to the nature and effect of such differences is presented in note 24 to the consolidated financial statements.

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, 2010, 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 May 23, 2011 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
May 23, 2011

## 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, 2010, 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.'s 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, 2010, based on criteria established in Internal Control – Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) and with auditing standards generally accepted in Mexico, the consolidated balance sheets of CEMEX, S.A.B. de C.V. and subsidiaries as of December 31, 2010 and 2009, and the related consolidated statements of operations, changes in stockholders' equity, and cash flows for each of the years in the three-year period ended December 31, 2010, and our report dated May 23, 2011 expressed an unqualified opinion on those consolidated financial statements.

KPMG Cárdenas Dosal, S.C.

/s/ Celin Zorrilla Rizo

Monterrey, N.L. Mexico
May 23, 2011

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Consolidated Balance Sheets**
**(Millions of Mexican pesos)**

| | Note | December 31, 2010 | 2009 |
|---|---|---|---|
| **ASSETS** | | | |
| **CURRENT ASSETS** | | | |
| Cash and investments | **4** | Ps 8,354 | 14,104 |
| Trade receivables less allowance for doubtful accounts | **5** | 12,193 | 13,383 |
| Other accounts receivable | **6** | 16,124 | 9,340 |
| Inventories, net | **7** | 15,544 | 17,191 |
| Other current assets | **8** | 2,352 | 2,752 |
| Total current assets | | 54,567 | 56,770 |
| **NON-CURRENT ASSETS** | | | |
| Investments in associates | **9A** | 8,261 | 10,895 |
| Other investments and non-current accounts receivable | **9B** | 14,914 | 21,249 |
| Property, machinery and equipment, net | **10** | 231,458 | 258,863 |
| Goodwill, intangible assets and deferred charges, net | **11** | 205,897 | 234,509 |
| Total non-current assets | | 460,530 | 525,516 |
| **TOTAL ASSETS** | | **Ps 515,097** | **582,286** |
| **LIABILITIES AND STOCKHOLDERS' EQUITY** | | | |
| **CURRENT LIABILITIES** | | | |
| Short-term debt including current maturities of long-term debt | **12A** | Ps 5,637 | 7,393 |
| Other financial obligations | **12A** | 115 | 375 |
| Trade payables | | 18,686 | 18,194 |
| Other accounts payable and accrued expenses | **13** | 30,681 | 23,251 |
| Total current liabilities | | 55,119 | 49,213 |
| **NON-CURRENT LIABILITIES** | | | |
| Long-term debt | **12A** | 197,181 | 203,751 |
| Other financial obligations | **12A** | 1,887 | 1,715 |
| Employee benefits | **14** | 7,583 | 7,458 |
| Deferred income taxes | **15B** | 17,147 | 32,642 |
| Other non-current liabilities | **13** | 22,480 | 29,937 |
| Total non-current liabilities | | 246,278 | 275,503 |
| **TOTAL LIABILITIES** | | **301,397** | **324,716** |
| **STOCKHOLDERS' EQUITY** | | | |
| Controlling interest: | | | |
| Common stock and additional paid-in capital | **16A** | 108,722 | 102,924 |
| Other equity reserves | **16B** | 22,180 | 28,484 |
| Retained earnings | **16C** | 79,790 | 81,056 |
| Net (loss) income | | (16,516) | 1,409 |
| Total controlling interest | | 194,176 | 213,873 |
| Non-controlling interest and perpetual debentures | **16D** | 19,524 | 43,697 |
| **TOTAL STOCKHOLDERS' EQUITY** | | **213,700** | **257,570** |
| **TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY** | | **Ps 515,097** | **582,286** |

The accompanying notes are part of these consolidated financial statements.

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Consolidated Statements of Operations**
**(Millions of Mexican pesos, except for earnings (loss) per share)**

| | Note | Years ended December 31, 2010 | 2009 | 2008 |
|---|---|---|---|---|
| Net sales | 2P | Ps 178,260 | 197,801 | 225,665 |
| Cost of sales | 2Q | (128,307) | (139,672) | (153,965) |
| **Gross profit** | | **49,953** | **58,129** | **71,700** |
| Administrative and selling expenses | | (25,871) | (28,611) | (32,262) |
| Distribution expenses | | (13,239) | (13,678) | (13,350) |
| Total operating expenses | 2Q | (39,110) | (42,289) | (45,612) |
| **Operating income** | | **10,843** | **15,840** | **26,088** |
| Other expenses, net | 2S | (6,672) | (5,529) | (21,403) |
| **Operating income after other expenses, net** | | **4,171** | **10,311** | **4,685** |
| Comprehensive financing result: | | | | |
| Financial expense | 12 | (16,302) | (13,513) | (10,199) |
| Financial income | | 439 | 385 | 513 |
| Results from financial instruments | 12 | (956) | (2,127) | (15,172) |
| Foreign exchange results | | 926 | (266) | (3,886) |
| Monetary position result | 2R | 266 | 415 | 418 |
| Comprehensive financing result | | (15,627) | (15,106) | (28,326) |
| Equity in income of associates | | (524) | 154 | 869 |
| **Loss before income tax** | | **(11,980)** | **(4,641)** | **(22,772)** |
| Income tax | 15 | (4,509) | 10,566 | 22,998 |
| **Income (loss) before discontinued operations** | | **(16,489)** | **5,925** | **226** |
| Discontinued operations | 3B | — | (4,276) | 2,097 |
| Consolidated net income (loss) | | (16,489) | 1,649 | 2,323 |
| Non-controlling interest net income | | 27 | 240 | 45 |
| **CONTROLLING INTEREST NET INCOME (LOSS)** | | **Ps (16,516)** | **1,409** | **2,278** |
| **BASIC EARNINGS (LOSS) PER SHARE OF CONTINUING OPERATIONS** | 18 | **Ps (0.55)** | **0.21** | **0.01** |
| **Basic earnings (loss) per share of discontinued operations** | 18 | **Ps —** | **(0.16)** | **0.08** |
| **DILUTED EARNINGS (LOSS) PER SHARE OF CONTINUING OPERATIONS** | 18 | **Ps —** | **0.21** | **0.01** |
| **Diluted earnings (loss) per share of discontinued operations** | 18 | **Ps —** | **(0.16)** | **0.08** |

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 | Years ended December 31, 2010 | 2009 | 2008 |
|---|---|---|---|---|
| **OPERATING ACTIVITIES** | | | | |
| **Consolidated net income (loss)** | | **Ps (16,489)** | **1,649** | **2,323** |
| **Discontinued operations** | | — | (4,276) | 2,097 |
| **Net income (loss) from continuing operations** | | **(16,489)** | **5,925** | **226** |
| Non-cash items: | | | | |
| Depreciation and amortization of assets | **10 and 11** | 18,474 | 20,313 | 19,699 |
| Impairment losses | **2S** | 1,904 | 889 | 21,125 |
| Equity in income (loss) of associates | **9A** | 524 | (154) | (869) |
| Other expenses (income), net | | 1,499 | 9,015 | (4,728) |
| Comprehensive financing result | | 15,627 | 15,106 | 28,326 |
| Income taxes | **15** | 4,509 | (10,566) | (22,998) |
| Changes in working capital, excluding income taxes | | 100 | (2,599) | 1,299 |
| **Net cash flows provided by continuing operations before income taxes** | | 26,148 | 37,929 | 42,080 |
| Income taxes paid in cash | | (4,310) | (4,201) | (3,625) |
| **Net cash flows provided by continuing operations** | | **21,838** | **33,728** | **38,455** |
| **Net cash flows provided by discontinued operations** | | — | 1,023 | 2,817 |
| **Net cash flows provided by operating activities** | | **21,838** | **34,751** | **41,272** |
| **INVESTING ACTIVITIES** | | | | |
| Property, machinery and equipment, net | **10** | (4,726) | (6,655) | (20,511) |
| Disposal of subsidiaries and associates, net | **9 and 11** | 1,172 | 21,115 | 10,845 |
| Intangible assets and other deferred charges | **11** | 117 | (8,440) | (1,975) |
| Long term assets and others, net | | 1,575 | 186 | (1,622) |
| **Net cash flows (used in) provided by investing activities of continuing operations** | | **(1,862)** | **6,206** | **(13,263)** |
| **Net cash flows used in investing activities of discontinued operations** | | — | (491) | (1,367) |
| **Net cash flows (used in) provided by investing activities** | | **(1,862)** | **5,715** | **(14,630)** |
| **FINANCING ACTIVITIES** | | | | |
| Issuance of common stock | **16A** | 5 | 23,953 | — |
| Financial expense paid in cash including coupons on perpetual debentures | **16D** | (14,968) | (14,607) | (11,784) |
| Derivative instruments | | 69 | (8,513) | (9,909) |
| Dividends paid | **16A** | — | — | (215) |
| Repayment of debt, net | **12A** | (9,615) | (35,812) | (3,611) |
| Non-current liabilities, net | | 122 | (2,795) | 1,471 |
| **Net cash flows used in financing activities of continuing operations** | | **(24,387)** | **(37,774)** | **(24,048)** |
| **Net cash flows provided by financing activities of discontinued operations** | | — | 628 | 359 |
| **Net cash flows used in financing activities** | | **(24,387)** | **(37,146)** | **(23,689)** |
| Increase (decrease) in cash and investments of continuing operations | | (4,411) | 2,160 | 1,144 |
| Increase in cash and investments of discontinued operations | | — | 1,160 | 1,809 |
| Cash conversion effect, net | | (1,339) | (2,116) | 1,277 |
| Cash and investments at beginning of year | | 14,104 | 12,900 | 8,670 |
| **CASH AND INVESTMENTS AT END OF YEAR** | **4** | **Ps 8,354** | **14,104** | **12,900** |
| **Changes in working capital, excluding income taxes:** | | | | |
| Trade receivables, net | | Ps 477 | 3,530 | 3,897 |
| Other accounts receivable and other assets | | (2,666) | 510 | 825 |
| Inventories | | 396 | 3,911 | (630) |
| Trade payables | | 1,599 | (2,422) | (2,931) |
| Other accounts payable and accrued expenses | | 294 | (8,128) | 138 |
| **Changes in working capital, excluding income taxes** | | **Ps 100** | **(2,599)** | **1,299** |

The accompanying notes are part of these consolidated financial statements.

**CEMEX, S.A.B. DE C.V. (PARENT COMPANY-ONLY) AND CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Statement 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 December 31, 2007** | | **Ps 4,115** | **63,379** | **(104,574)** | **200,248** | **163,168** | **40,985** | **204,153** |
| Currency translation of foreign subsidiaries | **16B** | — | — | 30,987 | — | 30,987 | — | 30,987 |
| Hedge derivative financial instruments | **12** | — | — | (297) | — | (297) | — | (297) |
| Deferred income tax recognized directly in equity | **15** | — | — | 558 | — | 558 | — | 558 |
| Net income | | — | — | — | 2,278 | 2,278 | 45 | 2,323 |
| Comprehensive income for the period | | — | — | 31,248 | 2,278 | 33,526 | 45 | 33,571 |
| Adoption of new Mexican Financial Reporting Standards | | — | — | 104,640 | (107,843) | (3,203) | — | (3,203) |
| Dividends (0.29 pesos per share) | **16A** | — | — | — | (7,009) | (7,009) | — | (7,009) |
| Issuance of common stock | **16A** | 2 | 6,792 | — | — | 6,794 | — | 6,794 |
| Treasury shares owned by subsidiaries | **16** | — | — | 12 | — | 12 | — | 12 |
| Issuance and effects of perpetual debentures | **16D** | — | — | (2,596) | — | (2,596) | 8,025 | 5,429 |
| Changes in non-controlling interest | **16D** | — | — | — | — | — | (2,480) | (2,480) |
| **Balance at December 31, 2008** | | **4,117** | **70,171** | **28,730** | **87,674** | **190,692** | **46,575** | **237,267** |
| Currency translation of foreign subsidiaries | **16B** | — | — | (904) | — | (904) | — | (904) |
| Hedge derivative financial instruments | **12** | — | — | 450 | — | 450 | — | 450 |
| Deferred income tax recognized directly in equity | **15** | — | — | 941 | — | 941 | — | 941 |
| Net income | | — | — | — | 1,409 | 1,409 | 240 | 1,649 |
| Comprehensive income for the period | | — | — | 487 | 1,409 | 1,896 | 240 | 2,136 |
| Adoption of new Mexican Financial Reporting Standards | | — | — | — | (2,245) | (2,245) | — | (2,245) |
| Capitalization of retained earnings | **16A** | 3 | 4,370 | — | (4,373) | — | — | — |
| Issuance of common stock | **16A** | 7 | 14,633 | — | — | 14,640 | — | 14,640 |
| Treasury shares owned by subsidiaries | **16** | — | 9,623 | — | — | 9,623 | — | 9,623 |
| Issuance and effects of convertible securities | **16B** | — | — | 1,971 | — | 1,971 | — | 1,971 |
| Issuance and effects of perpetual debentures | **16D** | — | — | (2,704) | — | (2,704) | (1,636) | (4,340) |
| Changes in non-controlling interest | **16D** | — | — | — | — | — | (1,482) | (1,482) |
| **Balance at December 31, 2009** | | **4,127** | **98,797** | **28,484** | **82,465** | **213,873** | **43,697** | **257,570** |
| Currency translation of foreign subsidiaries | **16B** | — | — | (12,050) | — | (12,050) | — | (12,050) |
| Deferred income tax recognized directly in equity | **15** | — | — | 737 | — | 737 | — | 737 |
| Net loss | | — | — | — | (16,516) | (16,516) | 27 | (16,489) |
| Comprehensive loss for the period | | — | — | (11,313) | (16,516) | (27,829) | 27 | (27,802) |
| Adoption of new Mexican Financial Reporting Standards | | — | — | — | 2,806 | 2,806 | — | 2,806 |
| Capitalization of retained earnings | **16A** | 5 | 5,476 | — | (5,481) | — | — | — |
| Issuance of common stock | **16A** | — | 317 | — | — | 317 | — | 317 |
| Issuance and effects of convertible securities | **16B** | — | — | 1,232 | — | 1,232 | — | 1,232 |
| Issuance and effects of perpetual debentures | **16D** | — | — | 3,777 | — | 3,777 | (23,549) | (19,772) |
| Changes in non-controlling interest | **16D** | — | — | — | — | — | (651) | (651) |
| **Balance at December 31, 2010** | | **Ps 4,132** | **104,590** | **22,180** | **63,274** | **194,176** | **19,524** | **213,700** |

The accompanying notes are part of these consolidated and Parent Company-only financial statements.

**CEMEX, S.A.B. DE C.V. AND SUBSIDIARIES**
**Notes to the Consolidated Financial Statements**
**As of December 31, 2010, 2009 and 2008**
**(Millions of Mexican pesos)**

## 1. DESCRIPTION OF BUSINESS

CEMEX, S.A.B. de C.V. is a Mexican corporation, 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 is a public stock corporation with variable capital (S.A.B. de C.V.) organized under the laws of the United Mexican States ("Mexico").

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. shares are listed on the New York Stock Exchange ("NYSE") as American Depositary Shares or "ADSs" under the symbol "CX." Each ADS represents ten CPOs.

The terms "CEMEX, S.A.B. de C.V." 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 Parent Company only and consolidated financial statements was authorized by the Company's management on January 27, 2011, and they were approved at the February 24, 2011 stockholders' meeting.

## 2. SIGNIFICANT ACCOUNTING POLICIES

### A) BASIS OF PRESENTATION AND DISCLOSURE

The financial statements are prepared in accordance with Mexican Financial Reporting Standards ("MFRS") issued by the Mexican Board for Research and Development of Financial Reporting Standards ("CINIF"), which recognized the effects of inflation on the financial information until December 31, 2007.

**Definition of terms**

When reference is made to pesos or "Ps," it means Mexican pesos. Except when specific references are made to "earnings per share" and "prices per share," the amounts in the financial statements and the accompanying notes are stated in millions of pesos. 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 translation into dollars, into pesos, or both, as applicable. These translations are provided as informative data and should not be construed as representations that the amounts in pesos or dollars, as applicable, actually represent that those peso or dollar amounts could be converted into pesos or dollars at the rate indicated. The translation procedures used are detailed as follows:

- In 2010, 2009 and 2008, translations of pesos into dollars, and dollars into pesos, were determined using the closing exchange rates of Ps12.36 per dollar, Ps13.09 per dollar and Ps13.74 per dollar for balance sheet amounts, respectively, and using the average exchange rates of Ps12.67 per dollar, Ps13.60 per dollar and Ps11.21 per dollar for the statements of operations amounts for 2010, 2009 and 2008, respectively.

- When the amounts between parentheses are the peso and the dollar, it means the disclosed amounts were originated in other currencies. Such amounts were determined by translating the foreign currency figures into dollars using the respective closing exchange rates at year-end, and then translated into pesos using the closing exchange rates of Ps12.36 per dollar in 2010, Ps13.09 per dollar in 2009 and Ps13.74 per dollar in 2008.

**Inflationary accounting**

Beginning on January 1, 2008, pursuant to MFRS B-10, "Inflation Effects" ("MFRS B-10"), the financial statements subject to restatement are those related to an entity whose functional currency corresponds to a country in which the cumulative inflation rate over the preceding three years equals or exceeds 26% (i.e., a high-inflation environment). Designation takes place at the end of each year, and inflation restatement is applied prospectively. In 2010, CEMEX restated the financial statements of its subsidiaries in Egypt, Nicaragua and Costa Rica; in 2009, the financial statements of its subsidiaries in Egypt, Nicaragua, Latvia and Costa Rica; and in 2008, the financial statements of its subsidiaries in Costa Rica and Venezuela.

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The amounts in the statements of operations, the statements of cash flows and the statement of changes in stockholders' equity are presented in nominal pesos. The restatement adjustments as of December 31, 2007, the date the inflationary accounting was discontinued, are part of the carrying amounts. When moving back from a low-inflation to a high-inflation environment, the initial restatement factor should consider the cumulative inflation since the last time in which inflationary accounting was applied.

Upon adoption of MFRS B-10 on January 1, 2008, the accumulated result for holding non-monetary assets as of December 31, 2007 included in "Other equity reserves" (note 16B) was reclassified to "Retained earnings," representing a decrease in this caption on such date of approximately Ps97,722.

**Statements of cash flows**

The statements of cash flows present cash inflows and outflows in nominal currency, and exclude inflation effects and unrealized foreign exchange effects. The statements of cash flows for the years ended December 31, 2009 and 2008 consider the classification of CEMEX's operations in Australia as discontinued operations.

The statements of cash flows exclude the following transactions that did not represent sources or uses of cash: a) in 2010, the effects of the exchange of a portion of CEMEX's perpetual debentures into notes maturing in 2020 for US$1,067 and notes maturing in 2017 for €115 (note 12A), which represented a net increase in debt of Ps15,437, a reduction in equity's non-controlling interest of Ps20,838 and an increase in equity's controlling interest of Ps5,401; meanwhile, in 2009, the effects of the exchange of promissory notes issued in Mexico (" *Certificados Bursátiles*" or "CBs") into mandatorily convertible securities (note 12A), which represented a reduction in debt of Ps4,007, an increase in other financial obligations of Ps2,036 and an increase in stockholders' equity of Ps1,971 (net of issuance expenses); b) in 2010, 2009 and 2008, the increase in stockholders' equity associated with the capitalization of retained earnings for Ps5,481, Ps4,373 and Ps6,794, respectively (note 16A); c) in 2010 and 2009, the increase in stockholders' equity associated with CPOs issued as part of the executive stock-based compensation for Ps312 and Ps163, respectively (note 16A); and d) in 2010 and 2009, a decrease of Ps2,911 and an increase of Ps2,245, respectively, in taxes payable as a result of the Mexican tax reform of 2009, which were recognized against retained earnings (notes 15A and 16B).

**Migration to International Financial Reporting Standards**

In November 2008, the Mexican National Banking and Securities Commission ("CNBV") published regulations requiring registrants whose shares are traded on the MSE to adopt International Financial Reporting Standards ("IFRS") as issued by the International Accounting Standards Board ("IASB") no later than January 1, 2012. Earlier adoption was allowed following certain requirements published by the CNBV.

On August 31, 2010, MFRS Interpretation 19 was issued by CINIF requiring disclosure by companies in process of adoption of IFRS of any obligation and/or decision to adopt IFRS, the expected date of adoption of IFRS and the estimated impact of the adoption on the financial statements. The interpretation is effective for all financial statements issued on or after September 30, 2010.

CEMEX will adopt IFRS, as issued and interpreted by the IASB, beginning on January 1, 2012. In order to comply with the requirements of the CNBV, CEMEX has gathered the necessary resources required in the IFRS conversion effort and is in the process of identifying and measuring the necessary adjustments. As of December 31, 2010, the migration process to IFRS is in progress and CEMEX cannot estimate the effects on its consolidated financial statements.

**B) PRINCIPLES OF CONSOLIDATION**

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 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. Balances and operations between related parties are eliminated in consolidation.

Investments in associates are accounted for by the equity method when CEMEX has significant influence, which is generally presumed with an equity interest between 10% and 50% in public companies, and between 25% and 50% in non-public companies, unless it is proven in each specific case 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 the effects of inflation, if applicable.

Under MFRS B-8, "Consolidated or Combined Financial Statements," beginning in 2009, 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 recognized under the equity method. Until December 31, 2008, financial statements of such joint ventures were consolidated through the proportional integration method, considering CEMEX's interest in the results of operations, assets and liabilities of such entities, based on International Accounting Standard No. 31, "Interest in Joint Ventures." No significant effects resulted from the adoption of MFRS B-8 in 2009, considering that CEMEX sold its joint venture investments in Spain in 2008 (note 11A).

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## C) USE OF ESTIMATES

The preparation of financial statements in accordance with MFRS 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 captions subject to estimates and assumptions include, among others, long-lived assets, allowances for doubtful accounts and inventories, deferred income tax assets, the measurement of financial instruments at fair value, and the assets and liabilities related to employee benefits.

## D) FOREIGN CURRENCY TRANSACTIONS AND TRANSLATION OF FOREIGN CURRENCY FINANCIAL STATEMENTS

Transactions denominated in foreign currencies are recorded at the exchange rates prevailing on the dates of their execution. Monetary assets and liabilities denominated in foreign currencies are translated into pesos 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 that are of a long-term investment nature. These fluctuations are recorded against stockholders' equity, as part of the foreign currency translation adjustment of foreign subsidiaries (note 16B).

The financial statements of foreign subsidiaries, which are determined using the functional currency applicable in each country, are translated to pesos at the closing exchange rate for balance sheet accounts and at the average exchange rates of each month for income statement accounts. The corresponding translation adjustment is included within "Other equity reserves" in the balance sheet. The closing exchange rates and the approximate average exchange rates for balance sheet accounts and income statement accounts, respectively, in 2010, 2009 and 2008, were as follows:

| | 2010 | | 2009 | | 2008 | |
|---|---|---|---|---|---|---|
| **Currency** | **Closing** | **Average** | **Closing** | **Average** | **Closing** | **Average** |
| United States Dollar | 12.3600 | 12.6700 | 13.0900 | 13.6000 | 13.7400 | 11.2100 |
| Euro | 16.4822 | 16.7106 | 18.7402 | 18.9186 | 19.2060 | 16.4394 |
| British Pound Sterling | 19.2854 | 19.5404 | 21.1436 | 21.2442 | 20.0496 | 20.4413 |
| Colombian Peso | 0.0065 | 0.0067 | 0.0064 | 0.0062 | 0.0061 | 0.0056 |
| Egyptian Pound | 2.1285 | 2.2410 | 2.3823 | 2.4483 | 2.4889 | 2.0578 |
| Philippine Peso | 0.2819 | 0.2813 | 0.2833 | 0.2845 | 0.2891 | 0.2509 |

The financial statements of foreign subsidiaries are initially translated from their functional currencies into dollars and subsequently into pesos. Therefore, the foreign exchange rates presented in the table above between the functional currency and the peso represent the exchange rates resulting 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 exchange rates published by the Mexican Central Bank.

## E) CASH AND INVESTMENTS (note 4)

The balance in this caption is comprised of available amounts of cash and cash equivalents, mainly represented by short-term investments of high liquidity, which are easily convertible into cash, and which are not subject to significant risks for changes in their values, including overnight investments, which yield fixed returns and have maturities of less than three months from the investment date. Those fixed-income investments are recorded at cost plus accrued interest. Other investments which are easily convertible into cash are recorded at market value. Gains or losses resulting from changes in market values and accrued interest are included as part of the Comprehensive Financing Result.

Beginning on January 1, 2010, based on new MFRS C-1, "Cash and Cash Equivalents," restricted amounts of cash and investments, comprised by deposits in margin accounts with suppliers and financial institutions that guarantee CEMEX obligations under commercial transactions as well as those associated with derivative financial instruments, to the extent that the restriction will be lifted in less than three months at the balance sheet date. When the restriction period is greater than three months, such restricted cash and investments 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 are offset against the liabilities that CEMEX has with its counterparties.

## F) INVENTORIES (note 7)

Inventories are valued using the lower of their production cost and market value. Production cost may correspond to the latest purchase price, the average price of the last purchases or the last production cost. 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 of the period.

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## G) OTHER INVESTMENTS AND NON-CURRENT RECEIVABLES (note 9B)

Other investments and non-current accounts receivable include CEMEX's collection rights with respect to investments with maturities of more than twelve months as of the balance sheet date. Non-current assets resulting from the valuation of derivative financial instruments, as well as investments in private funds and other investments which are recognized at their estimated fair value as of the balance sheet date, and their changes in valuation are included in the statements of operations as part of the Comprehensive Financing Result.

Beginning on January 1, 2010, in accordance with MFRS C-3 "Accounts Receivable," long-term accounts receivable are initially recognized at fair value. Subsequent changes in valuation are recognized in the Comprehensive Financing Result. The adoption of MFRS C-3, as of January 1, 2010, generated a reduction of approximately Ps146 in long-term accounts receivable, an increase in deferred tax assets of approximately Ps41 and a reduction in retained earnings of approximately Ps105.

## H) PROPERTY, MACHINERY AND EQUIPMENT (note 10)

Property, machinery and equipment are recognized at their acquisition or construction cost, as applicable. When inflationary accounting is applied during high-inflation periods, such assets should be restated using the factors derived from the general price index of the countries where the assets are held.

Depreciation of fixed assets is recognized within "Cost of sales" and "Administrative and selling expenses," depending on the utilization of the respective assets, 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. The maximum average useful lives by category of assets are as follows:

| | Years |
|---|---|
| Administrative buildings | 35 |
| Industrial buildings | 34 |
| Machinery and equipment in plant | 21 |
| Ready-mix trucks and motor vehicles | 8 |
| Office equipment and other assets | 9 |

During 2010, 2009 and 2008, CEMEX capitalized, as part of the historical cost of fixed assets, the Comprehensive Financing Result, which includes interest expense, and, when inflationary accounting is applied during periods of high inflation, the monetary position result, 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.

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.

## I) BUSINESS COMBINATIONS, GOODWILL, OTHER INTANGIBLE ASSETS AND DEFERRED CHARGES (note 11)

In accordance with MFRS B-7, "Business Combinations," CEMEX applies the purchase method as the sole recognition alternative through the allocation of the purchase price 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 is recognized as goodwill, which is not amortized and is subject to periodic impairment tests (note 2J). If applicable, goodwill is subsequently adjusted for any correction to the preliminary assessment given to the assets acquired and/or liabilities assumed, within the twelve-month period after purchase.

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, and are restated during high inflation periods to comply with MFRS B-10. 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.

Direct costs incurred in debt issuances or borrowings are capitalized and amortized as part of the effective interest rate of each transaction over its maturity. These costs include commissions and professional fees. 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.

Startup costs are recognized in the income statement as they are incurred. Costs associated with research and development activities ("R&D"), performed by CEMEX to create new 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 2010, 2009 and 2008, total combined expenses of these departments were approximately Ps519 (US$41), Ps408 (US$30) and Ps348 (US$31), respectively.

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## J) IMPAIRMENT OF LONG LIVED ASSETS (notes 10 and 11)

### Property, machinery and equipment, intangible assets of definite life and other investments

According to MFRS C-15, "Impairment and disposal of long-lived assets" ("MFRS C-15"), 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 the operating environment in which CEMEX operates, 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 which case an impairment loss is recorded in the income statements for the period when such determination is made within "Other expenses, net." The impairment loss results from the excess of the carrying amount over the net present value of estimated cash flows related to such assets.

### Goodwill and intangible assets of indefinite life

Goodwill and other intangible assets of indefinite life are tested for impairment when needed and at least once a year, during the last quarter of the period, by determining the value in use of the reporting units, which consists in the discounted amount of estimated future cash flows to be generated by the reporting units to which those assets relate. CEMEX determines the discounted amount of estimated future cash flows over a period of 5 years, unless a longer period is justified in a specific country considering its economic cycle and the situation of the industry. A reporting unit refers to a group of one or more cash generating units. An impairment loss is recognized if the value in use is lower than the net book value of the reporting unit.

The geographic segments reported by CEMEX (note 3A), each integrated by multiple cash generating units, also represent the reporting units for purposes of testing goodwill for impairment, considering that: a) the operating components that comprise the reported segment have similar economic characteristics; b) the reported segments are the level 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) 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.

Impairment tests are significantly sensitive, among other factors, to 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. CEMEX uses specific after-tax discount rates for each reporting unit, which are applied to after-tax cash flows. The amounts of estimated undiscounted future 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 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.

## K) FINANCIAL LIABILITIES AND DERIVATIVE FINANCIAL INSTRUMENTS (note 12)

### Financial liabilities

Financial liabilities such as bank loans and notes payable are recognized at their nominal amount. Interest accrued on financial instruments is recognized in the balance sheet within "Other accounts payable and accrued expenses" against financial expense.

For the years ended December 31, 2010, 2009 and 2008, CEMEX does not have financial liabilities recognized voluntarily at fair value or associated to fair value hedge strategies with derivative financial instruments.

### Financial instruments with components of both liability and equity

Based on MFRS, when a financial instrument contains components of both liability and equity, such as a note that at maturity is convertible into shares of CEMEX, each component is recognized separately in the balance sheet according to the specific characteristics of each transaction. In the event of a mandatorily convertible instrument, 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 an instrument that is optionally convertible into a fixed number of shares, the liability component represents the difference between the principal amount and the fair value of the call option premium, which reflects the equity component (note 2O).

### Derivative financial instruments

In compliance with the guidelines established by its Risk Management Committee, 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 and (ii) CEMEX's net investments in foreign subsidiaries.

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CEMEX recognizes 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 "Results from financial instruments" for the period in which they occur, except for hedges of cash flows and the net investment in foreign subsidiaries. Some derivative instruments have been designated as cash flow hedges. For the years ended December 31, 2010, 2009 and 2008, CEMEX has not designated any fair value hedges. The accounting rules applied to specific derivative instruments are as follows:

a) Changes in the fair value of interest rate swaps to exchange floating rates for fixed rates, designated and that are effective as hedges of the variability in the cash flows associated with the interest expense of a portion of the debt, are recognized in stockholders' equity. These effects are reclassified to earnings as the interest expense of the related debt is accrued.

b) Changes in the fair value of foreign currency forwards, designated as hedges of a portion of CEMEX's net investment in foreign subsidiaries, whose functional currency is different from the peso, are recognized in stockholders' equity as part of the foreign currency translation result (notes 2D and 16B), and whose reversal to earnings would take place upon disposal of the foreign investment.

c) Changes in the fair value of derivative instruments based on the price of CEMEX's own shares are recognized in the statements of operations as incurred.

d) Changes in the fair value of forward contracts on the price of raw materials and commodities, such as natural gas, designated and that are effective as hedges of the variability in market prices, are first recognized in stockholders' equity and are subsequently reclassified to earnings starting when the underlying products are consumed.

e) Accrued interest generated by interest rate swaps and cross currency swaps 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 with 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. The estimated fair value represents the amount at which a financial asset could be bought or sold, or a financial liability could be extinguished, between willing parties in an arm's length transaction. 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. The estimated fair values of derivative instruments determined by CEMEX and used for valuation, recognition and disclosure purposes in the financial statements and their notes, are supported as well by the confirmations of these values received from the financial counterparties, which act as valuation agents in these transactions.

## L) 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 13)

CEMEX recognizes a provision for restructuring costs only when the restructuring plans have been properly finalized and authorized by CEMEX's 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 13)

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 statements of operations. 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.

### Costs related to remediation of the environment (notes 13 and 20)

Provisions associated with environmental damage represent the estimated future cost of remediation. These provisions 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.

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**Contingencies and commitments (notes 19 and 20)**

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 the 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.

## M) EMPLOYEE BENEFITS (note 14)

**Employees' statutory profit sharing**

For the years ended December 31, 2010, 2009 and 2008, current and deferred employees' statutory profit sharing ("ESPS") is presented within "Other expenses, net." Deferred ESPS is calculated applying the ESPS rate to the total temporary differences resulting from comparing the book values and the taxable values for ESPS purposes of assets and liabilities according to applicable legislation. Until December 31, 2007, deferred ESPS was determined considering temporary differences of a non-recurring nature, arising from the reconciliation of net income (loss) and the taxable income of the period for ESPS purposes. The cumulative initial effect for the adoption of new MFRS D-3, "Employee benefits" ("MFRS D-3"), as of January 1, 2008, represented an expense of approximately Ps2,283, which was included within "Retained earnings."

**Defined contribution 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 plans, other postretirement benefits and termination benefits**

CEMEX recognizes the costs associated with employees' benefits for: a) defined benefit pension plans; b) other postretirement benefits, basically comprised of health care benefits, life insurance and seniority premiums, granted pursuant to applicable law or by Company grant; and c) termination benefits, not associated with a restructuring event, which mainly represent severance payments by law. These costs are recognized in the operating results, as services are rendered, based on actuarial estimations of the benefits' present value. The actuarial assumptions in a low-inflation environment consider the use of real 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 actuarial gains and losses ("actuarial results"), which exceed the greater of 10% of the fair value of the plan assets, and 10% of the present value of the plan obligations, the prior service cost and the transition liability, are amortized to the operating results over the employees' estimated active service life. In accordance with the transition rules of new MFRS D-3, beginning January 1, 2008, the actuarial results, prior service costs and the transition liability recognized as of December 31, 2007, should be amortized to the income statement in a maximum period of five years. The net periodic cost for the years ended December 31, 2010, 2009 and 2008 includes a portion of this transition amortization. The excess of amortization expense resulting from the transition rule is recognized within "Other expenses, net."

The net periodic cost recognized in the operating results includes: a) the service cost for additional benefits earned by employees during the period; b) the interest cost for the increase in the liability by the passage of time; c) the amortization of the actuarial gains and losses, prior service cost and transition liability; and d) the expected return on plan assets for the period.

## N) INCOME TAXES (note 15)

According to MFRS D-4, "Accounting for Income Taxes" ("MFRS D-4"), the effects reflected in the income statements for income taxes include the amounts incurred during the period as well as the amounts of deferred income taxes, in both cases 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, taking into account and subject to a recoverability analysis, tax loss carryforwards as well as other recoverable taxes and tax credits. Deferred income taxes for the period represent the difference between the 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 MFRS, all items charged or credited directly in stockholders' equity are recognized net of their deferred income tax effects. The effect of a change in enacted statutory tax rates is recognized in the income statement for the period in which the change is officially enacted.

For the recognition of deferred tax assets derived from net operating losses and their corresponding valuation reserve, CEMEX makes an assessment of: a) the aggregate amount of self-determined tax loss carryforwards included in its income tax returns in each country that CEMEX believes the tax authorities would not reject 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 CEMEX believes that it is more-likely-than-not that the tax authorities would reject a self-determined deferred tax asset, it would decrease its deferred tax assets. Likewise, if CEMEX believes that it would not be able to use a deferred tax carryforward asset before its expiration, CEMEX would increase its valuation reserve. Both situations would result in additional income tax expense in the income statement for the period in which such determination is made.

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In the determination of whether it is more-likely-than-not 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 income statement in such period.

Based on changes in MFRS D-4 effective starting January 1, 2008, CEMEX reclassified the cumulative effect at December 31, 2007 for the initial recognition of deferred income taxes based on the assets and liabilities method from "Other equity reserves" to "Retained earnings" (note 16B). In addition, it was required to determine deferred income taxes for investments in associates. CEMEX recognized the cumulative initial effect as of January 1, 2008 against "Retained earnings."

In November 2009 reforms to the income tax law were approved in Mexico which became effective beginning January 1, 2010 (note 15A). These reforms include changes to the tax consolidation regime in Mexico pursuant to which entities are required, among other changes, to determine income taxes as if the tax consolidation provisions did not exist from 1999 and onward. In connection with this change in tax consolidation law, on December 15, 2009, CINIF issued for its immediate application MFRS Interpretation 18, "Effects on income taxes arising from the tax reform 2009" ("Interpretation 18"). Interpretation 18 establishes that the portion of the liability related to: 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, should be recognized against retained earnings. Moreover, Interpretation 18 clarifies that the tax liabilities associated with the tax loss carryforwards used in the tax consolidation of the Mexican subsidiaries should not be offset with deferred tax assets in the balance sheet; therefore, beginning in 2009, CEMEX recognizes deferred income tax assets and liabilities associated with this concept separately. 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. In December 2010, by means of miscellaneous rules, the tax authority in Mexico eliminated the taxable amount for 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. Based on Interpretation 18, the effects from these modifications were recognized in 2010 against "Retained earnings" (notes 15A and 16C).

## O) STOCKHOLDERS' EQUITY

Beginning in 2008, stockholders' equity of the Parent Company would only be restated during high-inflation periods in Mexico.

### Common stock and additional paid-in capital (note 16A)

These items represent the value of stockholders' contributions, restated considering the Mexican inflation until December 31, 2007, including those increases related to the recapitalization of retained earnings and executive compensation (note 16).

### Other equity reserves (note 16B)

This caption groups the cumulative effects of items and transactions that are, temporarily or permanently, recognized directly to stockholders' equity, and includes the elements of "Comprehensive income (loss) for the period," which is presented in the statement of changes in stockholders' equity. Comprehensive income includes, in addition to net income (loss), certain changes in stockholders' equity during a period, not resulting from investments by owners and distributions to owners.

The balance of "Other equity reserves" includes the result from holding non-monetary assets accrued until December 31, 2007, which referred to the difference between the revaluation effect of non-monetary assets (inventories, fixed assets, intangible assets) using specific restatement factors, and the effect that would have resulted using inflation-only restatement factors.

The most significant items within "Other equity reserves" during the reported periods are as follows:

**Items of "Other equity reserves" included within comprehensive income for the period:**

- Currency translation effects from the translation of foreign subsidiaries' financial statements, net of changes in the estimated fair value of foreign currency forward contracts related to net investment in foreign subsidiaries (note 2K), and exchange results from foreign currency debt directly related to the acquisition of foreign subsidiaries, as well as 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 2K); and
- The deferred income tax arising from items whose effects are directly recognized in stockholders' equity.

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**Items of "Other equity reserves" not included in comprehensive income for the period:**

- Effects related to controlling stockholders' equity for changes or transactions affecting non-controlling interest stockholders in CEMEX's consolidated subsidiaries;
- 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 component of equity of outstanding mandatorily convertible securities into shares of the Parent Company (note 12A). Upon conversion, this amount will be reclassified to common stock and additional paid-in capital;
- The component of equity of the optional convertible subordinated notes into shares of the Parent Company (note 12A). If the conversion option is exercised, this amount would be reclassified to additional paid-in capital; and
- The cancellation of the Parent Company's shares held by consolidated subsidiaries.

**Retained earnings (note 16C)**

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. Retained earnings also include the effects from the adoption of certain newly issued MFRS as detailed in note 16C.

**Non-controlling interest and perpetual debentures (note 16D)**

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 because there is: a) no contractual obligation to deliver cash or another financial asset; b) no predefined maturity date; and c) an unilateral option to defer interest payments or preferred dividends for indeterminate periods.

## P) REVENUE RECOGNITION

CEMEX's 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 transactions between related parties. 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 the customers have assumed the risk of loss. Revenues 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 of property on the goods purchased, 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 the entity.

## Q) 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 producing plants. Cost of sales excludes expenses related to personnel, equipment and services involved in sale activities and storage of product at points of sales, as well as costs related to warehousing of products at the selling points.

Expenses related to freight of raw material in plants, as well as of finished product between plants and points of sale and freight expenses between points of sales and customers' facilities, are all recognized within distribution expenses.

For the years ended December 31, 2010, 2009 and 2008, selling expenses amounted to Ps7,894, Ps9,310 and Ps11,079, respectively. Distribution expenses refer to freight of finished products between points of sale and the customers' facilities.

## R) MONETARY POSITION RESULT

Monetary position result represents the gain or loss for holding monetary assets and liabilities in high-inflation environments and is calculated applying the inflation rate of the country where the subsidiary operates to its net monetary position (monetary assets less monetary liabilities).

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## S) OTHER EXPENSES, NET

The caption consists primarily of revenues and expenses not directly related to CEMEX's main activity, or which are of an unusual or non-recurring nature. Other expenses, net in 2010, 2009 and 2008, consisted of the following:

| | 2010 | 2009 | 2008 |
|---|---|---|---|
| Impairment losses (notes 8, 9B, 10 and 11) | Ps (1,904) | (889) | (21,125) |
| Restructuring costs (note 13) | (897) | (1,100) | (3,141) |
| Charitable contributions | (385) | (264) | (174) |
| Current and deferred ESPS (note 2M) | (5) | (8) | 2,283 |
| Results from the sale of assets and others, net | (3,481) | (3,268) | 754 |
| Other expenses, net | Ps(6,672) | (5,529) | (21,403) |

## T) EXECUTIVE STOCK-BASED COMPENSATION (note 17)

Beginning in 2009, CEMEX applies MFRS D-8, "Share-based payments" ("MFRS D-8"), to recognize its executive stock-based compensation programs. Until 2008, CEMEX applied International Financial Reporting Standard 2, "Shared-based payments." There were no effects from the adoption of MFRS D-8 in 2009.

Stock awards based on CEMEX shares granted to executives are defined as equity instruments, when services received from employees are settled 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 the 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 income statement 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 income statement. CEMEX determines the estimated fair value of options using the binomial financial option-pricing model.

## U) EMISSION RIGHTS

In some countries where CEMEX operates, such as member countries of the EU, governments have established mechanisms aimed to reduce carbon-dioxide emissions ("$CO_2$"), by means of which, industries releasing $CO_2$ must submit to the environmental authority at the end of a compliance period, emission rights for a volume equivalent to the tons of $CO_2$ released. In addition, the United Nations Framework Convention on Climate Change ("UNFCCC") grants Certified Emission Reductions ("CERs") to qualified $CO_2$ 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 $CO_2$ emissions. Some of these projects have been awarded with CERs.

In the absence of a MFRS or an IFRS that defines an accounting treatment for these schemes, CEMEX accounts for the effects associated with $CO_2$ 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 $CO_2$ 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 $CO_2$ 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; and
- CEMEX does not maintain emission rights, CERs and/or forward transactions for trading purposes.

The combined effect of the use of alternate fuels that help reduce the emission of $CO_2$ and the downturn in produced cement volumes in the EU, has generated a surplus of emission rights held over the estimated $CO_2$ emissions. From the consolidated surplus of emission rights, during 2010, 2009 and 2008, CEMEX sold an aggregate amount of approximately 19.4 million certificates, receiving revenues of approximately Ps1,417, Ps961 and Ps3,666, respectively. As of December 31, 2010, there were forward sale commitments for approximately Ps319 with settlement in March 2011.

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## V) 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 December 31, 2010, 2009 and 2008, 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.

## W) NEWLY ISSUED FINANCIAL REPORTING STANDARDS EFFECTIVE IN 2011 AND 2012

In 2010 and 2009, the CINIF issued the following MFRS, effective beginning January 1, 2011 and 2012, as indicated below:

### MFRS B-5, "Financial information by segments" ("MFRS B-5")

New MFRS B-5 supersedes Bulletin B-5, "Financial information by segments." The most significant changes, beginning on January 1, 2011, are the following: (i) companies should disclose information by operating segment which is usually used by top management, in addition to the current disclosure of information by products or services and geographical segments; (ii) the requirement that companies disclose information by primary and secondary segments will be eliminated; (iii) a business in pre-operative stage may be considered as an operating segment; (iv) disclosure by segments of financial income and expenses will be required, as well as other components of Comprehensive Financial Result; and (v) disclosure of liabilities by operating segment will be required. CEMEX does not anticipate any material impact as a result of the adoption of new MFRS B-5 in 2011.

### MFRS B-9, "Interim Financial Reporting" ("MFRS B-9")

New MFRS B-9 supersedes Bulletin B-9, "Interim Financial Reporting." The most significant changes, beginning on January 1, 2011, are the following: (i) MFRS B-9 requires the statement of changes in stockholders' equity and the statement of cash flows in addition to the balance sheet and the income statements; and (ii) requires for all financial statements that information presented for interim periods be compared to the equivalent interim period for the immediate previous year, and in the case of the balance sheet also to be compared to the balance sheet as of the end of the immediate prior year. CEMEX does not anticipate any material impact as a result of the adoption of new MFRS B-9 in 2011.

### MFRS C-4, "Inventories" ("MFRS C-4")

In November 2010, CINIF issued MFRS C-4. The main aspects of MFRS C-4, beginning on January 1, 2011, are as follows: (i) MFRS C-4 formally prohibits the use of the direct cost method for inventory valuation, which excludes fixed production costs; (ii) the inventory allocation to the cost of sales at the moment of a sale transaction based on last inputs, first outputs, or LIFO, has been eliminated. CEMEX does not use either of the two options eliminated; therefore, CEMEX does not anticipate any material impact as a result of the adoption of new MFRS C-4 in 2011.

### MFRS C-5, "Advanced Payments" ("MFRS C-5")

In November 2010, CINIF also issued MFRS C-5. Beginning on January 1, 2011, MFRS C-5 requires that advanced payments for the purchase of inventory or fixed assets be recognized within short-term or long-term assets, as appropriate, but outside the items of inventory and/or fixed assets, as was the previous practice; and that advance payments should be subject to impairment losses when the carrying amount exceeds the expected benefits. CEMEX does not anticipate any material impact as a result of the adoption of new MFRS C-5 in 2011.

### MFRS C-6, "Properties, Plant and Equipment" ("MFRS C-6")

In December 2010, CINIF issued MFRS C-6, which supersedes Bulletin C-6, "Real Estate, Machinery and Equipment." The main changes from MFRS C-6 beginning on January 1, 2011, are the following: (i) MFRS C-6 specifically covers plant and equipment associated with biological assets and mining industries; (ii) establishes guidelines for the recognition at fair value of exchanges of non-monetary assets when the transaction has commercial substance, with gains and losses upon initial recognition being recognized through the income statement for the period; (iii) incorporates the basis to determine the residual value for components of fixed assets; (iv) defines that assets received for no consideration have an acquisition cost equal to zero instead of being recognized at fair value in equity surplus; and (v) requires that idle components should continue to be depreciated unless depreciation method is based on the component's activity. In addition, beginning January 1, 2012, MFRS C-6 establishes the requirement to depreciate the main components of fixed assets which have clearly different useful lives based on such specific useful lives instead of as a single major asset. CEMEX does not anticipate any material impact to its financial statements as a result of the adoption of new MFRS C-6 in 2011 and 2012.

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**MFRS C-18, "Asset Retirement Obligations" ("MFRS C-18")**

In December 2010, CINIF issued MFRS C-18, which beginning on January 1, 2011, establishes guidelines for measurement and recognition of obligations associated with the retirement of property, plant and equipment, as well as obligations in connection with environmental remediation upon retirement of a component of fixed assets. Retirement activities comprise permanent elimination, dismantling, demolition, sale, abandonment and recycling, among others. Under MFRS C-18, such obligations should be measured by the net present value of expected cash flows required to meet the obligations and should be initially recognized against the acquisition cost of the related asset. Changes in the estimation as a result to modifications in discount rates are recognized through the financing cost, while changes in cash flow estimations are recognized against the corresponding asset. Before MFRS C-18, as a general matter, other MFRS provided for the same recognition of the obligation against the related asset, and measurement techniques were obtained from international financial reporting standards, very similar to the actual guidelines of MFRS C-18. Consequently, CEMEX does not anticipate any material impact to its financial statements as a result of the adoption of MFRS C-18 in 2011.

**Improvements to MFRS 2011**

In December 2010, CINIF also issued several improvements to certain existing MFRS. The most significant changes in respect to existing guidelines, beginning on January 1, 2011, are as follows:

- Bulletin C-3, "Accounts receivable." Changes require that interest income should be accrued to the extent the amount could be reasonably quantified and the recoverability is probable. In addition, doubtful accounts should not generate interest income.
- MFRS C-10, "Derivative financial instruments and hedging activities." Changes clarify that: (i) certain effects can be excluded from effectiveness tests; (ii) the designation as a hedge of an intercompany forecasted transaction when functional currencies are different is allowed; and (iii) the gross presentation of margin accounts is required.
- Bulletin D-5, "Leases." Changes incorporate guidance to: (i) determine the discount rate to measure a capital lease; (ii) require additional disclosures for such capital leases; and (iii) modify the moment when a gain or loss for a sale and lease back transaction should be recognized.

Except for the reclassification of margin accounts associated with derivative instruments (note 2E), which are currently offset against the liabilities that CEMEX has with its counterparties, CEMEX does not anticipate any material impact to its financial statements as a result of the adoption of these MFRS improvements in 2011.

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## 3. SELECTED FINANCIAL INFORMATION BY GEOGRAPHIC OPERATING SEGMENT AND DISCONTINUED OPERATIONS

### 3A) GEOGRAPHIC OPERATING SEGMENTS

Operating segments are defined as the components of an entity oriented to the production and sale of goods and services, which are subject to risks and benefits different from those associated with other business segments. CEMEX operates principally in the construction industry segment through the production, distribution, marketing and sale of cement, ready-mix concrete and aggregates.

CEMEX operates geographically on a regional basis. Each regional manager 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 and aggregates. The country manager, who is one level below the regional manager in the organizational structure, reports his business unit operating results including all the operating sectors, to the regional manager. CEMEX's management internally evaluates the results and performance of each country and region for decision-making purposes, following a vertical integration approach. According to this approach, in the daily operations, management allocates economic resources on a country basis rather than on an operating component basis.

The main indicator used by CEMEX's management to evaluate the performance of each country is operating EBITDA, which CEMEX defines as operating income plus depreciation and amortization. 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 statements of operation information by geographic operating segment for the year ended December 31, 2008 has been modified as a result of the presentation of discontinued operations in connection with the sale of CEMEX's operations in Australia (notes 3B and 11A). Information for the years ended December 31, 2010, 2009 and 2008 was as follows:

| 2010 | Net sales (including related parties) | Related parties | Consolidated net sales | Operating income (loss) | Operating depreciation and amortization | Operating EBITDA |
|---|---|---|---|---|---|---|
| **North America** | | | | | | |
| Mexico | Ps 42,907 | (744) | 42,163 | 12,380 | 1,940 | 14,320 |
| United States | 31,575 | (70) | 31,505 | (8,990) | 7,978 | (1,012) |
| **Europe** | | | | | | |
| Spain | 8,013 | (110) | 7,903 | 984 | 777 | 1,761 |
| United Kingdom | 14,320 | — | 14,320 | (780) | 1,153 | 373 |
| Germany | 13,524 | (864) | 12,660 | 26 | 589 | 615 |
| France | 12,179 | — | 12,179 | 221 | 897 | 1,118 |
| Rest of Europe [1] | 13,682 | (632) | 13,050 | 399 | 746 | 1,145 |
| **Central and South America and the Caribbean** | | | | | | |
| Colombia | 6,964 | (8) | 6,956 | 2,226 | 262 | 2,488 |
| Rest of Central and South America and the Caribbean [2] | 12,380 | (1,588) | 10,792 | 2,222 | 1,079 | 3,301 |
| **Africa and Middle East** | | | | | | |
| Egypt | 8,608 | (174) | 8,434 | 4,146 | 274 | 4,420 |
| Rest of Africa and Middle East [3] | 5,248 | — | 5,248 | 228 | 233 | 461 |
| **Asia** | | | | | | |
| Philippines | 4,014 | — | 4,014 | 909 | 322 | 1,231 |
| Rest of Asia [4] | 2,512 | — | 2,512 | 73 | 124 | 197 |
| **Others** [5] | 8,215 | (1,691) | 6,524 | (3,201) | 2,100 | (1,101) |
| **Total** | Ps 184,141 | (5,881) | 178,260 | 10,843 | 18,474 | 29,317 |

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**Selected statements of operations information by geographic operating segment – continued.**

| 2009 | Net sales (including related parties) | Related parties | Consolidated net sales | Operating income (loss) | Operating depreciation and amortization | Operating EBITDA |
|---|---|---|---|---|---|---|
| **North America** | | | | | | |
| Mexico | Ps 42,339 | (730) | 41,609 | 13,965 | 1,878 | 15,843 |
| United States | 38,472 | (58) | 38,414 | (7,290) | 8,630 | 1,340 |
| **Europe** | | | | | | |
| Spain | 11,308 | (127) | 11,181 | 1,667 | 912 | 2,579 |
| United Kingdom | 16,126 | — | 16,126 | (859) | 1,438 | 579 |
| Germany | 16,492 | (1,068) | 15,424 | 658 | 745 | 1,403 |
| France | 13,866 | — | 13,866 | 786 | 770 | 1,556 |
| Rest of Europe [1] | 16,174 | (387) | 15,787 | 976 | 983 | 1,959 |
| **Central and South America and the Caribbean** | | | | | | |
| Colombia | 6,766 | (2) | 6,764 | 2,672 | 406 | 3,078 |
| Rest of Central and South America and the Caribbean [2] | 13,857 | (1,776) | 12,081 | 2,784 | 1,147 | 3,931 |
| **Africa and Middle East** | | | | | | |
| Egypt | 8,372 | — | 8,372 | 3,465 | 289 | 3,754 |
| Rest of Africa and Middle East [3] | 6,425 | — | 6,425 | 830 | 206 | 1,036 |
| **Asia** | | | | | | |
| Philippines | 3,867 | (68) | 3,799 | 996 | 327 | 1,323 |
| Rest of Asia [4] | 2,566 | — | 2,566 | 102 | 137 | 239 |
| **Others** [5] | 9,709 | (4,322) | 5,387 | (4,912) | 2,445 | (2,467) |
| **Total** | Ps 206,339 | (8,538) | 197,801 | 15,840 | 20,313 | 36,153 |

| 2008 | Net sales (including related parties) | Related parties | Consolidated net sales | Operating income (loss) | Operating depreciation and amortization | Operating EBITDA |
|---|---|---|---|---|---|---|
| **North America** | | | | | | |
| Mexico | Ps 42,857 | (1,221) | 41,636 | 14,254 | 1,880 | 16,134 |
| United States | 52,040 | (23) | 52,017 | (461) | 7,932 | 7,471 |
| **Europe** | | | | | | |
| Spain | 17,493 | (306) | 17,187 | 4,325 | 854 | 5,179 |
| United Kingdom | 19,225 | — | 19,225 | (1,411) | 1,671 | 260 |
| Germany | 15,883 | (909) | 14,974 | 434 | 719 | 1,153 |
| France | 14,266 | — | 14,266 | 505 | 1,218 | 1,723 |
| Rest of Europe [1] | 19,343 | (422) | 18,921 | 2,009 | 1,058 | 3,067 |
| **Central and South America and the Caribbean** | | | | | | |
| Venezuela | 4,443 | (157) | 4,286 | 958 | 392 | 1,350 |
| Colombia | 6,667 | (3) | 6,664 | 2,116 | 735 | 2,851 |
| Rest of Central and South America and the Caribbean [2] | 13,035 | (1,570) | 11,465 | 2,481 | 908 | 3,389 |
| **Africa and Middle East** | | | | | | |
| Egypt | 5,218 | — | 5,218 | 2,176 | 244 | 2,420 |
| Rest of Africa and Middle East [3] | 6,850 | — | 6,850 | 558 | 206 | 764 |
| **Asia** | | | | | | |
| Philippines | 2,928 | (88) | 2,840 | 528 | 283 | 811 |
| Rest of Asia [4] | 2,313 | 252 | 2,565 | 57 | 100 | 157 |
| **Others** [5] | 13,368 | (5,817) | 7,551 | (2,441) | 1,499 | (942) |
| **Total** | Ps 235,929 | (10,264) | 225,665 | 26,088 | 19,699 | 45,787 |

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All significant balances and transactions between related parties have been eliminated in the preparation of the selected balance sheet information by operating geographic segments. As of December 31, 2010 and 2009, the information was as follows:

| December 31, 2010 | Investments in associates | Other segment assets | Total assets | Total liabilities | Net assets by segment | Capital expenditures |
|---|---|---|---|---|---|---|
| **North America** | | | | | | |
| Mexico | Ps 803 | 62,079 | 62,882 | 11,222 | 51,660 | 1,089 |
| United States | 193 | 219,506 | 219,699 | 18,535 | 201,164 | 945 |
| **Europe** | | | | | | |
| Spain | 155 | 49,668 | 49,823 | 26,171 | 23,652 | 581 |
| United Kingdom | 227 | 30,424 | 30,651 | 12,503 | 18,148 | 657 |
| Germany | 72 | 10,804 | 10,876 | 6,186 | 4,690 | 593 |
| France | 633 | 14,933 | 15,566 | 7,076 | 8,490 | 294 |
| Rest of Europe [1] | 105 | 22,080 | 22,185 | 4,970 | 17,215 | 688 |
| **Central and South America and the Caribbean** | | | | | | |
| Colombia | — | 10,422 | 10,422 | 4,533 | 5,889 | 241 |
| Rest of Central and South America and the Caribbean [2] | 22 | 20,003 | 20,025 | 3,951 | 16,074 | 794 |
| **Africa and Middle East** | | | | | | |
| Egypt | — | 7,780 | 7,780 | 3,116 | 4,664 | 315 |
| Rest of Africa and Middle East [3] | 1 | 6,837 | 6,838 | 2,366 | 4,472 | 102 |
| **Asia** | | | | | | |
| Philippines | — | 8,371 | 8,371 | 1,783 | 6,588 | 181 |
| Rest of Asia [4] | — | 1,647 | 1,647 | 624 | 1,023 | 53 |
| **Corporate** [5] | 4,374 | 13,190 | 17,564 | 196,609 | (179,045) | — |
| **Others** [5] | 1,676 | 29,092 | 30,768 | 1,752 | 29,016 | 430 |
| **Total** | Ps 8,261 | 506,836 | 515,097 | 301,397 | 213,700 | 6,963 |

| December 31, 2009 | Investments in associates | Other segment assets | Total assets | Total liabilities | Net assets by segment | Capital expenditures |
|---|---|---|---|---|---|---|
| **North America** | | | | | | |
| Mexico | Ps 790 | 63,141 | 63,931 | 13,983 | 49,948 | 1,157 |
| United States | 2,329 | 241,691 | 244,020 | 24,430 | 219,590 | 817 |
| **Europe** | | | | | | |
| Spain | 212 | 64,555 | 64,767 | 36,214 | 28,553 | 1,015 |
| United Kingdom | 257 | 34,531 | 34,788 | 17,324 | 17,464 | 781 |
| Germany | 90 | 12,265 | 12,355 | 7,337 | 5,018 | 426 |
| France | 738 | 17,350 | 18,088 | 8,369 | 9,719 | 202 |
| Rest of Europe [1] | 116 | 25,732 | 25,848 | 5,982 | 19,866 | 1,818 |
| **Central and South America and the Caribbean** | | | | | | |
| Colombia | — | 10,305 | 10,305 | 4,530 | 5,775 | 66 |
| Rest of Central and South America and the Caribbean [2] | 25 | 21,573 | 21,598 | 4,634 | 16,964 | 1,354 |
| **Africa and Middle East** | | | | | | |
| Egypt | — | 8,992 | 8,992 | 3,988 | 5,004 | 324 |
| Rest of Africa and Middle East [3] | — | 7,656 | 7,656 | 2,401 | 5,255 | 69 |
| **Asia** | | | | | | |
| Philippines | — | 8,651 | 8,651 | 1,846 | 6,805 | 85 |
| Rest of Asia [4] | — | 2,516 | 2,516 | 592 | 1,924 | 28 |
| **Corporate** [5] | 4,492 | 19,535 | 24,027 | 189,478 | (165,451) | — |
| **Others** [5] | 1,846 | 32,898 | 34,744 | 3,608 | 31,136 | 512 |
| **Total** | Ps 10,895 | 571,391 | 582,286 | 324,716 | 257,570 | 8,654 |

Total consolidated liabilities in 2010 and 2009 include debt of Ps202,818 and Ps211,144, respectively. Of such balances, 26% and 27% was is in the Parent Company, 42% and 40% in Spain, 13% and 14% in Dutch finance subsidiaries, 17% and 15% in a finance subsidiary in the United States, and 2% and 4% in other countries, in 2010 and 2009, respectively.

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Net sales by product and geographic segment for the years ended December 31, 2010, 2009 and 2008 were as follows:

| 2010 | Cement | Concrete | Aggregates | Others | Eliminations | Net sales |
|---|---|---|---|---|---|---|
| **North America** | | | | | | |
| 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 |
| **Europe** | | | | | | |
| Spain | 6,107 | 2,057 | 757 | 1,089 | (2,107) | 7,903 |
| 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 Europe [1] | 6,799 | 5,596 | 1,927 | 1,089 | (2,361) | 13,050 |
| **Central and South America and the Caribbean** | | | | | | |
| Colombia | 5,612 | 2,021 | 283 | 626 | (1,586) | 6,956 |
| Rest of Central and South America and the Caribbean [2] | 10,139 | 2,732 | 337 | 469 | (2,885) | 10,792 |
| **Africa and Middle East** | | | | | | |
| Egypt | 7,050 | 702 | 41 | 413 | 228 | 8,434 |
| Rest of Africa and Middle East [3] | 387 | 3,988 | 1,017 | 686 | (830) | 5,248 |
| **Asia** | | | | | | |
| Philippines | 3,976 | — | — | 38 | — | 4,014 |
| Rest of Asia [4] | 779 | 1,497 | 190 | 146 | (100) | 2,512 |
| **Others** [5] | — | — | — | 8,215 | (1,691) | 6,524 |
| **Total** | Ps 88,360 | 61,462 | 25,000 | 42,354 | (38,916) | 178,260 |

| 2009 | Cement | Concrete | Aggregates | Others | Eliminations | Net sales |
|---|---|---|---|---|---|---|
| **North America** | | | | | | |
| Mexico | Ps 27,992 | 11,344 | 1,471 | 8,929 | (8,127) | 41,609 |
| United States | 13,746 | 13,788 | 8,402 | 11,434 | (8,956) | 38,414 |
| **Europe** | | | | | | |
| Spain | 8,447 | 3,205 | 985 | 1,647 | (3,103) | 11,181 |
| United Kingdom | 3,421 | 5,886 | 5,674 | 6,691 | (5,546) | 16,126 |
| Germany | 5,225 | 7,428 | 4,176 | 3,731 | (5,136) | 15,424 |
| France | — | 11,397 | 3,835 | 394 | (1,760) | 13,866 |
| Rest of Europe [1] | 7,246 | 6,961 | 2,627 | 1,445 | (2,492) | 15,787 |
| **Central and South America and the Caribbean** | | | | | | |
| Colombia | 5,314 | 2,032 | 303 | 551 | (1,436) | 6,764 |
| Rest of Central and South America and the Caribbean [2] | 11,460 | 3,198 | 317 | 509 | (3,403) | 12,081 |
| **Africa and Middle East** | | | | | | |
| Egypt | 7,129 | 706 | 46 | 84 | 407 | 8,372 |
| Rest of Africa and Middle East [3] | 940 | 4,970 | 920 | 707 | (1,112) | 6,425 |
| **Asia** | | | | | | |
| Philippines | 3,850 | — | — | 17 | (68) | 3,799 |
| Rest of Asia [4] | 738 | 1,533 | 169 | 226 | (100) | 2,566 |
| **Others** [5] | — | — | — | 9,712 | (4,325) | 5,387 |
| **Total** | Ps 95,508 | 72,448 | 28,925 | 46,077 | (45,157) | 197,801 |

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**Net sales by product and geographic segment – continued.**

| 2008 | Cement | Concrete | Aggregates | Others | Eliminations | Net sales |
|---|---|---|---|---|---|---|
| **North America** | | | | | | |
| Mexico | Ps 28,666 | 13,017 | 1,355 | 7,597 | (8,999) | 41,636 |
| United States | 17,429 | 19,601 | 11,379 | 17,258 | (13,650) | 52,017 |
| **Europe** | | | | | | |
| Spain | 11,900 | 5,267 | 1,224 | 3,526 | (4,730) | 17,187 |
| United Kingdom | 3,773 | 7,427 | 6,574 | 8,208 | (6,757) | 19,225 |
| Germany | 5,275 | 6,783 | 3,525 | 4,089 | (4,698) | 14,974 |
| France | — | 11,632 | 3,588 | 815 | (1,769) | 14,266 |
| Rest of Europe [1] | 8,947 | 8,709 | 2,702 | 1,579 | (3,016) | 18,921 |
| **Central and South America and the Caribbean** | | | | | | |
| Venezuela | 3,046 | 1,398 | 204 | 106 | (468) | 4,286 |
| Colombia | 4,656 | 2,340 | 450 | 1,159 | (1,941) | 6,664 |
| Rest of Central and South America and the Caribbean [2] | 10,518 | 3,234 | 249 | 810 | (3,346) | 11,465 |
| **Africa and Middle East** | | | | | | |
| Egypt | 4,728 | 485 | 39 | 80 | (114) | 5,218 |
| Rest of Africa and Middle East [3] | — | 5,449 | 799 | 1,263 | (661) | 6,850 |
| **Asia** | | | | | | |
| Philippines | 2,919 | — | — | 9 | (88) | 2,840 |
| Rest of Asia [4] | 791 | 1,533 | 166 | 229 | (154) | 2,565 |
| **Others** [5] | — | — | – | 12,356 | (4,805) | 7,551 |
| **Total** | Ps 102,648 | 86,875 | 32,254 | 59,084 | (55,196) | 225,665 |

**Footnotes to the geographic segment tables presented above:**

**1** For the reported periods, the segment "Rest of Europe" refers primarily to operations in Ireland, the Czech Republic, Austria, Poland, Croatia, Hungary and Latvia.

**2** For the reported periods, the segment "Rest of Central and South America and the Caribbean" includes CEMEX's operations in Costa Rica, Panama, Puerto Rico, the Dominican Republic, Nicaragua, other countries in the Caribbean, Guatemala, and small ready-mix concrete operations in Jamaica and Argentina. As mentioned in note 11A, in August 2008, the Government of Venezuela nationalized CEMEX's operations in that country; therefore, operations reported in 2008 refer to the seven-month period ended July 31, 2008.

**3** The segment "Rest of Africa and Middle East" includes the operations in the United Arab Emirates and Israel.

**4** For the reported periods, the segment "Rest of Asia" includes the operations in Thailand, Bangladesh, China and Malaysia.

**5** This segment refers to: 1) cement trade maritime operations, 2) the subsidiary involved in the development of information technology solutions (Neoris, N.V.), 3) the Parent Company and other corporate entities, and 4) other minor subsidiaries with different lines of business.

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## 3B) DISCONTINUED OPERATIONS

On October 1, 2009, CEMEX completed the sale of its Australian operations to a subsidiary of Holcim Ltd. for approximately 2,020 million Australian dollars (approximately US$1,700). The assets divested consisted of 249 ready-mix concrete plants, 83 aggregate quarries and 16 concrete pipe plants. The sale also included CEMEX's 25% interest in Cement Australia, whose assets include four cement plants, one grinding mill and several works under construction, with an aggregate cement production capacity of 5.1 million tons. As a result of this significant divestiture, the Australian operations included in the statements of operations for the years ended December 31, 2009 and 2008, were reclassified to the single line item of "Discontinued operations," which includes, in 2009, a loss on sale, net of income tax, and the reclassification of foreign currency translation effects accrued in equity for an aggregate amount of approximately Ps5,901 (US$446). The 2009 loss on the sale of CEMEX's Australian assets includes an expense of approximately Ps1,310 (US$99) resulting from the reclassification to the statement of operations of foreign currency translation effects accrued in equity until the moment of sale, as well as an income tax benefit of approximately Ps2,528 (US$191).

Selected condensed balance sheet information of discontinued operations of CEMEX in Australia as of September 30, 2009 was as follows:

| | (unaudited) September 30, 2009 |
|---|---|
| Current assets | Ps 6,027 |
| Investment in associates | 2,870 |
| Property, machinery and equipment, net | 13,343 |
| Goodwill | 8,657 |
| Intangible assets, net | 3,885 |
| Other non-current assets | 850 |
| Total assets from discontinued operations | **35,632** |
| Short-term debt | 1,634 |
| Other current liabilities | 2,634 |
| Long-term debt | 140 |
| Other non-current liabilities | 2,324 |
| Total liabilities from discontinued operations | **6,732** |
| Net assets from discontinued operations | **Ps 28,900** |

The following table presents condensed income statement information of the discontinued operations of CEMEX Australia for the nine-month period ended September 30, 2009 and the twelve-month period ended December 31, 2008, respectively:

| | (unaudited) September 30, 2009 | December 31, 2008 |
|---|---|---|
| Sales | Ps 13,015 | 17,536 |
| Cost of sales and operating expenses | (11,817) | (15,740) |
| **Operating income** | 1,198 | 1,796 |
| Other expenses, net | (87) | (92) |
| Comprehensive financial result | (179) | (399) |
| Equity in income of associates | 208 | 229 |
| **Income before income tax** | 1,140 | 1,534 |
| Income tax | 512 | 563 |
| **Net income** | Ps 1,652 | 2,097 |
| Depreciation | Ps 631 | 856 |
| Amortization | Ps 256 | 309 |
| Capital expenditures | Ps 128 | 737 |

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## 4. CASH AND INVESTMENTS

As of December 31, 2010 and 2009, consolidated cash and investments consisted of:

| | 2010 | 2009 |
|---|---|---|
| Cash and bank accounts | Ps3,659 | 11,295 |
| Fixed-income securities | 4,683 | 2,783 |
| Investments in marketable securities | 12 | 26 |
| | Ps 8,354 | 14,104 |

As of December 31, 2010 and 2009, the balance of cash and investments excludes amounts deposited in margin accounts that guarantee several obligations of CEMEX for approximately Ps2,918 and Ps3,962, respectively, of which approximately Ps1,972 in 2010 and Ps2,553 in 2009, related to derivative financial instruments, were offset against the liabilities of CEMEX with its counterparties. As of December 31, 2010, fixed-income securities included approximately Ps195 for the CBs reserve (note 12A).

## 5. TRADE ACCOUNTS RECEIVABLE

As of December 31, 2010 and 2009, consolidated trade accounts receivable consisted of:

| | 2010 | 2009 |
|---|---|---|
| Trade accounts receivable | Ps 14,439 | 15,954 |
| Allowances for doubtful accounts | (2,246) | (2,571) |
| | Ps12,193 | 13,383 |

As of December 31, 2010 and 2009, trade receivables exclude receivables of Ps9,968 (US$807) and Ps9,624 (US$735), respectively, that were sold to financial institutions under securitization programs for the sale of trade receivables, established in Mexico, the United States, Spain and France. Under these programs, CEMEX effectively surrenders control associated with the trade receivables sold and there is no guarantee or obligation to reacquire the assets; therefore, the amount of receivables sold is removed from the balance sheet at the moment of sale, except for the amounts owed by the counterparties, which are reclassified to other short-term accounts receivable. Trade receivables 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 discount granted to the acquirers of the trade receivables is recorded as financial expense and amounted to approximately Ps368 (US$29) in 2010, Ps645 (US$47) in 2009 and Ps656 (US$58) in 2008.

CEMEX's securitization programs are negotiated for specific periods and should be renewed at their maturity, normally for periods of one or two years. Programs outstanding in Mexico, the United States, Spain and France mature in December 2011, May 2011, May 2011 and September 2011, respectively.

Allowances for doubtful accounts are established according to the credit history and risk profile of each customer. Changes in the valuation allowance for doubtful accounts in 2010, 2009 and 2008, were as follows:

| | 2010 | 2009 | 2008 |
|---|---|---|---|
| Allowances for doubtful accounts at beginning of period | Ps2,571 | 2,261 | 1,991 |
| Charged to selling expenses | 353 | 777 | 602 |
| Deductions | (609) | (454) | (523) |
| Business combinations | 2 | — | 63 |
| Foreign currency translation and inflation | (71) | (13) | 128 |
| Allowances for doubtful accounts at end of period | Ps2,246 | 2,571 | 2,261 |

## 6. OTHER ACCOUNTS RECEIVABLE

As of December 31, 2010 and 2009, consolidated other accounts receivable consisted of:

| | 2010 | 2009 |
|---|---|---|
| Non-trade accounts receivable | Ps 4,262 | 3,650 |
| Current portion of valuation of derivative instruments | 7,448 | 1,259 |
| Interest and notes receivable | 3,412 | 3,700 |
| Loans to employees and others | 264 | 375 |
| Refundable taxes | 738 | 356 |
| | Ps16,124 | 9,340 |

Non-trade accounts receivable are mainly attributable to the sale of assets. As of December 31, 2010 and 2009, the caption "Interests and notes receivable" include Ps3,306 and Ps3,083, respectively, arising from uncollected trade receivables sold under securitization programs (note 5), and Ps221 in 2010 and Ps235 in 2009 arising from the settlement of derivative instruments related to perpetual debentures issued by CEMEX (notes 12C and 16D).

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## 7. INVENTORIES

As of December 31, 2010 and 2009, consolidated balances of inventories are summarized as follows:

| | 2010 | 2009 |
|---|---|---|
| Finished goods | Ps 5,434 | 5,168 |
| Work-in-process | 2,710 | 3,207 |
| Raw materials | 2,783 | 3,005 |
| Materials and spare parts | 4,383 | 5,729 |
| Advances to suppliers | 446 | 331 |
| Inventory in transit | 301 | 233 |
| Allowance for obsolescence | (513) | (482) |
| | Ps15,544 | 17,191 |

During December 2010, as a result of analyses performed during the year, main components of plant and equipment that were held as part of materials and spare parts in inventory for approximately Ps724 (US$59) were reclassified to fixed assets (note 10). CEMEX recognized, in the statements of operations, inventory impairment losses of approximately Ps17 in 2010, Ps91 in 2009 and Ps81 in 2008.

## 8. OTHER CURRENT ASSETS

As of December 31, 2010 and 2009, consolidated other current assets consisted of:

| | 2010 | 2009 |
|---|---|---|
| Advance payments | Ps1,387 | 1,497 |
| Assets held for sale | 965 | 1,255 |
| | Ps2,352 | 2,752 |

Assets held for sale are stated at their estimated realizable value and include real estate properties received in payment of trade receivables. During 2010 and 2009, CEMEX recognized within “Other expenses, net” impairment losses in connection with assets held for sale for approximately Ps420 and Ps253, respectively.

## 9. INVESTMENTS IN ASSOCIATES AND OTHER INVESTMENTS AND NON-CURRENT ACCOUNTS RECEIVABLE

### 9A) INVESTMENTS IN ASSOCIATES

As of December 31, 2010 and 2009, consolidated investments in shares of associates are summarized as follows:

| | 2010 | 2009 |
|---|---|---|
| Book value at acquisition date | Ps3,257 | 4,961 |
| Changes in stockholders’ equity since acquisition | 5,004 | 5,934 |
| | Ps8,261 | 10,895 |

As of December 31, 2010 and 2009, investments in shares of associates were as follows:

| | Activity | Country | % | 2010 | 2009 |
|---|---|---|---|---|---|
| Control Administrativo Mexicano, S.A. de C.V. | Cement | Mexico | 49.0 | Ps 4,366 | 4,491 |
| Ready Mix USA, LLC | Concrete | United States | 49.9 | 66 | 2,194 |
| Trinidad Cement Ltd. | Cement | Trinidad | 20.0 | 560 | 591 |
| Cancem, S.A. de C.V. | Cement | Mexico | 10.3 | 465 | 478 |
| Société Méridionale de Carrières | Aggregates | France | 33.3 | 264 | 331 |
| Société d’Exploitation de Carrières | Aggregates | France | 50.0 | 188 | 227 |
| ABC Capital S.A. de C.V.S.F.O.M. | Financing | Mexico | 49.0 | 333 | 301 |
| Société des Ciments Antillais | Cement | French Antilles | 26.0 | 124 | 173 |
| Huttig Building Products Inc. | Materials | United States | 25.2 | 48 | 98 |
| Lehigh White Cement Company | Cement | United States | 24.5 | 155 | 214 |
| Other companies | — | — | — | 1,692 | 1,797 |
| | | | | Ps8,261 | 10,895 |

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As of December 31, 2010, CEMEX's joint ventures with Ready Mix USA have the following prospective changes:

- The two joint ventures, which were created in 2005, are comprised of the following assets: a) CEMEX Southeast, LLC, the joint venture owned at 50.01% and consolidated by CEMEX, owns the Demopolis cement plant in Alabama with an annual installed capacity of 0.9 million tons, the Clinchfield cement plant in Georgia with an annual installed capacity of 0.8 million tons, and 12 cement terminals; and b) Ready Mix USA LLC, the joint venture owned at 50.01% and consolidated by Ready Mix USA, owns 10 sand and gravel pits, 149 concrete plants and 20 block plants located throughout the states of Arkansas, Mississippi, Tennessee, Alabama, Georgia, and the Florida Panhandle. Starting on June 30, 2008, Ready Mix USA had the right, but not the obligation, to sell its interest in both entities to CEMEX.
- On September 30, 2010, Ready Mix USA exercised its put option. As a result, upon closing of the transaction, which will take place upon performance of the obligations by both parties under the put option agreement and is expected on or before September 2011, CEMEX will acquire its joint venture partner's interests in the two joint ventures. CEMEX's purchase price for its partner's interests, including a non-compete agreement, will be approximately US$355. Ready Mix USA will continue to manage the joint venture in which it has a majority interest (Ready Mix USA LLC) until the closing of the transaction. As of December 31, 2010, CEMEX has not recognized a liability as the fair value of the net assets exceeds the estimated purchase price. Had the purchase price exceeded the fair value of the net assets to be acquired, a loss would have been recognized. As of December 31, 2010, Ready Mix USA, LLC had approximately US$27 (unaudited) in net debt (debt minus cash and cash equivalents), which will be consolidated upon closing of the transaction.

In addition, on February 22, 2010, Ready Mix USA LLC sold 12 quarries located in Georgia, Tennessee and Virginia and certain other assets to SPO Partners & Co. for US$420. The assets were deemed non-strategic by CEMEX and Ready Mix USA. The proceeds from the sale were partly used to reduce debt held by Ready Mix USA LLC, and to effect a cash distribution of approximately US$100 to each joint venture partner. Furthermore, in January 2008, as part of the joint venture agreements, CEMEX contributed and sold certain assets located also in Georgia, Tennessee and Virginia to Ready Mix USA, LLC for approximately US$380 of which US$120 represented the sale of assets and was received in cash. The difference between the US$380 and the fair value of the assets of approximately US$437 was included within investment in associates.

On April 2010, CEMEX agreed to participate as a minority investor and invest up to US$100 into the share capital of Blue Rock Cement Holdings ("Blue Rock") to develop a cement plant in Peru, and is evaluating if it will assist, by agreement with the majority shareholders, in the development, building, and operation of the plant. The plant is designed to have an initial annual production capacity of 1 million tons and is expected to be completed in 2013 with a total investment of around US$230. The construction industry in Peru operates in an attractive market that has seen sustained annual growth of over 10% in the past years. This investment falls under permitted terms under CEMEX's debt financing agreements (note 12A). As of December 31, 2010, the project is still in its documentary stage and CEMEX has not made any investment.

In June 2009, CEMEX sold its 49% interest in an aggregates sector joint venture located in Wyoming to Martin Marietta Materials, Inc., as well as three quarries located in Nebraska, Wyoming and Utah in the United States, for approximately US$65 and recognized a loss related to the sale of these assets of approximately US$64.

In March 2008, CEMEX sold 119 million CPOs of AXTEL, S.A.B. de C.V. ("AXTEL"), which represented 9.5% of the equity capital of AXTEL for approximately Ps2,738, recognizing a net gain of approximately Ps1,463 in 2008 within "Other expenses, net." The sale represented nearly 90% of CEMEX's position in AXTEL, which had been part of CEMEX's investments in associates.

## 9B) OTHER INVESTMENTS AND NON-CURRENT ACCOUNTS RECEIVABLE

As of December 31, 2010 and 2009, other investments and non-current accounts receivable are summarized as follows:

| | 2010 | 2009 |
|---|---|---|
| Non-current portion of valuation of derivative financial instruments | Ps 1,615 | 6,512 |
| Non-current accounts receivable and other assets | 12,842 | 14,205 |
| Investments in private funds | 457 | 532 |
| | Ps14,914 | 21,249 |

As of December 31, 2010 and 2009, "Non-current accounts receivable and other assets" include Ps6,203 and Ps6,147, respectively, related to CEMEX's net investment in its expropriated assets in Venezuela (note 11A), Ps94 in 2010 and Ps156 in 2009 of an investment in AXTEL's CPOs, Ps1,144 in 2010 and Ps916 in 2009 of an investment restricted for acquisitions in cement, concrete and/or aggregates businesses, as well as Ps726 in 2010 and Ps1,011 in 2009 resulting from the settlement of derivative instruments associated with the perpetual debentures, which are used to pay coupons under such instruments (notes 12C and 16D). In 2010, CEMEX recognized impairment losses within "Other expenses, net" for approximately Ps129 related to other assets in the United States.

In 2010, no contributions were made to private funds. In 2009, contributions to private funds were approximately US$5 (Ps65).

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## 10. PROPERTY, MACHINERY AND EQUIPMENT

As of December 31, 2010 and 2009, consolidated property, machinery and equipment consisted of:

| | 2010 | 2009 |
|---|---|---|
| Land and mineral reserves | Ps 76,146 | 83,568 |
| Buildings | 63,391 | 65,285 |
| Machinery and equipment | 240,283 | 253,797 |
| Construction in progress | 12,745 | 18,433 |
| Accumulated depreciation and depletion | (161,107) | (162,220) |
| | Ps 231,458 | 258,863 |

Changes in property, machinery and equipment in 2010, 2009 and 2008, excluding the discontinued operations in Australia (note 3B), were as follows:

| | 2010 | 2009 | 2008 |
|---|---|---|---|
| Cost of property, machinery and equipment at beginning of period | Ps 421,083 | 427,529 | 403,967 |
| Accumulated depreciation and depletion at beginning of period | (162,220) | (157,248) | (153,953) |
| **Net book value at beginning of period** | 258,863 | 270,281 | 250,014 |
| Capital expenditures | 6,963 | 8,307 | 22,554 |
| Capitalization of comprehensive financing result | — | 347 | 609 |
| Total additions | 6,963 | 8,654 | 23,163 |
| Disposals **1** | (2,978) | (4,040) | (5,084) |
| Reclassifications **2** | 724 | 3,603 | (11,656) |
| Contribution and sale to associates **3** | — | — | (4,588) |
| Additions through business combinations | 38 | 733 | 98 |
| Depreciation and depletion for the period | (14,442) | (15,963) | (15,611) |
| Impairment losses | (1,161) | (503) | (1,045) |
| Foreign currency translation effects **4** | (16,549) | (3,902) | 34,990 |
| Cost of property, machinery and equipment at end of period | 392,565 | 421,083 | 427,529 |
| Accumulated depreciation and depletion at end of period | (161,107) | (162,220) | (157,248) |
| **Net book value at end of period** | Ps 231,458 | 258,863 | 270,281 |

**1** In 2010, includes sales of non-strategic fixed assets in the Unites States and Mexico for Ps1,140 and Ps749, respectively. In 2009, includes sales in the United States, France and Mexico for Ps2,196, Ps747 and Ps293, respectively. In 2008, includes sales in Italy and Spain for Ps4,200 (note 11A).

**2** In 2010, includes the reclassification of main components of plant and equipment for approximately Ps724 (US$59) from the inventories of materials and spare parts (note 7). In 2008, includes the reclassification of CEMEX's Venezuelan fixed assets as a result of the nationalization of assets for Ps8,053 and the reclassification of fixed assets of Austria and Hungary as assets held for sale for Ps3,603. Fixed assets from Austria and Hungary were reinstated to this caption in 2009 for Ps3,603.

**3** Refers to the contribution and sale of assets to Ready Mix USA, LLC in 2008 detailed in note 9A.

**4** The effects presented in this caption refer to fluctuations in exchange rates for the period between the functional currency of the reporting unit and the peso.

During 2010, 2009 and 2008, in connection with impairment tests conducted considering certain triggering events, such as the closing and/or reduction of operations of cement and ready-mix plants resulting from adjusting the supply to current demand conditions and the transferring of installed capacity to more efficient plants, among other factors, CEMEX recognized within "Other expenses, net" impairment losses in machinery and equipment in the following countries:

| | 2010 | 2009 | 2008 |
|---|---|---|---|
| United States | Ps 500 | 154 | 511 |
| Mexico | 138 | — | — |
| Germany | 103 | — | — |
| Thailand | 74 | — | — |
| Puerto Rico | — | 282 | — |
| Poland | 92 | — | 322 |
| Other countries | 254 | 67 | 212 |
| | Ps1,161 | 503 | 1,045 |

The related assets were adjusted to their estimated realizable value.

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## 11. GOODWILL, INTANGIBLE ASSETS AND DEFERRED CHARGES

As of December 31, 2010 and 2009, consolidated goodwill, intangible assets and deferred charges are summarized as follows:

| | 2010 | | | 2009 | | |
|---|---|---|---|---|---|---|
| | Cost | Accumulated amortization | Carrying amount | Cost | Accumulated amortization | Carrying amount |
| **Intangible assets of indefinite useful life:** | | | | | | |
| Goodwill | Ps 142,094 | — | 142,094 | Ps 150,827 | — | 150,827 |
| **Intangible assets of definite useful life:** | | | | | | |
| Extraction rights | 27,051 | (2,738) | 24,313 | 28,986 | (2,286) | 26,700 |
| Cost of internally developed software | 7,664 | (6,537) | 1,127 | 7,807 | (5,075) | 2,732 |
| Industrial property and trademarks | 3,476 | (2,209) | 1,267 | 3,317 | (1,908) | 1,409 |
| Customer relationships | 4,587 | (1,596) | 2,991 | 4,936 | (1,224) | 3,712 |
| Mining projects | 1,969 | (600) | 1,369 | 2,161 | (431) | 1,730 |
| Others intangible assets | 7,239 | (4,564) | 2,675 | 7,635 | (4,665) | 2,970 |
| **Deferred charges and others:** | | | | | | |
| Deferred income taxes (notes 15A and 15B) **1** | 24,504 | — | 24,504 | 36,751 | — | 36,751 |
| Deferred financing costs | 7,743 | (2,186) | 5,557 | 9,333 | (1,655) | 7,678 |
| | Ps226,327 | (20,430) | 205,897 | Ps251,753 | (17,244) | 234,509 |

**1** The balance of deferred taxes includes Ps2 and Ps3 of deferred ESPS as of December 31, 2010 and 2009, respectively.

The amortization of intangible assets of definite useful life was approximately Ps4,032 in 2010, Ps4,350 in 2009 and Ps4,088 in 2008, and was recognized within operation costs and expenses.

During 2009, CEMEX capitalized financing costs for approximately Ps8,378 (US$616) associated with its debt Financing Agreement, as defined in note 12A. Under MFRS, CEMEX's debt Financing Agreement qualified as the issuance of new debt and the extinguishment of the old facilities in 2009. Consequently, approximately Ps608 (US$45) in 2009 of deferred financing costs associated with the extinguished debt were recognized immediately in the statement of operations.

**Goodwill**

Goodwill balances by reporting unit as of December 31, 2010 and 2009, are the following:

| | 2010 | 2009 |
|---|---|---|
| **North America** | | |
| United States | Ps109,765 | 116,784 |
| Mexico | 6,354 | 6,354 |
| **Europe** | | |
| Spain | 8,750 | 9,217 |
| United Kingdom | 4,254 | 4,569 |
| France | 3,302 | 3,635 |
| Rest of Europe **1** | 545 | 587 |
| **Central and South America and the Caribbean** | | |
| Colombia | 5,031 | 5,109 |
| Dominican Republic | 195 | 226 |
| Rest of Central and South America and the Caribbean **2** | 714 | 951 |
| **Africa and Middle East** | | |
| United Arab Emirates | 1,275 | 1,373 |
| Egypt | 229 | 231 |
| **Asia** | | |
| Philippines | 1,339 | 1,425 |
| **Others** | | |
| Other reporting units **3** | 341 | 366 |
| | Ps 142,094 | 150,827 |

**1** This segment includes reporting units in the Czech Republic and Latvia.
**2** This segment includes reporting units in Costa Rica and Panama.
**3** This segment is primarily associated with CEMEX's subsidiary in the information technology and software development business.

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Changes in goodwill in 2010, 2009 and 2008, excluding effects from the discontinued Australian assets (note 3B), were as follows:

| | 2010 | 2009 | 2008 |
|---|---|---|---|
| Balance at beginning of period | Ps150,827 | 157,541 | 142,344 |
| Increase for business acquisitions | 81 | 504 | 1,289 |
| Disposals | (448) | (414) | (187) |
| Impairment losses (note 11B) | (189) | — | (18,314) |
| Foreign currency translation effects **1** | (8,177) | (6,804) | 32,409 |
| Balance at end of period | Ps 142,094 | 150,827 | 157,541 |

**1** The amounts presented in this line item refer to the effects on goodwill from foreign exchange fluctuations during the period between the reporting units' currencies and the Mexican peso.

As mentioned in note 11B, during 2010 and 2008, 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 reporting units in Puerto Rico for approximately Ps189 (US$15) in 2010, and with the reporting units located in the United States, Ireland and Thailand for approximately Ps17,476 (US$1,272) in 2008. In addition, considering that the investment in CEMEX Venezuela is expected to be recovered through different means other than use, in 2008, CEMEX recognized an impairment loss of approximately Ps838 (US$61) associated with the goodwill of this investment. Based on impairment tests made during the last quarter of the year, no goodwill impairment losses were determined in 2009.

**Intangible assets of definite life**

Changes in balances of intangible assets of definite life in 2010, 2009 and 2008, excluding effects from the discontinued Australian assets (note 3B), were as follows:

| | 2010 | 2009 | 2008 |
|---|---|---|---|
| Balance at beginning of period | Ps39,253 | 45,303 | 40,577 |
| Increase for business acquisitions | 48 | 5 | 404 |
| Additions (disposals), net **1** | (287) | 47 | 1,445 |
| Amortization | (4,032) | (4,350) | (4,088) |
| Impairment losses **2** | (5) | (42) | (1,598) |
| Foreign currency translation effects | (1,235) | (1,710) | 8,563 |
| Balance at end of period | Ps 33,742 | 39,253 | 45,303 |

**1** CEMEX capitalized the costs incurred in the development stage of internal-use software for Ps30 in 2010, Ps161 in 2009 and Ps1,236 in 2008, related to the replacement of the technological platform in which CEMEX executes the most important processes of its business model. The items capitalized refer to direct costs incurred in the development phase of the software and relate mainly to professional fees, direct labor and related travel expenses.

**2** Considering impairment indicators, during the last quarter of 2008, CEMEX tested intangible assets of definite life for impairment in the United States, and determined that the carrying amount of names and commercial trademarks exceeded their value in use, resulting in an impairment loss of approximately Ps1,598.

**11A) MAIN ACQUISITIONS AND DIVESTITURES IN 2010, 2009 and 2008**

**Sale of assets in Australia**

During 2009, CEMEX sold its Australian operations (note 3B).

**Nationalization of CEMEX Venezuela**

In August 18, 2008, as a result of a nationalization decree aimed to convert the cement industry in a sector controlled by the State, the Government of Venezuela expropriated all businesses, assets and shares of CEMEX in such country and took control of its facilities. CEMEX controlled and operated CEMEX Venezuela until August 17, 2008. In August 2008, CEMEX decided not to accept a compensation proposal for US$650 from the Government of Venezuela, considering that it significantly undervalued its business in Venezuela, and in proportion to price per ton of installed capacity and operating cash flow multiples, was lower than those proposals offered to the other foreign companies for their assets in Venezuela. In October 2008, CEMEX submitted a request to the International Centre for Settlement of Investment Disputes ("ICSID"), seeking international arbitration for the violations of the Venezuelan Government through its confiscation of assets without compensation, and deprivation of rights and legal guarantees in the process. The ICSID Tribunal was constituted on July 6, 2009. On July 27, 2010, the arbitral tribunal heard arguments on the jurisdictional objections argued by the Republic of Venezuela and issued its decision in favor of jurisdiction on December 30, 2010. The proceedings are now expected to proceed to the merits phase of the arbitration.

At December 31, 2010 and 2009, except for the impairment loss associated to the investment recognized in 2008, CEMEX has not adjusted its investment in Venezuela for impairment, remaining confident that it will eventually reach an agreement and obtain fair compensation. CEMEX carefully evaluates the evolution of the arbitration process with the ICSID and other negotiations to determine if the carrying amount requires an impairment adjustment.

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CEMEX's consolidated statement of operations for the year ended December 31, 2008 includes the results of CEMEX Venezuela for the seven-month period ended July 31, 2008. As of December 31, 2010 and 2009, the investment in Venezuela was presented within "Other investments and non current accounts receivable" (note 9B) and amounted to approximately Ps6,203 and Ps6,147, respectively, corresponding to CEMEX's equity interest of approximately 75.7%.

For the year 2008, including the Australian discontinued operations, CEMEX measured the materiality of CEMEX Venezuela considering a threshold of 5% of consolidated net sales, operating income, net income and total assets, as not significant. CEMEX concluded that the nationalized Venezuelan operations did not reach the materiality thresholds to be classified as discontinued operations. The quantitative test for the seven-month period ended July 31, 2008 (unaudited) was as follows:

| | July 31, 2008 |
|---|---|
| **Net sales** | **3.2%** |
| CEMEX consolidated from continuing operations | Ps 134,836 |
| CEMEX Venezuela | 4,286 |
| **Operating income** | **4.8%** |
| CEMEX consolidated from continuing operations | Ps 16,003 |
| CEMEX Venezuela **1** | 775 |
| **Net income** | **0.1%** |
| CEMEX consolidated from continuing operations | Ps 10,557 |
| CEMEX Venezuela | 11 |
| **Total assets** | **2.1%** |
| CEMEX consolidated | Ps 525,756 |
| CEMEX Venezuela | 11,010 |

**1** Changes in the net investment between July 31, 2008 and December 31, 2010 and 2009 are attributable to foreign currency fluctuations.

The following table presents condensed selected income statement information for CEMEX's operations in Venezuela for the seven-month period ended July 31, 2008 (unaudited):

| | July 31, 2008 |
|---|---|
| Sales | Ps 4,286 |
| Operating income | 775 |
| Net income | Ps 11 |

**Sale of operations in Canary Islands**

On December 26, 2008, through its subsidiary in Spain, CEMEX sold assets in the cement and concrete sectors in the Canary Islands, including its 50% interest in Cementos Especiales de Las Islas, S.A. ("CEISA") for approximately €162 (US$227 or Ps3,113) to a subsidiary of Cimpor Cimentos de Portugal SGPS SA. Until the sale, CEMEX controlled CEISA together with another stockholder (Grupo Tudela Beguin) and the financial statements were consolidated through the proportional integration method (note 2B). CEMEX's 2008 consolidated statement of operations includes the results of operations of the assets sold, calculated through the proportional integration method for assets related to CEISA, for the twelve-month period ended on December 31, 2008. Sale of the CEISA interest and other assets generated a net gain in 2008 of approximately Ps920, including the cancellation of the related goodwill for approximately Ps18, which was recognized within "Other expenses, net."

Selected condensed combined information of income statement of the assets sold and the CEISA interest in 2008 is as follows:

| | 2008 |
|---|---|
| Sales | Ps2,317 |
| Operating income | 283 |
| Net income | Ps 371 |

**Sale of operations in Italy**

In several transactions during 2008, CEMEX sold its cement mill operations in Italy for approximately €148 (US$210 or Ps2,447), generating a gain on the sale of approximately €8 (US$12 or Ps119), which was recognized within "Other expenses, net."

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## 11B) ANALYSIS OF GOODWILL IMPAIRMENT

Goodwill amounts are allocated to the multiple cash generating units, which together constitute a geographic operating segment commonly comprising all of the operations in each country. CEMEX's geographic segments represent its reporting units for purposes of impairment testing. An impairment loss would be recognized for the amount that the carrying amount of the reporting unit exceeds the respective fair value, represented by the value in use (discounted cash flows) attributable to such reporting unit. Cash flow projection models include long-term economic variables. 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 that: a) the starting point of the future cash flow models is the operating cash flow for the previous period; b) the cost of capital reflects current risks and volatility in the markets; and c) the cost of debt represents CEMEX's specific interest rates observed in recent transactions.

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, long-term growth expectations in the different markets, as well as the discount rates and the rates of growth in perpetuity used. CEMEX uses after-tax discount rates, which are applied to after-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 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.

During the last quarter of 2010, 2009 and 2008, CEMEX performed its annual goodwill impairment test. Based on these analyses, in 2010, CEMEX determined an impairment loss of goodwill for approximately Ps189 (US$15) associated with the reporting unit in Puerto Rico, whereas, in 2008, CEMEX determined impairment losses of goodwill for a total of approximately Ps18,314 (US$1,333), associated with CEMEX's reporting units in the United States, Ireland and Thailand for approximately Ps16,790 (US$1,222), Ps233 (US$17) and Ps453 (US$33), respectively. The estimated impairment loss in the United States in 2008 was mainly attributable to the acquisition of the Australian producer Rinker Materials Group finalized in 2007, and overall such losses were attributable to the economic environment described in the paragraph below. In addition, considering that CEMEX's investment in Venezuela is expected to be recovered through different means other than use, CEMEX recognized in 2008 an impairment loss of approximately Ps838 (US$61) associated with the goodwill of this investment. For the year 2009, based on its goodwill impairment tests, CEMEX did not determine impairment losses of goodwill.

Beginning in the last quarter of 2008, the global economic environment was negatively affected by the intensification of the turmoil in several major financial institutions, which caused a liquidity shortage for companies in almost all productive sectors and resulted in a significant decrease in overall economic activity and a worldwide downturn in the main stock markets. These situations generated a reduction of growth expectations in the countries in which CEMEX operates, motivated by the cancellation or deferral of several investment projects, affecting the construction industry. Although in 2009 and 2010 most global macroeconomic variables have stabilized, the construction industry has remained depressed in certain countries mainly as a result of the high level of inventories existing at the beginning of the financial crisis, and the lack of investment projects considering the reaction of investors to the liquidity problems in countries like Greece, Spain, Ireland and Portugal, among others.

In 2010 and 2009, discount rates and growth rates in perpetuity used to determine the discounted cash flows in the reporting units with the main goodwill balances are as follows:

| | Discount rates | | Growth rates | |
|---|---|---|---|---|
| Reporting units | 2010 | 2009 | 2010 | 2009 |
| United States | 8.7% | 8.5% | 2.5% | 2.9% |
| Spain | 10.2% | 9.4% | 2.5% | 2.5% |
| Mexico | 10.0% | 10.0% | 2.5% | 2.5% |
| Colombia | 10.0% | 10.2% | 2.5% | 2.5% |
| France | 9.6% | 9.6% | 2.5% | 2.5% |
| United Arab Emirates | 11.5% | 11.4% | 2.5% | 2.5% |
| United Kingdom | 9.7% | 9.4% | 2.5% | 2.5% |
| Egypt | 11.1% | 10.0% | 2.5% | 2.5% |
| Range of rates in other countries | 10.3% – 13.9% | 9.6% – 14.6% | 2.5% | 2.5% |

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## 12. FINANCIAL LIABILITIES AND DERIVATIVE FINANCIAL INSTRUMENTS

### 12A) SHORT-TERM AND LONG-TERM FINANCIAL LIABILITIES

As of December 31, 2010 and 2009, consolidated debt according to the interest rates, the currencies and the type of instrument in which it was negotiated is summarized as follows:

| | Carrying amounts | | Effective rate 1 | |
|---|---|---|---|---|
| | 2010 | 2009 | 2010 | 2009 |
| **Short-term** | | | | |
| Floating rate | Ps 4,806 | 7,373 | 5.2% | 5.1% |
| Fixed rate | 831 | 20 | 7.8% | 5.7% |
| | 5,637 | 7,393 | | |
| **Long-term** | | | | |
| Floating rate | 120,581 | 150,273 | 5.0% | 5.0% |
| Fixed rate | 76,600 | 53,478 | 7.5% | 7.8% |
| | 197,181 | 203,751 | | |
| | Ps 202,818 | 211,144 | | |

| | 2010 | | | | 2009 | | | |
|---|---|---|---|---|---|---|---|---|
| **Currency** | **Short-term** | **Long-term** | **Total** | **Effective rate 1** | **Short-term** | **Long-term** | **Total** | **Effective rate 1** |
| Dollars | Ps 176 | 137,249 | 137,425 | 6.5% | Ps 950 | 125,441 | 126,391 | 5.7% |
| Euros | 600 | 47,159 | 47,759 | 5.5% | 431 | 57,261 | 57,692 | 5.6% |
| Pesos | 4,705 | 12,636 | 17,341 | 6.8% | 4,379 | 20,877 | 25,256 | 6.5% |
| Other currencies | 156 | 137 | 293 | 5.4% | 1,633 | 172 | 1,805 | 5.3% |
| | Ps 5,637 | 197,181 | 202,818 | | Ps 7,393 | 203,751 | 211,144 | |

**1** Represents the weighted average effective interest rate.

| **2010** | **Short-term** | **Long-term** | **2009** | **Short-term** | **Long-term** |
|---|---|---|---|---|---|
| **Bank loans** | | | **Bank loans** | | |
| Loans in Mexico, 2011 to 2014 | Ps — | 2,217 | Loans in Mexico, 2010 to 2014 | Ps — | 3,348 |
| Loans in foreign countries, 2011 to 2018 | 499 | 27,985 | Loans in foreign countries, 2010 to 2018 | 2,275 | 33,842 |
| Syndicated loans, 2011 to 2014 | — | 83,741 | Syndicated loans, 2010 to 2014 | — | 100,593 |
| | 499 | 113,943 | | 2,275 | 137,783 |
| **Notes payable** | | | **Notes payable** | | |
| Notes payable in Mexico, 2011 to 2017 | — | 13,224 | Notes payable in Mexico, 2010 to 2017 | — | 19,041 |
| Medium-term notes, 2011 to 2020 | — | 72,471 | Medium-term notes, 2010 to 2017 | — | 48,221 |
| Other notes payable, 2011 to 2025 | 574 | 2,107 | Other notes payable, 2010 to 2025 | 1,177 | 2,647 |
| | 574 | 87,802 | | 1,177 | 69,909 |
| Total bank loans and notes payable | 1,073 | 201,745 | Total bank loans and notes payable | 3,452 | 207,692 |
| Current maturities | 4,564 | (4,564) | Current maturities | 3,941 | (3,941) |
| | Ps 5,637 | 197,181 | | Ps 7,393 | 203,751 |

**Relevant transactions during 2010 and 2009**

As detailed elsewhere in note 12A, on August 14, 2009, CEMEX entered into the Financing Agreement with its major creditors. The Financing Agreement extended the maturity of approximately US$14,961 (Ps195,839) in syndicated and bilateral loans, private placement obligations and other obligations. On October 25, 2010, CEMEX and its lenders under the Financing Agreement agreed to amendments which prospectively modify the requirements of certain financial ratios and tests.

On December 15, 2010, CEMEX prepaid US$100 toward maturities coming due in June 2012 under the Financing Agreement, reducing the June 2012 amortization amount to US$47. CEMEX intends to achieve its milestones of debt reduction negotiated under the Financing Agreement in order to maintain the current applicable margin until at least December 2011.

In June 2010, CEMEX concluded an early cash payment of Ps4,077 (US$330) in long-term CBs (" *Certificados Bursátiles de Largo Plazo*") following a public tender offer and the exercise of a call option. For the early payment of CBs, CEMEX used proceeds from the optional convertible subordinated notes (the "2010 Optional Convertible Subordinated Notes") issued in March 2010 (see below). As of December 31, 2010, the balance of CBs outstanding under this program amounted to Ps198 (US$16). These CBs mature in March 2011.

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In May 2010, CEMEX exchanged, at a discount, part of each series of its perpetual debentures (note 16D) 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, which were issued by our subsidiary CEMEX España, S.A., acting through its Luxembourg branch, are fully and unconditionally guaranteed by CEMEX, S.A.B. de C.V., CEMEX México, S.A. de C.V. and New Sunward Holding B.V., and have a *pari passu* over the collateral and all proceeds of the collateral granted to the financial institutions under the Financing Agreement and other secured lenders. 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."

On March 30, 2010, CEMEX issued US$715 aggregate principal amount of 4.875% Optional Convertible Subordinated Notes due 2015, including the full exercise of the US$65 over-allotment option granted to the initial purchasers of the notes. The 2010 Optional Convertible Subordinated Notes are subordinated to all the Parent Company's liabilities and commitments. The holders of the 2010 Optional Convertible Subordinated Notes have the option to convert their notes into CEMEX's 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 entered into a capped call transaction expected to generally reduce the potential dilution cost to CEMEX upon future conversion of the 2010 Optional Convertible Subordinated Notes (note 12C). Based on MFRS, the 2010 Optional Convertible Subordinated Notes contain a liability component and an equity component (note 2K). The equity component, which represents the premium of the noteholders' call option, amounted to Ps1,232 and was recognized upon issuance within "Other equity reserves." As of December 31, 2010, the liability component amounted to approximately Ps7,690 (US$622). After antidilution adjustments, the conversion rate as of December 31, 2010 was 76.4818 ADSs per each 1 thousand dollars principal amount of such 2010 Optional Convertible Subordinated Notes.

On January 13, 2010, through a reopening of the offering of its 9.5% notes due in 2016, which are described in the paragraph below, CEMEX 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 several of CEMEX's operating subsidiaries.

In December 2009, CEMEX issued U.S. dollar-denominated notes for US$1,250, maturing in 7 years with an annual coupon of 9.5%, as well as euro-denominated notes for €350 (US$501), maturing in 8 years with an annual coupon of 9.625%. The proceeds obtained from the offerings were mainly used to prepay principal outstanding maturing in 2011 under the Financing Agreement.

In December 2009, CEMEX completed its offer to exchange CBs issued in Mexico with maturities between 2010 and 2012, into mandatorily convertible securities ("Mandatorily Convertible Securities") for approximately Ps4,126 (US$315). Reflecting antidilution adjustments, at their scheduled conversion in ten years or earlier if the price of the CPO reaches approximately Ps34.50, the Mandatorily Convertible Securities will be mandatorily convertible into approximately 179.4 million CPOs at a conversion price of approximately Ps23.00 per CPO. During their tenure, the Mandatorily Convertible Securities yield 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. Based on MFRS, the Mandatorily Convertible Securities represent a compound instrument which has a liability component and an equity component. At December 31, 2010 and 2009, the liability component, which represents the net present value of interest payments on the principal amount, without assuming any early conversion, amounted to Ps1,994 and Ps2,090, respectively, and was recognized within "Other financial obligations." The equity component, which represents the difference between the principal amount and the liability component at the beginning of the transaction for Ps1,971, was recognized within "Other equity reserves."

The most representative exchange rates for the financial debt are as follows:

| | January 27, 2011 | December 31, | |
|---|---|---|---|
| | | 2010 | 2009 |
| Mexican pesos per dollar | 12.04 | 12.36 | 13.09 |
| Euros per dollar | 0.7302 | 0.7499 | 0.6985 |

Changes in consolidated debt for the years ending December 31, 2010, 2009 and 2008 are as follows:

| | 2010 | 2009 | 2008 |
|---|---|---|---|
| Debt at beginning of year | Ps211,144 | 258,074 | 216,895 |
| Proceeds from new debt instruments | 20,026 | 40,223 | 59,568 |
| Debt repayments | (29,641) | (76,035) | (63,179) |
| Issuance of debt in exchange for perpetual notes | 15,437 | – | – |
| Exchange of debt into convertible securities | – | (4,126) | – |
| Decrease from business combinations | – | – | (776) |
| Foreign currency translation and inflation effects | (14,148) | (6,992) | 45,566 |
| Debt at end of year | Ps202,818 | 211,144 | 258,074 |

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The maturities of consolidated long-term debt as of December 31, 2010, which reflect the amortization of debt under the Financing Agreement, are as follows:

| | 2010 |
|---|---|
| 2012 | Ps 14,377 |
| 2013 | 29,831 |
| 2014 | 99,955 |
| 2015 | 7,795 |
| 2016 and thereafter | 45,223 |
| | Ps197,181 |

As of December 31, 2010, CEMEX has the following lines of credit, the majority of which are subject to the banks' availability, at annual interest rates ranging between 1.39% and 11.35%, depending on the negotiated currency:

| | Lines of credit | Available |
|---|---|---|
| Other lines of credit in foreign subsidiaries | Ps 6,722 | 4,055 |
| Other lines of credit from banks | 365 | 290 |
| | Ps 7,087 | 4,345 |

**Financing Agreement**

On October 25, 2010, as described in the "Covenants" section within this note 12, CEMEX and its lenders under the Financing Agreement agreed to amendments which prospectively modify certain financial ratios and other financial tests. In addition, CEMEX's creditors under the Financing Agreement consented to the following amendments: a) allowing CEMEX to use the proceeds from a permitted fundraising to be applied to repay short-term CBs issued in Mexico; b) allowing CEMEX to replenish its CBs reserve with cash on hand or disposal proceeds following a voluntary prepayment of debt under the Financing Agreement made using amounts from the CBs reserve; c) assuming that specified debt reductions are met, allowing CEMEX to apply the proceeds from equity or equity-linked securities to the CBs reserve in the same way as it was permitted for proceeds from debt and convertible securities; d) the modification of solvency tests applying to certain intermediate holding companies to permit the elimination of subordinated intercompany liabilities; e) assuming that specified debt reductions are met, allowing the Parent Company to provide guarantees in connection with the refinancing of certain debt held by subsidiaries in Holland and Spain; f) permitting CEMEX to enter into a greater variety of derivative transactions for hedging exposures under voluntary convertible/exchangeable obligations, and permitting CEMEX to enter into such transactions with respect to mandatorily convertible securities; g) if by September 30, 2011, CEMEX has not issued equity or equity-linked securities for at least US$1,000, the interest rate on its debt under the Financing Agreement will increase until such amount of equity or equity-linked securities has been issued, and CEMEX will have the obligation, by an additional securities demand of its Financing Agreement creditors, to issue such securities prior to 6 months after the date of the additional securities demand. The interest rate increase will apply until that amount of equity or equity-linked securities is issued. To obtain the amendments package, CEMEX paid a fee to its creditors under the Financing Agreement. Unless CEMEX is able to repay approximately US$1,500 by December 31, 2011, of the debt outstanding under the Financing Agreement, CEMEX will be required to pay an additional fee in January 2012. CEMEX believes that the aforementioned amendments will increase its flexibility to refinance and/or repay existing debt.

On August 14, 2009, CEMEX entered into the Financing Agreement with its major creditors, by means of which the maturities of approximately US$14,961 (Ps195,839) in syndicated and bilateral loans, private placements and other obligations were extended, providing for a semi-annual amortization schedule. The Financing Agreement is guaranteed by several of CEMEX's operating subsidiaries. As of December 31, 2010, after the application in 2010 of the proceeds obtained in the reopening of its 9.5% notes and the issuance of the 2010 Optional Convertible Subordinated Notes, mainly, and in 2009, the application of the net proceeds obtained from the sale of assets in Australia, the equity offering (note 16A) and the issuance of dollar and euro-denominated notes described above, the remaining debt balance under the Financing Agreement was approximately US$9,566 (Ps118,235), with payments due for approximately US$47 in June 2012, US$391 in December 2012, US$1,179 in June 2013, US$1,179 in December 2013 and US$6,770 in February 2014. In addition, if CEMEX is able to further prepay approximately US$2,301 by December 31, 2011, CEMEX will avoid an increase in the interest rate of debt under the Financing Agreement between 0.5% and 1.0% per annum, depending on the amount of prepayments made.

Under the Financing Agreement, in addition to complying with certain financial ratios and restrictions, and subject in each case to the permitted negotiated amounts and other exceptions, CEMEX is limited in its ability to incur new debt, grant guarantees, engage in acquisitions and/or joint ventures, declare and pay cash dividends and make other cash distributions to stockholders. Furthermore, the Financing Agreement requires, in addition to the scheduled debt amortization, the application of cash on hand for any period for which it is being calculated in excess of US$650 to prepay debt (other than as may be held in the CBs reserve pursuant to the terms of the Financing Agreement), and that aggregate capital expenditures should not exceed US$800 for 2011 and each year thereafter until debt under the Financing Agreement has been repaid in full.

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## Covenants

Most debt contracts of CEMEX require 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 financial expense ("coverage ratio"). Financial ratios are calculated according to formulas established in the debt contracts and require in most cases *pro forma* adjustments, using definitions that differ from terms defined under MFRS.

As of December 31, 2010, 2009 and 2008, taking into account the Financing Agreement and the amendments thereto, the modifications to the credit contracts and the waivers obtained, CEMEX, S.A.B. de C.V. and its subsidiaries were in compliance with the restrictive covenants imposed by its debt contracts. The main consolidated financial ratios were as follows:

| Consolidated financial ratios 1 | | 2010 | 2009 | 2008 |
|---|---|---|---|---|
| Leverage ratio 2, 3 | **Limit** | =< 7.75 | N/A | =< 4.5 |
| | **Calculation** | 7.43 | N/A | 4.04 |
| Coverage ratio 4 | **Limit** | > 1.75 | N/A | > 2.5 |
| | **Calculation** | 1.95 | N/A | 4.82 |

**1** Beginning on August 14, 2009, even though the financial ratios under the Financing Agreement use similar terminology, they are calculated differently as compared to the financial ratios effective until December 31, 2008 and before the completion of the Financing Agreement.

**2** The leverage ratio is calculated in pesos by dividing "funded debt" by *pro forma* operating income plus depreciation and amortization ("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, minus convertible securities, plus or minus the fair value of corresponding derivative financial instruments, among other adjustments. In 2008, the leverage ratio was calculated in U.S. dollars using net debt by *pro forma* operating EBITDA for the last twelve months as of the calculation date. Net debt included debt, as reported in the balance sheet, plus the negative fair value or minus the positive fair value of cross currency swap derivative financial instruments associated with debt, minus cash and temporary investments.

**3** For purposes of calculating the leverage ratio, the *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. In 2008, *pro forma* operating EBITDA was determined also in pesos, but considering a different conversion methodology, and included financial income.

**4** The coverage ratio is calculated in pesos using the amounts arising 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. In 2008, the coverage ratio was calculated also in pesos but considering a different conversion methodology. Operating EBITDA included financial income, while financial expense did not include interest accrued on the perpetual debentures.

On October 25, 2010, amendments were made to the Financing Agreement financial ratios and tests, including a coverage ratio of not less than (i) 1.75 times for each semi-annual period beginning on June 30, 2010 through December 31, 2012; and (ii) 2.0 times for the remaining semi-annual periods to December 31, 2013. In addition, the maximum leverage ratio must not exceed 7.75 times for each semi-annual period beginning on June 30, 2010 through the period ending June 30, 2011, decreasing to 7.0 times for the period ending December 31, 2011, and decreasing gradually for subsequent semi-annual periods to 4.25 times for the period ending December 31, 2013.

Upon completion of the Financing Agreement in August 2009 and before the amendments described above, the consolidated ratio of operating EBITDA to financial expense was of not less than: (i) 1.75 times for each semi-annual period beginning on June 30, 2010 through the period ending on June 30, 2011; (ii) 2.0 times for each semi-annual period through December 31, 2012; and (iii) 2.25 times for the subsequent semi-annual periods until December 31, 2013. In addition, the maximum leverage ratio was of 7.75 times for each semi-annual period beginning on June 30, 2010, decreasing gradually in subsequent semi-annual periods until reaching 3.50 times for the period ending December 31, 2013. For the year ended December 31, 2009, no such financial ratios under the Financing Agreement were applicable.

CEMEX will classify all of its outstanding debt as current debt in the CEMEX's 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 Financing 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 Financing 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. The aforementioned classification of debt as short-term could have a material adverse effect on CEMEX's liquidity and financial position.

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## 12B) FAIR VALUE OF ASSETS, FINANCIAL LIABILITIES AND DERIVATIVE 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), long-term accounts receivable and long-term investments are recognized at fair value, considering quoted market prices for the same or similar instruments to the extent available.

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 interest rates currently available to CEMEX. As of December 31, 2010 and 2009, the carrying amounts of long-term debt (including current maturities) and their respective fair values were as follows:

| | 2010 | | 2009 | |
|---|---|---|---|---|
| | Carrying amount | Fair value | Carrying amount | Fair value |
| Bank loans | Ps 113,943 | 113,943 | 137,783 | 137,783 |
| Notes payable | 87,802 | 87,146 | 69,909 | 68,503 |

## 12C) DERIVATIVE FINANCIAL INSTRUMENTS

CEMEX has negotiated interest rate swaps, cross currency swaps, forward contracts and other foreign exchange derivatives, as well as forward contracts and other derivative instruments on CEMEX's own shares and third parties' shares, with the objective, depending in each case, of: a) changing the profile of the interest rates and/or the interest rates and currencies originally negotiated in a portion of the debt; b) changing the mix of currencies of the debt; c) hedging certain net investments in foreign subsidiaries; d) changing the risk profile associated with the price of raw materials and other energy projects; and e) other corporate purposes.

As of December 31, 2010 and 2009, the notional amounts and fair values of CEMEX's derivative instruments were as follows:

| | | 2010 | | 2009 | |
|---|---|---|---|---|---|
| | (U.S. dollars millions) | Notional amount | Fair value | Notional amount | Fair value |
| I. | Interest rate swaps | US$ 196 | 35 | 202 | 27 |
| II. | Equity forwards on third party shares | 53 | 15 | 54 | 54 |
| III. | Forward instruments over indexes | 16 | 1 | 55 | 1 |
| IV. | Options on CEMEX's own shares | 1,575 | (71) | 860 | (79) |
| | | US$ 1,840 | (20) | 1,171 | 3 |

The caption "Results from financial instruments" includes gains and losses related to the recognition of changes in fair values of the derivative instruments portfolio during the applicable period and that represented net losses of approximately Ps849 (US$67) in 2010, Ps2,160 (US$141) in 2009 and Ps15,253 (US$1,229) in 2008. As of December 31, 2010 and 2009, pursuant to net balance settlement agreements, cash deposits in margin accounts that guarantee obligations through derivative financial instruments, were offset with the fair value of the derivative instruments for approximately US$160 (Ps1,978) and US$195 (Ps2,553), respectively.

As of December 31, 2010 and 2009, the main exposure of CEMEX is related to changes in the prices of its CPOs and third party shares. A significant decrease in the market price of CEMEX's CPOs and third party shares would negatively affect CEMEX's liquidity and financial position.

During October 2008, many companies experienced a period of greater volatility in the global securities and exchange markets, as part of the further worsening financial institutions' crisis. The crisis affected the availability of financing and companies' perceived risks, resulting from expectations of entering into an extended economic recession. Particularly in Mexico, during the period from October 1 to 16, 2008, the peso depreciated against the dollar by approximately 19%, representing two thirds of the total depreciation of the peso against the dollar during 2008 of approximately 26%. Meanwhile, the price of CEMEX's CPO decreased 58% in that same period. These factors had a significant negative effect on the valuation of CEMEX's derivative instruments portfolio, particularly the valuation of foreign exchange forward contracts that hedged CEMEX's net investment in foreign subsidiaries and cross currency swaps related to debt, as well as forward contracts in CEMEX's CPOs, among others. In the aforementioned period, changes in the fair value of the derivative instruments portfolio represented losses of approximately US$976 (Ps13,410), which affected the availability of CEMEX's lines of credit and triggered the need to make significant deposits in margin accounts with the counterparties, negatively affecting CEMEX's liquidity. In light of an uncertain economic outlook and the expectation of further worsening of the economic variables, CEMEX elected to neutralize its derivative instruments positions that were sensitive to fluctuations of the exchange rate of the peso vis-à-vis foreign currencies and the price of its CPOs.

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In order to neutralize those positions and considering contractual limitations to settle the contracts before their maturity date, in October 2008, CEMEX entered into new derivative instruments with the same counterparties, which represented the opposite position to the exposure resulting from fluctuations of the economic variables included in the original derivative instruments. As a result, from the date of the negotiation of the new opposite positions, any changes in the fair value of the original instruments has been effectively offset by an equivalent inverse amount generated by the new positions. The derivative instruments still exposed to changes in fair value were designated as "Active derivative financial instruments." In addition, CEMEX designated the portfolio of original and opposite derivative positions as "Inactive derivative financial instruments."

During April 2009, following negotiations with its creditors, CEMEX completed the settlement of a significant portion of its active and inactive derivative financial instruments held at the beginning of the year in order to reduce the risk of further margin calls. By means of this settlement, CEMEX recognized in 2009 an aggregate loss of approximately US$1,093, which after netting US$624 of cash margin deposits already posted in favor of CEMEX's counterparties and cash payments of approximately US$48, was documented through promissory notes for approximately US$421, which increased CEMEX's outstanding debt. Previously, in February 2009, CEMEX and its counterparties agreed the settlement of a portion of the obligations incurred through derivative instruments. The counterparties permanently withdrew part of the amounts deposited in such margin accounts at the beginning of the year for an amount of approximately US$392, of which approximately US$102 referred to active positions and approximately US$290 referred to inactive positions.

As mentioned above, all Cross Currency Swaps ("CCS") outstanding at the beginning of 2009 were settled in April 2009. In 2009 and 2008, changes in the fair value of CCS generated losses of approximately US$61 (Ps830) and US$216 (Ps2,421), respectively.

As previously mentioned, all outstanding foreign exchange forward contracts at the beginning of 2009 were settled in April 2009. Until October 2008, in order to hedge financial risks associated with fluctuations in foreign exchange rates of certain net investments in foreign countries denominated in euros and dollars to the peso, and consequently, reducing volatility in the value of stockholders' equity in CEMEX's reporting currency, CEMEX negotiated foreign exchange forward contracts with different maturities until 2010. Changes in the estimated fair value of these instruments were recorded in stockholders' equity as part of the foreign currency translation effect. The designation of the original positions as hedges of CEMEX's net exposure on investments in foreign subsidiaries in stockholders' equity terminated with the negotiation of the opposite derivative positions in October 2008. Therefore, changes in fair value of original positions and opposite derivative positions were recognized prospectively in the statement of operations. Valuation effects were recognized within stockholders' equity until the hedge designation was revoked, adjusting the cumulative effect for translation of foreign subsidiaries.

On July 15, 2009, in connection with the derivative financial instruments associated with CEMEX's perpetual debentures (note 16D), by means of which the Company changed the risk profile of the interest rates and the currencies of the debentures from the U.S. dollar and the euro to the yen; and in order to eliminate CEMEX's exposure to the yen and the yen interest rate, CEMEX concluded the settlement of its yen cross currency swap derivatives, as well as the forward contracts for US$196 as of December 2008, negotiated to eliminate the variability of cash flows in yen to be incurred through the CCS until 2010, in which CEMEX received cash flows in yen and paid U.S. dollars. As a result, a total amount of approximately US$94 was invested with trustees for the benefit of the debenture holders. This amount is being used to pay CEMEX's coupons on the perpetual debentures. As a result of this settlement, during 2009, CEMEX recognized a loss from changes in the fair value of the instruments of approximately US$162 (Ps2,203). As of December 31, 2010 and 2009, the balance of the investment placed in the trusts amounted to approximately Ps902 and Ps1,011, 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 basis of the notional amounts and other terms included in the derivative instruments.

### I. Interest rate swap contracts

As mentioned above, all outstanding interest rate swaps related to debt at the beginning of 2009 were settled in April 2009. Changes in fair value of interest rate swaps, including the swap described in the following paragraph, generated a gain of approximately US$9 (Ps114) in 2010, and losses of approximately US$2 (Ps27) in 2009 and US$170 (Ps1,906) in 2008.

As of December 31, 2010 and 2009, CEMEX had an interest rate swap maturing in September 2022 with notional amounts of US$196 and US$202, respectively, negotiated to exchange floating for fixed rates in connection with agreements entered into by CEMEX for the acquisition of electric energy in Mexico (note 19C). As of December 31, 2010 and 2009, the fair value of the swap represented gains of approximately US$35 and US$27, 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 a LIBO rate, which is the international reference for debt denominated in U.S. dollars. As of December 31, 2010 and 2009, LIBOR was 0.46% and 0.43%, respectively. Changes in the fair value of this instrument generated a gain of approximately US$9 (Ps114) in 2010, a loss of approximately US$27 (Ps367) in 2009 and a gain of approximately US$36 (Ps404) in 2008.

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### II. Equity forwards in third party shares

In connection with the sale of CPOs of AXTEL (note 9A) and in order to maintain the exposure to changes in the price of such entity, in March 2008, CEMEX 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 originally was set to mature in April 2011. During 2009, in order to reset the exercise price included in the contract, CEMEX instructed the counterparties to definitively dispose of the deposits in margin accounts for approximately Ps207 and the counterparties exercised an option to maintain the contract over 59.5 million CPOs of AXTEL each 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. Changes in the fair value of this instrument generated a loss of approximately US$43 (Ps545) in 2010, a gain of approximately US$32 (Ps435) in 2009 and a loss of approximately US$196 (Ps2,197) in 2008.

### III. Forward instruments over indexes

During 2008, CEMEX negotiated forward derivative instruments over the TRI (Total Return Index) of the Mexican Stock Exchange, maturing in October 2009, through which 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. At their maturity in 2009, these derivative instruments were renegotiated until October 2010 and subsequently were further extended until October 2011. Changes in the fair value of these instruments generated gains of approximately US$5 (Ps63) in 2010 and US$18 (Ps245) in 2009 and a loss of approximately US$32 (Ps359) in 2008.

### IV. Options on CEMEX's own shares

As of December 31, 2010 and 2009, there were options based on the price of CEMEX's ADSs for a notional amount of US$500 in both years maturing in August 2011, structured within a debt transaction of US$500 (Ps6,870) issued in June 2008, pursuant to which if the ADS price exceeds approximately US$30.4, as adjusted as of December 31, 2010, the net interest rate of this debt would be zero. This rate increases as the price of the ADS decreases, with a maximum rate of 12% when the price per ADS is below approximately US$20.5, as adjusted as of December 31, 2010. CEMEX values the options based on the price of its ADS at fair value, recognizing gains and losses in the statements of operations. As of December 31, 2010 and 2009, the fair value represented liabilities of approximately US$71 (Ps878) and US$77 (Ps952), respectively, which included deposits in margin accounts of approximately US$105 (Ps1,298) in 2010 and US$54 (Ps707) in 2009. Changes in the fair value were recognized in the statements of operations within "Results from financial instruments," representing losses of approximately US$21 (Ps266) in 2010, a gain of approximately US$2 (Ps25) in 2009 and a loss of approximately US$150 (Ps1,681) in 2008.

On March 30, 2010, in connection with the offering of the 2010 Optional Convertible Subordinated Notes and with the intention to effectively increase the conversion price for CEMEX's CPOs under such notes, CEMEX entered into a capped call transaction over approximately 52.6 million ADSs maturing in March 2015, by means of which, at maturity of the notes, if the price per ADS is above US$13.60, CEMEX will receive in cash the difference between the market price of the ADS and US$13.60, with a maximum appreciation per ADS of US$5.23. CEMEX paid a premium of approximately US$105. As of December 31, 2010, the fair value of such contract represented an asset of approximately US$95 (Ps1,174). During 2010, changes in the fair value of this instrument generated a loss of approximately US$11 (Ps139), which was recognized in the statement of operations.

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, as described in note 19C. CEMEX granted a guarantee over this transaction for a notional amount of approximately US$360. As of December 31, 2010 and 2009, the fair value of such guarantee, net of deposits in margin accounts, represented liabilities of approximately US$95 (Ps1,174) and US$2 (Ps26), respectively. Changes in the fair value were recognized in the statements of operations within "Results from financial instruments," representing a loss of approximately US$6 (Ps76) in 2010, a gain of approximately US$51 (Ps694) in 2009 and a loss of approximately US$190 (Ps2,130) in 2008. As of December 31, 2010 and 2009, cash deposits in margin accounts were approximately US$55 (Ps680) and US$141 (Ps1,846), respectively.

In addition, in October 2008, through the early settlement of forward contracts over approximately 81 million CPOs, CEMEX realized a loss of approximately US$153 (Ps2,102), which was recognized in the 2008 results.

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## 13. OTHER CURRENT AND NON-CURRENT LIABILITIES

As of December 31, 2010 and 2009, consolidated other current accounts payable and accrued expenses were as follows:

| | 2010 | 2009 |
|---|---|---|
| Provisions | Ps 9,372 | 8,581 |
| Other accounts payable and accrued expenses | 2,967 | 2,942 |
| Taxes payable | 6,911 | 7,537 |
| Advances from customers | 1,564 | 2,408 |
| Interest payable | 1,697 | 1,752 |
| Current liabilities for valuation of derivative instruments | 8,140 | — |
| Dividends payable | 30 | 31 |
| | Ps30,681 | 23,251 |

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 (note 20). These amounts are revolving in nature and are expected to be settled and replaced by similar amounts within the next 12 months.

Other non-current liabilities 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. As of December 31, 2010 and 2009, consolidated other non-current liabilities were as follows:

| | 2010 | 2009 |
|---|---|---|
| Asset retirement obligations **1** | Ps 5,658 | 5,322 |
| Environmental liabilities **2** | 849 | 754 |
| Accruals for legal assessments and other responsibilities **3** | 2,665 | 1,169 |
| Non-current liabilities for valuation of derivative instruments | 1,207 | 7,923 |
| Other non-current liabilities and provisions **4** | 12,101 | 14,769 |
| | Ps22,480 | 29,937 |

**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.

**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, 2010 and 2009, includes approximately Ps9,578 and Ps10,073, respectively, of taxes payable recognized during 2009 as a result of changes to the tax consolidation regime in Mexico (note 15A).

As of December 31, 2009 and 2008, some significant proceedings that gave rise to a portion of the carrying amount of CEMEX's other non-current liabilities and provisions are detailed in note 20.

Changes in consolidated other non-current liabilities for the years ended December 31, 2010, 2009 and 2008, excluding changes in liabilities related to 2009 sale of assets in Australia, are the following:

| | 2010 | 2009 | 2008 |
|---|---|---|---|
| Balance at beginning of period | Ps29,937 | 22,710 | 15,492 |
| Current period additions due to new obligations or increase in estimates | 3,438 | 16,003 | 9,522 |
| Current period releases due to payments or decrease in estimates | (916) | (9,153) | (2,276) |
| Additions due to business combinations | 5 | 48 | 64 |
| Reclassification from current to non-current liabilities, net | (8,654) | 1,186 | (236) |
| Foreign currency translation and inflation effects | (1,330) | (857) | 144 |
| Balance at end of period | Ps 22,480 | 29,937 | 22,710 |

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## 14. EMPLOYEE BENEFITS

### Defined contribution plans

The costs of defined contribution plans for the years ended December 31, 2010, 2009 and 2008 were approximately Ps550, Ps479 and Ps708, respectively.

### Defined benefit plans

For the years ended December 31, 2010, 2009 and 2008, the net periodic cost for pension plans, other postretirement benefits and termination benefits are summarized as follows:

| | Pensions | | | Other benefits 1 | | | Total | | |
|---|---|---|---|---|---|---|---|---|---|
| | 2010 | 2009 | 2008 | 2010 | 2009 | 2008 | 2010 | 2009 | 2008 |
| **Net period cost:** | | | | | | | | | |
| Service cost | Ps 273 | 295 | 399 | 107 | 115 | 124 | 380 | 410 | 523 |
| Interest cost | 1,825 | 1,834 | 1,706 | 125 | 134 | 117 | 1,950 | 1,968 | 1,823 |
| Actuarial return on plan assets | (1,310) | (1,382) | (1,614) | (2) | (1) | (2) | (1,312) | (1,383) | (1,616) |
| Amortization of prior service cost, transition liability and actuarial results | 443 | 327 | 138 | 74 | 156 | 121 | 517 | 483 | 259 |
| Loss (gain) for settlements and curtailments | (7) | 68 | 33 | (52) | (38) | (15) | (59) | 30 | 18 |
| | Ps 1,224 | 1,142 | 662 | 252 | 366 | 345 | 1,476 | 1,508 | 1,007 |

**1** Includes the net periodic cost of termination benefits.

The reconciliations of the actuarial benefits obligations, pension plan assets, and liabilities recognized in the balance sheet as of December 31, 2010 and 2009 are presented as follows:

| | Pensions | | Other benefits | | Total | |
|---|---|---|---|---|---|---|
| | 2010 | 2009 | 2010 | 2009 | 2010 | 2009 |
| **Change in benefits obligation:** | | | | | | |
| Projected benefit obligation at beginning of year | Ps 33,334 | 28,709 | 1,946 | 1,834 | 35,280 | 30,543 |
| Service cost | 273 | 295 | 107 | 115 | 380 | 410 |
| Interest cost | 1,825 | 1,834 | 125 | 134 | 1,950 | 1,968 |
| Actuarial results | 1,602 | 3,685 | 120 | 227 | 1,722 | 3,912 |
| Employee contributions | 58 | 73 | — | — | 58 | 73 |
| Changes for acquisitions (disposals) | 7 | 250 | 1 | (6) | 8 | 244 |
| Foreign currency translation and inflation effects | (2,652) | 520 | (78) | (11) | (2,730) | 509 |
| Settlements and curtailments | (10) | (295) | (27) | (65) | (37) | (360) |
| Benefits paid | (1,885) | (1,737) | (166) | (282) | (2,051) | (2,019) |
| Projected benefit obligation at end of year | 32,552 | 33,334 | 2,028 | 1,946 | 34,580 | 35,280 |
| **Change in plan assets:** | | | | | | |
| Fair value of plan assets at beginning of year | 21,659 | 19,760 | 22 | 19 | 21,681 | 19,779 |
| Return on plan assets | 1,716 | 2,550 | 1 | 3 | 1,717 | 2,553 |
| Foreign currency translation and inflation effects | (1,723) | 451 | — | — | (1,723) | 451 |
| Additions through business combinations | (19) | 202 | — | — | (19) | 202 |
| Employer contributions | 583 | 659 | 166 | 306 | 749 | 965 |
| Employee contributions | 58 | 73 | — | — | 58 | 73 |
| Settlements and curtailments | (1) | (295) | — | (25) | (1) | (320) |
| Benefits paid | (1,885) | (1,741) | (166) | (281) | (2,051) | (2,022) |
| Fair value of plan assets at end of year | 20,388 | 21,659 | 23 | 22 | 20,411 | 21,681 |
| **Amounts recognized in the balance sheets:** | | | | | | |
| Funded status | 12,164 | 11,675 | 2,005 | 1,924 | 14,169 | 13,599 |
| Transition liability | (40) | (46) | (77) | (149) | (117) | (195) |
| Prior service cost and actuarial results | (6,471) | (6,090) | 2 | 144 | (6,469) | (5,946) |
| Net projected liability recognized | Ps 5,653 | 5,539 | 1,930 | 1,919 | 7,583 | 7,458 |

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As of December 31, 2010 and 2009, the projected benefit obligation is derived from the following types of plans and benefits:

| | 2010 | 2009 |
|---|---|---|
| Plans and benefits totally unfunded | Ps 2,772 | 2,611 |
| Plans and benefits partially or totally funded | 31,808 | 32,669 |
| Projected benefit obligation at end of the period | Ps34,580 | 35,280 |

Based on MFRS D-3, prior services and actuarial results related to pension plans and other postretirement benefits are amortized during the estimated remaining years of service of the employees subject to these benefits. As of December 31, 2010, the approximate average years of service for pension plans is 10.8 years and 15.5 years for other postretirement benefits. As mentioned in note 2M, MFRS D-3 requires amortizing the transition liability, prior services and actuarial results accumulated as of December 31, 2007 under the previous MFRS D-3 related to pensions, other postretirement benefits and termination benefits, over a maximum period of five years. MFRS D-3 establishes that termination benefits generated after its adoption are recognized in the results of the period in which they are generated. The net periodic cost in 2010, 2009 and 2008 included the transition amortization established by MFRS D-3.

As of December 31, 2010 and 2009, plan assets were measured at their estimated fair value at year end and consisted of:

| | 2010 | 2009 |
|---|---|---|
| **Fixed-income securities** | | |
| Cash | Ps 708 | 1,286 |
| Investments in corporate bonds | 8,481 | 5,632 |
| Investments in government bonds | 2,916 | 6,685 |
| | 12,105 | 13,603 |
| **Variable-income securities** | | |
| Investment in marketable securities | 5,026 | 5,731 |
| Other investments and private funds | 3,280 | 2,347 |
| | 8,306 | 8,078 |
| | Ps 20,411 | 21,681 |

As of December 31, 2010, estimated future benefit payments for pensions and other postretirement benefits during the next ten years were as follows:

| | 2010 |
|---|---|
| 2011 | Ps 1,908 |
| 2012 | 1,912 |
| 2013 | 1,868 |
| 2014 | 1,895 |
| 2015 | 1,896 |
| 2016 – 2020 | 10,046 |

The most significant assumptions used in the determination of the net periodic cost were as follows:

| | 2010 | | | | 2009 | | | |
|---|---|---|---|---|---|---|---|---|
| | Mexico | United States | United Kingdom | Other countries 1 | Mexico | United States | United Kingdom | Other countries 1 |
| Discount rates | 8.5% | 5.5% | 5.7% | 4.0% - 8.9% | 9.0% | 6.2% | 6.0% | 4.7% - 9.0% |
| Rate of return on plan assets | 9.0% | 7.5% | 6.5% | 3.8% - 9.0% | 9.0% | 8.0% | 6.7% | 3.0% - 9.0% |
| Rate of salary increases | 4.5% | 3.0% | 3.6% | 2.0% - 6.0% | 5.5% | 3.5% | 3.0% | 2.3% - 5.5% |

**1** Range of rates.

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As of December 31, 2010 and 2009, the aggregate projected benefit obligation for pension plans and other benefits and the plan assets by country were as follows:

| | 2010 | | | 2009 | | |
|---|---|---|---|---|---|---|
| | Projected benefit obligation | Assets | Deficit | Projected benefit obligation | Assets | Deficit |
| Mexico | Ps 3,725 | 710 | 3,015 | Ps 3,228 | 904 | 2,324 |
| United States | 4,665 | 3,475 | 1,190 | 4,612 | 3,873 | 739 |
| United Kingdom | 19,928 | 14,404 | 5,524 | 20,800 | 14,820 | 5,980 |
| Other countries | 6,262 | 1,822 | 4,440 | 6,640 | 2,084 | 4,556 |
| | Ps 34,580 | 20,411 | 14,169 | Ps 35,280 | 21,681 | 13,599 |

**Other information related to employees' benefits at retirement**

During 2010, 2009 and 2008, CEMEX reduced its workforce, subject to defined pension and medical benefits in the United States, and during 2008, CEMEX reduced its workforce, subject to defined pension benefits in several countries including the United Kingdom, and froze the defined benefit pension plan in Puerto Rico. These actions generated events of settlement and curtailment of obligations in the respective pension plans pursuant to MFRS D-3. As a result, changes in the plan liabilities and proportional parts of prior services and actuarial results pending to be amortized were recognized in the statements of operations for the periods, which represented a gain of approximately Ps7 in 2010 and losses of approximately Ps68 and Ps33 in 2009 and 2008, respectively.

The defined benefit plan in the United Kingdom has been closed to new participants since January 2004. Regulation in the United Kingdom requires entities to maintain plan assets at a level similar to that of the obligations. Consequently, it is expected that CEMEX will make significant contributions to the United Kingdom's pension plans in the following years. As of December 31, 2010, the deficit in the funded status of these plans after reducing the deficit related to other postretirement benefits, which are financed through daily operations, was approximately Ps5,116.

**Information related to termination benefits**

In some countries, CEMEX pays benefits to personnel pursuant to legal requirements upon termination of their working relationships based on the years of service and the last salary received. The projected benefits obligation of these benefits as of December 31, 2010 and 2009 was approximately Ps509 and Ps568, respectively.

**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, 2010 and 2009, the projected benefit obligation related to these benefits was approximately Ps1,268 and Ps1,247, respectively. The medical inflation rate used in 2010 to determine the projected benefits obligation of these benefits was 7.0% in Mexico, 4.7% in Puerto Rico and in the United States and 7.4% in the United Kingdom.

**Other employee benefits**

In addition, 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, 2010, 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. If all employees qualifying for health care benefits required medical services simultaneously, the contingency for CEMEX would be significantly larger. However, this scenario, while possible, is remote. The amount expensed for the years ended December 31, 2010, 2009 and 2008 through self-insured health care benefits was approximately US$81 (Ps1,026), US$106 (Ps1,442) and US$100 (Ps1,126), respectively.

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## 15. INCOME TAXES

### A) INCOME TAXES FOR THE PERIOD

The amounts for income taxes included in the statements of operations in 2010, 2009 and 2008 are summarized as follows:

| | 2010 | 2009 | 2008 |
|---|---|---|---|
| **Current income taxes** | | | |
| From Mexican operations | Ps(3,119) | (3,804) | (2,793) |
| From foreign operations | (4,914) | (4,885) | (5,180) |
| | (8,033) | (8,689) | (7,973) |
| **Deferred income taxes** | | | |
| From Mexican operations | 786 | 2,181 | 5,990 |
| From foreign operations | 2,738 | 17,074 | 24,981 |
| | 3,524 | 19,255 | 30,971 |
| | Ps(4,509) | 10,566 | 22,998 |

As of December 31, 2010, consolidated tax loss and tax credits carryforwards expire as follows:

| | Amount of carryforwards |
|---|---|
| 2011 | Ps 6,470 |
| 2012 | 6,657 |
| 2013 | 5,910 |
| 2014 | 825 |
| 2015 and thereafter | 271,495 |
| | Ps 291,357 |

As of December 31, 2009, in connection with changes to the tax consolidation regime in Mexico (note 2N) and based on Interpretation 18, CEMEX recognized a liability for Ps10,461 against "Other non-current assets" for Ps8,216 in connection with the net liability recognized before the new tax law, and Ps2,245 against "Retained earnings," for the portion, 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 of the consolidated entity for tax purposes; b) dividends from the controlled entities for tax purposes to the Parent Company; and c) other transactions that represented the transfer of resources between the companies included in the tax consolidation. 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, until the subsidiary is disposed of or CEMEX eliminates the tax consolidation, over 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. As a result, CEMEX reduced its estimated tax payable by approximately Ps2,911 against a credit to "Retained earnings." In addition, considering during 2010: a) cash payments of Ps325; b) income tax from subsidiaries paid to the Parent Company for Ps2,496; and c) other adjustments of Ps358, the estimated tax payable for tax consolidation in Mexico as of December 31, 2010 amounted to Ps10,079.

### B) DEFERRED INCOME TAXES

As of December 31, 2010 and 2009, the income tax effects of the main temporary differences that generated the consolidated deferred income tax assets and liabilities are presented below:

| | 2010 | 2009 |
|---|---|---|
| **Deferred tax assets:** | | |
| Tax loss carryforwards and other tax credits | Ps 73,843 | 77,602 |
| Accounts payable and accrued expenses | 8,206 | 8,487 |
| Intangible assets and deferred charges, net | 13,096 | 2,352 |
| Others | 1,032 | 1,161 |
| Total deferred tax assets | 96,177 | 89,602 |
| Less – Valuation allowance | (40,137) | (32,079) |
| Net deferred tax assets | 56,040 | 57,523 |
| **Deferred tax liabilities:** | | |
| Property, machinery and equipment | (42,284) | (47,605) |
| Investments and other assets | (3,205) | (4,826) |
| Others | (3,194) | (983) |
| Total deferred tax liabilities | (48,683) | (53,414) |
| Net deferred tax asset (liability) | Ps 7,357 | 4,109 |

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Changes to the consolidated valuation allowance of deferred tax assets in 2010, 2009 and 2008 were as follows:

| | 2010 | 2009 | 2008 |
|---|---|---|---|
| Balance at the beginning of the period | Ps(32,079) | (27,194) | (21,093) |
| Increases | (14,780) | (18,638) | (5,652) |
| Decreases **1** | 3,436 | 13,547 | 1,571 |
| Translation effects | 3,286 | 206 | (2,020) |
| Balance at the end of the period | Ps (40,137) | (32,079) | (27,194) |

The changes in consolidated deferred income taxes during 2010, 2009 and 2008 were as follows:

| | 2010 | 2009 | 2008 |
|---|---|---|---|
| Deferred income tax charged to the statements of operations | Ps 3,524 | 19,255 | 30,971 |
| Deferred income tax in stockholders' equity **2** | 778 | 941 | (362) |
| Reclassification to other captions in the balance sheet | (1,054) | 1,060 | — |
| Change in deferred income tax for the period | Ps 3,248 | 21,256 | 30,609 |

**1** Includes in 2009 the reclassification of the liability related to the income tax law reforms in Mexico.
**2** The change in stockholders' equity in 2010 and 2009, includes an expense of Ps338 and an income of Ps585, respectively, related to the effect generated for the future tax deduction of the debt components of both the 2010 Optional Convertible Subordinated Notes and the Mandatorily Convertible Securities (note 12). In 2008, this includes a debit of Ps920 related to the initial effect of deferred tax liabilities on investment in associates, recognized within "Retained earnings," and a credit of Ps558 related to the deferred tax asset on items directly recognized in stockholders' equity.

CEMEX believes that sufficient taxable income will be generated as to realize the tax benefits associated with the deferred income tax assets and tax loss carryforwards, prior to their expiration. Nevertheless, a valuation allowance is recorded for the deferred tax assets on tax loss carryforwards that are estimated and may not be recoverable in the future. In the event that present conditions change, and it is determined that future operations would not generate sufficient taxable income, the valuation allowance on deferred tax assets would be increased against the results of the period.

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 not generating 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.

## C) 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 2010, 2009 and 2008 were as follows:

| | 2010 % | 2009 % | 2008 % |
|---|---|---|---|
| Consolidated statutory tax rate | (30.0) | (28.0) | (28.0) |
| Non-taxable dividend income | — | (7.4) | (15.6) |
| Other non-taxable income **1** | (14.7) | (179.9) | (32.6) |
| Expenses and other non-deductible items | (3.1) | 30.8 | 25.3 |
| Non-taxable sale of marketable securities and fixed assets | 21.0 | (86.9) | (7.4) |
| Difference between book and tax inflation | 11.7 | 27.1 | 8.0 |
| Other tax non-accounting benefits | 46.3 | (0.5) | (8.6) |
| Foreign exchange fluctuations **2** | 3.2 | 12.8 | (37.8) |
| Others | 3.2 | 4.3 | (4.3) |
| Effective consolidated tax rate | 37.6 | (227.7) | (101.0) |

**1** Includes the effects of the different income tax rates in the countries where CEMEX operates.
**2** Includes the effects of foreign exchange fluctuations recognized as translation effects (note 16B).

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## 16. STOCKHOLDERS' EQUITY

The carrying amounts of consolidated stockholders' equity exclude investments in shares of CEMEX, S.A.B. de C.V. held by subsidiaries, which implied a reduction to controlling interest stockholders' equity of Ps220 (16,668,156 CPOs) in 2010, Ps187 (16,107,081 CPOs) in 2009 and Ps6,354 (589,238,041 CPOs) in 2008. This reduction is included within "Other equity reserves." The increase in CPOs held by subsidiaries during 2010 refers to CPOs received by subsidiaries as a result of the recapitalization of retained earnings as described in this note.

### A) COMMON STOCK AND ADDITIONAL PAID-IN CAPITAL

As of December 31, 2010 and 2009, the breakdown of common stock and additional paid-in capital was as follows:

| | 2010 | 2009 |
|---|---|---|
| Common stock | Ps 4,132 | 4,127 |
| Additional paid-in capital | 104,590 | 98,797 |
| | Ps108,722 | 102,924 |

As of December 31, 2010 and 2009, the common stock of CEMEX, S.A.B. de C.V. was represented as follows:

| | 2010 | | 2009 | |
|---|---|---|---|---|
| **Shares 1** | **Series A 2** | **Series B 3** | **Series A 2** | **Series B 3** |
| Subscribed and paid shares | 20,043,602,184 | 10,021,801,092 | 19,224,300,330 | 9,612,150,165 |
| Unissued shares authorized for stock compensation programs | 345,164,180 | 172,582,090 | 395,227,442 | 197,613,721 |
| Shares that guarantee the issuance of convertible securities **4** | 1,896,584,924 | 948,292,462 | 344,960,064 | 172,480,032 |
| Shares authorized for the issuance of stock or convertible securities **5** | 3,415,076 | 1,707,538 | 1,055,039,936 | 527,519,968 |
| | 22,288,766,364 | 11,144,383,182 | 21,019,527,772 | 10,509,763,886 |

**1** 13,068,000,000 shares in both years correspond to the fixed portion and 20,365,149,546 as of December 31, 2010 and 18,461,291,658 as of December 31, 2009 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 both the 2010 Optional Convertible Subordinated Notes and the Mandatorily Convertible Securities (note 12).
**5** Shares authorized for the issuance of stock through a public offer or through the issuance of convertible securities.

On April 29, 2010, stockholders at the annual ordinary stockholders' meeting approved resolutions: (i) to 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 increase in common stock of approximately Ps3, considering a nominal value of Ps0.00833 per CPO, and additional paid-in capital of Ps5,476, and (ii) to 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, which generated an increase in common stock for approximately Ps2 against retained earnings. There was no cash distribution and no entitlement to fractional shares.

On September 28, 2009, through a global offering, CEMEX completed the sale of a total of 1,495 million CPOs (directly or in the form of ADSs), including CPOs sold through the exercise in full of the over-allotment option granted to the underwriters, of which approximately 373.8 million CPOs were sold in Mexico, and approximately 1,121.2 million CPOs were sold in the United States and elsewhere outside Mexico. The CPOs were offered to the public at a price of Ps16.65 per CPO and US$12.50 per ADS. The net aggregate proceeds from the global offering were approximately Ps23,948, increasing stockholders' equity by Ps7 considering a nominal value of Ps0.00833 per CPO, and additional paid-in capital of Ps23,941. Of the 1,495 million CPOs sold, approximately 595 million CPOs were sold by subsidiaries. CEMEX used the net proceeds from the global offering to pay down debt.

On September 4, 2009, stockholders at the extraordinary stockholders' meeting approved resolutions to: (i) increase the variable common stock by up to 4,800 million shares (1,600 million CPOs) through additional subscription, of which said subscription and payment could be done indistinctively through the issuance of stock in a public offer or through the issuance of convertible securities; and (ii) finalize any public offer and/or issuance of convertible securities within the following 24 months.

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On April 23, 2009, stockholders at the annual ordinary stockholders' meeting approved resolutions to increase the variable common stock through the capitalization of retained earnings, issuing up to 1,004 million shares (335 million CPOs) based on a price of Ps13.07 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 334 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 Ps4,370. In addition, stockholders approved resolutions to cancel the corresponding shares held in CEMEX's treasury. There was no cash distribution and no entitlement to fractional shares.

On April 24, 2008, stockholders at the annual ordinary stockholders' meeting approved resolutions to: (i) create a reserve for share repurchases of up to Ps6,000; and (ii) increase the variable common stock through the capitalization of retained earnings of up to Ps7,500, issuing up to 1,500 million shares (500 million CPOs), based on a price of Ps23.92 pesos per CPO or instead, stockholders could have chosen to receive a cash dividend of US$0.0835 per CPO (approximately Ps0.8677 pesos for each CPO considering the exchange rate of Ps10.3925 per dollar). As a result, shares equivalent to approximately 284 million CPOs were issued, representing an increase in common stock of approximately Ps2, considering a nominal value of Ps0.00833 per CPO, and additional paid-in capital of approximately Ps6,792, while a cash dividend payment was made for approximately Ps214. In addition, stockholders approved the cancellation of the corresponding shares held in CEMEX's treasury.

The CPOs issued pursuant to the exercise of options under the "Fixed program" (note 17A) generated additional paid-in capital of approximately Ps5 in 2010, Ps5 in 2009 and Ps4 in 2008, and increased the number of shares outstanding. Likewise, in connection with the long-term compensation program (note 17) in 2010 and 2009, CEMEX issued approximately 25.7 and 13.7 million CPOs, generating an additional paid-in capital of approximately Ps312 and Ps163, respectively, associated with the fair value of the compensation received by executives.

### B) OTHER EQUITY RESERVES

As of December 31, 2010 and 2009, the balance of other equity reserves is summarized as follows:

| | 2010 | 2009 |
|---|---|---|
| Cumulative translation effect, net of effects from perpetual debentures and deferred income taxes recognized directly in equity (notes 15B and 16D) **1** | Ps19,197 | 26,700 |
| Issuance of convertible securities **2** | 3,203 | 1,971 |
| Treasury shares held by subsidiaries | (220) | (187) |
| | Ps 22,180 | 28,484 |

**1** In 2010, includes a gain of approximately Ps5,401, resulting from the exchange of perpetual debentures (note 12A).
**2** Represents the equity components associated with the issuances of convertible securities into shares of CEMEX, S.A.B. de C.V. described in note 12A. Upon mandatory or voluntary 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, 2010, 2009 and 2008, the translation effects of foreign subsidiaries included in the statement of changes in stockholders' equity were as follows:

| | 2010 | 2009 | 2008 |
|---|---|---|---|
| Foreign currency translation adjustment **1** | Ps 6,123 | (17,716) | 106,190 |
| Foreign exchange fluctuations from debt **2** | 1,886 | 2,158 | (9,407) |
| Foreign exchange fluctuations from intercompany balances **3** | (20,059) | 14,654 | (65,796) |
| | Ps(12,050) | (904) | 30,987 |

**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 hedge of the net investment in foreign subsidiaries. The average amount of such debt was approximately US$2,829 in 2010, US$3,200 in 2009 and US$3,656 in 2008.
**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, of which a loss of Ps4,857 in 2008 was recognized in CEMEX, S.A.B. de C.V.

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## C) RETAINED EARNINGS

In 2009, a charge for a portion of the liability resulting from changes in the Mexican tax consolidation rules of approximately Ps2,245 was included (note 15A). Nonetheless, in 2010, due to recent modifications to the income tax law in Mexico, in accordance to Interpretation 18, CEMEX reduced its estimated tax payable by approximately Ps2,911 against a credit to "Retained earnings." In addition, in connection with the initial adoption of MFRS C-3 in 2010, CEMEX reduced its retained earnings by approximately Ps105 (note 2G). In 2008, the caption includes the effects associated with the adoption of several MFRS: a) the reclassification of the accumulated results from holding non-monetary assets (note 2A); b) the reclassification of the cumulative initial deferred income tax effect (note 2N); c) the cumulative initial deferred income tax recognition in investments in associates; and d) the cumulative initial deferred income tax recognition based on the assets and liabilities method (note 2M), which decreased retained earnings by Ps97,722, Ps6,918, Ps920 and Ps2,283, respectively.

Net income for the year is subject to a 5% allocation toward a legal reserve until such reserve equals one fifth of the common stock. As of December 31, 2010, the legal reserve amounted to Ps1,804.

## D) 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, 2010 and 2009, non-controlling interest in equity amounted to approximately Ps3,214 and Ps3,838, respectively.

**Perpetual debentures**

As of December 31, 2010 and 2009, consolidated balance sheets included approximately US$1,320 (Ps16,310) and US$3,045 (Ps39,859), respectively, representing the notional amount of perpetual debentures. On May 12, 2010, as mentioned in note 12A, following an exchange offer with the debenture holders, CEMEX exchanged amounts in excess of a majority of the then outstanding principal amount of each series of perpetual debentures for new secured notes.

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 Ps1,624 in 2010, Ps2,704 in 2009 and Ps2,596 in 2008.

These debentures have no fixed maturity date and do not represent a contractual payment obligation for CEMEX. 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, CEMEX has the unilateral right to defer indefinitely the payment of interest due on the debentures. The definition of the debentures as equity instruments was made under applicable IFRS, which were applied to these transactions in compliance with the supplementary application of IFRS in Mexico. 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, 2010 and 2009, CEMEX's perpetual debentures were as follows:

| Issuer | Issuance date | 2010 Nominal amount | 2009 Nominal amount | Repurchase option | Interest rate |
|---|---|---|---|---|---|
| C10-EUR Capital (SPV) Ltd. | May 2007 | € 266 | € 730 | Tenth anniversary | 6.3% |
| C8 Capital (SPV) Ltd. | February 2007 | US$ 369 | US$ 750 | Eighth anniversary | 6.6% |
| C5 Capital (SPV) Ltd. **1** | December 2006 | US$ 147 | US$ 350 | Fifth anniversary | 6.2% |
| C10 Capital (SPV) Ltd. | December 2006 | US$ 449 | US$ 900 | Tenth anniversary | 6.7% |

**1** If CEMEX does not exercise its repurchase option by December 31, 2011, the annual interest rate of this series will change 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. CEMEX is not permitted to call these debentures under the Financing Agreement. As of December 31, 2010, 3-month LIBOR was approximately 0.30%.

As mentioned in note 12C, as of December 31, 2008, there were derivative instruments associated with the perpetual debentures, through which CEMEX changed the risk profile associated with interest rates and foreign exchange rates in respect of the debentures from the U.S. dollar and euro to the Japanese yen. These derivative instruments were settled during 2009.

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## 17. EXECUTIVE STOCK-BASED COMPENSATION

CEMEX has a long-term compensation program providing for the grant of CEMEX's CPOs to a group of executives. Beginning in 2009, CEMEX issues new CPOs under each annual program over a 4 year period. By agreement with the executives, the CPOs of the annual grant, which is equivalent to 25% of the CPOs related to each plan, are placed in a trust established for the benefit of the executives (the "executives' trust") to comply with a 1 year restriction on sale. Under these plans, CEMEX granted approximately 25.7 million CPOs in 2010 and 13.7 million CPOs in 2009 that were subscribed and pending for payment in CEMEX's treasury, corresponding in 2010 to the first 25% of the 2010 program and the second 25% of the 2009 program, and in 2009 to the first 25% of the 2009 program. The remaining shares will be issued during the following years representing approximately 50.7 million CPOs. During 2008, under this program, the eligible executives received cash bonuses, which were used by the executives to simultaneously acquire CPOs in the market through the executives' trust. Such CPOs were placed in the executives' trust to comply with a restriction on sale period of 4 years, which vests up to 25% at the end of each year. The compensation expense related to the grants in 2010 and 2009 represented the fair value of CPOs as of the grant date considering a weighted average price per CPO of Ps12.54 and Ps11.86, respectively. In 2008, the fair value of CPOs at acquisition date equaled the cash bonuses. The expense recognized in the statements of operations in connection with these programs during 2010, 2009 and 2008 amounted to Ps536, Ps606 and Ps725, respectively.

Until 2005, CEMEX granted stock options to executives based on CEMEX's CPOs. Options outstanding under CEMEX's programs represent liability instruments, except for those of its "Fixed program," which was designated as equity instruments (note 2T). The information related to options granted in respect of CEMEX, S.A.B. de C.V. CPOs is as follows:

| Options | Fixed program (A) | Variable program (B) | Restricted program (C) | Special program (D) |
|---|---|---|---|---|
| Options outstanding at the beginning of 2008 | 898,470 | 1,376,347 | 15,022,272 | 845,424 |
| **Changes in 2008:** | | | | |
| Options cancelled and adjustments | (63,352) | — | — | — |
| Options exercised | (87,873) | (17,427) | — | (99,425) |
| Options outstanding at the end of 2008 | 747,245 | 1,358,920 | 15,022,272 | 745,999 |
| **Changes in 2009:** | | | | |
| Options exercised | (133,606) | — | — | (23,381) |
| Options at the end of 2009 | 613,639 | 1,358,920 | 15,022,272 | 722,618 |
| **Changes in 2010:** | | | | |
| Options cancelled and adjustments | (57,933) | — | — | — |
| Options exercised | (106,963) | — | — | (8,000) |
| Options at the end of 2010 | 448,743 | 1,358,920 | 15,022,272 | 714,618 |
| Underlying CPOs **1** | 2,760,842 | 7,119,529 | 70,481,496 | 14,292,360 |
| **Exercise prices:** | | | | |
| Options outstanding at the beginning of 2010 **1, 2** | Ps 6.49 | US$ 1.43 | US$ 2.00 | US$ 1.36 |
| Options exercised in the year **1, 2** | Ps 7.53 | — | — | US$ 0.97 |
| Options outstanding at the end of 2010 **1, 2** | Ps 5.85 | US$ 1.52 | US$ 2.00 | US$ 1.36 |
| **Average life of options:** | 0.5 years | 1.3 years | 1.5 years | 2.8 years |
| **Number of options per exercise price:** | 266,385 – Ps4.5 | 886,170 – US$1.6 | 15,022,272 – US$2.0 | 81,826 – US$1.1 |
| | 182,358 – Ps7.8 | 141,679 – US$1.7 | — | 125,345 – US$1.4 |
| | — | 67,295 – US$1.4 | — | 135,751 – US$1.0 |
| | — | 205,034 – US$1.2 | — | 257,291 – US$1.4 |
| | — | 58,742 – US$1.5 | — | 114,405 – US$1.9 |
| **Percent of options fully vested:** | 100% | 100% | 100% | 100% |

**1** Exercise prices and the number of underlying CPOs are technically adjusted for the dilutive effect of stock dividends and recapitalization of retained earnings.
**2** Weighted average exercise prices per CPO.

### A) Fixed program

From June 1995 through June 2001, CEMEX granted stock options with a fixed exercise 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.

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### 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 have an exercise price denominated in dollars which, depending on the program, increase annually at a 5.5% rate or at a 7% rate. Executives' gains under these options are settled in the form of CPOs, which are restricted for sale for an approximate period of 4 years from the exercise date.

### D) Special program

From June 2001 through June 2005, CEMEX's 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 (ten CPOs represent one ADS).

### Other programs

CEMEX's subsidiary in Ireland has an outstanding stock option program in its own shares. As of December 31, 2010 and 2009, this subsidiary had outstanding options over 307,748 and 347,748 of its shares, respectively, with an average exercise price per share of approximately €1.18 in 2010 and €1.23 in 2009. As of December 31, 2010 and 2009, the market price per share of CEMEX's subsidiary in Ireland was €0.21 and €0.18, respectively.

### 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, 2010, 2009 and 2008 were as follows:

| | Restricted program | Variable program | Special program | Total |
|---|---|---|---|---|
| Provision as of December 31, 2007 | Ps 927 | 120 | 283 | 1,330 |
| Net revenue in current period results | (1,055) | (129) | (353) | (1,537) |
| Estimated decrease from exercises of options | — | 1 | 29 | 30 |
| Foreign currency translation effect | 239 | 31 | 73 | 343 |
| Provision as of December 31, 2008 | 111 | 23 | 32 | 166 |
| Net expense in current period results | 8 | 2 | 18 | 28 |
| Estimated decrease from exercises of options | — | — | 5 | 5 |
| Foreign currency translation effect | (5) | (1) | (1) | (7) |
| Provision as of December 31, 2009 | 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 | Ps 15 | 8 | 13 | 36 |

The options' fair values were determined through the binomial option-pricing model. As of December 31, 2010, 2009 and 2008, the most significant assumptions used in the valuations were as follows:

| Assumptions | 2010 | 2009 | 2008 |
|---|---|---|---|
| Expected dividend yield | 4.0% | 7.9% | 10.4% |
| Volatility | 35% | 35% | 35% |
| Interest rate | 2.6% | 2.6% | 1.8% |
| Weighted average remaining tenure | 1.3 years | 4.8 years | 5.3 years |

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## 18. EARNINGS (LOSS) PER SHARE

The amounts considered for calculations of earnings (loss) per share ("EPS") 2010, 2009 and 2008 were as follows:

| | 2010 | 2009 | 2008 |
|---|---|---|---|
| **Denominator (thousands of shares)** | | | |
| Weighted average number of shares outstanding – basic | 29,974,524 | 26,796,205 | 25,142,051 |
| Effect of dilutive instruments – stock-based compensation (note 17) | — | 39,963 | 10,337 |
| Effect of dilutive instruments – convertible securities (note 12A) | — | 517,440 | — |
| Potentially dilutive shares | — | 557,403 | 10,337 |
| Weighted average number of shares outstanding – diluted | — | 27,353,608 | 25,152,388 |
| **Numerators** | | | |
| Controlling interest income (loss) before discontinued operations | Ps (16,489) | 5,925 | 226 |
| Less: non-controlling interest net income | 27 | 240 | 45 |
| Controlling interest income (loss) before discontinued operations – basic | (16,516) | 5,685 | 181 |
| Plus: interest expense on convertible securities | — | 16 | — |
| Controlling interest income before discontinued operations – diluted | Ps — | 5,701 | 181 |
| Income (loss) from discontinued operations | Ps — | (4,276) | 2,097 |
| **Basic earnings (loss) per share** | | | |
| Controlling interest basic EPS from continuing operations | Ps (0.55) | 0.21 | 0.01 |
| Basic EPS from discontinued operations | — | (0.16) | 0.08 |
| **Diluted earnings (loss) per share** | | | |
| Controlling interest diluted EPS from continuing operations | Ps — | 0.21 | 0.01 |
| Diluted EPS from discontinued operations | — | (0.16) | 0.08 |

Diluted earnings per share reflect the effects of any transactions which have a potentially dilutive effect on the weighted average number of common shares outstanding. The dilutive effect of the number of shares resulting from the executives' stock option programs is determined under the inverse treasury method. In connection with the restricted CPO grants under the long-term compensation program initiated in 2009, as well as the convertible securities, the total amount of CPOs committed for issuance in the future is computed from the beginning of the reporting period. Based on MFRS B-14 "Earnings per Share" ("MFRS B14"), the weighted average number of shares outstanding in 2009 and 2008 includes the shares issued as a result of the capitalization of retained earnings declared in April 2010 and 2009 (note 16A).

According to MFRS B-14, diluted earnings per share shall not be disclosed when the result from continuing operations is a loss.

## 19. COMMITMENTS

### A) GUARANTEES

As of December 31, 2010 and 2009, CEMEX, S.A.B. de C.V. had guaranteed loans of certain subsidiaries for approximately US$13,028 and US$12,570, respectively.

### B) PLEDGED ASSETS

As of December 31, 2010 and 2009, CEMEX had liabilities amounting to US$186 and US$292, respectively, secured by property, machinery and equipment.

In addition, in connection with the Financing Agreement (note 12A), CEMEX transferred the shares of several of its main subsidiaries, including CEMEX México, S.A. de C.V. and CEMEX España, S.A., to a trust for the benefit of the bank lenders, note holders and other creditors having the benefit of negative pledge clauses, in order to guarantee payment obligations under the Financing Agreement and other financial transactions. These shares secure several other financings entered into subsequent to the date of the Financing Agreement.

### C) COMMITMENTS

As of December 31, 2010 and 2009, CEMEX had commitments for the purchase of raw materials for an approximate amount of US$288 and US$172, respectively.

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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 should 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.

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, 2010, 2009 and 2008, TEG supplied (unaudited) 72.8%, 73.7% and 60.4%, respectively, of CEMEX's 15 plants' electricity needs in Mexico during such year.

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 has been 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 once on a monthly and quarterly basis. According to the contract, COZ acquired 28 MW in 2008 and 2009, 27 MW in 2010 and will acquire 27 MW per year from 2011 to 2014. COZ 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, does 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 MFRS. 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 126 million CPOs at a price of US$2.8660 per CPO (120% of initial CPO price in dollars), as adjusted as of December 31, 2010. If the value of the assets held in the trust (32.1 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$2.8660 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 and other antidilution adjustments. CEMEX recognizes a liability for the fair value of the guarantee, and changes in valuation were recorded in the statements of operations (note 12C).

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## D) CONTRACTUAL OBLIGATIONS

As of December 31, 2010 and 2009, CEMEX had the following contractual obligations:

| (U.S. dollars millions) | 2010 | | | | | 2009 |
|---|---|---|---|---|---|---|
| Obligations | Less than 1 year | 1-3 Years | 3-5 Years | More than 5 Years | Total | Total |
| Long-term debt | US$ 407 | 1,160 | 10,500 | 4,289 | 16,356 | 15,851 |
| Capital lease obligations | 2 | 2 | 1 | 1 | 6 | 15 |
| Total debt **1** | 409 | 1,162 | 10,501 | 4,290 | 16,362 | 15,866 |
| Operating leases **2** | 199 | 297 | 124 | 111 | 731 | 920 |
| Interest payments on debt **3** | 964 | 2,131 | 1,068 | 454 | 4,617 | 5,144 |
| Pension plans and other benefits **4** | 154 | 306 | 306 | 813 | 1,579 | 1,670 |
| Total contractual obligations **5** | US$ 1,726 | 3,896 | 11,999 | 5,668 | 23,289 | 23,600 |
| | Ps 21,333 | 48,155 | 148,308 | 70,056 | 287,852 | 308,924 |

**1** The scheduling 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 similar nature.

**2** The amounts of 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$199 (Ps2,521), US$243 (Ps3,305) and US$198 (Ps2,239) in 2010, 2009 and 2008, respectively.

**3** For the determination of the future estimated interest payments on floating rate denominated debt, CEMEX used the interest rates in effect as of December 31, 2010 and 2009.

**4** Represents estimated annual payments under these benefits for the next 10 years (note 14). Future payments include the estimate of new retirees during such future years.

**5** Excludes the contractual obligation to purchase, from Ready Mix USA, its joint venture interests in the two joint ventures between Ready Mix USA and CEMEX pursuant to the exercise of the put option (note 9A).

## 20. CONTINGENCIES

### A) CONTINGENT LIABILITIES RESULTING FROM LEGAL PROCEEDINGS

As of December 31, 2010, CEMEX was involved in various significant legal proceedings, the resolutions of which would imply cash outflows or the delivery of other resources owned by CEMEX. As a result, certain provisions have been recognized in the financial statements. Such provisions represent the best estimate of the contingent amounts payable in respect of these legal proceedings. As a result, CEMEX believes that it will not incur significant expenditure in excess of the amounts previously recorded. The details of the most significant events are as follows:

- On January 2, 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. In addition, CEMEX Polska 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. The fine imposed on CEMEX Polska amounted to 115 million Polish zlotys (US$39 or Ps479), which represents 10% of CEMEX Polska's total revenue for the calendar year preceding the imposition of the fine. CEMEX Polska initiated an appeal before the Polish Court of Competition and Consumer Protection. The resolution will not be enforced until two appeals are exhausted. As of December 31, 2010, CEMEX recognized a provision of approximately 72 million Polish zlotys (US$24 or Ps300), representing the best estimate on such date of the expected cash outflow in connection with this resolution.
- In 2005, through the acquisition of RMC Group plc ("RMC"), CEMEX assumed environmental remediation liabilities in the United Kingdom, pertaining to closed and current landfill sites for the confinement of waste. As of December 31, 2010, CEMEX had generated a provision for the net present value of such obligation of approximately £130 (US$203 or Ps2,507). Expenditure has been 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.

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- 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$136 or Ps1,681) in respect of damage claims by 28 entities relating to alleged price and quota fixing by German cement companies between 1993 and 2002. In the meantime, CDC has acquired new claims by assignment and the claim has increased to €131 (US$175 or Ps2,159). 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 court of first instance. As of December 31, 2010, CEMEX Deutschland, AG had accrued liabilities regarding this matter for approximately €20 (US$27 or Ps330). The District Court in Düsseldorf has called for a hearing on the merits of this case, scheduled for May 26, 2011.
- As of December 31, 2010, CEMEX's subsidiaries in the United States have accrued liabilities specifically relating to environmental matters in the aggregate amount of approximately US$29 (Ps358). The environmental matters relate to: a) the disposal of various materials, in accordance with past industry practice, which might be currently 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.

**B) OTHER LEGAL PROCEEDINGS**

CEMEX is involved in various legal proceedings, which have not required the recognition of accruals as CEMEX believes that the probability of loss is reasonably remote after considering all the elements of such proceedings. As of December 31, 2010, the details of the most significant events with a quantification of the potential loss, when it is determinable, were as follows:

- In September 2009, officers from the European Commission ("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 previous unannounced inspections carried out by the EC in the United Kingdom and Germany in November 2008. Since the inspections, CEMEX has received requests for information from the EC in September 2009, October 2010 and December 2010. CEMEX has fully cooperated by providing the relevant information on time.
- On December 8, 2010, the 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. These proceedings may lead to an infringement decision, or if the objections raised by the EC are not substantiated, the case might be closed. If the allegations 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.
- On November 10, 2010, the Colombian Tax Authority (*Dirección de Impuestos*) 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$22 or Ps272) and imposed a penalty in the amount of approximately 69 billion Colombian pesos (US$36 or Ps445), both amounts as of December 31, 2010. 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 returns has already expired pursuant to Colombian law. 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.

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- In September 2009, the CNC, applying exclusively national antitrust law, 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 some 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 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 will 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. The CNC must issue a final decision within 18 months from the formal start of the procedure, which began on December 15, 2009. The maximum fine that the CNC could impose 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.
- In June 2009, the Texas General Land Office ("GLO") alleged that CEMEX Construction Materials South, LLC failed to pay approximately US$550 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 states that the State of Texas is seeking injunctive relief. 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 has also requested that the Texas Court of Appeals hear oral arguments in this matter. CEMEX has filed its response brief and oral argument was set for May 3, 2011. CEMEX will continue to vigorously defend the claim.
- In January and March 2009, one of CEMEX's subsidiaries in Mexico was notified of two findings of presumptive responsibility issued by the Mexican Competition Authority (*Comisión Federal de Competencia* or "CFC"), alleging certain violations of Mexican antitrust laws. CEMEX believes these findings contain substantial violations of rights granted by the Mexican Constitution. In February and April 2009, CEMEX filed two constitutional challenges in connection with these two cases. With respect to the first case, the 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 proceedings 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 avoid such violations. CEMEX believes that Mexican law does not entitle the CFC to reinitiate a new proceeding but only to continue with the original one. In August 2010, CEMEX filed a separate constitutional challenge with the Circuit Court to argue against the reinitiated proceeding. With respect to the second case, in December 2010, the District Court in Mexico City determined that CEMEX lacked standing with its constitutional challenge 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 expects to appeal the resolution of the District Court.
- In November 2008, AMEC/Zachry, the general contractor for the 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 (Ps742). 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. CEMEX Florida amended its pleadings in accordance with the court's rulings. The parties have begun producing documents and are preparing to take depositions. Until discovery is significantly underway, CEMEX cannot assess the likelihood of an adverse result or the potential damages which could be borne by CEMEX.
- 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$52 or Ps646). 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 was required to deposit with the court 337.8 billion Colombian pesos (US$176 or Ps2,181) 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$10 or Ps129). CEMEX deposited the security and, in July 2009, the attachment was lifted. At this stage, we are not able to assess the likelihood of an adverse result or the potential damages that could be borne by CEMEX Colombia upon appeal.

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## C) OTHER CONTINGENCIES FOR LEGAL PROCEDURES

Finally, there are certain legal proceedings in which a negative resolution for CEMEX may represent, among others, the revocation of operating licenses or the assessment of fines, whereby CEMEX may experience a decrease of future revenues, an increase in operating costs or a loss. Nevertheless, as of the date of these financial statements, in some cases, it is not possible to quantify the impact. As of December 31, 2010, the most significant other contingencies were the following:

- Pursuant to amendments to the Mexican income tax law effective on January 1, 2005, Mexican companies with investments in entities incorporated in foreign countries 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 indirect revenues, such as dividends, royalties, interest, capital gains and rental fees obtained by such foreign entities, provided, however, that such 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. Since the Supreme Court's decision does not pertain to the amount of taxes due or other tax obligations, CEMEX will self-assess any taxes due through the submission of amended tax returns. CEMEX has not yet determined the amount of tax or the periods affected, but the amount could be material. If the Mexican tax authorities do not agree with our self-assessment of the taxes due for past periods, they may assess additional amounts of taxes past due, which could be material and may impact CEMEX's cash flows.
- 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 the mining activities of CEMEX Colombia at El Tunjuelo quarry, located in Bogotá, Colombia, as a temporary injunction. 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 of El Tunjuelo quarry, have also been ordered to suspend mining activities in that area. The environmental secretary alleges that during the past 60 years CEMEX Colombia and the other companies included in the temporary injunction have illegally changed the course of the Tunjuelo River, have used the percolating waters without any 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 environmental secretary informing about the initiation of proceedings to impose fines based on the previously mentioned presumed environmental violations against CEMEX Colombia. CEMEX Colombia responded to the temporary injunction by requesting that it be revoked based on the fact that the mining activities at El Tunjuelo quarry are supported by the corresponding 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$157 or Ps1,941). 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) the first type were filed by entities purporting to have purchased cement or ready-mix concrete directly from one or more of the defendants; and b) 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 purported suits is the allegation that the defendants conspired to raise the price of cement and hinder competition in Florida. 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, CEMEX moved to dismiss the amended complaint filed by the indirect purchaser plaintiffs based on lack of standing. CEMEX also answered the complaint filed by the direct purchaser plaintiffs. CEMEX continues to believe that the lawsuits are without merit and intends to defend them vigorously. At this stage, we are not able to assess the likelihood of an adverse result or potential damages which could be borne by CEMEX Corp.
- In October 2008, in connection with the nationalization of CEMEX's assets in Venezuela (note 11A), CEMEX's subsidiaries in Holland, which held CEMEX's shares in CEMEX Venezuela, submitted a complaint seeking international arbitration to the International Centre for Settlement of Investment Disputes ("ICSID") following the Venezuelan Government's confiscation of assets, deprivation of rights of CEMEX Venezuela and the initiation of the expropriation of CEMEX's Venezuelan business. On July 27, 2010, the ICSID tribunal heard arguments on the jurisdictional objections raised by the Republic of Venezuela and issued its decision in favor of jurisdiction on December 30, 2010. The proceedings are now expected to proceed to the merits phase of the arbitration. CEMEX is unable at this preliminary stage to estimate the likely range of potential recovery or to determine what position the Republic of Venezuela will take in these proceedings, the nature of the award that may be issued by the ICSID tribunal or the likely extent of collection of any possible monetary award issued.

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In addition, the government of Venezuela has claimed that three cement transportation vessels, transferred before the expropriation of CEMEX Venezuelan operations, continue to be the property of the former CEMEX Venezuela, and obtained interim measures before a Venezuelan court barring further transfer or disposition of the vessels. The government of Venezuela attempted to enforce this interim measure in the courts of Panama, and on November 2010, the Panamanian Supreme Civil Court's confirmed its prior rejection of such attempt to give the Venezuelan interim measures legal effect in Panama. The appropriate affiliates of CEMEX will continue to resist any further efforts by the government of Venezuela to assert ownership rights over the vessels.

- 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$413 or Ps5,105), subject to authorization of the competition authorities in Hungary and Austria. 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$200 or Ps2,472). In December 2009, Strabag requested the tribunal to dismiss the claim and also filed a counterclaim for the payment of damages and applied for security for costs related to the arbitration proceedings for an aggregate amount of approximately €2 (US$3 or Ps33). The security for costs application was withdrawn by Strabag in March 2010. The arbitration tribunal was constituted on February 16, 2010, and a first procedural hearing was held on March 23, 2010 at which parties agreed on the terms of reference and procedural rules in accordance to ICC Rules of Arbitration. 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. CEMEX believes Strabag's counterclaim to be unfounded.
- In 2002, CEMEX Construction Materials Florida, LLC ("CEMEX Florida"), one of CEMEX's subsidiaries in the United States, was granted one federal quarry permit that covered the SCL and FEC quarries, and was the beneficiary of another federal quarrying permit for the Lake Belt area in South Florida, which covered the Kendall Krome quarry. In response to litigation brought by environmental groups concerning the manner in which the federal quarry permits were granted, in January 2009, 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. 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 of federal quarry permits in Lake Belt, Florida, the Army Corps of Engineers concluded a revision related to the court's ruling in 2006 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, 2010, a number of potential environmental impacts must be addressed before a new federal quarry permit may be issued for mining in the Kendall Krome 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. This would likely affect operating income from CEMEX's 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 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 one 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, CEMEX expects a resolution from the Constitutional Court to determine if the cities of Kaštela and Solin, within the scope of their master plans, can unilaterally change the borders of exploited fields. Currently, it is difficult to determine the impact on CEMEX as a result of the Kaštela and Solin proceedings.

In addition, as of December 31, 2010, there are 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 or results of operations.

As of December 31, 2010, 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, should any exist, would be appropriately disclosed and/or recognized in the financial statements.

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## 21. 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 at 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"), and was its chief executive officer until December 31, 2006. 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, member of the board of directors at CEMEX, S.A.B. de C.V., 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 also vice-chairman of the board of *Consejo de Enseñanza e Investigación Superior, A.C.* (the managing entity of *Instituto de Estudios Superiores de Monterrey* or "ITESM"), of which Mr. Lorenzo Zambrano, chief executive officer and chairman of CEMEX's board of directors, is chairman of the board. ITESM has received contributions by CEMEX for amounts that were not material in the periods presented.
- At December 31, 2010, Mr. Rafael Rangel Sostmann, a member of the board of directors at CEMEX, S.A.B. de C.V., was the dean of ITESM.
- During 2010, 2009 and 2008, there were no loans between CEMEX and board members or top management executives.
- For the years ended December 31, 2010, 2009 and 2008, the aggregate amount of compensation paid by CEMEX, S.A.B. de C.V. and subsidiaries to its board of directors, including alternate directors and top management executives, was approximately US$11 (Ps139), US$11 (Ps144) and US$28 (Ps314), respectively. Of these amounts, approximately US$3 (Ps38) in 2010, US$10 (Ps131) in 2009 and US$12 (Ps134) in 2008, were paid as compensation plus performance bonuses, while approximately US$8 (Ps101) in 2010, US$1 (Ps13) in 2009 and US$16 (Ps179) in 2008, corresponded to share payments under the long-term incentive program in restricted CPOs.

## 22. SUBSEQUENT EVENTS

On January 4, 2011, in connection with the class action lawsuits in Florida (note 20C), both the direct and indirect purchaser plaintiffs filed further amended complaint, which CEMEX answered on January 18, 2011. CEMEX simultaneously moved to partially dismiss the indirect purchaser plaintiffs' amended complaint, again based on a lack of standing for two of the three named plaintiffs. CEMEX continues to believe that the lawsuits are without merit and intends to defend them vigorously.

On January 7, 2011, in connection with its nationalized assets in Venezuela (note 11A), CEMEX announced that it is maintaining a constructive negotiation process with the Republic of Venezuela aimed at achieving an amicable settlement and that an agreement may be finalized in the near term. Such agreement would render the ongoing arbitration process with the ICSID unnecessary. Nonetheless, for accounting purposes at December 31, 2010, CEMEX cannot assess the likelihood of effectively recovering the net asset in the short-term; therefore, its net assets remain within long-term assets.

On January 11, 2011, CEMEX, S.A.B. de C.V. finalized the offering of US$1 billion aggregate principal amount of senior secured notes due in 2018 with annual coupon of 9.0%, which were issued at 99.364% of face value, and will be callable beginning on their 4th anniversary. The notes share the collateral pledged to the lenders under the Financing Agreement and other senior secured indebtedness having the benefit of such collateral, and are unconditionally guaranteed by CEMEX México, S.A. de C.V., New Sunward Holding B.V. and CEMEX España, S.A. This transaction was intended to improve CEMEX's debt maturity profile and liquidity position.

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On January 21, 2011, the Mexican tax authority notified CEMEX, S.A.B. de C.V., of a tax assessment for approximately Ps996 (US$81) 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 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 will proceed to challenge the assessment before the tax court.

In February 2011, in connection with the tax matter in Colombia related to CEMEX's 2008 year-end tax return, CEMEX Colombia presented its arguments to the Colombian Tax Authority. The Colombian Tax Authority has six months from the time CEMEX Colombia presented such arguments to send a "*Liquidación Oficial*," or final determination, that CEMEX may appeal, if necessary.

On February 10, 2011, CEMEX made a prepayment of US$50 to reduce the principal amount due under the Financing Agreement. The prepayment satisfied in full the June 2012 amortization amount.

On February 24, 2011, stockholders at the extraordinary stockholders' meeting approved an increase in the variable portion of our capital stock of up to 6 billion shares (equivalent to 2 billion CPOs). Pursuant to the resolution approved by CEMEX's stockholders, 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 CEMEX's treasury.

On February 24, 2011, stockholders at the 2010 annual ordinary stockholders' meeting approved resolutions: (i) to 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 and paid. There was no cash distribution and no entitlement to fractional shares; and (ii) to 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 2010 Optional Convertible Subordinated Notes and the Mandatorily Convertible Securities. These shares will be kept in CEMEX's treasury and will be used to preserve the rights of note holders pursuant to the company's issuance of convertible notes.

On March 4, 2011, CEMEX closed a private exchange transaction of approximately €119 aggregate principal amount of 6.277% Fixed-to-Floating Rate Callable Perpetual Debentures for approximately US$125 aggregate principal amount of new 9.25% U.S. Dollar-Denominated Senior Secured Notes due 2020, issued by CEMEX España, and guaranteed by CEMEX S.A.B. de C.V., CEMEX México, S.A. de C.V., and New Sunward Holding B.V. As a result of such private exchange, approximately €119 in aggregate principal amount of the 6.277% Perpetual Debentures and an equal corresponding aggregate principal amount of underlying dual-currency notes were cancelled.

On March 15, 2011, CEMEX finalized the offering of US$977.5 aggregate principal amount of 3.25% convertible subordinated notes due in 2016 (the "2016 Notes") and US$690 aggregate principal amount of 3.75% convertible subordinated notes due in 2018 (the "2018 Notes" and, together with the 2016 Notes, the "2011 Optional Convertible Subordinated Notes"). The aggregate principal amounts reflect the full exercise of the US$177.5 and US$90 over-allotment option granted to the relevant initial purchasers related to the 2016 Notes and the 2018 Notes, respectively. The initial conversion price was equivalent to an approximate 30% premium to the closing price of CEMEX's ADSs on March 9, 2011, and are convertible into CEMEX's ADSs, at any time after June 30, 2011. The net proceeds from this transaction were used to fund the purchase of capped call transactions, which are generally expected to reduce the potential cost to CEMEX upon future conversion of the 2011 Optional Convertible Subordinated Notes, improve CEMEX's debt maturity profile by prepaying outstanding amounts under the Financing Agreement. This prepayment satisfied in full the December 2012 amortization amount and reduced the June 2013 amortization amount to US$294 million. As a result of the issuance, substantially all the new shares approved at CEMEX's extraordinary stockholders' meeting on February 24, 2011 are being reserved by CEMEX to satisfy conversion of these notes.

On April 1, 2011, the Colombian Tax Authority (Dirección de Impuestos) notified CEMEX Colombia of a proceeding in which the Colombian Tax Authority rejected certain deductions taken by CEMEX Colombia in its 2009 year-end tax return. In addition, the Colombian Tax Authority seeks to increase the taxes to be paid by CEMEX Colombia in the amount of approximately 90 billion Colombian pesos (US$48) and to impose a penalty in the amount of approximately 144 billion Colombian pesos (US$77). 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 take into considerations that future revenue will be taxed with income tax in Colombia. 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.

On April 5, 2011, CEMEX closed the offering of US$800 aggregate principal amount of Floating Rate Senior Secured Notes due in 2015, 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 Holding B.V. and CEMEX España, S.A. The net proceeds from the offering, approximately US$788, were used to repay indebtedness under the Financing Agreement.

On April 15, 2011, in connection with the antitrust cases in Florida, the court denied the motions for certification filed by the direct and indirect purchasers.

On April 19, 2011, in connection with the note 9A, Blue Rock adopted the form of a S.à.r.l. (private limited liability company) and its name changed to TRG Blue Rock HBM Holdings S.à.r.l. ("Blue Rock -TRG"). Blue Rock-TRG is now managed by entities that are part of The Rohatyn Group, LLC (a privately owned firm that invests in the public equity and fixed income markets across the globe, including emerging markets of Latin America, Asia, Africa and Central and Eastern Europe).

On May 3, 2011, in connection with the Texas General Land Office litigation, the GLO and CEMEX submitted briefs and the Court of Appeals heard oral arguments on this matter. It is not certain when the court will issue its ruling.

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On May 5, 2011 and May 17, 2011 CEMEX extended its securitization programs of accounts receivables in Spain and in the United States for 5 and 2 years, respectively, for funded amounts of up to €100 in Spain and US$275 in the United States. As a result, CEMEX's securitization programs outstanding as of December 31, 2010 expire for Spain on May 2016 and for the United States on May 2013.

On May 17, 2011, in connection with the antitrust investigations in Spain by the CNC, the CNC Council decided to accept CEMEX España's request to review the evidence by the other parties. As a result, the deadline for the CNC Council to issue a decision has been interrupted and will resume once the other parties present the proposed evidence requested by CEMEX España.

In May 2011, the Internal Revenue Service ("IRS") has issued various Notices of Proposed Adjustment ("NOPAs") for the years 2005 through 2007 proposing a number of adjustments. CEMEX has requested the opportunity to discuss and negotiate these with the IRS field team before they are finalized as formal Revenue Agent Reports. CEMEX anticipates that this process of discussion and negotiation, together with subsequent administrative and legal processes that CEMEX may avail itself of if discussion and negotiation do not produce an acceptable settlement, may take an extended period of time, and management is uncertain that these issues will be settled in the next twelve months. CEMEX believes it has adequately reserved for its uncertain tax positions; however, there can be no assurance that the outcome of the IRS negotiations will not require further provisions for taxes.

## 23. MAIN SUBSIDIARIES

The main subsidiaries as of December 31, 2010 and 2009 were as follows:

| Subsidiary | Country | % Interest 2010 | % Interest 2009 |
|---|---|---|---|
| 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 (Costa Rica), S.A. | Costa Rica | 99.1 | 99.1 |
| 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 |
| CEMEX Asia Holdings Ltd. **3** | Singapore | 100.0 | 100.0 |
| Solid Cement Corporation **3** | Philippines | 100.0 | 100.0 |
| APO Cement Corporation **3** | Philippines | 100.0 | 100.0 |
| CEMEX (Thailand) Co., Ltd. **3** | Thailand | 100.0 | 100.0 |
| CEMEX U.K. | United Kingdom | 100.0 | 100.0 |
| CEMEX Investments Limited | 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. **4** | Ireland | 61.2 | 61.2 |
| CEMEX Holdings (Israel) Ltd. | Israel | 100.0 | 100.0 |
| CEMEX SIA | Latvia | 100.0 | 100.0 |
| CEMEX Topmix LLC, Gulf Quarries LLC, CEMEX Supermix LLC and CEMEX Falcon LLC **5** | United Arab Emirates | 100.0 | 100.0 |

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. Represents CEMEX's indirect interest in the economic benefits of these entities.
4. Readymix PLC is listed in the Irish stock exchange.
5. CEMEX owns 49% of the common stock of these entities and obtains 100% of the economic benefits, through arrangements with other stockholders.

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## 24. DIFFERENCES BETWEEN MEXICAN AND UNITED STATES ACCOUNTING PRINCIPLES

### (a) Basis of Presentation under U.S. GAAP

The consolidated financial statements are prepared in accordance with MFRS, which differ in certain significant respects from generally accepted accounting principles applicable in the United States ("U.S. GAAP"). The term "SFAS" as used herein refers to U.S. Statements of Financial Accounting Standards. Likewise, the term "FASB" refers to the U.S. Financial Accounting Standards Board. On July 1, 2009, the FASB instituted a major change in the way accounting standards are organized by the implementation of the FASB Accounting Standards Codification TM ("ASC") which became the single official source of authoritative, nongovernmental U.S. GAAP. After that date, only one level of authoritative U.S. GAAP exists, other than guidance issued by the Securities and Exchange Commission ("SEC"). All other literature will be non-authoritative.

As detailed in note 2A, until December 31, 2007, the MFRS consolidated financial statements included the effects of inflation, whereas financial statements prepared under U.S. GAAP are presented on a historical cost basis. The reconciliation to U.S. GAAP includes: (i) a reconciling item to reflect the difference in the carrying value of machinery and equipment of foreign origin and related depreciation between the methodology set forth by MFRS B-10 until December 31, 2007 and the amounts that would be determined by using the historical cost/constant currency method. As described below, this provision of inflation accounting under MFRS did not meet the requirements of Rule 3-20 of Regulation S-X promulgated by the SEC. The reconciliation does not include the reversal of other MFRS inflation accounting adjustments as of and for the years ended December 31, 2010, 2009 and 2008, as these adjustments represent a comprehensive measure of the effects of price level changes in the applicable countries and, as such, are considered a more meaningful presentation than historical cost-based financial reporting for both Mexican and U.S. accounting purposes.

**Reconciliation of net income (loss) under MFRS to U.S. GAAP**

Considering the presentation of CEMEX's operations in Australia in 2009 and 2008 as discontinued operations under MFRS (note 3B), for purposes of the reconciliation of net income (loss) to U.S. GAAP, all reconciling items pertaining to CEMEX's operations in Australia for the those periods were reclassified and presented in the single line item "U.S. GAAP adjustments from discontinued operations." For the years ended December 31, 2010, 2009 and 2008, the main differences between MFRS and U.S. GAAP, and their effect on consolidated net income (loss) and earnings (loss) per share, are presented below:

| | | 2010 | 2009 | 2008 |
|---|---|---|---|---|
| | Income (loss) under MFRS from continuing operations | Ps(16,489) | 5,925 | 226 |
| | **U.S. GAAP adjustments having the effect of increasing reported income (loss) from continuing operations:** | | | |
| 1. | Financial instruments – Fair value measurements (note 24(h)) | — | — | 1,305 |
| 2. | Employees' statutory profit sharing (note 24(c)) | — | — | 195 |
| 3. | Employee benefits (note 24(e)) | 36 | 104 | 104 |
| 4. | Other adjustments – Deferred charges (notes 24(c), (h) and (k)) | 1,594 | — | 225 |
| 5. | Other adjustments – Discontinued operations financial expense (note 24(l)) | — | 373 | 388 |
| 6. | Impairment of long-lived assets (note 24(j)) | — | 920 | — |
| 7. | Hedge accounting (note 24(h)) | 1,449 | 1,763 | — |
| 8. | Income taxes (note 24(c)) | 2,911 | 3,420 | — |
| 9. | Accounting for uncertainty in income taxes (note 24(d)) | 5,279 | — | — |
| 10. | Financing transactions (note 24(f)) | 5,401 | — | — |
| | **U.S. GAAP adjustments having the effect of decreasing reported income (loss) from continuing operations:** | | | |
| 1. | Impairment of long-lived assets (note 24(j)) | — | — | (46,077) |
| 2. | Income taxes (note 24(c)) | (5,442) | — | (7,861) |
| 3. | Hedge accounting (note 24(h)) | — | — | (7,716) |
| 4. | Financing transactions (note 24(f)) | (1,627) | (2,706) | (2,596) |
| 5. | Accounting for uncertainty in income taxes (note 24(d)) | — | (3,473) | (1,584) |
| 6. | Financial instruments – Fair value measurements (note 24(h)) | (42) | (1,057) | — |
| 7. | Financial instruments – Mandatorily convertible securities (note 24(h)) | — | (65) | — |
| 8. | Inflation adjustment of machinery and equipment (note 24(g)) | (213) | (224) | (272) |
| 9. | Other adjustments – Deferred charges (notes 24(c) and (k)) | — | (6,104) | — |
| | **Loss under U.S. GAAP from continuing operations** | Ps (7,143) | (1,124) | (63,663) |
| | Income (loss) from discontinued operations as reported under MFRS | — | (4,276) | 2,097 |
| | U.S. GAAP adjustments from discontinued operations (note 24(l)) | — | (264) | (275) |
| | **Income (loss) under U.S. GAAP from discontinued operations** | Ps — | (4,540) | 1,822 |
| | Non-controlling interest under MFRS | 27 | 240 | 45 |
| | Non-controlling interest share of U.S. GAAP adjustment | — | — | — |
| | **Non-controlling income under U.S. GAAP** | Ps 27 | 240 | 45 |
| | **Controlling net loss under U.S. GAAP** | Ps (7,170) | (5,904) | (61,886) |

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Approximate basic and diluted earnings (loss) per share under U.S. GAAP for the years ended December 31, 2010, 2009 and 2008 are as follows:

| | 2010 | 2009 | 2008 |
|---|---|---|---|
| Basic loss per share under U.S. GAAP from continuing operations | Ps(0.23) | (0.05) | (2.38) |
| Basic earnings (loss) per share under U.S. GAAP from discontinued operations | — | (0.16) | 0.07 |
| | Ps(0.23) | (0.21) | (2.31) |
| Diluted loss per share under U.S. GAAP from continuing operations **1** | Ps(0.23) | (0.05) | (2.38) |
| Diluted earnings (loss) per share under U.S. GAAP from discontinued operations **1** | — | (0.16) | 0.07 |
| | Ps(0.23) | (0.21) | (2.31) |

**1** According to ASC 260-10-45-20, *Earnings per Share*, if there is a loss from continuing operations, diluted EPS would be computed as basic EPS not including potential common shares to avoid anti-dilution. Earnings per share as of December 31, 2010, 2009 and 2008 were computed considering the number of shares issued on February 24, 2011.

The following table presents summarized consolidated financial information for the years ended December 31, 2010, 2009 and 2008 under U.S. GAAP, including all reconciling items described in this note 24 as well as certain reclassifications required for presentation purposes under U.S. GAAP:

| | 2010 | 2009 | 2008 |
|---|---|---|---|
| Revenues | Ps 178,260 | 197,801 | 224,804 |
| Cost of sales and operating expenses **1** | (172,773) | (187,405) | (267,037) |
| Operating income (loss) | 5,487 | 10,396 | (42,233) |
| Other income (expenses), net | (990) | 1,652 | 806 |
| Operating income (loss) after other income (expenses), net | 4,497 | 12,048 | (41,427) |
| Comprehensive financing result **2** | (9,353) | (23,818) | (36,944) |
| Equity in income (loss) of associates | (524) | 154 | 869 |
| Income tax (expense) income | (1,763) | 10,492 | 13,839 |
| Loss before discontinued operations | (7,143) | (1,124) | (63,663) |
| Discontinued operations | — | (4,540) | 1,822 |
| Non-controlling interest net income | 27 | 240 | 45 |
| Controlling interest net loss | Ps (7,170) | (5,904) | (61,886) |

**1** Impairment losses as well as current and deferred Employee Statutory Profit Sharing under U.S. GAAP are included in the determination of operating income (loss). Under MFRS, these items are part of other expenses, net. In addition, as mentioned in note 2S, under MFRS, for the years ended December 31, 2010, 2009 and 2008, other expenses, net, include several unusual or non-recurring transactions, such as restructuring costs (severance payments), results from sales of assets and impairment losses. In the summarized statements of operations under U.S. GAAP, expenses of Ps5,185 in 2010, Ps4,451 in 2009 and Ps70,753 in 2008, were reclassified from other expenses, net, under MFRS to operating expenses under U.S. GAAP. Cost of sales and operating expenses under U.S. GAAP include non-cash impairment loss of approximately Ps1,904 in 2010, income of Ps(40) in 2009 and loss of Ps67,023 in 2008.

**2** Commissions associated with CEMEX's Financing Agreement in 2010 (note 12A), as well as deferred financing costs in connection with the early extinguishment of the related debt in 2009, which were recognized under MFRS within Other expenses, net for approximately Ps139 and Ps940, respectively, for the years ended December 31, 2010 and 2009, were reclassified to interest expense under U.S. GAAP.

**3** Until December 31, 2008, for MFRS purposes, CEMEX accounted for its investments in entities under joint control using the proportional consolidation method (note 2B), incorporating line-by-line all assets, liabilities, revenues and expenses according to CEMEX's equity ownership. CEMEX sold these jointly controlled entities in December 2008 (note 11A). Under U.S. GAAP, joint controlled investments are accounted for by the equity method; therefore, all revenues and expenses for the year ended December 31, 2008 related to such joint controlled entities were removed line-by-line against the equity in associates for purposes of the statement of operations.

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**Reconciliation of stockholders' equity under MFRS to U.S. GAAP**

As of December 31, 2010 and 2009, the main differences between MFRS and U.S. GAAP, and their effect on consolidated stockholders' equity, with an explanation of the adjustments, are presented below:

| | | 2010 | 2009 |
|---|---|---|---|
| | Total stockholders' equity reported under MFRS | Ps 213,700 | 257,570 |
| | **U.S. GAAP adjustments:** | | |
| 1. | Goodwill (notes 24(b) and (j)) | (27,193) | (27,760) |
| 2. | Other intangible assets (note 24(j)) | (179) | (179) |
| 3. | Income taxes (note 24(c)) | 2,393 | 2,678 |
| 4. | Accounting for uncertainty in income taxes (note 24(d)) | (7,246) | (13,265) |
| 5. | Employee benefits (note 24(e)) | (6,586) | (6,141) |
| 6. | Non-controlling interest – Financing transactions (note 24(f)) | (16,310) | (39,859) |
| 7. | Inflation adjustment for machinery and equipment (note 24(g)) | 3,532 | 3,839 |
| 8. | Financial instruments – Fair value measurements (note 24(h)) | 206 | 247 |
| 9. | Financial instruments - Mandatorily convertible securities (note 24(h)) | (2,036) | (2,036) |
| 10. | Financial instruments - Optional convertible subordinated notes (note 24(h)) | (1,258) | — |
| 11. | Other adjustments – Deferred charges (note 24(k)) | (4,208) | (5,769) |
| 12. | Other adjustments – Capitalized interest (note 24(k)) | 56 | 79 |
| | Approximate U.S. GAAP adjustments | (58,829) | (88,166) |
| | Total stockholders' equity under U.S. GAAP (note 24(f)) | Ps154,871 | 169,404 |

The following table presents summarized consolidated financial information of balance sheets as of December 31, 2010 and 2009, prepared under U.S. GAAP, including all reconciling items and reclassifications as compared to MFRS described in this note 24:

| | At December 31, 2010 | | | At December 31, 2009 | | |
|---|---|---|---|---|---|---|
| | MFRS | Change | U.S. GAAP | MFRS | Change | U.S. GAAP |
| Current assets **1, 2** | Ps 54,567 | 7,182 | 61,749 | 56,770 | 5,615 | 62,385 |
| Investments in associates, other investments and non-current accounts receivable | 23,175 | 2,542 | 25,717 | 32,144 | 2,600 | 34,744 |
| Property, machinery and equipment **3, 4** | 231,458 | 8,812 | 240,270 | 258,863 | 9,687 | 268,550 |
| Goodwill, intangible assets and deferred charges, net | 205,897 | (29,568) | 176,329 | 234,509 | (41,647) | 192,862 |
| Total assets | 515,097 | (11,032) | 504,065 | 582,286 | (23,745) | 558,541 |
| Current liabilities **1, 2** | 55,119 | 4,428 | 59,547 | 49,213 | 1,549 | 50,762 |
| Long-term debt | 197,181 | (113) | 197,068 | 203,751 | (149) | 203,602 |
| Other non-current liabilities | 49,097 | 27,172 | 76,269 | 71,752 | 23,162 | 94,914 |
| Perpetual debentures | — | 16,310 | 16,310 | — | 39,859 | 39,859 |
| Total liabilities | 301,397 | 47,797 | 349,194 | 324,716 | 64,421 | 389,137 |
| Controlling interest | 194,176 | (42,639) | 151,537 | 213,873 | (48,334) | 165,539 |
| Non-controlling interest | 19,524 | (16,190) | 3,334 | 43,697 | (39,832) | 3,865 |
| Consolidated stockholders' equity | 213,700 | (58,829) | 154,871 | 257,570 | (88,166) | 169,404 |
| Total liabilities and stockholders' equity | Ps515,097 | (11,032) | 504,065 | 582,286 | (23,745) | 558,541 |

**Additional reclassifications under U.S. GAAP**

The summarized consolidated financial information under U.S. GAAP presented in the table above includes several reclassifications as compared to the summarized consolidated financial information under MFRS. The main reclassifications at December 31, 2010 and 2009 are as follows:

**1** In connection with deferred income taxes, as of December 31, 2010 and 2009, current assets under U.S. GAAP include assets of Ps4,496 and Ps6,499, respectively, which are considered non-current items under MFRS. Likewise, current liabilities under U.S. GAAP include liabilities of Ps4,150 in 2010 and Ps1,680 in 2009 classified as non-current items under MFRS.

**2** Includes the reversal of receivables sold under MFRS that do not qualify for derecognition under U.S. GAAP for approximately Ps3,617 in 2010 (note 24(n)).

**3** Assets classified as held for sale under MFRS (note 8) for approximately Ps965 and Ps1,255, as of December 31, 2010 and 2009, respectively, were reclassified to long-term assets in the condensed financial balance sheet information under U.S. GAAP. These assets are stated at their estimated fair value. Estimated costs to sell these assets are not significant.

**4** At December 31, 2010 and 2009, extraction rights in the aggregates sector, net of accumulated amortization, of approximately Ps5,953 (US$482) and Ps6,302 (US$481), respectively (note 11), recognized as intangible assets under MFRS, were reclassified as part of the book value of the quarries in property, machinery and equipment under U.S. GAAP, in accordance with ASC 805-20-55-37, *Whether Mineral Rights are Tangible or Intangible*

*Assets*.

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**(b) Goodwill**

Goodwill recognized under MFRS (note 11) has been adjusted under U.S. GAAP for: (i) the effect on goodwill from the U.S. GAAP adjustments as of the acquisition dates; (ii) beginning January 1, 2002, goodwill is not amortized under U.S. GAAP, while under MFRS goodwill was amortized until December 31, 2004; and (iii) until December 31, 2003, goodwill under MFRS was carried in the functional currencies of the holding companies for the reporting units, was translated into pesos and was then restated based on the Mexican inflation, while under U.S. GAAP, goodwill is carried in the functional currencies of the reporting units, and is restated, when inflationary accounting is applicable under MFRS, by the inflation factor of the reporting unit's country, and is translated into Mexican pesos at the exchange rates prevailing at the reporting date. Goodwill generated beginning January 1, 2005 under MFRS is carried consistently with the treatment of goodwill under U.S. GAAP.

The reconciliation of goodwill under MFRS and U.S. GAAP for the years ended December 31, 2010, 2009 and 2008 is as follows:

| | 2010 | 2009 | 2008 |
|---|---|---|---|
| Goodwill under MFRS | Ps 142,094 | 150,827 | 157,541 |
| Cumulative U.S. GAAP adjustments | (27,193) | (27,760) | (31,502) |
| Goodwill under U.S. GAAP | 114,901 | 123,067 | 126,039 |
| **U.S. GAAP adjustments:** | | | |
| Cumulative U.S. GAAP adjustments at beginning of year | (27,760) | (31,502) | 11,675 |
| Foreign exchange results and inflation effects | 567 | 2,813 | 2,721 |
| Impairment charges (see note 24(j)) | — | 929 | (45,898) |
| Cumulative U.S. GAAP adjustments at end of year | Ps (27,193) | (27,760) | (31,502) |

The accumulated impairment losses as of December 31, 2010 amounts approximately Ps46,150.

**(c) Income Taxes and Employees' Statutory Profit Sharing**

**Deferred Income Taxes**

Under MFRS, CEMEX determines deferred income taxes in a manner similar to U.S. GAAP (note 15B). Nonetheless, there are specific differences as compared to the calculation under ASC 740, *Income Taxes* ("ASC 740"), resulting in adjustments in the reconciliation to U.S. GAAP. These differences mainly arise from: (i) the recognition of the accumulated initial effect of the asset and liability method under MFRS did not consider the deferred tax consequences of business combinations made before January 1, 2000; and (ii) the effects of deferred tax on the reconciling items between MFRS and U.S. GAAP. The tax effects of temporary differences that give rise to significant portions of the deferred tax assets and deferred tax liabilities under U.S. GAAP at December 31, 2010 and 2009 are presented below:

| | 2010 | 2009 |
|---|---|---|
| **Deferred tax assets:** | | |
| Tax loss and tax credits carryforwards | Ps 73,843 | 77,602 |
| Accounts payable and accrued expenses | 8,206 | 8,487 |
| Others | 13,302 | 3,364 |
| Total gross deferred tax assets | 95,351 | 89,453 |
| Less valuation allowance | (40,137) | (32,079) |
| Total deferred tax assets under U.S. GAAP | 55,214 | 57,374 |
| **Deferred tax liabilities:** | | |
| Property, machinery and equipment | (42,740) | (48,198) |
| Others | (4,882) | (4,571) |
| Total deferred tax liability under U.S. GAAP | (47,622) | (52,769) |
| Net deferred tax asset under U.S. GAAP | Ps 7,592 | 4,605 |

Under U.S. GAAP, tax effects of intra-group transactions where the related assets remain in the consolidated balance sheet should be eliminated in consolidation until the time at which the asset is sold outside the group. Under MFRS, the tax effects recognized by each subsidiary as part of such intra-group sale of assets are not reversed. During 2008 (note 24(k)), in connection with an intra-group transfer of intangible assets, a deferred tax asset recognized by the buyer under MFRS in the amount of Ps2,206 was eliminated for U.S. GAAP purposes. The carrying amount of such deferred tax asset under MFRS as of December 31, 2010 and 2009 was Ps2,343 and Ps1,986, respectively. During 2010, the estimated useful life of the asset was revised, considering a non-significant change in estimation which was accounted for prospectively. As of December 31, 2010 and 2009, the deferred income tax benefit and expense recorded under MFRS, which was reversed for U.S. GAAP purposes was Ps83 and Ps220, respectively.

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In addition, a deferred charge for an amount of Ps215 was recognized by the seller under U.S. GAAP and is being amortized over the estimated useful life of the asset beginning in 2009. The amortization expense recognized for U.S. GAAP purposes in the statement of operations as of December 31, 2010 and 2009 was Ps2 and Ps21, respectively.

Of the total net income tax expense of approximately Ps2,531 in 2010, income tax benefit of approximately Ps3,420 in 2009 and income tax expense of approximately Ps7,861 in 2008, included in the reconciliation of net income (loss) to U.S. GAAP, income tax expense of approximately Ps559 in 2010, income tax benefit of approximately Ps2,421 in 2009 and income tax expense of approximately Ps2,657 in 2008, are related to deferred income taxes.

**Current Income Taxes**

In addition to the reconciling items mentioned above related to deferred income taxes, according to MFRS D-4, current income taxes are presented in the income statement. For U.S. GAAP purposes, current income taxes generated by items recognized directly in equity are recognized in equity, considering also intra-period tax allocation. The reconciliation of net income (loss) to U.S. GAAP for the years ended December 31, 2010, 2009 and 2008, includes a tax expense of approximately Ps4,883, a tax benefit of approximately Ps3,353 and a tax expense of approximately Ps5,091, respectively, for the reclassification of current income taxes from net income (loss) under MFRS to equity under U.S. GAAP.

In connection with changes to the tax consolidation regime in Mexico (notes 2N and 15A) under MFRS based on Interpretation 18, during 2010 and 2009, CEMEX recognized a credit of approximately Ps2,911 and a charge of approximately Ps2,245 against retained earnings, respectively, for the partial cancellation in 2010 and the initial recognition in 2009 of the liability portion 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 between the companies included in the tax consolidation that represented the transfer of resources within the group. Under U.S. GAAP, the tax effects of a new tax law enactment are recognized in the income statement for the period, therefore, the credit in 2010 and the charge in 2009 to retained earnings mentioned above were reclassified to income tax expense in the statements of operations for the years ended December 31, 2010 and 2009, respectively.

**Employees' Statutory Profit Sharing ("ESPS")**

Until December 31, 2007, for purposes of U.S. GAAP, CEMEX recorded a deferred tax liability related to ESPS in Mexico using the asset and liability method at the statutory rate of 10%. As mentioned in note 2M, beginning January 1, 2008, deferred ESPS under MFRS is calculated and recognized under the asset and liability method. As a result, the reconciling item as of December 31, 2007 under U.S. GAAP was eliminated in the reconciliation of net income (loss) to U.S. GAAP in the year 2008.

**(d) Accounting for Uncertainty in Income Taxes**

Pursuant to ASC 740 under U.S. GAAP, CEMEX defines the confidence level that a tax position taken or expected to be taken must meet in order to be recognized in the financial statements. ASC 740-10-25-6 requires that the tax effects of a position must be recognized only if it is "more-likely-than-not" to be sustained based on its technical merits as of the reporting date. In making this assessment, CEMEX has assumed that the tax authorities will examine each position and have full knowledge of all relevant information. 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 to be recognized. Moreover, the more-likely-than-not threshold must continue to be met in each reporting period to support continued recognition of a benefit.

If during any period after recognition the threshold ceases to be met, the previously recorded benefit must be derecognized. Likewise, the benefit of a tax position that initially fails to meet the more-likely-than-not threshold should be recognized in a subsequent period if changing facts and circumstances enable the position to meet the threshold, the matter is effectively settled through negotiation or litigation with the tax authorities, or the statute of limitations has expired. A summary of the beginning and ending amount of unrecognized tax benefits recorded under U.S. GAAP as of December 31, 2010, 2009 and 2008, excluding interest and penalties, is as follows:

| | 2010 | 2009 | 2008 |
|---|---|---|---|
| Balance of tax positions under U.S. GAAP at beginning of year | Ps 20,333 | 13,930 | 11,198 |
| Additions for tax positions of prior years | 3,687 | 2,368 | 2,217 |
| Additions for tax positions of current year | 765 | 5,110 | 2,126 |
| Reductions for tax positions related to prior years and other items | (2,240) | (306) | (3,639) |
| Settlements | (81) | (187) | (123) |
| Expiration of the statue of limitations | (4,195) | (236) | (24) |
| Foreign currency translation effects | (1,009) | (346) | 2,175 |
| Balance of tax positions under U.S. GAAP at end of year | Ps17,260 | 20,333 | 13,930 |
| Balance of tax positions under MFRS at end of year | Ps 10,940 | 9,024 | 5,474 |

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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. Final balance for interest and penalties accrued under MFRS and U.S. GAAP was Ps1,055 and Ps1,981, respectively, as of December 31, 2010, and was Ps1,108 under MFRS and Ps3,064 under U.S. GAAP as of December 31, 2009.

Interest and penalties expense (benefit) related to unrecognized tax benefits recorded in the consolidated statements of operations for the years ended December 31, 2010, 2009 and 2008 is as follow:

| Years | MFRS | U.S. GAAP |
|---|---|---|
| 2010 | Ps (53) | (1,006) |
| 2009 | (15) | 154 |
| 2008 | 695 | 1,341 |

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.

CEMEX files income tax returns in multiple jurisdictions and is subject to examination by income taxing authorities throughout the world. CEMEX's major tax jurisdictions and the years open for examination are as follows:

| Country | Years |
|---|---|
| Mexico | 2005 – 2010 |
| United States | 2005 – 2010 |
| Spain | 2006 – 2010 |
| United Kingdom | 2006 – 2010 |

**(e) Employee Benefits**

**Severance payments**

Under U.S. GAAP, post-employment benefits for former or inactive employees, including severance payments, which are not part of a restructuring event, are accrued over the employees' service lives. Beginning January 1, 2005, under MFRS, severance payments that are not part of a restructuring event are accrued over the employees' service lives according to actuarial computations, in a manner similar to U.S. GAAP. For the years ended December 31, 2010, 2009 and 2008, the reconciling item refers to the amortization of the cumulative initial effect from the accounting change under MFRS recognized as of January 1, 2005 as part of the unrecognized net transition obligation. Based on the adoption of amended MFRS D-3, as of January 1, 2008, such cumulative initial effect is amortized over a maximum period of 5 years. In addition, all unamortized actuarial gains and losses were amortized immediately in the results of 2008 under MFRS.

**Pension and other postretirement benefits**

In connection with employee pension and other postretirement benefits under MFRS, until December 31, 2007, CEMEX determined the costs of these benefits based on the obligations' net present value, and the actuarial results which exceed the greater of 10% of the fair value of the plan assets and 10% of the present value of the plan obligations, the prior service cost and the transition liability, are amortized to the operating results over the employees' estimated active service life (note 2M), as permitted by ASC 715, *Compensation – Retirement Benefits Defined Benefit Plans – Pensions*, under U.S. GAAP. Resulting from the adoption of amended MFRS D-3 as of January 1, 2008, the prior service cost and transition liability accrued as of December 31, 2007, should be amortized to the income statement over a maximum period of five years, while actuarial results are amortized normally over the employees' estimated active service lives following the corridor method. The reconciliation of net income (loss) to U.S. GAAP in 2010, 2009 and 2008 includes the reversal of the additional amortization expense recognized under MFRS of approximately Ps36, Ps104 and Ps104, respectively.

For the reconciliation of stockholders' equity to U.S. GAAP, based on ASC 715, CEMEX recognizes the funded status (benefits obligation less fair value of plan assets) of defined benefit pension and other postretirement plans as a net asset or liability and recognizes any changes in that funded status in the year in which the changes occur against other comprehensive income ("OCI") within stockholders' equity under U.S. GAAP to the extent those changes are not included in the net periodic cost.

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The reconciliation of the funded status of postretirement benefits at December 31, 2010 and 2009 between MFRS and U.S. GAAP is as follows:

| | Assets (non-current) | Liabilities (non-current) | Deferred income tax (effect) | Total | Cumulative OCI, net of tax |
|---|---|---|---|---|---|
| Funded status under U.S. GAAP at December 31, 2009 | Ps 33 | 13,632 | (3,350) | 10,249 | (4,338) |
| Reversal of approximate ASC 715 adjustments | (33) | (6,174) | 1,803 | (4,338) | 4,338 |
| Funded status under MFRS at December 31, 2009 | Ps — | 7,458 | (1,547) | 5,911 | — |
| Funded status under U.S. GAAP at December 31, 2010 | Ps 20 | 14,189 | (4,159) | 10,010 | (4,574) |
| Reversal of approximate ASC 715 adjustments | (20) | (6,606) | 2,012 | (4,574) | 4,574 |
| Funded status under MFRS at December 31, 2010 | Ps — | 7,583 | (2,147) | 5,436 | — |

The changes in OCI under U.S. GAAP during 2010 and 2009 were as follows:

| | Pension | | Other benefits | | Total | |
|---|---|---|---|---|---|---|
| | 2010 | 2009 | 2010 | 2009 | 2010 | 2009 |
| **Balance of OCI at beginning of year** | Ps(6,136) | (4,047) | (5) | 74 | (6,141) | (3,973) |
| Amortization of prior service cost and actuarial results | 423 | 308 | 4 | 55 | 427 | 363 |
| Amortization of transition liability | 25 | 20 | 71 | 101 | 96 | 121 |
| Actuarial results accumulated during the year | (823) | (2,417) | (145) | (235) | (968) | (2,652) |
| **Balance of OCI at end of year** | Ps(6,511) | (6,136) | (75) | (5) | (6,586) | (6,141) |

The balance as of December 31, 2010 and 2009 in OCI under U.S. GAAP includes approximately Ps6,469 (Ps4,493 net of income tax) and Ps5,946 (Ps4,201 net of income tax) of unamortized prior service costs and actuarial gains and losses, net, respectively, and a transition liability of Ps117 (Ps81 net of income tax) and Ps195 (Ps137 net of income tax), respectively. For the years ended December 31, 2010, 2009 and 2008, ASC 715 adjustments had no effect on the summarized statements of operations under U.S. GAAP presented in note 24(a).

The expected long-term rate of return on plan assets is determined based on a variety of considerations, including the established asset allocation targets and expectations for those asset classes, historical returns of the plans' assets and other market considerations. The primary objective in the investment management for plan assets is to maximize the inflation-adjusted principal value of the assets in order to meet current and future benefit obligations to plan participants. We have a diversified portfolio composed of equity, alternative investments, fixed income and cash equivalent securities. We have independent investment consultants that provide advice to Investment Committees and Trustees to determine the annual investment strategy. Plan assets are managed on a total return and risk basis, and its performance is monitored on a quarterly basis. The Investment Committee recognizes that a certain level of risk (i.e., the uncertainty of future events), volatility (i.e., the potential for variability of asset values) and the possibility of loss in purchasing power (due to inflation) are present to some degree in all types of investment vehicles. Risk is controlled by maintaining a portfolio of assets that is diversified across a variety of asset classes, economic and industry sectors, investment styles and investment managers. Funds management complies with local legal regulations in terms of asset allocation and statutory funding requirements.

In connection with the pension plans' assets by asset category (note 14), according to requirements of ASC 820, *Fair Value Measurements and Disclosure*, under U.S. GAAP, the breakdown of the assets' fair value by hierarchy level (note 24(h)) as of December 31, 2010 and 2009 was as follows:

| 2010 | Quoted prices in active markets for identical assets (Level 1) | Significant observable inputs (Level 2) | Significant unobservable inputs (Level 3) | Total fair value |
|---|---|---|---|---|
| **Fixed-income securities** | | | | |
| Cash and equivalents | Ps 600 | 19 | 89 | 708 |
| Investments in corporate bonds | 7,143 | 1,338 | — | 8,481 |
| Investments in government bonds | 2,574 | 342 | — | 2,916 |
| | 10,317 | 1,699 | 89 | 12,105 |
| **Variable-income securities** | | | | |
| Investment in marketable securities | 5,000 | — | 26 | 5,026 |
| Other investments and private funds | 3,280 | — | — | 3,280 |
| | 8,280 | — | 26 | 8,306 |
| | Ps 18,597 | 1,699 | 115 | 20,411 |

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| 2009 | Quoted prices in active markets for identical assets (Level 1) | Significant observable inputs (Level 2) | Significant unobservable inputs (Level 3) | Total fair value |
|---|---|---|---|---|
| **Fixed-income securities** | | | | |
| Cash | Ps 1,286 | — | — | 1,286 |
| Investments in corporate bonds | 3,860 | 1,772 | — | 5,632 |
| Investments in government bonds | 6,685 | — | — | 6,685 |
| | 11,831 | 1,772 | — | 13,603 |
| **Variable-income securities** | | | | |
| Investment in marketable securities | 5,704 | — | 27 | 5,731 |
| Other investments and private funds | 1,882 | 42 | 423 | 2,347 |
| | 7,586 | 42 | 450 | 8,078 |
| | Ps 19,417 | 1,814 | 450 | 21,681 |

Due to limited market information, we utilized different methods to determine the Level 3 unobservable inputs fair value breakdown. This category includes temporary investments based on pricing of the investment manager for private funds and private equity in real estate.

**(f) Non-controlling Interest**

**Financing Transactions**

In connection with CEMEX's perpetual debentures (note 16D) for notional amounts of approximately US$1,320 (Ps16,310) in 2010 and US$3,045 (Ps39,859) in 2009, which are treated as equity instruments and included as part of non-controlling interest under MFRS, for purposes of the reconciliation of stockholders' equity to U.S. GAAP, such perpetual debentures were reclassified to long-term debt under U.S. GAAP, reducing stockholders' equity under U.S. GAAP in the amount of Ps16,310 in 2010 and Ps39,859 in 2009. Interest accrued on the perpetual debentures, including interest incurred in connection with perpetual loan facilities that were originated and settled during the year (note 12A and 16D), for approximately Ps1,624 in 2010, Ps2,704 in 2009 and Ps2,596 in 2008 recognized within "Other equity reserves" under MFRS were reclassified to interest expense in the reconciliation of net income (loss) to U.S. GAAP.

As detailed in note 12A, in May 2010, CEMEX exchanged part of its perpetual debentures into new senior secured notes. As a result of the exchange, a gain of approximately Ps5,401 was recorded in "Other equity reserves". According to ASC 470-50, Debt – Modifications and Extinguishments ("ASC 470-50"), new debt instruments shall be initially recorded at fair value, and that amount shall be used to determine the debt extinguishment gain or losses. Under MFRS, the senior secured notes qualified as the issuance of new debt and the extinguishment of the perpetual debentures, as it did under U.S. GAAP. The extinguishment gain of Ps5,401 recognized within "Other equity reserves" under MFRS was reclassified to comprehensive financial result in the reconciliation of net income (loss) to U.S. GAAP. The fair value of the senior secured notes under U.S. GAAP approximates its nominal value at the time of issuance. As of December 31, 2010 the fair value of the senior secured notes was of approximately US$1,193.

**Non-controlling Interest under U.S. GAAP**

Under both MFRS and U.S. GAAP, non-controlling interest in consolidated subsidiaries represent ownership interests in the consolidated entity that are presented as a separate component within stockholders' equity. Likewise, under both MFRS and U.S. GAAP, the reported consolidated net income (loss) presents the amounts attributable to both the parent and the non-controlling interest on the face of the consolidated income statement. There were no U.S. GAAP adjustments attributable to non-controlling interests as of December 31, 2010 and 2009 or for any of the years in the three year period ended December 31, 2010.

**(g) Inflation Adjustment of Machinery and Equipment**

According to Regulation S-X, when inflationary accounting is applicable under MFRS, fixed assets of foreign origin should be restated by applying the inflation rate of the country that holds the assets, regardless of the assets' origin countries, instead of using the applicable methodology of MFRS until December 31, 2007, under which fixed assets of foreign origin were restated by applying a factor that considered the inflation of the asset's origin country and the fluctuation of the currency of the country that holds the asset against the currency of the asset's origin country. Depreciation expense is based upon the revised amounts. The amount recognized in the reconciliation of net income (loss) to U.S. GAAP in 2010, 2009 and 2008 refers to depreciation expense of the cumulative effect of the reconciling item as of December 31, 2007, the date on which inflationary accounting was suspended under MFRS. The amount recognized in the reconciliation of stockholders' equity to U.S. GAAP in 2010 and 2009 includes Ps2,410 (US$195) ((Ps1,591 (US$129) net of income tax) and Ps2,553 (US$195) ((Ps1,685 (US$129) net of income tax), respectively, related to the revaluation of fixed assets nationalized in Venezuela, which are presented net in the caption "Non-current accounts receivable and other assets." Beginning in 2008, if inflationary accounting is applicable under MFRS, fixed assets of foreign origin are restated using the factors derived from the general price indexes of the countries holding the assets, in a manner similar to that permitted under Regulation S-X.

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### (h) Financial Instruments

**Indebtedness (note 12A)**

Under MFRS, CEMEX has designated certain debt as hedges of certain investments in foreign subsidiaries and recognizes foreign exchange fluctuations on such debt within "Other equity reserves" in stockholders' equity (notes 2D and 16B). In the reconciliation of net income (loss) to U.S. GAAP, a portion of those foreign exchange results recognized in equity under MFRS was reclassified to the statement of operations under U.S. GAAP, resulting in income of Ps1,449 in 2010, income of Ps1,763 in 2009 and expense of Ps7,716 in 2008.

**Fair Value of High Yield Bonds**

As of December 31, 2010 the fair value of CEMEX's US dollar-denominated notes due on 2016 and euro-denominated notes due on 2017 was approximately US$2,289, and it is considered Level 1 fair value measurement given that the market price of these securities was available. At December 31, 2009 the fair value of the notes approximates their carrying value considering that the issuance date of the notes was December 14, 2009.

**Derivative Financial Instruments (notes 2K and 12C)**

Under both MFRS and U.S. GAAP, all derivative instruments, including those embedded in other contracts, are recognized in the balance sheet as assets or liabilities at their fair values, and changes in fair value are recognized in earnings, unless the derivatives qualify as hedges of future cash flows, in which case the effective portion of such changes in fair value is recorded temporarily in equity, and then recognized in earnings along with the related effects of the hedged items. Any ineffective portion of a hedge is reported in earnings as it occurs. However, ASC 820, *Fair Value Measurements and Disclosure* ("ASC 820") under U.S. GAAP defines fair value using concepts that differ from those applied under MFRS. Except for the different amounts of fair value under MFRS and U.S. GAAP, all derivative instruments were accounted under MFRS consistently with the provisions of U.S. GAAP. For the years ended December 31, 2010, 2009 and 2008, CEMEX did not designate any derivative instrument as a fair value hedge under both MFRS and U.S. GAAP.

All energy supply contracts in which CEMEX has the obligation to acquire produced amounts of megawatts during predefined periods (note 19C), were negotiated for own-use in CEMEX's plants, do not include provisions for net cash settlement and do not have trading purposes. Such energy contracts contain features that may imply that the contracts represent derivative instruments or that they contain embedded derivative instruments. For both MFRS and U.S. GAAP, CEMEX considers these contracts under the "Normal Purchases and Normal Sales Exception" established in ASC 815, *Derivatives and Hedging*; consequently, such contracts are not recognized at fair value through the statements of operations.

For all hedging relationships, for accounting purposes, CEMEX formally documents the hedging relationship and its risk-management objective and strategy for undertaking the hedge, the hedging instrument, the hedged item, the nature of the risk being hedged, how the hedging instrument's effectiveness in offsetting the hedged risk will be assessed, and a description of the method of measuring ineffectiveness. This process includes linking all derivatives that are designated as cash-flow or foreign-currency hedges to specific assets and liabilities on the balance sheet or to specific firm commitments or forecasted transactions. CEMEX also formally assesses, both at the hedge's origination and on an ongoing basis, whether the derivatives that are used in hedging transactions are highly effective in offsetting changes in cash flows of hedged items. When it is determined that a derivative is not highly effective as a hedge or that it has ceased to be a highly effective hedge, CEMEX discontinues hedge accounting prospectively.

**Fair Value Hierarchy**

Under U.S. GAAP, CEMEX applies ASC 820 for fair value measurements of financial assets and financial liabilities recognized or disclosed at fair value. Beginning on January 1, 2009, CEMEX also recognizes and discloses the fair value of non-financial assets and non-financial liabilities under ASC 820.

Under MFRS, in addition to certain investments in trading securities which are recorded at their quoted market prices, CEMEX has recognized all its derivative financial instruments at their estimated fair value (note 12C). For purposes of MFRS, fair value is the amount for which an asset could be exchanged, a liability settled, or an equity instrument granted could be exchanged between knowledgeable, willing parties in an arm's length transaction. Under U.S. GAAP, the concept of fair value is defined by ASC 820 as 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. Basically, the difference between the fair value under MFRS, which is equivalent to a settlement amount at the balance sheet date, and the Exit Value under U.S. GAAP, is that the latter considers the counterparty's credit risk in the valuation.

The concept of Exit Value works under the premise that there is 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, ASC 820 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.

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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 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 following table presents a comparison of fair values between MFRS and U.S. GAAP at December 31, 2010 and 2009. The reconciling adjustments arising from the differences in fair value between MFRS and U.S. GAAP for the years ended December 31, 2010, 2009 and 2008, represented a gain of approximately US$1 (Ps12 or Ps8 after deferred income tax), a loss of approximately US$88 (Ps1,207 or Ps890 after deferred income tax) and a gain of approximately US$95 (Ps1,305 or Ps960 after deferred income tax), respectively.

| | 2010 | | | 2009 | | |
|---|---|---|---|---|---|---|
| **(U.S. dollars millions)** | **MFRS** | **U.S. GAAP** | **Adjustment** | **MFRS** | **U.S. GAAP** | **Adjustment** |
| **Active derivative instruments (note 12C)** | | | | | | |
| Derivative instruments related to interest rates | US$ 35 | 34 | (1) | 27 | 26 | (1) |
| Derivative instruments related to other equity | 16 | 16 | — | 55 | 55 | — |
| Derivative instruments related to equity instruments | (71) | (62) | 9 | (79) | (71) | 8 |
| Total | US$(20) | (12) | 8 | 3 | 10 | 7 |

The fair values under both MFRS and U.S. GAAP presented in the table above at December 31, 2010 and 2009 include approximately US$160 (Ps1,978) and US$195 (Ps2,553), respectively, of deposits in margin accounts with financial institutions (note 12C).

**Fair Value of Perpetual Debentures**

As of December 31, 2010 and 2009, the fair value of CEMEX's perpetual debentures (note 16D) was approximately Ps10,927 (US$884) and Ps27,594 (US$2,108), respectively. Based on ASC 820, such fair values represent Level 1 measurements which were determined considering quoted market prices of the perpetual debentures as they are available.

**Effects of CEMEX's Financing Agreement under U.S. GAAP**

As detailed in note 12A, on August 14, 2009, CEMEX entered into the Financing Agreement with its major creditors, which extended the maturity of approximately US$14,961 (Ps195,839) of syndicated and bilateral loans and private placement obligations. Under MFRS, the Financing Agreement qualified as the issuance of new debt and the extinguishment of the old facilities, as it did under US GAAP according to ASC 470-50, *Debt – Modifications and Extinguishments* ("ASC 470-50"). However, as opposed to MFRS in which the nominal amount of the new debt is used for the determination of gain and losses at inception, under U.S. GAAP, the new long-term debt should be measured at fair value at inception of the new debt in order to determine gains or losses on extinguishment.

CEMEX segregated the extinguished instruments into long term facilities and revolving credit lines and determined the accounting treatment for each of these components as follows:

a) The fair value at measurement date of the long term facilities with a nominal amount of approximately US$11,368 (Ps148,807) was determined to be approximately US$11,357 (Ps148,663), which represents a Level 2 measurement under ASC 820 as there was no direct measure of the instrument or CEMEX's default risk. The fair value adjustment required under U.S. GAAP was a decrease in the liability and a corresponding gain in the reconciliation of net income (loss) to U.S. GAAP in 2009 for approximately US$11 (Ps150); for 2010 an amortization of Ps38 was recognized. As of December 31, 2010, the fair value of the long term facilities was US$7,093. Issuance costs and commissions paid, which under MFRS were capitalized as deferred financing costs and are subject to amortization throughout the life of the instrument, were fully expensed in the reconciliation of net income (loss) to U.S. GAAP in 2009 for approximately Ps6,016 (US$442). As of December 31, 2010 and 2009, a deferred income tax asset under U.S. GAAP for approximately Ps1,250 and Ps1,786, respectively, was recognized in connection with the commissions and issuance costs mentioned above. In the reconciliation of net income (loss) to U.S. GAAP for 2010, the reversal of the amortization of deferred financing costs recognized under MFRS associated with CEMEX's debt under the Financing Agreement that were fully expensed under U.S. GAAP in 2010 led to the recognition of an income of approximately Ps1,562.

b) The revolving credit lines retained their original carrying amount of approximately US$3,593 (Ps47,032) in accordance with ASC 470-50. The provisions of the Financing Agreement increased the borrowing capacity relative to these revolving credit lines and therefore, previously capitalized borrowing costs, which were not significant, will continue to be amortized throughout the term of the Financing Agreement. New borrowing costs for approximately Ps811 (US$62) were capitalized as deferred financing costs during 2009 and will be amortized throughout the term of the Financing Agreement under both MFRS and U.S. GAAP.

**Mandatorily Convertible Securities**

Under MFRS, the Mandatorily Convertible Securities issued in Mexico on December 10, 2009 for approximately Ps4,126 (US$315) in exchange for CBs (note 12A), represent a compound instrument which has a liability component and an equity component. The liability component, which amounted to Ps1,994 and Ps2,090 as of December 31, 2010 and 2009, respectively, represents the net present value of interest payments on the principal amount, without assuming any early conversion, and was recognized within "Other financial obligations" (note 12A). The equity component for approximately Ps1,971, net of commissions of Ps65, which represents the difference between the principal amount and the liability component at the beginning of the transaction was

recognized within “Other equity reserves” (note 16B).

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As of December 31, 2010 and 2009, according to ASC 470-20, *Debt with Conversion and other Options* ("ASC 470-20"), under U.S. GAAP, the equity component of the Mandatorily Convertible Securities was reclassified to debt in the reconciliation of stockholders' equity to U.S. GAAP and is presented within "Other non-current liabilities" together with the liability component in the condensed balance sheet financial information under US GAAP. Likewise, deferred income tax assets for approximately Ps562 in 2010 and Ps585 in 2009 recognized against stockholders' equity under MFRS in connection with this transaction were eliminated (note 15B). The exchange of CBs for the Mandatorily Convertible Securities also qualified as the issuance of new debt and the extinguishment of the old facilities under ASC 470-50, which required CEMEX to measure the new financial obligation at fair value at inception and to recognize as interest expense in the reconciliation of net income (loss) to U.S. GAAP in 2009: a) the issuance costs related to the liability component, which were capitalized as deferred financing costs under MFRS for approximately Ps67(US$5), and b) the issuance costs related to the equity component recognized within "Other equity reserves" under MFRS for approximately Ps65 (US$5). Under U.S. GAAP, a deferred income tax asset of Ps34 and Ps37 at December 31, 2010 and 2009, respectively, was recognized in connection with the commissions and issuance costs mentioned above. In the reconciliation of net income (loss) to U.S. GAAP for 2010, the reversal of the amortization of deferred financing costs recognized under MFRS associated with the liability component of the Mandatorily Convertible Securities that were fully expensed under U.S. GAAP in 2009 led to the recognition of an income of approximately Ps10.

The fair value at measurement date approximates to the carrying value of approximately Ps4,126 (US$315) at December 31, 2009 determined by CEMEX for the Mandatorily Convertible Securities, and it is considered a Level 2 fair value measurement given that the market price of these securities was available but the contract included a one-year trading restriction. As of December 31, 2010, the fair value of the Mandatorily Convertible Securities was Ps3,780 (US$306), considered as a Level 1 fair value measurement.

**2010 Optional Convertible Subordinated Notes**

Under MFRS, the 2010 Optional Convertible Subordinated Notes issued on March 30, 2010 for approximately Ps8,837 (US$715), represent a compound instrument which has a liability component and an equity component (note 12A). The equity component, which represents the premium of the noteholders' call option, amounted to Ps1,232, net of commissions of Ps26, and was recognized upon issuance within "Other equity reserves." As of December 31, 2010, the liability component for these notes amounted to approximately Ps7,690 (US$622). As of December 31, 2010 the fair value of the Optional Convertible Notes was Ps9,654 (US$781), considered as a Level 2 fair value measurement given that the market price of these notes was available but the contract included a one-year trading restriction.

As of December 31, 2010, pursuant to ASC 470-20 under U.S. GAAP, the equity component of the 2010 Optional Convertible Subordinated Notes was reclassified to debt in the reconciliation of stockholders' equity to U.S. GAAP and is presented within "Other non-current liabilities" together with the liability component in the condensed balance sheet financial information under US GAAP. Likewise, a deferred income tax liability for approximately Ps315 in 2010 recognized against stockholders' equity under MFRS in connection with this transaction was eliminated (note 15B). Moreover, the issuance costs related to the equity component recognized within "Other equity reserves" in 2010 under MFRS for approximately Ps26 (US$2) was reclassified to deferred financing costs under U.S. GAAP. In the reconciliation of net income (loss) to U.S. GAAP for 2010, the amortization of deferred financing costs recognized under U.S. GAAP associated with the equity component of these notes that were recognized in equity under MFRS in 2010 led to the recognition of interest expense of approximately Ps4.

**Fair Value Option**

Beginning in January 1, 2008, ASC 825, *Financial Instruments* ("ASC 825"), provides entities with an option to measure several financial instruments and certain other items at fair value. Under ASC 825, unrealized gains and losses on items for which the fair value option has been elected are reported in earnings at each reporting period. As of and for the years ended December 31, 2010, 2009 and 2008, CEMEX has not elected to measure any financial instruments or other items at fair value.

**Fair value of non-financial assets and non-financial liabilities**

On January 1, 2009, CEMEX adopted ASC Topic 820, *Fair Value Measurements and Disclosures*, for fair value measurements of non-financial assets and non-financial liabilities that are recognized or disclosed at fair value in the financial statements on a non-recurring basis. For the periods ended December 31, 2010 and 2009 the non-financial assets and non-financial liabilities mentioned below correspond to a Level 3 measurement according to such topic.

Based on the requirements of ASC 40-20-35, asset retirement and environmental obligations in 2010 and 2009 amounted to approximately Ps5,658 (US$460) and Ps5,322 (US$407), respectively, and are calculated based on the present value of estimated removal and other closure costs using our internal risk-free rate of return or an appropriate equivalent as detailed in note 2L and note 13.

As indicated in ASC 360-10-35, long-lived assets held for sale with a carrying amount of Ps965 (US$78) in 2010 and Ps1,255 (US$96) in 2009 are stated as mentioned in note 8 at their estimated realizable value and include real state properties received in payment of trade receivables. CEMEX recognized, under MFRS, impairment losses in connection with assets held for sale in 2010 and 2009 for approximately Ps420 (US$31) and Ps253 (US$19) respectively, which were included in the consolidated statement of operations under both MFRS and U.S. GAAP for the respective periods.

**(i) Stock Award Programs**

The balance of options outstanding at December 31, 2010 and 2009 and other general information regarding CEMEX's stock awards is presented in note 17.

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As mentioned in note 2T, CEMEX accounted for its stock option programs in 2008 according to IFRS 2 and beginning on January 1, 2009 under MFRS D-8, which provide basically the same accounting treatment. Effective January 1, 2006, under U.S. GAAP, CEMEX applies ASC 718, *Compensation – Stock Compensation* ("ASC 718"), which requires that all stock-based compensation be recognized as an expense in the financial statements and that such cost be measured at the fair value of the award. Similar to MFRS D-8 under MFRS, ASC 718 requires liabilities incurred under stock awards to be measured at fair value at each balance sheet date, with changes in fair value recorded in the income statement. Likewise, MFRS D-8 and ASC 718 require compensation cost related to awards qualifying as equity instruments to be determined considering the grant-date fair value of the awards, and be recorded during the awards' vesting period. As of and for the years ended December 31, 2010, 2009 and 2008, the compensation expense and the liabilities accrued in connection with CEMEX's stock option programs under MFRS are the same amounts that would be determined using ASC 718 under U.S. GAAP.

**(j) Impairment of Long-Lived Assets**

Under U.S. GAAP, CEMEX assesses goodwill and indefinite-lived intangibles for impairment annually unless events occur that require more frequent reviews. Other long-lived assets, including amortizable intangibles, are tested for impairment if impairment triggers occur. Discounted cash flow analyses considering the required use of market considerations are applied to assess the possible impairment of goodwill and indefinite life intangible assets; whereas if impairment indicators exist, undiscounted cash flow analyses are used to assess the impairment for other long-lived assets, including definite life intangible assets. If an assessment indicates impairment, the impaired asset is written down to its fair value based on the best information available. The useful lives of amortizable intangibles are evaluated periodically, and subsequent to impairment reviews, to determine whether revision is warranted. If cash flows related to an indefinite life intangible are not expected to continue for the foreseeable future, a useful life is assigned. Considerable management judgment is necessary to estimate undiscounted and discounted future cash flows. Assumptions used for these cash flows are consistent with internal forecasts and industry practices.

As mentioned in note 2J, under MFRS, in order to test the balances of its long-lived assets for impairment, including goodwill, definite and indefinite life intangible assets and property, machinery and equipment, CEMEX determines the value in use, which consists of the discounted amount of estimated future cash flows to be generated by the related asset. The impairment loss results from the excess of the carrying amount over the value in use related to the asset. Differences in the carrying values of certain long-lived assets under U.S. GAAP as well as other factors explained below led to different impairment losses or impairment testing results between MFRS and U.S. GAAP. As of December 31, 2010 and 2009, CEMEX has no indefinite-lived intangible assets other than goodwill under both MFRS and U.S. GAAP.

As mentioned in note 11B under MFRS, during the last quarter of 2010, 2009 and 2008, CEMEX performed its annual goodwill impairment test. Based on these analyses, in 2010, CEMEX determined an impairment loss of goodwill for approximately Ps189 (US$15) associated with the reporting unit in Puerto Rico, whereas, in 2008, goodwill impairment losses were determined for the United States, Ireland and Thailand reporting units for approximately Ps18,314 (US$1,333), including an impairment loss related to CEMEX's Venezuelan investment in connection with its nationalization. For the year 2009, based on its goodwill impairment tests, CEMEX did not determine impairment losses of goodwill under MFRS. Likewise, considering triggering events in the United States during the fourth quarter of 2008, CEMEX tested its intangible assets of definite life in that country and determined that the net book value of certain trademarks exceeded their related value in use and recorded impairment losses of approximately Ps1,598 (US$116) (note 11). In addition, as mentioned in note 10, for the years ended December 31, 2010, 2009 and 2008, CEMEX recognized impairment losses in connection with the permanent closing of plant and equipment in several countries for an aggregate amount of approximately Ps1,161 (US$92), Ps503 (US$38) and Ps1,045 (US$76), respectively.

**Goodwill**

Under U.S. GAAP, if the carrying amount of the reporting unit exceeds its related fair value, CEMEX should apply a "second step" process by means of which the fair value of such reporting unit should be allocated to the fair value of its net assets in order to determine the reporting unit's "implied" goodwill. The resulting impairment loss under U.S. GAAP is the difference between the carrying amount of the related goodwill as of the valuation date and the implied goodwill amount. This process, in addition to differences in the determination of the risk-adjusted discount rates under MFRS as compared to U.S. GAAP, as well as differences in the reporting units' carrying amounts between MFRS and U.S. GAAP, originate, when applicable, different amounts of impairment losses.

To establish the fair value of its reporting units under U.S. GAAP, CEMEX initially calculated their fair value by discounting the projected future cash flows using country specific estimated weighted average cost of capital as the discount rates, and by including and blending the allocated fair value estimates, on a basis of 60% discounted cash flows and 40% Operating EBITDA (Operating income plus depreciation and amortization) multiples. As additional reference to the fair value as determined and as deemed necessary, CEMEX compared other market value indicators, including fair value estimates based on the Guided Transactions Approach and Industry Multiples.

The results of the impairment test performed as of December 31, 2010 under U.S. GAAP indicated that the carrying amount of the reporting unit in Puerto Rico exceeded its estimated fair value. In connection with its reporting unit in Puerto Rico, CEMEX did not perform the second step considering that the related goodwill was fully impaired in the first step test; consequently, and considering that there were no differences in the goodwill balance of this reporting unit between MFRS and U.S. GAAP, there is no reconciling adjustment to the impairment loss relating to this reporting unit determined in 2010. As of December 31, 2010, goodwill under both MFRS and U.S. GAAP associated with CEMEX's reporting unit in Puerto Rico was completely removed, as a consequence of an impairment of Ps189 (US$15).

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The results of the impairment test performed as of December 31, 2009 indicated that the estimated fair values of all reporting units under U.S. GAAP exceeded in each case their corresponding carrying amount and that the second step of the test was not required.

Based on the results of goodwill impairment testing as of December 31, 2008 under U.S. GAAP, CEMEX recorded an estimated impairment loss in connection with its reporting unit in the United States of approximately Ps62,354 (US$4,538). The goodwill was written down to its implied fair value derived in the second step as mentioned above. Due to the complexity of this process, CEMEX did not complete the measurement of the implied fair value of goodwill in 2008; accordingly, the goodwill impairment charge in the reconciliation of net income (loss) to U.S. GAAP in 2008 represented an estimate. After finalizing its 2008 impairment exercise under U.S. GAAP during 2009, CEMEX's impairment losses in the United States were reduced by approximately US$71 (Ps929). This amount was recognized as income in the reconciliation of net income (loss) to U.S. GAAP in 2009. The reconciliation of net income (loss) under U.S. GAAP also includes a loss of Ps9 related to other impairment charges.

Complementarily, for 2008 and in connection with the goodwill associated with CEMEX's reporting units in Ireland and Thailand, as well as the goodwill associated with its Venezuelan investment, which was fully impaired under MFRS (note 11B), CEMEX did not perform the second step considering that the related goodwill balances were fully impaired in the first step test, the materiality of these reporting units and the goodwill balances. Nonetheless, the reconciliation of net income (loss) to U.S. GAAP in 2008 includes an additional impairment loss of approximately Ps331 associated with the cancellation of cumulative differences in the goodwill carrying amounts of these reporting units between MFRS and U.S. GAAP. At December 31, 2008, goodwill under U.S. GAAP associated with CEMEX's reporting units in Thailand and Ireland, as well as its Venezuelan assets, was completely removed.

For purposes of the summarized statements of operations under U.S. GAAP for the years ended December 31, 2010, 2009 and 2008 (note 24(a)), the non-cash goodwill impairment losses, excluding the loss associated with CEMEX's Venezuelan investment in 2008, are included in the determination of operating income. The adjustment in 2009 after finalizing the second step measurement and the impairment losses recognized in 2008 under U.S. GAAP are explained as follows:

| Item | 2009 | 2008 |
|---|---|---|
| Impairment charge considering the different discount rates and required market considerations, net | Ps — | 51,711 |
| Effect originated by the "second step" process | (929) | 11,966 |
| Effect resulting from different carrying amounts of goodwill between MFRS and U.S. GAAP | — | 535 |
| Total goodwill impairment losses under U.S. GAAP | (929) | 64,212 |
| Goodwill impairment losses under MFRS | — | 18,314 |
| Additional goodwill impairment losses under U.S. GAAP | Ps(929) | 45,898 |

There were no differences under MFRS and U.S. GAAP for impairment losses as of December 31, 2010.

Discount rates under MFRS differ from those determined under U.S. GAAP. In determining an appropriate discount rate, MFRS requires company specific data such as the rate at which CEMEX can obtain financing. In contrast, under U.S. GAAP, the discount rate should reflect a market participant's perspective on the risk of the determined cash flow streams; therefore, CEMEX applied industry specific data.

The use of various rates could have an adverse change in the fair value of CEMEX's goodwill and cause it to be impaired. 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.

CEMEX used the same growth rates in determining its projected future cash flows for both MFRS and U.S. GAAP (note 11B). The following table presents the discount rates by country as of December 31, 2010 and 2009, used for the determination of CEMEX's discounted projected future cash flows under MFRS and U.S. GAAP:

| | 2010 | | 2009 | |
|---|---|---|---|---|
| Reporting units | MFRS | U.S. GAAP | MFRS | U.S. GAAP |
| United States | 8.7% | 8.8% | 8.5% | 8.9% |
| Spain | 10.2% | 10.3% | 9.4% | 9.9% |
| Mexico | 10.0% | 10.1% | 10.0% | 10.5% |
| Colombia | 10.0% | 10.1% | 10.2% | 10.7% |
| France | 9.6% | 9.7% | 9.6% | 10.1% |
| United Arab Emirates | 11.5% | 11.6% | 11.4% | 12.1% |
| United Kingdom | 9.7% | 9.8% | 9.4% | 9.9% |
| Egypt | 11.1% | 11.2% | 10.0% | 10.6% |
| Range of discount rates in other countries | 10.3% – 13.9 | 10.4% – 14.0 | 9.6% – 14.6 | 10.0% – 15.1 |

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The main assumptions used in the impairment testing under U.S. GAAP of the reporting unit which, according to CEMEX's sensitivity analyses, presented a relative impairment risk in 2010 and 2009, were as follows:

| Reporting Unit | At December 31, 2010 | | |
|---|---|---|---|
| | Discount rate | Perpetual growth rate | Operating EBITDA multiple |
| Spain | 10.3% | 2.5% | 10.5 |

| Reporting Unit | At December 31, 2009 | | |
|---|---|---|---|
| | Discount rate | Perpetual growth rate | Operating EBITDA multiple |
| Spain | 9.9% | 2.5% | 8.2 |

In connection with CEMEX's assumptions included in the table above, the impairment charges resulting from the sensitivity analysis under U.S. GAAP that would have resulted from an independent change of each one of the variables, regarding the reporting unit that presented a relative impairment risk in 2010 and 2009, excluding effects that would arise from the second step process under U.S. GAAP, would have been as follows:

| | **Sensitivity analysis impact of described change in assumptions as of December 31, 2010** | | | | |
|---|---|---|---|---|---|
| **Reporting unit** | **Recognized impairment charges** | **Discount rate +1 Pt** | **Perpetual growth rate -1 Pt** | **EBITDA -10%** | **EBITDA Multiple -1 Pt** |
| Spain | Ps — | 2,579 | 890 | 925 | 850 |

| | **Sensitivity analysis impact of described change in assumptions as of December 31, 2009** | | | | |
|---|---|---|---|---|---|
| **Reporting unit** | **Recognized impairment charges** | **Discount rate +1 Pt** | **Perpetual growth rate -1 Pt** | **EBITDA -10%** | **EBITDA Multiple -1 Pt** |
| Spain | Ps — | 2,980 | 1,374 | 1,484 | 1,818 |

**Other Intangible Assets**

A significant portion of CEMEX's definite-lived intangible assets under both MFRS and U.S. GAAP as of December 31, 2010 and 2009 are comprised of extraction permits, trademarks and customer relationships (note 11). When impairment indicators exist, for each intangible asset, CEMEX would determine its projected revenue streams over the estimated useful life of the asset. In order to obtain undiscounted and 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 rates 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.

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, key in the determination of revenue streams, as the most subjective assumption. In respect of permits 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.

During the fourth quarter of 2008, considering the existence of triggering events, CEMEX tested its U.S. intangible assets under both MFRS and U.S. GAAP. In connection with the trademarks that were adjusted to its value in use under MFRS, the impairment test under U.S. GAAP also presented an excess of the carrying amount over the undiscounted estimated future cash flows. Consequently, CEMEX discounted such estimated future cash flows using the discount rate determined under U.S. GAAP as described above, and arrived at an additional impairment loss in 2008 of approximately Ps179.

In 2010 and 2009, there were no additional impairment losses of CEMEX's definite-lived intangible assets under U.S. GAAP.

**Property, Plant and Equipment**

For the years ended December 31, 2010, 2009 and 2008, there were no impairment charges under U.S. GAAP in addition to those described in note 10 related to property, plant and equipment, which were recorded under MFRS. In the case of the assets subject to impairment in the related periods, the differences in carrying amounts between MFRS and U.S. GAAP were not so significant as to require additional adjustments.

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### (k) Other U.S. GAAP Adjustments

#### Deferred charges

On October 25, 2010, CEMEX and its lenders under the Financing Agreement agreed amendments which prospectively modify certain financial ratios and other financial tests. Issuance costs and commissions paid, which under MFRS were recorded in the statement of operations have been capitalized under U.S. GAAP for approximately Ps274 (US$22). A deferred income tax liability under U.S. GAAP for approximately Ps82 was recognized in connection with the commissions and issuance costs mentioned above.

In prior years, under MFRS, CEMEX capitalized certain costs not qualifying for deferral under U.S. GAAP. Therefore, such costs were reversed through earnings under U.S. GAAP in the period incurred, resulting in income of Ps10 in 2008. During 2010, 2009 and 2008, all amounts capitalized under MFRS also met the requirements for capitalization under U.S. GAAP. Accordingly, the adjustments in the reconciliation of net income (loss) to U.S. GAAP for the year ended December 31, 2008 refer exclusively to amounts amortized under MFRS during the respective year and which were expensed in prior years under U.S. GAAP. During 2008, the accounting difference was fully amortized.

As mentioned in note 24(h), in connection with the extinguished long-term facilities replaced under the Financing Agreement (note 12A) with an original carrying amount of approximately US$11,368 (Ps148,807), the issuance costs and commissions paid under MFRS, which were capitalized as deferred financing costs, were expensed in the reconciliation of net income (loss) to U.S. GAAP in 2009 as interest expense for approximately Ps6,016 (US$442). During 2010, an amortization of Ps1,562 related to the mentioned deferred financing costs was eliminated for U.S. GAAP purposes as a gain in the income (loss) U.S. GAAP reconciliation.

Additionally and in connection with the exchange of CBs issued in Mexico for the Mandatorily Convertible Securities for approximately Ps4,126 (US$315) (notes 12A, 16B and 24(h)), which, based on MFRS, these Mandatorily Convertible Securities represent a compound instrument which has a liability component and an equity component. Under U.S. GAAP, the exchange qualified as the issuance of new debt and the extinguishment of the old facilities according to ASC 470-50. Consequently, CEMEX reclassified to interest expense under U.S. GAAP in 2009 the issuance costs related to the Mandatorily Convertible Securities classified as deferred financing costs under MFRS for approximately Ps67 (US$5).

During 2008, in connection with its perpetual debentures, CEMEX recognized issuance costs directly in equity under MFRS for approximately Ps221. As mentioned in note 24(f), CEMEX's perpetual debentures are treated as debt under U.S. GAAP. Consequently, issuance costs were reclassified from equity under MFRS to deferred financing costs under U.S. GAAP and are being amortized over 5, 8 and 10 years, depending on each facility, which were the periods remaining before CEMEX has the option to repurchase the instrument. For the years ended December 31, 2010, 2009 and 2008, the reconciliation of net income (loss) to U.S. GAAP included expenses of approximately Ps36, Ps41 and Ps61, respectively, related to the amortization of these deferred financing costs.

In addition, during 2008, CEMEX recognized a current income tax expense of approximately Ps215 related to an intercompany transfer of intangible assets under MFRS. Under U.S. GAAP, income tax effects associated with intercompany transfers of assets should be eliminated from the income statement. Consequently, CEMEX reclassified the current income tax expense for the period under MFRS against a deferred charge under U.S. GAAP. During 2010, the estimated useful life of the asset was revised, considering a non-significant change in estimation which was accounted for prospectively. As of December 31, 2010 and 2009, the reconciliation of stockholders' equity to U.S. GAAP included a benefit of approximately Ps191 and Ps194, respectively, related to this item.

#### Capitalized Interest

Under both MFRS (note 10) and U.S. GAAP, CEMEX capitalizes interest related to debt incurred during significant construction projects. Capitalized interest is depreciated over the useful lives of the related assets. Under U.S. GAAP, only interest expense is considered an additional cost of constructed assets. Under MFRS, until December 31, 2007, pursuant to inflationary accounting, capitalized interest was comprehensively measured in order to include: (i) interest expense, plus (ii) any foreign exchange fluctuations, and less (iii) the related monetary position result. CEMEX does not capitalize foreign exchange fluctuations related to debt incurred during significant construction projects, considering the mix of currencies in its outstanding debt and that it is not possible to link a specific debt transaction with a corresponding construction project. During 2010, due to the postponement of its major construction projects, CEMEX did not capitalize interest in connection with such projects under both MFRS and U.S. GAAP. In 2009 and 2008, the amount of interest capitalized by CEMEX incurred during significant construction projects under MFRS was the same as the amount that would be determined under U.S. GAAP (note 10). In the reconciliation of net income (loss) to U.S. GAAP, until December 31, 2007, the monetary position results related to debt incurred during significant construction projects and which were capitalized under MFRS were reversed to earnings under U.S. GAAP. Beginning in 2008 and thereafter, the reconciling adjustment to U.S. GAAP refers to the depreciation expense related to the cumulative adjustment as of December 31, 2007.

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### (l) U.S. GAAP adjustments to discontinued operations

The reconciling items in the reconciliation of net income (loss) to U.S. GAAP related to CEMEX's operations in Australia for the years ended December 31, 2009 and 2008 were as follows:

| | 2009 | 2008 |
|---|---|---|
| Interest expense **1** | Ps (373) | (388) |
| Income tax **2** | 109 | 113 |
| U.S. GAAP adjustments from discontinued operations | Ps(264) | (275) |

**1** Represents the interest related to the repaid debt with the proceeds of the sale of our Australian operations, required to be allocated to discontinued operations by IASC 205-20-45-6 "Reporting Discontinued Operations".
**2** Income tax effects related to the interest mentioned in footnote 1 above.

**Discontinued operations financial expense**

According to ASC 205-20-45-6, *Reporting Discontinued Operations – Allocation of Interest to Discontinued Operations* , and in connection with the sale of the Australian operations (note 3B), interest on debt that is to be assumed by the buyer and interest on debt that is required to be repaid as a result of a disposal transaction shall be allocated to discontinued operations. The amounts of interest expense reclassified to discontinued operations related to the repaid debt with the funds received from the sale of our subsidiary in Australia for the years ended December 31, 2009 and 2008 were Ps373 and Ps388, respectively. This interest expense was reclassified net of its tax effect for approximately Ps109 in 2009 and Ps113 in 2008, and is included within income from discontinued operations. CEMEX elected not to reclassify other interest expenses which are not directly attributable to discontinued operations, as permitted under ASC 205-20.

### (m) Supplemental Cash Flow Information under U.S. GAAP

Beginning in 2008 under MFRS (note 2A), as part of its primary financial statements, CEMEX includes statements of cash flows, which present the sources and uses of cash flows in following significantly the same requirements as those established by ASC 230, *Statement of cash flows*, under U.S. GAAP, instead of the statement of changes in financial position presented until December 31, 2007 which identified the sources and uses of resources based on the differences between beginning and ending balance sheets in constant pesos.

MFRS requires interest expense to be classified as a financing activity within the statement of cash flows, unlike ASC 230 under U.S. GAAP, which requires it to be classified as an operating activity. The following table presents cash flows from operating, financing and investing activities under MFRS and U.S. GAAP pursuant to the reclassification of interest expense for the years ended December 31, 2010, 2009 and 2008:

| | 2010 | | 2009 | | 2008 | |
|---|---|---|---|---|---|---|
| | MFRS | U.S. GAAP | MFRS | U.S. GAAP | MFRS | U.S. GAAP |
| Cash flows provided by operating activities | Ps 21,838 | 6,009 | 34,751 | 20,144 | 41,272 | 29,488 |
| Cash flows used in financing activities | (24,387) | (8,558) | (37,146) | (22,539) | (23,689) | (11,905) |
| Cash flows provided by (used in) investing activities | (1,862) | (1,862) | 5,715 | 5,715 | (14,630) | (14,630) |

Non-cash activities during 2010, 2009 and 2008 are disclosed in note 2A.

### (n) Sales of accounts receivable

In December 2009, the FASB issued ASU 2009-16, *Transfers and Servicing (Topic 860): Accounting for Transfers of Financial Assets (FASB Statement No. 166, Accounting for Transfers of Financial Assets – an amendment of FASB Statement No. 140)* ("ASU 2009-16"). ASU 2009-16 removes the concept of a qualifying special purpose entity ("QSPE") from ASC Topic 860, *Transfers and Servicing*, and the exception from applying ASC 810 10 to QSPEs, thereby requiring transferors of financial assets to evaluate whether to consolidate transferees that previously were considered QSPEs. Transferor imposed constraints on transferees whose sole purpose is to engage in securitization or asset backed financing activities are evaluated in the same manner under the provisions of ASU 2009-16 as transferor imposed constraints on QSPEs were evaluated under the provisions of Topic 860 prior to the effective date of ASU 2009-16 when determining whether a transfer of financial assets qualifies for sale accounting. ASU 2009-16 also clarifies the Topic 860 sale accounting criteria pertaining to legal isolation and effective control and creates more stringent conditions for reporting a transfer of a portion of a financial asset as a sale. ASU 2009-16 was effective for CEMEX beginning January 1, 2010.

Until December 31, 2009, CEMEX accounted for transfers of receivables under MFRS consistently with the rules set forth by ASC 860, *Transfers and Servicing* ("ASC 860"). Under ASC 860, transactions that met the criteria for surrender of control were recorded as sales of receivables and their amounts were removed from the consolidated balance sheet at the time they are sold (note 5). ASC 860-50-30, *Transfers and Servicing – Servicing Assets and Liabilities – Initial Measurement*, requires that all separately recognized servicing assets and servicing liabilities be initially measured at fair value, if practicable. ASC 860-50-35, *Transfers and Servicing – Servicing Assets and Liabilities – Subsequent Measurement,* permits, but does not require, the subsequent measurement of servicing assets and servicing liabilities at fair value. An entity should apply the requirements for recognition and initial measurement of servicing assets and servicing liabilities prospectively to all similar transactions. For the years ended December 31, 2010, 2009 and 2008,

CEMEX did not determine any reconciling item resulting from servicing assets and liabilities under U.S. GAAP considering that the effects were immaterial. In arriving at this conclusion CEMEX considered that the receivables are short-term financial assets with an average collection period of approximately 42 days, and assumed a 1% servicing fee over its approximately US$807 and US$735 of receivables sold under MFRS at December 31, 2010 and 2009, respectively. The result is a servicing asset of approximately US$8 in 2010 and US$7 in 2009 that would be amortized every 42 days.

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As a result of ASU 2009-16, beginning January 1, 2010, CEMEX's accounts receivable sold under its securitization program in Mexico no longer qualify for derecognition under U.S. GAAP considering that despite the effective surrender of control associated with the trade receivables sold and that CEMEX does not guarantee or is obliged to reacquire the assets. CEMEX participates on a stand-alone basis in a securitization program in Mexico and retains certain administrative roles in connection with the collection of the accounts receivable. Consequently, the condensed balance sheet financial information under U.S. GAAP as of December 31, 2010 includes the reversal of the receivables sold and derecognized under MFRS for approximately Ps3,617, which were recognized as part of current assets against current liabilities. For the years ended December 31, 2010, 2009 and 2008, CEMEX considers there are no material effects that would require reconciling adjustments in the reconciliation of net income (loss) to U.S. GAAP since the discount granted to the acquirers of the trade receivables is recorded as financial expense under MFRS (note 5).

### (o) Other Disclosures under U.S. GAAP

**Asset retirement obligations and other environmental costs**

ASC 410, Asset Retirement and Environmental Obligations ("ASC 410"), requires entities to record the fair value of an asset retirement obligation as a liability in the period in which a legal or a constructive obligation is incurred associated with the retirement of tangible long-lived assets that result from the acquisition, construction, development, and/or normal use of the assets. Such liability would be recorded against an asset that is depreciated over the life of the long-lived asset. Subsequent to the initial measurement, the obligation will be adjusted at the end of each period to reflect the passage of time and changes in the estimated future cash flows underlying the obligation. MFRS C-9, *Liabilities, Provisions, Contingent Assets and Liabilities and Commitments* ("MFRS C-9"), establishes generally the same requirements as ASC 410 in connection with asset retirement obligations. For the years ended December 31, 2010, 2009 and 2008, CEMEX did not identify any differences between MFRS and U.S. GAAP in connection with this topic.

In addition, environmental expenditures related to current operations are expensed or capitalized, as appropriate. Other than those contingencies disclosed in notes 13 and 20, CEMEX is not currently facing other material contingencies, which might result in the recognition of an environmental remediation liability.

**Accounting for Costs Associated with Exit or Disposal Activities**

CEMEX accrues the costs related to an exit or disposal activity, including severance payments, according to ASC 420, *Exit or Disposal Cost Obligations* ("ASC 420"), which basically requires, as a condition to accrue for such costs, that the entity communicate the plan to all affected employees and that the plan be terminated in the short-term; otherwise, associated costs should be expensed when incurred.

**Guarantor's Accounting and Disclosure Requirements for Guarantees**

Under U.S. GAAP, a guarantor is required to recognize, at origination of a guarantee, a liability for the fair value of the obligation undertaken. As of December 31, 2010 and 2009, CEMEX has not guaranteed any third parties' obligations. Nonetheless, with respect to the electricity supply long-term contract in Mexico discussed in note 19C, CEMEX may also be required to purchase the power plant upon the occurrence of specified material defaults or events, such as failure to purchase the energy and pay when due, bankruptcy or insolvency, and revocation of permits necessary to operate the facility. For the years ended December 31, 2010, 2009 and 2008, for accounting purposes under MFRS and U.S. GAAP, CEMEX has considered this agreement as a long-term energy supply agreement for own use and no liability has been created, based on the contingent characteristics of CEMEX's obligation and given that, absent a default under the agreement, CEMEX's obligations are limited to the purchase of energy from, and the supply of fuel to, the plant.

**Variable Interest Entities**

The FASB issued ASU 2009-17, *Consolidations (Topic 810): Improvements to Financial Reporting by Enterprises Involved with Variable Interest Entities (FASB Statement No. 167, Amendments to FASB Interpretation No. 46(R))* ("ASU 2009-17") in December 2009. ASU 2009-17, which amends the Variable Interest Entity (VIE) Subsections of ASC Subtopic 810 10, *Consolidation – Overall*, revises the test for determining the primary beneficiary of a VIE from a primarily quantitative risks and rewards calculation based on the VIE's expected losses and expected residual returns to a primarily qualitative analysis based on identifying the party or related party group (if any) with (a) the power to direct the activities that most significantly impact the VIE's economic performance and (b) the obligation to absorb losses of, or the right to receive benefits from, the VIE that could potentially be significant to the VIE. ASU 2009-17 requires kick out rights and participating rights to be ignored in evaluating whether a variable interest holder meets the power criterion unless those rights are unilaterally exercisable by a single party or related party group. ASU 2009-17 also revises the criteria for determining whether fees paid by an entity to a decision maker or another service provider are a variable interest in the entity and revises the Topic 810 scope characteristic that identifies an entity as a VIE if the equity at risk investors as a group do not have the right to control the entity through their equity interests to address the impact of kick out rights and participating rights on the analysis. Finally, ASU 2009-17 adds a new requirement to reconsider whether an entity is a VIE if the holders of the equity investment at risk as a group lose the power, through the rights of those interests, to direct the activities that most significantly impact the VIE's economic performance, and requires a company to reassess on an ongoing basis whether it is deemed to be the primary beneficiary of a VIE. ASU 2009-17 is effective for CEMEX beginning January 1, 2010. The adoption of ASU 2009-17 did not have a material impact on our consolidated financial statements.

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**As of December 31, 2010, 2009 and 2008**
**(Millions of Mexican pesos)**

Under U.S. GAAP, CEMEX applies ASC 810, *Consolidation* ("ASC 810"). This topic addresses the consolidation of variable interest entities ("VIEs"), which are defined as those that have one or more of the following characteristics: (i) entities in which the equity investment at risk is not sufficient to finance their operations without requiring additional subordinated financing support provided by any parties, including the equity holders; and (ii) the equity investors lack one or more of the following attributes: a) the ability to make decisions about the entity's activities through voting or similar rights, b) the obligation to absorb the expected losses of the entity, and c) the right to receive the expected residual returns of the entity. Among others, entities that are deemed to be a business according to ASC 810-10-15, *Consolidation – Overall – Scope and Scope Exceptions,* including operating joint ventures, need not be evaluated to determine if they are VIEs under ASC 810.

Variable interests, among other factors, may be represented by operating losses, debt, contingent obligations or residual risks and may be assumed by means of loans, guarantees, management contracts, leasing, put options, derivatives, etc. A primary beneficiary is the entity that assumes the variable interests of a VIE, or the majority of them in the case of partnerships, directly or jointly with related parties, and is the entity that should consolidate the VIE. For the years ended December 31, 2010, 2009 and 2008, CEMEX has not identified any VIE that would require consolidation under U.S. GAAP other than those consolidated under MFRS.

**Accounting for Planned Major Maintenance Activities**

Under both MFRS and U.S. GAAP, CEMEX does not use the accrue-in-advance method of accounting for planned major maintenance activities considering that an obligation has not been incurred and therefore a liability should not be recognized.

**(p) Newly Issued Accounting Pronouncements under U.S. GAAP not Effective in 2010**

In October 2009, the FASB issued ASU 2009-13, *Revenue Recognition (Topic 605): Multiple Deliverable Revenue Arrangements (EITF Issue No. 08 1, Revenue Arrangements with Multiple Deliverables)* ("ASU 2009-13"). ASU 2009-13 amends ASC 650 25 to eliminate the requirement that all undelivered elements have vendor specific objective evidence of selling price ("VSOE") or third party evidence of selling price (TPE) before an entity can recognize the portion of an overall arrangement fee that is attributable to items that already have been delivered. In the absence of VSOE and TPE for one or more delivered or undelivered elements in a multiple element arrangement, entities will be required to estimate the selling prices of those elements. The overall arrangement fee will be allocated to each element (both delivered and undelivered items) based on their relative selling prices, regardless of whether those selling prices are evidenced by VSOE or TPE or are based on the entity's estimated selling price. Application of the "residual method" of allocating an overall arrangement fee between delivered and undelivered elements will no longer be permitted upon adoption of ASU 2009-13. Additionally, the new guidance will require entities to disclose more information about their multiple element revenue arrangements. ASU 2009-13 is effective for CEMEX prospectively for revenue arrangements entered into or materially modified beginning January 1, 2011. Early adoption is permitted. CEMEX expects that the adoption of ASU 2009-13 will not have a material impact on its consolidated financial statements.

In December 2010, the FASB issued ASU 2010-28, *Intangibles—Goodwill and Other (Topic 350): When to Perform Step 2 of the Goodwill Impairment Test for Reporting Units with Zero or Negative Carrying Amounts, a consensus of the FASB Emerging Issues Task Force (Issue No. 10-A)* ("ASU 210-28"). ASU 2010-28 modifies Step 1 of the goodwill impairment test under ASC Topic 350 for reporting units with zero or negative carrying amounts to require an entity to perform Step 2 of the goodwill impairment test if it is more likely than not that a goodwill impairment exists. In determining whether it is more likely than not that goodwill impairment exists, an entity should consider whether there are adverse qualitative factors, including the examples provided in ASC paragraph 350-20-35-30, in determining whether an interim goodwill impairment test between annual test dates is necessary. The ASU allows an entity to use either the equity or enterprise valuation premise to determine the carrying amount of a reporting unit. ASU 2010-28 is effective for CEMEX beginning January 1, 2011. CEMEX expects that the adoption of ASU 2010-28 in 2011 will not have a material impact on its consolidated financial statements.

C L I F F O R D

C H A N C E

**EXECUTION COPY**

DATED 25th of October 2010

AMENDMENT AGREEMENT

between

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

acting for itself and as agent on behalf of each Obligor

and

**CITIBANK INTERNATIONAL PLC**

acting for itself and as Administrative Agent on behalf of the Finance Parties

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RELATING TO THE FINANCING AGREEMENT

DATED 14 AUGUST 2009 (AS AMENDED ON 1 DECEMBER 2009 AND 18 MARCH 2010)

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**THIS AGREEMENT** is dated 25 October 2010 and made between:

(1) **CEMEX, S.A.B. de C.V**. (the "**Parent**") (for itself, and in accordance with Clauses 34.7 and 38.1(c) of the Financing Agreement, on behalf of each Obligor); and

(2) **CITIBANK INTERNATIONAL PLC**, for itself and as administrative agent of the Finance Parties under the Financing Agreement (the "**Administrative Agent**").

**IT IS AGREED** as follows:

1. **DEFINITIONS AND INTERPRETATION**

1.1 Definitions

In this Agreement:

"**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 and 18 March 2010.

1.2 Incorporation of defined terms

1.2.1 Unless a contrary indication appears, a term defined in the Financing Agreement has the same meaning in this Agreement.

1.2.2 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 or a Schedule to this Agreement.

1.4 Third party rights

Except as otherwise expressly provided in a Finance Document, 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.

1.5 Designation

In accordance with the Financing Agreement, the Parent and the Administrative Agent designate this Agreement as a New Finance Document.

2. **AMENDMENT**

With effect from the date of this Agreement, the Financing Agreement shall be amended as set out in Schedule 1 ( *Amendments to Financing Agreement*) to this Agreement.

3. **REPRESENTATIONS**

The Repeating Representations are deemed to be made by each Obligor (by reference to the facts and circumstances then existing) on the date of this Agreement.

4. **CONTINUITY, GUARANTEE CONFIRMATION, NO NOVATION AND FURTHER ASSURANCE**

4.1 Continuing obligations

The provisions of the Financing Agreement and the other Finance Documents shall, save as amended by this Agreement, continue in full force and effect.

4.2 Guarantee confirmation

The Parent (acting on behalf of each of the Guarantors) hereby confirms for the benefit of the Finance Parties that, notwithstanding any amendments which may be made to the Financing Agreement pursuant to this Agreement, the guarantee and indemnity obligations undertaken by each of the Guarantors pursuant to Clause 20 ( *Guarantee and Indemnity*) of the Financing Agreement shall remain in full force and effect.

4.3 No novation

The amendment of the Financing Agreement does not constitute a novation of the obligations of the parties thereto.

4.4 Further assurance

The Parent shall, at the request of the Administrative Agent and at its own expense, do all such acts and things necessary or desirable to give effect to the amendments effected or to be effected pursuant to this Agreement.

5. **COSTS AND EXPENSES**

The Parent shall within fifteen days of receipt of demand pay (or procure to be paid) the Administrative Agent the amount of all legal fees reasonably incurred by the Administrative Agent in connection with the negotiation, preparation, printing and execution of this Agreement.

6. **CONSENT OF THE MAJORITY PARTICIPATING CREDITORS AND SUPER MAJORITY PARTICIPATING CREDITORS**

Pursuant to Clause 38.1 (*Amendments and waivers*) of the Financing Agreement, the Administrative Agent, by its signature to this Agreement, hereby confirms that it has received the consent to the amendments to the Financing Agreement as set out in Clause 2 ( *Amendment*) of:

(a) the Super Majority Participating Creditors, in the case of the amendment referred to in paragraph 5 of Schedule 1 ( *Amendments to the Financing Agreement*); and

(b) the Majority Participating Creditors, in the case of all other amendments set out in Schedule 1 ( *Amendments to the Financing Agreement*),

and has been authorised by them to execute this Agreement on their behalf.

## 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 all non-contractual obligations arising from or connected with it are governed by English law.

**SCHEDULE 1**
**AMENDMENTS TO FINANCING AGREEMENT**

***Amendments to Clause 1.1 (Definitions)***

1. The following new definitions shall be inserted in alphabetical order in Clause 1.1 ( *Definitions*):

""**Additional Securities Demand**" has the meaning given to it in paragraph (c) of Clause 24.28 ( *Equities Issuance and Securities Demand*).

"**Additional Securities Demand Execution End Date**" means the date falling 6 calendar months after the Additional Securities Demand Execution Start Date.

"**Additional Securities Demand Execution Period**" means the period starting on the Additional Securities Demand Execution Start Date and ending on the Additional Securities Demand Execution End Date.

"**Additional Securities Demand Execution Start Date**" means the later of (a) if an Additional Securities Demand has been delivered on or prior to 1 October 2011, 1 October 2011 and (b) the date of receipt by the Parent of the Additional Securities Demand in accordance with paragraph (c) of Clause 24.28 (*Equity Issuance and Securities Demand*).

"**Additional Securities Demand Notice Delivery Period**" means the period between 1 August 2011 and 31 December 2011 **provided that** an Additional Securities Demand may not be delivered to the Parent on or prior to 1 October 2011 unless there is sufficient evidence provided by the Participating Creditors delivering the Additional Securities Demand that the New Issuance Threshold will not be met by the issuance of Equity Securities on or prior to the Cut-off Date.

"**Additional Securities Demand Securities**" means Equity Securities or bonds, notes or other debt securities or convertible or exchangeable securities issued by the Parent or any member of the Group.

"**Cut-off Date**" means 30 September 2011.

"**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 this 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,

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.

"**Equity Securities**" means (a) securities falling within paragraphs (a) or (b) of the definition of Permitted Fundraising; (b) Relevant Convertible/Exchangeable Obligations; (c) any other securities or obligations which, on issuance, do not directly increase the amount of Consolidated Funded Debt; and (d) any other securities or obligations expressly consented to by the Majority Participating Creditors from time to time to constitute Equity Securities.

"**Eurobonds**" means any €900,000,000 4.75% Eurobonds issued by CEMEX Finance Europe B.V. and guaranteed by CEMEX, España S.A. dated 5 March 2007 (as amended from time to time).

"**New Issuance Shortfall**" is equal to the New Issuance Threshold minus the net proceeds from the issuance of Equity Securities received in the period from 30 September 2010 to (and including) the Cut-off Date.

"**New Issuance Threshold**" means US$1,000,000,000 (or its equivalent in any other currency)."

2. The definition of "**Margin**" shall be amended by inserting a new paragraph (d) as follows:

"(ii) if the difference between the Second Amortisation Target and the Actual Reduction Amount as at 31 December 2011 is equal to or greater than half the difference between the Second Amortisation Target and the Cumulative Repayment Amount for 15 December 2011, 1.00 per cent. per annum; and

(d) if during the period from 30 September 2010 to (and including) the Cut-Off Date, the Group has not received net proceeds equal to or in excess of the New Issuance Threshold from the issuance of Equity Securities, then the Margin will be increased by 1.00 per cent. per annum for the period from (and including) the Cut-off Date to (and including) the earlier of: (i) the date on which the New Issuance Shortfall is met by the issuance of Equity Securities (whether as a result of delivery of an Additional Securities Demand or otherwise) and (ii) the Termination Date.".

3. The definition of "**Permitted Call Transaction**" shall be amended as follows:

""**Permitted Put/Call Transaction**" has the meaning given to it in paragraph (d) of paragraph 1 of Schedule 15 ( *Hedging Parameters*)."

As a consequence of the above, each reference in the Financing Agreement to "Permitted Call Transaction" shall be amended so as to refer to "Permitted Put/Call Transaction".

4. Paragraph (q) of the definition of "**Permitted Disposal**" shall be amended as follows:

"(q) 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;".

5. The definition of "**Permitted Financial Indebtedness**" shall be amended by amending the final paragraph in paragraph (f) as follows:

"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)*; (3) if proceeds of such issuance or incurrence are, to the extent required under this Agreement, being used to replace or refinance (x) Financial Indebtedness which shares in the Transaction Security or (y) the Eurobonds, 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 Eurobonds, such Financial Indebtedness shall only be entitled to share in the Transaction Security if, prior to the first replacement or refinancing of the Eurobonds, 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);".

6. The definition of "**Permitted Guarantee**" shall be amended by amending paragraph (f) as follows:

"(f) any guarantee (including an *aval*) of Financial Indebtedness falling within the following paragraphs of the definition of Permitted Financial Indebtedness: (a), (b) (other than Existing Financial Indebtedness described in Part I of Schedule 10 ( *Existing Financial Indebtedness* ) unless such guarantee is already in place as at the date of this Agreement), (c), (e), (f) (so long as: (A) the Financial Indebtedness refinanced from the proceeds of such Permitted Financial Indebtedness was issued, borrowed or guaranteed by the relevant guarantor; (B) such Permitted Financial Indebtedness that is guaranteed is used, to the extent required under this Agreement, to repay Participating Creditors; or (C) if the Permitted Financial Indebtedness that is guaranteed is used, to the extent permitted under this Agreement, to refinance the Eurobonds, only

the Guarantors provide such guarantees and the Debt Reduction Satisfaction Date has occurred), (g) and (j) to (o);".

7. The definition of "**Permitted Share Issue**" shall be amended by amending paragraph (d) as follows:

"(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.".

***Amendments to Clause 13 (Mandatory Prepayment)***

8. The following new definitions shall be inserted in alphabetical order in paragraph (a) of Clause 13.1 ( *Disposal, Permitted Fundraising and Permitted Securitisation Proceeds and Excess Cashflow*):

""**CB Cash Replenishment Amount**" means, for a particular Relevant Prepayment Period, the amount of cash in hand of the Parent on a consolidated basis to be applied by the Parent to the CB Reserve pursuant to paragraph (b) of Clause 13.3 ( *Mandatory prepayments: Certificados Bursatiles Reserve*) 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 Cash Replenishment Certificate**" means a certificate signed by an Authorised Signatory of the Parent setting out the CB Cash Replenishment Amount that the Parent is applying to the CB Reserve in accordance with paragraph (b) of Clause 13.3 ( *Mandatory prepayments: Certificados Bursatiles Reserve*).

"**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 Parent to the CB Reserve pursuant to paragraph (b) of Clause 13.3 (*Mandatory prepayments: Certificados Bursatiles Reserve* ) **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 Disposal Proceeds Replenishment Certificate**" means a certificate signed by an Authorised Signatory of the Parent setting out the CB Disposal Proceeds Replenishment Amount that the Parent is applying to the CB Reserve in accordance with paragraph (b) of Clause 13.3 ( *Mandatory prepayments: Certificados Bursatiles Reserve*).

"**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 any voluntary prepayments made to Participating Creditors pursuant to Clause 12.2 ( *Voluntary prepayment of Exposures*) from proceeds standing to the credit of the CB Reserve in that Relevant Prepayment Period; and

(ii) the principal amount of any Relevant Existing Financial Indebtedness then outstanding in that Relevant Prepayment Period."

9. The definition of "**Excluded Disposal Proceeds**" in paragraph (a) of Clause 13.1 (*Disposal, Permitted Fundraising and Permitted Securitisation Proceeds and Excess Cashflow*) shall be amended as follows:

""**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 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 $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 Call Transaction, including, but not limited to, any settlement, disposal, transfer, assignment, close-out or other termination of such Permitted Call Transaction.".

10. The definition of "**Excluded Fundraising Proceeds**" in paragraph (a) of Clause 13.1 (*Disposal, Permitted Fundraising and Permitted Securitisation Proceeds and Excess Cashflow*) shall be amended by amending paragraph (v) as follows:

"(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 is 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* );".

11. The definition of "**Month End Cash in Hand**" in paragraph (a) of Clause 13.1 (*Disposal, Permitted Fundraising and Permitted Securitisation Proceeds and Excess Cashflow*) shall be amended as follows:

    ""**Month End Cash in Hand**" means the cash in hand of the Parent on a consolidated basis as at the last Business Day of the month ending immediately prior to the day on which the last instalment of any Disposal Proceeds or Permitted Fundraising Proceeds (as the case may be) are prepaid (or would have been required to be prepaid if such Permitted Fundraising Proceeds were not Excluded Fundraising Proceeds), with such amount being set out in a notice signed by an Authorised Signatory of the Parent and delivered to the Administrative Agent at the same time as the making of any final instalment of a prepayment amount required under Clauses 13.1(b)(i) or (ii). For the avoidance of doubt, the cash in hand of the Parent shall not include any of the following amounts for the period in which they are being held by the Parent pending application in accordance with the terms of this Agreement: (a) Disposal Proceeds; (b) Permitted Fundraising Proceeds; and (c) Excluded Fundraising Proceeds falling within paragraphs (i), (ii), (v) and (vi) of the definition thereof including, without limitation, any amounts standing to the credit of, or to be applied in accordance with this Agreement to, the CB Reserve.".

12. The definition of "**Relevant Prepayment Period**" in paragraph (a) of Clause 13.1 (*Disposal, Permitted Fundraising and Permitted Securitisation Proceeds and Excess Cashflow*) shall be deleted in its entirety and replaced with the following:

    ""**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 date falling 364 days thereafter.".

13. The definition of "**Subordinated Optional Convertible Securities Proceeds**" in paragraph (a) of Clause 13.1 (*Disposal, Permitted Fundraising and Permitted Securitisation Proceeds and Excess Cashflow*) shall be deleted in its entirety and replaced by the following, which shall be placed in the appropriate alphabetical order in that paragraph (a):

    ""**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 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).".

14. Clause 13.3 *(Mandatory prepayments: Certificados Bursatiles Reserve)* shall be amended as follows:

"(a) In circumstances where, prior to the Debt Reduction Satisfaction Date, a Permitted Fundraising falling within paragraph (c) of that definition occurs or, after the Debt Reduction Satisfaction Date, a Permitted Fundraising falling within paragraphs (a), (b) or (c) of that definition occurs (which may, for the avoidance of doubt, include a fundraising the proceeds of which are applied in accordance with this Clause 13.3) and any Relevant Existing Financial Indebtedness is due to mature within the particular Relevant Prepayment Period, the Parent shall ensure that any Permitted Fundraising Proceeds (but not excluding, for the purposes of this Clause, Excluded Fundraising Proceeds falling within paragraphs (v) and (vi) (to the extent applicable) of the definition of Excluded Fundraising Proceeds) received by any member of the Group from such Permitted Fundraising, shall be applied as follows:

(i) first, to replenish the cash in hand position of the Parent by deducting and retaining from any such proceeds the amount equal to any Shortfall;

(ii) then, as to the remaining proceeds (if any):

(A) if, during the Relevant Prepayment Period, there is an outstanding Repayment Instalment scheduled to fall due prior to the maturity of any Relevant Existing Financial Indebtedness in that Relevant Prepayment Period, such proceeds shall first be applied in or towards prepayment of that Repayment Instalment to the Participating Creditors (in whole or in part), within 30 days of receipt of those proceeds. Any further remaining proceeds may then be designated by the Parent, by the issue of a CB Reserve Certificate, to be held in the CB Reserve for the purposes of repaying, prepaying or early redeeming any Relevant Existing Financial Indebtedness due to mature within that Relevant Prepayment Period; or

(B) if, during the Relevant Prepayment Period, any Relevant Existing Financial Indebtedness is due to mature prior to the date of an outstanding Repayment Instalment in that Relevant Prepayment Period, an amount of the proceeds may be designated by the Parent, by the issue of a CB Reserve Certificate, to be held in the CB Reserve for the purposes of repaying, prepaying or early redeeming that Relevant Existing Financial Indebtedness. Any further remaining proceeds shall be applied in or towards prepayment of such outstanding Repayment Instalment scheduled to fall due during that Relevant Prepayment Period (in whole or in part), within 30 days of receipt of such proceeds. To the extent there is any additional Relevant Existing Financial Indebtedness due to mature

after the date of such Repayment Instalment but before the end of the Relevant Prepayment Period, an amount of such proceeds following prepayment of that Repayment Instalment may be designated by the Parent, by the issue of a CB Reserve Certificate, to be held in the CB Reserve for the purposes of repaying, prepaying or early redeeming such additional Relevant Existing Financial Indebtedness due to mature within that Relevant Prepayment Period;

(iii) if any such Permitted Fundraising Proceeds remain following prepayment and/or designation in accordance with sub-paragraphs (ii)(A) or (ii)(B) above, such remaining proceeds shall be applied in or towards prepayment of the Exposures of the Participating Creditors within 30 days of receipt of such proceeds; and

(iv) if any such Permitted Fundraising Proceeds are not actually applied to repay, prepay or early redeem Relevant Existing Financial Indebtedness as set out in any CB Reserve Certificate, then those proceeds not so applied shall be applied in or towards prepayment of the Exposures of the Participating Creditors as soon as reasonably practicable (and, in any event, within 10 Business Days) from the originally scheduled maturity date of the Relevant Existing Financial Indebtedness as set out in the CB Reserve Certificate.

(b) In accordance with Clause 12.2 (*Voluntary prepayment of Exposures*), a Borrower may, subject to giving requisite notice required under that Clause, prepay the whole or any part of the Exposures of Participating Creditors under the Facilities. If, during a Relevant Prepayment Period, any amounts designated to the CB Reserve in accordance with paragraph (a) above are applied to voluntarily prepay the Exposures of Participating Creditors pursuant to Clause 12.2 (*Voluntary prepayment of Exposures*), the Parent may apply any CB Cash Replenishment Amount and/or CB Disposal Proceeds Replenishment Amount to replenish the CB Reserve up to an amount equal to the relevant CB Reserve Shortfall.

(c) The Parent shall, if:

(i) any such Permitted Fundraising Proceeds are to be designated to repay, prepay or early redeem any Relevant Existing Financial Indebtedness in accordance with paragraph (a) above, provide the CB Reserve Certificate to the Administrative Agent (for distribution to the Participating Creditors) as soon as reasonably practicable following calculation of the Month End Cash in Hand and, in any event, within 30 days of receipt of such proceeds;

(ii) any cash in hand of the Parent is to be designated to replenish an existing CB Reserve utilising the CB Cash Replenishment Amount in accordance with paragraph (b) above, provide the CB Cash Replenishment Certificate to the Administrative Agent (for

distribution to the Participating Creditors), as soon as reasonably practicable following the determination to apply such cash in hand to the CB Reserve and, in any event, within 30 days of such determination; and/or

(iii) any Disposal Proceeds are to be designated to replenish an existing CB Reserve utilising the CB Disposal Proceeds Replenishment Amount in accordance with paragraph (b) above, provide the CB Disposal Proceeds Replenishment Certificate to the Administrative Agent (for distribution to the Participating Creditors), as soon as reasonably practicable following the determination to apply such Disposal Proceeds to the CB Reserve and, in any event, within 30 days of such determination.".

15. Clause 13.4 *(Mandatory prepayments: Subordinated Optional Convertible Securities Issuance)* shall be deleted in its entirety and replaced with the following:

"13.4 **Mandatory prepayments: Relevant Convertible/Exchangeable Obligations**

The Parent shall ensure that the amount of any Relevant Convertible/Exchangeable Obligations Proceeds and the Cash Collateral Release Amount (if any) shall be applied as follows:

(a) first, the Relevant Convertible/Exchangeable Obligations Proceeds shall be applied in payment of any premiums arising under or related to any Permitted Put/Call Transaction; and

(b) second, the remaining Relevant Convertible/Exchangeable Obligations Proceeds, together with the Cash Collateral Release Amount (if any), shall be applied in accordance with the other provisions of Clause 13 ( *Mandatory Prepayment*) (to the extent applicable) notwithstanding that such proceeds may constitute Excluded Fundraising Proceeds under paragraph (vi) of the definition thereof.".

As a result of the change to the title of Clause 13.4 described above, all other references to such Clause and its title shall consequentially be amended in the Financing Agreement.

***Amendments to Clause 23 (Financial Covenants)***

16. The definition of "**Excess Cashflow**" in Clause 23.1 (*Financial definitions*) shall be amended as follows:

""**Excess Cashflow**" means, for any period for which it is being calculated, the amount by which the aggregate of the cash on hand of the Parent on a consolidated basis on the last day of the period and the amount of any unutilised

commitments under any Permitted Liquidity Facility on the last day of the period exceed $650,000,000. For the avoidance of doubt, the cash in hand of the Parent for the purposes of calculating Excess Cashflow shall not include any amounts falling within paragraphs (i), (ii), (v) and (vi) of the definition of Excluded Fundraising Proceeds including, without limitation, any amounts standing to the credit of, or to be applied in accordance with this Agreement to, the CB Reserve.".

17. The Consolidated Coverage Ratio as set out in paragraph (a) of Clause 23.2 ( *Financial condition*) for the Reference Period ending on 31 December, 2011, and each subsequent Reference Period, shall be amended as follows:

| **Column 1** | **Column 2** |
|---|---|
| **Reference Period ending** | **Ratio** |
| 30 June 2010 | 1.75:1 |
| 31 December 2010 | 1.75:1 |
| 30 June 2011 | 1.75:1 |
| 31 December 2011 | 1.75:1 |
| 30 June 2012 | 1.75:1 |
| 31 December 2012 | 1.75:1 |
| 30 June 2013 | 2.00:1 |
| 31 December 2013 | 2.00:1 |

18. The Consolidated Leverage Ratio as set out in paragraph (b) of Clause 23.2 ( *Financial condition*) for the Reference Period ending on 31 December, 2010, and each subsequent Reference Period, shall be amended as follows:

| **Column 1** | **Column 2** |
|---|---|
| **Reference Period ending** | **Ratio** |
| 30 June 2010 | 7.75: 1 |
| 31 December 2010 | 7.75:1 |
| 30 June 2011 | 7.75:1 |
| 31 December 2011 | 7.00:1 |
| 30 June 2012 | 6.50:1 |
| 31 December 2012 | 5.75:1 |
| 30 June 2013 | 5.00:1 |

| | | |
|---|---|---|
| 31 December 2013 | | 4.25:1 |

***Amendments to Clause 24 (General Undertakings)***

19. Clause 24.28 (*Equity Issuance and Securities Demand*) shall be amended by inserting the following paragraphs:

"(c) If during the period from 30 September 2010 to (and including) the Cut-off Date, the Group has not received net proceeds equal to or in excess of the New Issuance Threshold from the issuance of Equity Securities then, in addition to the change to the Margin commencing from (and including) the Cut-off Date as provided in paragraph (d) of the definition of Margin, upon written notice delivered to the Parent at any time during the Additional Securities Demand Notice Delivery Period by a Participating Creditor or Participating Creditors the Base Currency Amount of whose Exposures under the Facilities at the time aggregate not less than 25 per cent. of the Base Currency Amounts of all the Exposures of the Participating Creditors under all of the Facilities at that time (an " **Additional Securities Demand** "), at any time and from time to time during the Additional Securities Demand Execution Period, the Parent shall, subject to paragraph (f) of this Clause 24.28, cause the issuance and sale of, or shall cause another member of the Group to cause the issuance and sale of, Additional Securities Demand Securities in an amount such that the aggregate net proceeds of such issuance(s), when taken together with net proceeds from any issuance of Additional Securities Demand Securities since the Cut-off Date, are at least equal to the New Issuance Shortfall.

(d) Notwithstanding any other provision of this Agreement, net proceeds in an aggregate amount equal to the New Issuance Shortfall received from the issuance of any Additional Securities Demand Securities during the Additional Securities Demand Execution Period as a result of the delivery of an Additional Securities Demand shall be applied:

(i) firstly to replenish the cash in hand position of the Parent by deducting and retaining from any such proceeds an amount equal to any Shortfall; and

(ii) then, as to any remaining proceeds, in or towards prepayment of the Exposures of the Participating Creditors promptly following the replenishment referred to in sub-paragraph (i) above and in any event within 30 days of receipt of such proceeds.

(e) For the avoidance of doubt, any proceeds received by any member of the Group other than those envisaged under paragraph (d) of this Clause 24.28 will be utilised in accordance with the relevant provisions of Clause 13 ( *Mandatory Prepayment*) and not paragraph (d) of this Clause 24.28.

(f) After receipt of an Additional Securities Demand, the requirement on the Parent or any member of the Group in paragraph (c) of this Clause 24.28

above to cause the issuance and sale of Additional Securities Demand Securities shall be subject to:

(i) the Additional Securities Demand Securities being issued pursuant to documentation which contains such terms and conditions as are typical and customary for similar issuances of the same type of securities and in compliance with applicable law;

(ii) all other arrangements with respect to the Additional Securities Demand Securities being reasonably satisfactory in all respects to the Parent and any financial institution(s) engaged by the Parent for the purpose of such issuance in light of the then prevailing market conditions and such arrangements shall not have been objected to by the Majority Participating Creditors; and

(iii) the Parent giving prior written notice of the terms of the proposed issuance to the Administrative Agent.".

20. Clause 24.34 (*Subordinated Optional Convertible Securities Issuance*) shall be amended as follows:

"**24.34 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.".

***Amendments to Clause 26 (Events of Default)***

21. Paragraph (b) of Clause 26.6 shall be deleted and replaced with the following:

"(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 20 ( *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 Participating Creditors in the event of the bankruptcy, winding up or liquidation of such companies or an acceleration under Clause 26.16 ( *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 Participating Creditors in the event of the bankruptcy, winding up or liquidation of CEMEX Corp. or an acceleration under Clause 26.16 ( *Acceleration*).".

***Amendments to Schedule 15 (Hedging Parameters)***

22. Sub-paragraph 1(d) of Schedule 15 (*Hedging Parameters*) shall be amended as follows:

"(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**").".

**SIGNATURES**

The Parent

**CEMEX, S.A.B. de C.V**. (for itself and as agent on behalf of each Obligor)

By: /s/ Rodrigo Treviño

The Administrative Agent

**CITIBANK INTERNATIONAL PLC** (for itself and as agent on behalf of the Finance Parties)

By: /s/ Nick Williams

**Exhibit 4.33.4**

**DATED 13th of April 2011**

# AMENDMENT AGREEMENT

between

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

acting for itself and as agent on behalf of each Obligor

and

**CITIBANK INTERNATIONAL PLC**

acting for itself and as Administrative Agent on behalf of the Finance Parties

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RELATING TO THE FINANCING AGREEMENT

DATED 14 AUGUST 2009 (as amended on 1 December 2009, 18 March 2010 and 25 October 2010)

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**THIS AGREEMENT** is dated 13 April 2011 and made between:

(1) **CEMEX, S.A.B. de C.V.** (the "**Parent**") (for itself, and in accordance with Clauses 34.7 and 38.1(c) of the Financing Agreement, on behalf of each Obligor); and

(2) **CITIBANK INTERNATIONAL PLC**, for itself and as administrative agent of the Finance Parties under the Financing Agreement (the "**Administrative Agent**").

**IT IS AGREED** as follows:

## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In this Agreement:

"**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 and 25 October 2010.

### 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 or a Schedule to this Agreement.

### 1.4 Third party rights

Except as otherwise expressly provided in a Finance Document, 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.

### 1.5 Designation

In accordance with the Financing Agreement, the Parent and the Administrative Agent designate this Agreement as a New Finance Document.

## 2. AMENDMENT

With effect from the date of this Agreement, the Financing Agreement shall be amended as set out in Schedule 1 ( *Amendments to Financing Agreement*) to this Agreement.

## 3. REPRESENTATIONS

The Repeating Representations are deemed to be made by each Obligor (by reference to the facts and circumstances then existing) on the date of this Agreement.

## 4. CONTINUITY, GUARANTEE CONFIRMATION, NO NOVATION AND FURTHER ASSURANCE

### 4.1 Continuing obligations

The provisions of the Financing Agreement and the other Finance Documents shall, save as amended by this Agreement, continue in full force and effect.

### 4.2 Guarantee confirmation

The Parent (acting on behalf of each of the Guarantors) hereby confirms for the benefit of the Finance Parties that, notwithstanding any amendments which may be made to the Financing Agreement pursuant to this Agreement, the guarantee and indemnity obligations undertaken by each of the Guarantors pursuant to Clause 20 (*Guarantee and Indemnity*) of the Financing Agreement shall remain in full force and effect.

### 4.3 No novation

The amendment of the Financing Agreement does not constitute a novation of the obligations of the parties thereto.

### 4.4 Further assurance

The Parent shall, at the request of the Administrative Agent and at its own expense, do all such acts and things necessary or desirable to give effect to the amendments effected or to be effected pursuant to this Agreement.

## 5. COSTS AND EXPENSES

The Parent shall within fifteen days of receipt of demand pay (or procure to be paid) the Administrative Agent the amount of all legal fees reasonably incurred by the Administrative Agent in connection with the negotiation, preparation, printing and execution of this Agreement.

## 6. CONSENT OF THE MAJORITY PARTICIPATING CREDITORS

Pursuant to Clause 38.1 (*Amendments and waivers*) of the Financing Agreement, the Administrative Agent, by its signature to this Agreement, hereby confirms that it has received the consent to the amendments to the Financing Agreement as set out in

Clause 2 (*Amendment*) of the Majority Participating Creditors and has been authorised by them to execute this Agreement on their behalf.

## 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 all non-contractual obligations arising from or connected with it are governed by English law.

**SCHEDULE 1**
**AMENDMENTS TO FINANCING AGREEMENT**

***Amendment to Clause 1.1 (Definitions)***

(I) Sub-paragraph (b) of the definition of Debt Reduction Satisfaction Date be amended as follows:

"(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."

***Amendments to Clause 13 (Mandatory Prepayment)***

(I) The definition of CB Reserve Shortfall in paragraph (a) of Clause 13.1 ( *Disposal, Permitted Fundraising and Permitted Securitisation Proceeds and Excess Cashflow*) shall be amended as follows:

""**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*) 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."

(II) The definition of Relevant Prepayment Period in paragraph (a) of Clause 13.1 ( *Disposal, Permitted Fundraising and Permitted Securitisation Proceeds and Excess Cashflow*) shall be amended as follows:

""**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."

(III) The following new definitions shall be inserted in alphabetical order in paragraph (a) of Clause 13.1 ( *Disposal, Permitted Fundraising and Permitted Securitisation Proceeds and Excess Cashflow*):

""**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)."

""**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 Parent."

(IV) Paragraph (b) of Clause 13.3 (*Mandatory prepayments: Certificados Bursátiles Reserve*) shall be amended as follows:

"In accordance with Clause 12.2 (*Voluntary prepayment of Exposures*), a Borrower may, subject to giving requisite notice required under that Clause, prepay the whole or any part of the Exposures of Participating Creditors under the Facilities. If, during a Relevant Prepayment Period, any amounts designated to the CB Reserve in accordance with paragraph (a) above are applied to voluntarily prepay the Exposures of Participating Creditors pursuant to Clause 12.2 (*Voluntary prepayment of Exposures*) or any amounts are utilised to prepay the Exposures of Participating Creditors from any net proceeds of the issuance of the New Equity Securities or any Permitted Fundraisings occurring after the date of issuance of the New Equity Securities, the Parent may apply any CB Cash Replenishment Amount and/or CB Disposal Proceeds Replenishment Amount to replenish the CB Reserve up to an amount equal to the relevant CB Reserve Shortfall."

**SIGNATURES**

The Parent

**CEMEX, S.A.B. de C.V.** (for itself and as agent on behalf of each Obligor)

By: /s/ Agustín Blanco

The Administrative Agent

**CITIBANK INTERNATIONAL PLC** (for itself and as agent on behalf of the Finance Parties)

By: /s/ Raya Brody

**Exhibit 4.33.5**

**CLIFFORD CHANCE LLP**

**CLEARY GOTTLIEB STEEN & HAMILTON LLP**

COMPOSITE CONFORMED COPY

FINANCING AGREEMENT

for

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

with

THE FINANCIAL INSTITUTIONS AND NOTEHOLDERS NAMED HEREIN
as Participating Creditors

and

CITIBANK INTERNATIONAL PLC
acting as Administrative Agent

and

WILMINGTON TRUST (LONDON) LIMITED
acting as Security Agent

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FINANCING AGREEMENT
(as amended on 1 December 2009, 18 March 2010,
25 October 2010 and 13 April 2011)

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**CONTENTS**

**THIS FINANCING AGREEMENT** is dated 14 August 2009 (as amended on 1 December 2009, 18 March 2010, 25 October 2010 and 13 April 2011) 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 AND NOTEHOLDERS** listed in Part II (*The Original Participating Creditors*) of Schedule 1 as creditors (the "**Original Participating Creditors**");

(6) **THE CREDITORS REPRESENTATIVES** listed in Part III (*The Creditors' Representatives*) of Schedule 1;

(7) **CITIBANK INTERNATIONAL PLC** as administrative agent of the Finance Parties (other than itself) (the " **Administrative Agent**"); and

(8) **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:

"**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*).

"**Additional Guarantor**" means a company that becomes an Additional Guarantor in accordance with Clause 28 ( *Changes to the Obligors*).

"**Additional Securities Demand**" has the meaning given to it in paragraph (c) of Clause 24.28 ( *Equities Issuance and Securities Demand*).

"**Additional Securities Demand Execution End Date**" means the date falling 6 calendar months after the Additional Securities Demand Execution Start Date.

"**Additional Securities Demand Execution Period**" means the period starting on the Additional Securities Demand Execution Start Date and ending on the Additional Securities Demand Execution End Date.

"**Additional Securities Demand Execution Start Date**" means the later of (a) if an Additional Securities Demand has been delivered on or prior to 1 October 2011, 1 October 2011 and (b) the date of receipt by the Parent of the Additional Securities Demand in accordance with paragraph (c) of Clause 24.28 (*Equity Issuance and Securities Demand*).

"**Additional Securities Demand Notice Delivery Period**" means the period between 1 August 2011 and 31 December 2011 **provided that** an Additional Securities Demand may not be delivered to the Parent on or prior to 1 October 2011 unless there is sufficient evidence provided by the Participating Creditors delivering the Additional Securities Demand that the New Issuance Threshold will not be met by the issuance of Equity Securities on or prior to the Cut-off Date.

"**Additional Securities Demand Securities**" means Equity Securities or bonds, notes or other debt securities or convertible or exchangeable securities issued by the Parent or any member of the Group.

"**Additional Security Provider**" means a company that becomes an Additional Security Provider in accordance with Clause 28 ( *Changes to the Obligors*).

"**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 Parent, Mexican FRS or, if adopted by the Parent in accordance with Clause 22.3 ( *Requirements as to financial statements*), 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*), 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.

"**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 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.

"**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 Super Majority Participating Creditors or the relevant proportion of Participating Creditors under paragraph (b) of Clause 24.28 ( *Equity Issuance and Securities Demand* ), 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 Parent 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 Parent and the Participating Creditors).

"**Bilateral Bank Facilities**" means the facilities described in Part IB of Part II of Schedule 1 ( *The Original Participating Creditors* ).

"**Borrower**" means an Original Borrower unless it has ceased to be a Borrower in accordance with Clause 28.2 ( *Resignation of a Borrower* ).

"**Break Costs**" means the amount (if any) by which:

(a) the interest (excluding any margin) which a Participating 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 or Unpaid Sum to the last day of the current Interest Period in respect of that Loan 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 Participating 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, 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 contained within the FTI Report.

"**Capital Lease**" has the meaning given to such term in Clause 23.1 ( *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 15 (*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 15 (*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 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).

"**CEMEX Australia Holdings**" means CEMEX Australia Holdings Pty Limited.

"**CEMEX España**" means CEMEX España, S.A.

"**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, **provided that** the acquisition of beneficial ownership of capital stock of the Parent 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.

"**Co-Com Documents**" means the appointment letter and the fee letter each entered into on or about 16 April 2009 between the Parent, CEMEX España, the Co-ordinators and the Co-ordinating Committee Banks

"**Compliance Certificate**" means a certificate substantially in the form set out in Schedule 5 ( *Form of Compliance Certificate*).

"**Confidentiality Undertaking**" means a confidentiality undertaking substantially in the form set out in Schedule 13 ( *Confidentiality Undertaking*) or in any other form agreed between the Parent and the Administrative Agent.

"**Consolidated Leverage Ratio**" has the meaning given to such term in Clause 23.1 ( *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.

"**Co-ordinating Committee Banks**" means the Co-ordinators, Australia and New Zealand Banking Group Limited, Bank of America, N.A., Barclays Bank PLC, acting through its investment banking division Barclays Capital, Calyon, ING Bank N.V., JPMorgan Chase Bank, N.A., Lloyds TSB Bank plc and The Bank of Tokyo- Mitsubishi UFJ, Ltd. each in its capacity as a co-ordinating committee bank for the lenders under the Core Bank Facilities in relation to the process for the completion and implementation of the New Finance Documents.

"**Co-ordinators**" means Banco Bilbao Vizcaya Argentaria, S.A., Banco Santander, S.A., BNP Paribas, Citigroup Global Markets Limited, HSBC Bank plc and The Royal Bank of Scotland plc each in its capacity as co-ordinator for the lenders under the Core Bank Facilities in relation to the process for the completion and implementation of the New Finance Documents.

"**Core Bank Facilities**" means the Syndicated Bank Facilities, the Bilateral Bank Facilities and the Promissory Notes.

"**Covenant Reset Date**" means the first date falling after the Effective Date on which all of the following conditions are met:

(a) the Rating satisfies two of the following (in each case, with a stable Outlook): (i) at least BBB- from S&P; (ii) at least Baa3 from Moody's; and (iii) at least BBB- from Fitch;

(b) the Base Currency Amount of the Exposures of the Participating Creditors under the Facilities has been reduced by an aggregate amount equal to at least 50.96% of the aggregate Exposures (as at the Reference Date) of the Participating Creditors under the Facilities since the Reference Date;

(c) 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

(d) no Default is continuing.

"**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.

"**Cut-off Date**" means 30 September 2011.

"**CWEA**" means the letter entitled "conditional waiver and extension agreement" dated on or about 16 April 2009 (with effect from 24 March 2009) to the Parent and CEMEX España (for itself and on behalf of each subsidiary obligor thereunder) from certain Participating Creditors (and certain of their affiliates), as amended or varied from time to time.

"**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 this 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.

"**Default**" means an Event of Default or any event or circumstance specified in Clause 26 ( *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.

"**Delegate**" means any delegate, agent, attorney or co-trustee appointed by the Security Agent.

"**Derivatives Side Letter**" means the letter entitled "side letter to the conditional waiver and extension agreement" dated on or about 1 April 2009 (with effect from 24 March 2009) to the Parent and CEMEX España (for itself and on behalf of each subsidiary obligor thereunder) from certain Participating Creditors (and certain of their affiliates), as amended or varied from time to time.

"**Dutch Borrower**" means New Sunward Holding B.V.

"**Dutch Civil Code**" means the Dutch Civil code (*Burgerlijk Wetboek*).

"**Dutch FSA**" means the 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 Administrative 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 Administrative Agent (acting reasonably).

"**Employee Compensation Structured Note**" means the Mex$ 126,562,263.59 Nota Estructurada dated 17 April 2008 and issued by the Parent.

"**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.

"**Equity Securities**" means (a) securities falling within paragraphs (a) or (b) of the definition of Permitted Fundraising; (b) Relevant Convertible/Exchangeable Obligations; (c) any other securities or obligations which, on issuance, do not directly increase the amount of Consolidated Funded Debt; and (d) any other securities or obligations expressly consented to by the Majority Participating Creditors from time to time to constitute Equity Securities.

"**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 the Parent within the meaning of Section 4001(a)(14) of ERISA, or is a member of a group that includes the Parent and that is treated as a single employer under Section 414(b) or (c) of the U.S. Internal Revenue Code.

"**Eurobonds**" means any €900,000,000 4.75% Eurobonds issued by CEMEX Finance Europe B.V. and guaranteed by CEMEX, España S.A. dated 5 March 2007 (as amended from time to time).

"**Event of Default**" means any event or circumstance specified as such in Clause 26 ( *Events of Default*).

"**Excess Cashflow**" has the meaning given to such term in Clause 23.1 ( *Financial definitions*).

"**Excluded Positions**" shall have the meaning ascribed thereto in Schedule 15 ( *Hedging Parameters*).

"**Executive Compensation Plan**" means any stock option plan, restricted stock plan or retirement plan which the Parent or any other Obligor customarily provides to its employees, consultants and directors.

"**Existing Acceleration Clause**" means, in relation to a Facility, the provision(s) identified as such in Schedule 9 ( *The Facilities*).

"**Existing Change of Control Provisions**" means, in relation to a Facility, the provision(s) identified as such in Schedule 9 ( *The Facilities*).

"**Existing Drawdown Conditions**" means, in relation to a Facility, the provision(s) identified as such in Schedule 9 ( *The Facilities*).

"**Existing Events of Default**" means, in relation to a Facility, the provision(s) identified as such in Schedule 9 ( *The Facilities*).

"**Existing Extension and Term Out Provisions**" means, in relation to a Facility, the provisions identified as such in Schedule 9 ( *The Facilities*).

"**Existing Facility Agreements**" means the facility agreements and other documents described in Part II, Schedule 1 ( *The Original Participating Creditors*).

"**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 this Agreement).

"**Existing Financial Covenants**" means, in relation to a Facility, the provision(s) identified as such in Schedule 9 ( *The Facilities*).

"**Existing Financial Indebtedness**" means:

(a) the Financial Indebtedness described in Part I of Schedule 10 ( *Existing Financial Indebtedness*) **provided that** the principal amount of such Financial Indebtedness does not increase above the principal amount outstanding as at the date of this 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 this 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*) 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*) 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*) 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 this 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 this 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.

"**Existing Guarantor Release Restriction Clause**" means, in relation to a Facility the provision(s) identified as such in Schedule 9 ( *The Facilities*).

"**Existing General Undertakings**" means, in relation to a Facility, the provision(s) identified as such in Schedule 9 ( *The Facilities*).

"**Existing Illegality Clause**" means, in relation to a Facility, the provision(s) identified as such in Schedule 9 ( *The Facilities*).

"**Existing Information Undertakings**" means, in relation to a Facility, the provision(s) identified as such in Schedule 9 ( *The Facilities*).

"**Existing Mandatory Prepayment Provisions**" means, in relation to a Facility, the provision(s) identified as such in Schedule 9 ( *The Facilities*).

"**Existing Notification Requirements**" means, in relation to a Facility, the provisions identified as such in Schedule 9 ( *The Facilities*).

"**Existing Optional Currency Provisions**" means, in relation to a Facility the provisions identified as such in Schedule 9 ( *The Facilities*).

"**Existing Representations and Warranties**" means, in relation to a Facility, the provision(s) identified as such in Schedule 9 ( *The Facilities*).

"**Existing Sharing Provisions**" means, in relation to a Facility, the provision(s) identified as such in Schedule 9 ( *The Facilities*).

"**Existing Single Lender Repayment Clause**" means, in relation to a Facility, the provision(s) identified as such in Schedule 9 ( *The Facilities*).

"**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.

"**Facility Limit**" means the maximum principal amount capable of being utilised or issued, as the case may be, under a Facility.

"**Facility Office**" means (other than in the case of a USPP Noteholder) the office or offices notified by a Participating Creditor to the Administrative Agent in writing on or before the date it becomes a Participating 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.

"**Fee Letter**" means any letter or agreement between the Administrative Agent or Security Agent and the Parent 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 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 23.1 ( *Financial definitions*).

"**Financial Year**" has the meaning given to such term in Clause 23.1 ( *Financial definitions*).

"**Fitch**" means Fitch Ratings Limited or any successor thereto from time to time.

"**FTI Report**" means the report dated 19 May 2009 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 Administrative Agent under paragraph 4(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 28.4 ( *Resignation of Guarantor)* and has not subsequently become an Additional Guarantor pursuant to Clause 28.3 (*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.

"**IMSS**" means the Mexican Social Security Institute (*Instituto Mexicano del Seguro Social*).

"**INFONAVIT**" means the Mexican Workers' Housing Fund Institute (*Instituto del Fondo Nacional de la Vivienda para los Trabajadores*).

"**Insolvency Proceedings**" means any of the matters described in Clause 26.7 (*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 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.

"**Interest Period**" means each period by reference to which interest on money advanced or the principal amount outstanding is calculated under the terms of the relevant Existing Finance Documents.

"**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.

"**Legal Opinions**" means the legal opinions delivered to the Administrative Agent pursuant to Clause 5 ( *Initial 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.

"**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.

"**Margin**" means, in relation to any Facility (other than a USPP Note) or Unpaid Sum, 4.50 per cent. per annum, subject to the following:

(a) if, between the date of this Agreement and 30 June 2010, the Parent has not issued common equity securities to persons who are not members of the Group for net cash proceeds of at least $1,000,000,000 (or its equivalent in any other currency) then from (and including) 1 July 2010 onwards the Margin will be increased by 0.75 per cent. per annum; and

(b) if the Base Currency Amount of the Exposures of the Participating Creditors under the Facilities has not been reduced by an amount equal to at least 31.85% of the aggregate Exposures as at the Reference Date of the Participating Creditors under the Facilities (since the Effective Date) on or before 31 December 2010 (the "**First Amortisation Target**") then, for the period from (and including) 1 January 2011 to (and including) the earlier of the Covenant Reset Date and the Termination Date, the Margin will be increased in accordance with the following:

(i) if the difference between the First Amortisation Target and the amount by which the Base Currency Amount of the Exposures of the Participating Creditors under the Facilities has actually been reduced since the Effective Date (the " **Actual Reduction Amount**") as at 31 December 2010 is less than half the difference between the First Amortisation Target and the amount equal to the "Cumulative Repayment Amount %" set out in the table in paragraph (a) of Clause 11.1 (the "**Cumulative Repayment Amount**") for 15 December 2010, 0.50 per cent. per annum; or

(ii) if the difference between the First Amortisation Target and the Actual Reduction Amount as at 31 December 2010 is equal to or greater than half the difference between the First Amortisation Target and the Cumulative Repayment Amount for 15 December 2010, 1.00 per cent. per annum; and

(c) if the Base Currency Amount of the Exposures of the Participating Creditors under the Facilities has not been reduced by an amount equal to at least 50.96% of the aggregate Exposures as at the Reference Date of the Participating Creditors under all the Facilities (since the Effective Date) on or before 31 December 2011 (the "**Second Amortisation Target**") then, for the period from (and including) 1 January 2012 to (and including) the earlier of the Covenant Reset Date and the Termination Date, the Margin will be increased in accordance with the following:

(i) if the difference between the Second Amortisation Target and the Actual Reduction Amount as at 31 December 2011 is less than half the difference between the Second Amortisation Target and the Cumulative Repayment Amount for 15 December 2011, 0.50 per cent. per annum; or

(ii) if the difference between the Second Amortisation Target and the Actual Reduction Amount as at 31 December 2011 is equal to or greater than half the difference between the Second Amortisation Target and the Cumulative Repayment Amount for 15 December 2011, 1.00 per cent. per annum; and

(d) if during the period from 30 September 2010 to (and including) the Cut-Off Date, the Group has not received net proceeds equal to or in excess of the New Issuance Threshold from the issuance of Equity Securities, then the Margin will be increased by 1.00 per cent. per annum for the period from (and including) the Cut-off Date to (and including) the earlier of: (i) the date on which the New Issuance Shortfall is met by the issuance of Equity Securities (whether as a result of delivery of an Additional Securities Demand or otherwise) and (ii) the Termination Date.

For the avoidance of doubt:

(A) the adjustments to the Margin under paragraphs (a), (b) and (c) above are cumulative; and

(B) such adjustments will also apply to the USPP Note Interest Rate.

"**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 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 New 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 7 ( *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 Administrative Agent) that a Subsidiary is a Material Subsidiary shall, in the absence of manifest error, be conclusive and binding on all Parties.

"**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*).

"**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.

"**Moody's**" means Moody's Investor Services Limited or any successor to its ratings business.

"**New Issuance Shortfall**" is equal to the New Issuance Threshold minus the net proceeds from the issuance of Equity Securities received in the period from 30 September 2010 to (and including) the Cut-off Date.

"**New Issuance Threshold**" means US$1,000,000,000 (or its equivalent in any other currency)."

"**New Finance Document**" means this Agreement, the NY Law Amendment Agreement, the Intercreditor Agreement, each Transaction Security Document, any Accession Letter, any Fee Letter, any Resignation Letter, any Resignation Letter (Australia) and any other document designated as a "**New Finance Document**" by the Administrative Agent and the Parent.

"**New Participating Creditor**" has the meaning given to such term in Clause 27 ( *Changes to the Participating Creditors*).

"**NY Law Amendment Agreement**" means the omnibus amendment agreement dated on or about the date of this Agreement between, among others, the Parent 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.

"**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 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, 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.

"**Override Period**" means the period beginning on the Effective Date and ending on the date on which all amounts payable under the Finance Documents to the Finance Parties have been paid in full and no Participating Creditor is under any further obligation under any Finance Document.

"**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*),

which in each case has not ceased to be a Party in accordance with the terms of this Agreement.

"**Participating Creditor Accession Undertaking**" means an undertaking substantially in the form set out in Schedule 3 ( *Form of Participating Creditor Accession Undertaking*) or any other form agreed between the Administrative Agent and the Parent.

"**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 this Agreement.

"**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 to which any Obligor or any of its ERISA Affiliates has any liability.

"**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 this Agreement, with the material terms of those acquisitions requiring consideration payable in excess of $10,000,000 being described in the list delivered to the Administrative Agent under paragraph 4(f) of Part I (*Initial Conditions Precedent*) of Schedule 2 (**provided that** there is no material change to the terms of such acquisition after the date of this 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 Parent 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 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; 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*);

(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 Parent 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*) 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 23.2 ( *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 13 (*Mandatory prepayment*);

(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*);

(j) 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 Facilities);

(k) of any inventory disposed of pursuant to an Inventory Financing or similar arrangement that is otherwise permitted under this Agreement;

(l) of any plant or equipment disposed of pursuant to a sale and lease-back arrangement that is otherwise permitted under this Agreement;

(m) of any asset to which a member of the Group was contractually committed as at the date of this 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*) (**provided that** there is no material change to the terms of such Disposal after the date of this 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 Parent pursuant to an obligation in respect of any Executive Compensation Plan;

(q) 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;

(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 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; or

(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,

**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; or

(d) to any minority shareholders of any Subsidiary of the Parent *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.

"**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* ), one or more Obligors (other than CEMEX Materials LLC, CEMEX, Inc. and CEMEX Australia Holdings) 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, CEMEX, Inc. and CEMEX Australia Holdings) 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 Parent) 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*) one or more Obligors (other than CEMEX Materials LLC, CEMEX, Inc. and CEMEX Australia Holdings) 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, CEMEX, Inc. and CEMEX Australia Holdings) 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*); (3) if proceeds of such issuance or incurrence are, to the extent required under this Agreement, being used to replace or refinance (x) Financial Indebtedness which shares in the Transaction Security or (y) the Eurobonds, 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 Eurobonds, such Financial Indebtedness shall only be entitled to share in the Transaction Security if, prior to the first replacement or refinancing of the Eurobonds, 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 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 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*);

(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) 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 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 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 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 16 ( *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 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 24.17 (*Joint ventures*);

(f) any guarantee (including an *aval*) of Financial Indebtedness falling within the following paragraphs of the definition of Permitted Financial Indebtedness: (a), (b) (other than Existing Financial Indebtedness described in Part I of Schedule 10 ( *Existing Financial Indebtedness* ) unless such guarantee is already in place as at the date of this Agreement), (c), (e), (f) (so long as: (A) the Financial Indebtedness refinanced from the proceeds of such Permitted Financial Indebtedness was issued, borrowed or guaranteed by the relevant guarantor; (B) such Permitted Financial Indebtedness that is guaranteed is used, to the extent required under this Agreement, to repay Participating Creditors; or (C) if the Permitted Financial Indebtedness that is guaranteed is used, to the extent permitted under this Agreement, to refinance the Eurobonds, only the Guarantors provide such guarantees and the Debt Reduction Satisfaction Date has occurred), (g) and (j) to (o);

(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 Administrative Agent acting on behalf of the Participating Majority Creditors;

(k) any guarantee given by a member of the Group in favour of another member of the 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 paragraph (a) of 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 Exposures of Participating Creditors,

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 LLC or (unless it has granted a guarantee pursuant to Clause 24.32 (*Conditions subsequent*)) CEMEX Australia Holdings 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; and

(l) any other guarantee given by a member of the Group 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 of all such guarantees then outstanding does not exceed $500,000,000.

"**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 12 (*Permitted Joint Ventures*); or

(b) such investment is made after the date of this 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 Parent, 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 Parent 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*).

"**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 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 24.17 (*Joint ventures*);

(d) a loan made by a member of the Group to another member of the Group;

(e) deferred consideration in relation to Disposals falling within paragraphs (h) or (m) of the definition of Permitted Disposal;

(f) 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;

(g) any loan consented to by the Administrative Agent acting on the instructions of the Majority Participating Creditors;

(h) 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;

(i) 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 any such loan(s) does not exceed $100,000,000 (or its equivalent) at any time; and

(j) 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 in respect 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) a principal prepayment or early redemption in respect of Financial Indebtedness falling within (i) paragraph (a) of 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) a principal prepayment or early redemption in respect of Financial Indebtedness falling within paragraphs (a) to (e) of 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;

(d) a principal repayment or redemption required under the terms of the Banobras Facilities or the Employee Compensation Structured Note;

(e) a principal prepayment or early redemption in respect of Financial Indebtedness falling within paragraphs (b) to (e) of the definition of Existing Financial Indebtedness from the proceeds of a refinancing or replacement capital markets issuance, facility or facilities that constitute Existing Financial Indebtedness;

(f) any prepayment 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; and

(g) a principal prepayment or early redemption in respect of any Relevant Existing Financial Indebtedness from the proceeds applied in accordance with paragraph (v) of the definition of Excluded Fundraising Proceeds,

including, in each case, any payment, prepayment or redemption pursuant to a Permitted Guarantee given in respect of such Financial Indebtedness.

"**Permitted Put/Call Transaction**" has the meaning given to it in paragraph (d) of paragraph 1 of Schedule 15 ( *Hedging Parameters*).

"**Permitted Reorganisation**" means:

(a) the intra-Group reorganisation described in the presentation delivered as a condition precedent under paragraph 4(i) of Part I of Schedule 2 (*Conditions precedent*); and

(b) other than a reorganisation that would not be permitted under Clause 24.33 ( *Restriction on transfer of Material Operating Subsidiaries* ), any intra-Group reorganisation involving an Obligor consented to by the Administrative Agent (acting on the instructions of the Majority Participating Creditors),

**provided that** upon completion of each step in the Permitted Reorganisation the requirements of paragraph (c) of Clause 24.27 ( *Further assurance*) 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.

"**Permitted Security**" has the meaning given to such term in Clause 24.5 ( *Negative Pledge*).

"**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 Parent to another member of the Group or the Parent (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; or

(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.

"**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); and

(c) 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**" shall have the meaning ascribed thereto in Schedule 15 ( *Hedging Parameters*).

"**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 Notes**" means the promissory notes described in Part II of Schedule 1 ( *The Original Participating Creditors*).

"**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.

"**Quasi-Security**" has the meaning given to such terms in Clause 24.5 ( *Negative Pledge*).

"**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 Date**" means the date of this Agreement.

"**Reference Period**" has the meaning given to that term in Clause 23.1 ( *Financial definitions*).

"**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.

"**Repayment Date**" means each of the dates specified in paragraph (a) of Clause 11.1 ( *Repayment of Exposures and reduction of Facility Limits* ) as Repayment Dates and the Termination Date.

"**Repayment Instalment**" has the meaning given to such term in Clause 11.1 ( *Repayment of Exposures and reduction of Facility Limits* ).

"**Repeating Representations**" means each of the representations set out in Clauses 21.1 ( *Status*) to Clause 21.5 (*Validity and admissibility in evidence*) and paragraphs (a) and (b) of Clause 21.11 (*Financial statements*).

"**Resignation Letter**" means a document substantially in the form set out in Part I of Schedule 11 ( *Form of Resignation Letter* ).

"**Resignation Letter (Australia)**" means a document substantially in the form set out in Part II of Schedule 11 ( *Form of Resignation Letter (Australia*)).

"**Responsible Officer**" means the Chief Financial Officer and/or Chief Controlling Officer of the Parent or a person holding equivalent status (or higher).

"**Revolving Facility**" means each facility under a Syndicated Bank Facility or a Bilateral Bank Facility described as a revolving facility in Part II of Schedule 1 (*The Original Participating Creditors*).

"**Rinker Facilities**" means the facilities made available under the US$6,000,000,000 (originally US$9,000,000,000) facilities agreement dated 6 December 2006 (as amended) between, among others, CEMEX España as borrower and The Royal Bank of Scotland plc as facility agent.

"**RMC Facilities**" means the facilities made available under the US$2,300,000,000 facilities agreement dated 24 September 2004 (as amended) between, among others, CEMEX España as borrower and guarantor and Citibank International PLC as facility agent.

"**Rollover Loan**" means one or more Loans:

(a) made or to be made under the same Revolving Facility and tranche as a maturing Loan was made;

(b) made or to be made on the same day that a maturing Loan is due to be repaid;

(c) the aggregate amount of which is equal to or less than the maturing Loan;

(d) in the same currency as the maturing Loan; and

(e) made or to be made for the purpose of refinancing a maturing Loan.

"**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 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 28.6 ( *Resignation of a Security Provider*) and has not subsequently become an Additional Security Provider pursuant to Clause 28.3 ( *Additional Guarantors and Additional Security Providers* ), 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 Parent 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.

"**SPA**" has the meaning given to such term in Clause 28.5 ( *Release of CEMEX Australia Holdings* ).

"**Spain**" means the Kingdom of Spain.

"**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*).

"**Spanish Public Document**" means any obligation in an *Escritura Pública* or *poliza intervenida*.

"**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* )) 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 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.

"**Super 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 more than 85 per cent. of the Base Currency Amount of all the Exposures of the Participating Creditors under all of the Facilities at that time.

"**Syndicated Bank Facilities**" means the facilities described in Part IA of Part II of Schedule 1 ( *The Original Participating Creditors*).

"**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).

"**Tax Deduction**" means a deduction or withholding for or on account of Tax from a payment under a Finance Document.

"**Termination Date**" means 14 February 2014.

"**Third Party Disposal**" has the meaning given to such term in Clause 28 ( *Changes to the Obligors*).

"**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*) and any document required to be delivered to the Administrative 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).

"**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 is not a Treasury Transaction.

"**Unpaid Sum**" means any sum due and payable but unpaid by an Obligor under the Finance Documents.

"**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 consolidated, amended and restated note purchase agreement described in Part II of Schedule 1 ( *The Original Participating Creditors*).

"**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.

"**USPP Note Interest Rate**" means the original stated interest rate set forth in the USPP Note Agreement.

"**Utilisation**" means a utilisation of a Facility.

"**Utilisation Request**" means, in relation to a proposed Utilisation, a notice requesting a Utilisation substantially in the form required under the Existing Facility Agreement under which the Utilisation is requested.

"**VAT**" means value added tax, as defined 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 "**Administrative Agent**", any "**Secured Party**", the "**Security Agent**", any "**Finance Party**", any "**Participating Creditor**", any "**Obligor**" any "**Creditor's Representative**", any "**Co-ordinator**", any "**Co-ordinating Committee Bank**" 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) "**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;

(vi) a "**participation**" of a Participating Creditor in a Loan, means the amount of such Loan which such Participating Creditor has made or is to make available and thereafter that part of the Loan which is owed to such Participating Creditor;

(vii) 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;

(viii) 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;

(ix) 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;

(x) a provision of law is a reference to that provision as amended or re-enacted without material modification;

(xi) a time of day is a reference to London time; and

(xii) 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 20 (*Guarantee and indemnity*) and unless otherwise stated) any guarantee, *aval*, 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*.

(d) Section, Clause and Schedule headings are for ease of reference only.

(e) 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.

(f) 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.

(g) 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 23 (*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 23 ( *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, "**¥**" and "**yen**" denote lawful currency of Japan, "**Mexican pesos**", "**Mex$**", "**MXN**" and "**pesos**" denotes the lawful currency of Mexico and "**UDI**" denotes the Mexican Unidad de Inversion, "**AUS**" and "**AUS$**" denote the lawful currency of Australia, "**Colombian pesos**", "**COP**" and "**COP$**" denote the lawful currency of the Republic of Colombia, "**PLN**" denotes the lawful currency of Poland, "**ISL**" denotes the lawful currency of Israel, "**HUF**" denotes the lawful currency of Hungary, "**DOP**" denotes the lawful currency of Dominican Republic, "**CZK**" denotes the lawful currency of Czech Republic, "**EGP**" denotes the lawful currency of Egypt and "**AED**" denotes the lawful currency of United Arab Emirates.

1.4 **Participating Creditors**

Each Participating Creditor will be regarded, for the purposes of this Agreement, as acting in a different capacity in respect of its Exposure under each Facility in which it has an Exposure and may (in the case of a Participating 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 29.18 (*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 Contracts (Rights of Third Parties) Act 1999.

(c) The provisions of this Agreement relating to the Co-ordinating Committee Banks are for the benefit of the Co-ordinating Committee Banks and each Co-ordinating Committee Bank (although not a party to this Agreement) is entitled to rely on and enforce such clause on behalf of itself under the Contracts (Rights of Third Parties) Act 1999.

(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.

## SECTION 2
## INTRODUCTION

### 2. PURPOSE OF THIS AGREEMENT

This Agreement and the other New Finance Documents record the terms upon which, during the Override Period, the Participating Creditors are willing to continue to make available the Facilities and amend, vary, modify, waive, override, replace and supplement certain terms of the Existing Finance Documents.

### 3. RELATIONSHIP BETWEEN NEW FINANCE DOCUMENTS AND OTHER FINANCE DOCUMENTS

#### 3.1 Termination of CWEA and Derivatives Side Letter

With effect from the Effective Date the CWEA and Derivatives Side Letter shall cease to have any further force and effect.

#### 3.2 Termination of Co-Com Documents

With effect from the Effective Date (and without prejudicing any accrued rights and liabilities of the parties to those documents), the Co-Com Documents shall be terminated in accordance with their terms.

#### 3.3 Other Finance Documents continue

Each Obligor (other than a Security Provider which is not also a Borrower or a Guarantor) confirms that (in respect of the Existing Finance Documents to which it is a party), save to the extent amended, varied, overridden, replaced and supplemented by the New Finance Documents, the Existing Finance Documents (including, without limitation, any guarantee contained therein), shall remain in full force and effect.

#### 3.4 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;

(b) in the event of any inconsistency or conflict between this Agreement and any other Finance Document (except the Intercreditor Agreement), the terms of this Agreement will prevail; and

(c) neither the entry into the New Finance Documents, nor any action required by an Obligor pursuant to the New Finance Documents shall be regarded as a breach of any Existing Finance Document.

### 4. RELATIONSHIP BETWEEN THE PARTIES

#### 4.1 Finance Parties' rights and obligations

(a) The obligations of each Finance Party under the New Finance Documents are several. Failure by a Finance Party to perform its obligations under the New Finance Documents does not affect the obligations of any other Party under the New Finance Documents. No Finance Party is responsible for the obligations of any other Finance Party under the New Finance Documents.

(b) Except as otherwise stated in the New Finance Documents, the rights of each Finance Party under or in connection with the New Finance Documents are separate and independent rights and any debt arising under the New 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 New Finance Documents, separately enforce its rights under the New Finance Documents.

(d) No Party may require any Finance Party to act in breach of the New Finance Documents even if that Finance Party would otherwise be obliged to act in accordance with the decisions of other banks or financial institutions under any Existing Finance Document.

4.2 **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.

5. **INITIAL CONDITIONS PRECEDENT**

Clause 2 (*Purpose of this Agreement),* Clause 3 *(Relationship between New Finance Documents and Other Finance Documents),* Clauses 6 (*Provisions applicable to Facilities generally)* to 15 (*Interest)*, Clause 16 (*Fees*) (other than Clauses 16.3 and 16.4), Clause 20 ( *Guarantee and indemnity*), Clauses 21 (*Representations*) to 24 (*General Undertakings*) and Clause 26 (*Events of Default*) will take effect from (and not, for the avoidance of doubt, at any time before) the Effective Date (and the Administrative Agent shall notify the Parent and the Participating Creditors of the Effective Date promptly upon its occurrence).

## SECTION 3
## THE FACILITIES

### 6. PROVISIONS APPLICABLE TO FACILITIES GENERALLY

#### 6.1 Confirmation of Exposure

Each Participating Creditor confirms to the Parent and the Borrower under each relevant Facility in respect of which it is a Participating Creditor (but without liability to the Parent or any other member of the Group or any other person) to the best of its current knowledge and belief that Part II of Schedule 1 (*The Original Participating Creditors*) accurately records its Exposures under the Facilities as at close of business on the Reference Date.

#### 6.2 Deemed Consent

By their execution of this Agreement, each Participating Creditor is deemed to give any express or implied consent required under the Existing Finance Documents to any relevant provision of the New Finance Documents.

### 7. EXTENSION

#### 7.1 Extension of maturities for Core Bank Facilities

In relation to each Core Bank Facility, the scheduled repayment of principal amounts and/or (if applicable) scheduled cancellation of commitments and reduction in the applicable Facility Limit for such Core Bank Facility will (subject to the terms of the New Finance Documents including, without limitation, Clause 11 (*Repayment*)) be extended until the Termination Date.

#### 7.2 USPP Note Agreement

The Parent confirms (and each USPP Noteholder acknowledges) that all existing notes held by the USPP Noteholders have, as at the Effective Date, been replaced by new USPP Notes issued under the USPP Note Agreement with a stated maturity of 14 February 2014, with the USPP Note Agreement comprising an "Existing Finance Document" for all purposes hereunder.

### 8. SPECIFIC AMENDMENTS AND OTHER AGREEMENTS IN RELATION TO FINANCE DOCUMENTS

#### 8.1 Waiver of certain existing defaults

Without prejudicing or affecting in any respect any of the rights of the Participating Creditors under the New Finance Documents, the Participating Creditors hereby waive any default that has arisen prior to the date of this Agreement (including any such default that was waived under the terms of the CWEA) under the Finance Documents) of which the Participating Creditors have knowledge prior to the date of this Agreement.

#### 8.2 Replacement and / or deletion of specific provisions

In the Existing Finance Documents relating to the Syndicated Bank Facilities and in the Bilateral Bank Facilities:

(a) The Existing Representations and Warranties, the Existing Information Undertakings, the Existing Financial Covenants, the Existing Notification Requirements and the Existing General Undertakings are deleted.

(b) The Existing Events of Default are deleted in their entirety and replaced with the following Event of Default:

"Any Event of Default occurs under any of Clauses 26.1 ( *Non-payment*) to 26.15 (*Failure to perform payment obligations*) of the financing agreement entered into in August 2009 between, among others, CEMEX, S.A.B. de C.V. and certain of its subsidiaries (including CEMEX España), Citibank International PLC as Administrative Agent, Wilmington Trust (London) Limited as Security Agent and the "Participating Creditors" (as defined therein)."

(c) The Existing Sharing Provisions are deleted.

(d) The Existing Extension and Term Out Provisions are deleted.

(e) The Existing Mandatory Prepayment Provisions and the Existing Change of Control Provisions are deleted.

(f) Each Existing Single Lender Repayment Clause is deleted.

(g) Each Existing Guarantor Release Restriction Clause is deleted and the provisions of Clause 28 ( *Changes to the Obligors*) will replace any provisions in the Existing Finance Documents relating to the release of Obligors (with such amendments to defined terms required to be made being deemed to be made).

(h) The Existing Optional Currency Provisions are deleted.

(i) The Existing Acceleration Clauses are amended by providing that:

(i) the ability of any party to an Existing Finance Document to exercise their rights under any such clause is expressly subject to prior authorisation by the Majority Participating Creditors of the taking of such action under the Intercreditor Agreement; and

(ii) in the case of an Event of Default under Clauses 26.6 ( *Insolvency*) or Clause 26.7 (*Insolvency proceedings*) of this Agreement with respect to an Obligor, all commitments under the Facilities shall be cancelled automatically and immediately, each Facility Limit will be reduced to zero automatically and immediately and all Exposures of the Participating Creditors 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.

(j) In relation to each Revolving Facility:

(i) the Existing Drawdown Conditions are deleted;

(ii) the relevant Existing Finance Documents relating to each Revolving Facility are amended to provide that:

(A) in relation to each lender under that Revolving Facility the Borrower may set off that lender's participation in any Loan against that lender's participation in a Rollover Loan requested under that Facility for the purpose of repaying that Loan (and that lender will not require a Borrower to repay any such participation in the Loan in cash) except to the extent that the lender is entitled to receive, request, demand or require repayment or prepayment of such Loan (or a portion of it) otherwise than by way of Rollover Loan under the terms of the New Finance Documents;

(B) if any Loan matures under that Revolving Facility then (except to the extent of any reduction in the applicable Facility Limit under the New Finance Documents) the relevant Borrower under the Revolving Facility will be deemed to have delivered a Utilisation Request for a Rollover Loan under the Revolving Facility in the currency and amount of the maturing Loan in accordance with (and within the timeframe required by) the Existing Finance Documents relating to that Revolving Facility and each Participating Creditor under each such Revolving Facility shall (unless otherwise provided in the New Finance Documents) continue to make available and/or leave outstanding (as applicable) the amount of any Rollover Loan.

(k) The definition of "**Business Day**" in each Existing Finance Document is amended to conform to the " **Business Day**" definition in this Agreement.

8.3 **Other agreements in respect of certain Facilities**

In connection with each Syndicated Bank Facility and each Bilateral Bank Facility:

(a) in respect of any Existing Finance Documents under which the consent of (or consultation with) any Borrower or Guarantor is required in order for a Participating Creditor under such Existing Finance Document to transfer, assign or enter into a sub-participation in respect of any of its rights under such Existing Finance Documents, by executing this Agreement the relevant Borrower or Guarantor will be deemed to have given its consent to any transfer, assignment or sub-participation by any Participating Creditor under such Existing Finance Document (or, as the case may be, the relevant Participating Creditor will be deemed to have satisfied any applicable consultation requirement);

(b) notwithstanding anything to the contrary in the Existing Finance Documents relating to that Facility, there shall be no restriction as to the identity of any transferee, assignee or sub-participant of any rights of any of the Participating Creditors under any Facility;

(c) the Borrowers and Guarantors agree:

(i) not to request that any member of the Group becomes a borrower or (except to the extent required under the terms of the Existing Finance Documents relating to such Facility under any Facility) guarantor in respect of a Facility where such member of the Group is not a borrower or, as the case may be, guarantor under that Facility, at the date of this Agreement ( **provided that** this provision shall not prevent any member of the Group from becoming a Guarantor under this Agreement); and

(ii) to ensure that any member of the Group that is not already a Guarantor and that accedes to any Existing Finance Documents as a guarantor or obligor simultaneously accedes to this Agreement as an Additional Guarantor;

(d) each Participating Creditor (other than a USPP Noteholder) agrees not to exercise its rights under any Existing Facility Agreement to designate one of its Affiliates as its Facility Office for any purpose;

(e) each Participating Creditor agrees not to consent to a redenomination of any part of its Exposure under any Facility under the terms of the Existing Finance Documents; and

(f) each Participating Creditor with an Exposure under the " **NSH Facility**" (as defined in Schedule 9 ( *The Facilities*)) agrees that the Borrower in respect of such Facility need only issue a promissory note to such Participating Creditor under the terms of that Facility promptly following a request by such Participating Creditor.

8.4 **Direction to the Creditor's Representatives**

The Participating Creditors with Exposures under each Syndicated Bank Facility hereby:

(a) confirm that they consent to the amendments, deletions, variations, modifications and waivers of the Existing Finance Documents provided for in this Agreement and instruct the Creditor's Representative in relation to that Syndicated Bank Facility to execute this Agreement for the purpose of effecting those amendments, deletions, variations, modifications and waivers on their behalf;

(b) direct the Creditor's Representative in relation to that Syndicated Bank Facility to execute any transfer certificate relating to a transfer or assignment by a Participating Creditor in accordance with this Agreement;

(c) agree not to give an instruction to a Creditor's Representative under an Existing Facility Agreement that conflicts with the terms of the New Finance Documents; and

(d) direct the Creditor's Representative in relation to a Syndicated Bank Facility to act in accordance with the Existing Finance Documents for that Syndicated Bank Facility as the same have been amended, varied, modified, overridden, replaced, supplemented and waived by the terms of this Agreement and the other New Finance Documents.

8.5 **Acknowledgement of Facility Agents under Existing Finance Documents**

Each Creditor's Representative in relation to a Syndicated Bank Facility is executing this Agreement for the purpose of effecting the amendments, variations, modifications, replacements, supplements and waivers specified in this Agreement and acknowledges that it will act in accordance with the directions and instructions provided for in Clause 8.4 (*Direction to the Creditor's Representatives*) above.

9. **USPP NOTE AGREEMENT**

The Parent and each USPP Noteholder confirms that the USPP Note Agreement contains provisions that have the same substantive effect as Clauses 8.1 (*Waiver of certain existing defaults*) and 8.2 (*Replacement and / or deletion of specific provisions*) above (to the extent applicable).

10. **RESTRICTIONS ON PARTICIPATING CREDITORS DURING THE OVERRIDE PERIOD**

During the Override Period no Participating Creditor shall, and the Administrative Agent shall not, save as otherwise expressly permitted by, or provided for in, the New Finance Documents:

(a) amend the terms (including but not limited to the margin, interest rate and other pricing) of any Facility, except in a way which:

(i) could not be reasonably expected materially and adversely to affect the interests of the other Participating Creditors; and

(ii) would not change the date, amount or method of payment of interest or principal on any Exposures under the relevant Facility; or

(b) amend any Facility Limit; or

(c) call in, reduce, withdraw, or cease to make available or refuse to allow drawing against or borrowing under all or any part of any Facility; or

(d) 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 any Facility; or

(e) accept or recover any sums in settlement or discharge of any Exposure or liability in respect of any Facility from any member of the Group including under any security, guarantee or indemnity granted by any member of the Group; or

(f) declare to have occurred a default or an event of default under any of the Facilities or enforce any provision for the automatic or accelerated payment or discharge of all or any part of the money and liabilities due, owing or incurred under any Facility, upon or following the occurrence of any default or event of default applicable under the terms thereof; or

(g) except for the Transaction Security and any guarantee provided for in the Finance Documents (or otherwise as expressly permitted under this Agreement), request or take from any member of the Group any new Security, cash collateral, cash cover, guarantee or indemnity of whatever nature in respect of any of the Facilities, fixed security over assets expressed to be subject only to floating security under the Transaction Security or legal assignments of assets subject only to equitable charges or assignments under the Transaction Security (save for Permitted Security); or

(h) (save (i) as required by law and (ii) pursuant to current account netting, auto transfer or any other similar arrangements) exercise any right of set off or combination of accounts against any member of the Group by virtue of or in relation to rights under any of the Facilities; or in respect of reserves on maturity of the relevant contingency; or

(i) initiate or threaten to initiate any Insolvency Proceedings against any member of the Group; or

(j) attach or seek to attach any asset of any member of the Group; or

(k) amend the date for any payments in respect of the Facilities,

**provided that** nothing in the New Finance Documents shall prevent:

(i) payments of principal in respect of the Participating Creditors' Exposures under the Facilities and reduction of any Facility Limit, in each case to the extent expressly permitted under the New Finance Documents; or

(ii) payments of interest, fees and expenses in respect of the Facilities being paid on their due date in accordance with the terms of the Facilities (as amended by this Agreement),

**and further provided that** any Participating Creditor shall be entitled to take any action available to it to recover any amount due to it under the Finance Documents and unpaid other than the taking of any action described in Clause 26.16 ( *Acceleration*) except as contemplated in that Clause.

## SECTION 4
## REPAYMENT, PREPAYMENT AND CANCELLATION

### 11. REPAYMENT

#### 11.1 Repayment of Exposures and reduction of Facility Limits

(a) The Borrowers shall repay the aggregate Exposures of the Participating Creditors under their respective Facilities in instalments by repaying on each Repayment Date an amount which reduces the Base Currency Amount of the outstanding aggregate Exposures under each such Facility by an amount (each such amount, and the amount to be repaid under paragraph (b) below, a " **Repayment Instalment**") such that the amount of all Repayment Instalments up to (and including) that Repayment Date (as a percentage of the aggregate Exposures as at the Reference Date under all Facilities) is equal to the "Cumulative Repayment Amount %" set out opposite that Repayment Date below (and on each Repayment Date the Facility Limit for each Facility will be reduced by the aggregate amount of the Exposures of the Participating Creditors under that Facility that are required to be repaid on that date under this Clause 11.1):

| Repayment Date: | Cumulative Repayment Amount %: |
|---|---|
| 15 December 2009 | 3.18% |
| 15 June 2010 | 4.77% |
| 15 December 2010 | 19.10% |
| 15 June 2011 | 20.69% |
| 15 December 2011 | 33.11% |
| 15 June 2012 | 35.75% |
| 15 December 2012 | 38.39% |
| 15 June 2013 | 46.35% |
| 15 December 2013 | 54.31% |

(b) Each Borrower shall repay the remaining Exposures of Participating Creditors under Facilities in which it is a Borrower in full on the Termination Date.

(c) The Borrowers may not re-borrow any part of a Facility which is repaid as contemplated in this Clause 11.1 ( *Repayment of Exposures and reduction of Facility Limits*), Clause 12 (*Illegality, voluntary prepayment and cancellation*), Clause 13 (*Mandatory prepayment*) or Clause 26.16 (*Acceleration*).

(d) Each repayment and cancellation under this Clause 11.1 ( *Repayment of Exposures and reduction of Facility Limits* ) will reduce the Base Currency Amounts of the Exposures of the Participating Creditors across all Facilities as at the date of the repayment and cancellation rateably.

#### 11.2 Repayment of Loans under Revolving Facilities

Each Borrower which has drawn a Loan under a Revolving Facility shall satisfy its obligations in respect thereof on the last day of its Interest Period by way of a Rollover Loan (except to the extent that repayment or prepayment of such Loan is contemplated in Clause 11.1 ( *Repayment of Exposures and reduction of Facility Limits*), Clause 12 (*Illegality, voluntary prepayment and cancellation*), Clause 13 (*Mandatory prepayment*) or Clause 26.16 (*Acceleration*)).

11.3 **Effect of cancellation and prepayment on scheduled repayments and reductions**

(a) If any of the Exposures of Participating Creditors under the Facilities are prepaid in accordance with Clause 12.2 ( *Voluntary prepayment of Exposures*), Clause 13.1 (*Disposal, Permitted Fundraising and Permitted Securitisation Proceeds and Excess Cashflow* ) (other than in relation to sub-paragraph (b)(iv) thereof), Clause 13.3 ( *Mandatory prepayments: Certificados Bursatiles Reserve* ) or Clause 13.4 (*Mandatory prepayments: Relevant Convertible/Exchangeable Obligations* ), then such prepayment will be deemed to have been applied in reduction of the amount of the Repayment Instalment for the Repayment Dates falling after that prepayment in reduction of the Repayment Instalments in the chronological order of those Repayment Instalments.

(b) If any of the Exposures of Participating Creditors under the Facilities are prepaid in accordance with sub-paragraph (b)(iv) of Clause 13.1 (*Disposal, Permitted Fundraising and Permitted Securitisation Proceeds and Excess Cashflow* ), then such prepayment will be deemed to have been applied in reduction of the amount of the Repayment Instalment for the Repayment Dates falling after that prepayment in the following order:

(i) **first**, in reduction of the Repayment Instalments falling due on or before 31 December 2011, in the chronological order of those Repayment Instalments; and

(ii) **secondly**, following the prepayment in full of all Repayment Instalments falling due on or before 31 December 2011, in the *pro rata* reduction of all remaining Repayment Instalments.

11.4 **Automatic cancellation of unutilised commitments under Core Bank Facilities**

Any part of any Core Bank Facility that was not utilised as at close of business on the Reference Date shall be cancelled with effect from the Effective Date and the commitment of each Participating Creditor under such Core Bank Facility shall be reduced rateably.

## 12. ILLEGALITY, VOLUNTARY PREPAYMENT AND CANCELLATION

12.1 **Illegality**

(a) Any Existing Illegality Clause in an Existing Finance Document will continue in full force and effect in accordance with its terms.

(b) If, at any time, it is or will become unlawful in any applicable jurisdiction for a Participating Creditor to perform any of its obligations as contemplated by the Finance Documents, or to fund, issue or maintain its participation in any Loan:

(i) that Participating Creditor, shall promptly notify the Administrative Agent and the relevant Creditor's Representative upon becoming aware of that event;

(ii) subject to Clause 17.10 (*Replacement of Participating Creditor*), upon the Administrative Agent notifying the Parent and the relevant Creditor's Representative, the commitment of that Participating Creditor under the relevant Facilities will be immediately cancelled (and the Facility Limit applicable to those Facilities will be reduced accordingly); and

(iii) subject to Clause 17.10 (*Replacement of Participating Creditor*), each Borrower shall repay that Participating Creditor's participation in Loans made to that Borrower on the last day of the Interest Period for each such Loan occurring after the Administrative Agent has notified the Parent and the relevant Creditor's Representative or, if earlier, the date specified by the Participating Creditor in the notice delivered to the Administrative Agent and the relevant Creditor's Representative (being no earlier than the last day of any applicable grace period permitted by law).

(c) For the avoidance of doubt, this Clause 12.1 (*Illegality*) shall not apply to a USPP Note and any reference in this Agreement to this Clause 12.1 (*Illegality*) in respect of a USPP Note shall have no effect.

12.2 **Voluntary prepayment of Exposures**

Subject to Clause 12.3 (*Proportionate cancellation and prepayment*), a Borrower may, if it or the Parent gives the Administrative Agent not less than 5 Business Days' (or such shorter period as the Majority Participating Creditors and the Administrative Agent may agree) prior notice, prepay the whole or any part of the Exposures of Participating Creditors under the Facilities in accordance with the terms of the relevant Existing Finance Documents **provided that** in relation to any prepayment of an Exposure under a Revolving Facility, the Facility Limit applicable to that Facility is simultaneously reduced in an equal amount.

12.3 **Proportionate cancellation and prepayment**

Any prepayment under Clause 12.2 (*Voluntary prepayment of Exposures*) must reduce the Base Currency Amounts of the Exposures of the Participating Creditors across all Facilities as at the date of the prepayment rateably (and will reduce the Repayment Instalments in the order set out in Clause 11.3 (*Effect of cancellation and prepayment on scheduled repayments and reductions*)).

13. **MANDATORY PREPAYMENT**

13.1 **Disposal, Permitted Fundraising and Permitted Securitisation Proceeds and Excess Cashflow**

(a) For the purposes of this Clause 13 (*Mandatory Prepayment*):

"**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).

"**Cash Maintenance Threshold**" means $650,000,000 minus unutilised commitments (if any) under any Permitted Liquidity Facilities in place as at the last Business Day of the month ending immediately prior to the day on which the last instalment of any Disposal Proceeds or Permitted Fundraising Proceeds (as the case may be) are prepaid (or would have been required to be prepaid if such Permitted Fundraising Proceeds were not Excluded Fundraising Proceeds).

"**CB Cash Replenishment Amount**" means, for a particular Relevant Prepayment Period, the amount of cash in hand of the Parent on a consolidated basis to be applied by the Parent to the CB Reserve pursuant to paragraph (b) of Clause 13.3 ( *Mandatory prepayments: Certificados Bursatiles Reserve*) 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 Cash Replenishment Certificate**" means a certificate signed by an Authorised Signatory of the Parent setting out the CB Cash Replenishment Amount that the Parent is applying to the CB Reserve in accordance with paragraph (b) of Clause 13.3 ( *Mandatory prepayments: Certificados Bursatiles Reserve*).

"**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 Parent to the CB Reserve pursuant to paragraph (b) of Clause 13.3 (*Mandatory prepayments: Certificados Bursatiles Reserve*) **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 Disposal Proceeds Replenishment Certificate**" means a certificate signed by an Authorised Signatory of the Parent setting out the CB Disposal Proceeds Replenishment Amount that the Parent is applying to the CB Reserve in accordance with paragraph (b) of Clause 13.3 (*Mandatory prepayments: Certificados Bursatiles Reserve*).

"**CB Reserve**" means the reserve created by the Parent 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*).

"**CB Reserve Certificate**" means a certificate signed by a Responsible Officer of the Parent 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*):

(i) the amount of proceeds from the relevant Permitted Fundraising that the Parent 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 Parent 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*) 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.

"**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 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 this 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);

"**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 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 $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, close-out 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 is 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*);

(vi) subject to Clause 13.4(ii), 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* ); 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.

"**Month End Cash in Hand**" means the cash in hand of the Parent on a consolidated basis as at the last Business Day of the month ending immediately prior to the day on which the last instalment of any Disposal Proceeds or Permitted Fundraising Proceeds (as the case may be) are prepaid (or would have been required to be prepaid if such Permitted Fundraising Proceeds were not Excluded Fundraising Proceeds), with such amount being set out in a notice signed by an Authorised Signatory of the Parent and delivered to the Administrative Agent at the same time as the making of any final instalment of a prepayment amount required under Clauses 13.1(b)(i) or (ii). For the avoidance of doubt, the cash in hand of the Parent shall not include any of the following amounts for the period in which they are being held by the Parent

pending application in accordance with the terms of this Agreement: (a) Disposal Proceeds; (b) Permitted Fundraising Proceeds; and (c) Excluded Fundraising Proceeds falling within paragraphs (i), (ii), (v) and (vi) of the definition thereof including, without limitation, any amounts standing to the credit of, or to be applied in accordance with this Agreement to, the CB Reserve.

"**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 Parent.

"**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 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 not greater than the commitments under such Permitted Securitisation at the date of this Agreement) after deducting:

(i) any reasonable 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).

"**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 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).

"**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*); 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*) 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.

"**Shortfall**" means the amount by which the Month End Cash in Hand is less than the Cash Maintenance Threshold.

(b) The Parent shall ensure that the Exposures of Participating Creditors under the Facilities are prepaid in the following amounts at the times and in the order of application contemplated by Clause 13.2 ( *Application of mandatory prepayments*):

(i) the amount of Disposal Proceeds **provided that** the obligation to 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;

(ii) subject to Clause 13.3 (*Mandatory prepayments: Certificados Bursatiles Reserve*) and Clause 13.4 (*Mandatory prepayments: Relevant Convertible/Exchangeable Obligations*), the amount of Permitted Fundraising Proceeds;

(iii) the amount of Permitted Securitisation Proceeds; and

(iv) the amount equal to Excess Cashflow for any Financial Quarter of the Parent,

**provided that**, in the case of sub-clauses (i) or (ii) above, the amount required to be prepaid under this paragraph (b) in relation to the relevant Disposal or Permitted Fundraising (as the case may be) will be reduced by the amount of any Shortfall.

(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 Participating Creditors that a prepayment is not required to be made, upon completion of the Disposal, the Exposures of the relevant Participating Creditors under the relevant Facilities in respect of which that Borrower is the borrower or issuer (or the Holding Company is a holding company of that Borrower) (and for this purpose CEMEX España will be regarded as an issuer of the USPP Notes as well as CEMEX España Finance LLC) 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 Exposures of the relevant Participating Creditors under the relevant Facilities and, subject to paragraph (ii) below, not be required to be applied to reduce the Base Currency Amount of the Exposures of the Participating Creditors across all the Facilities as at the date of prepayment rateably (but will reduce the Repayment Instalments in the order set out in Clause 11.3 (*Effect of cancellation and prepayment on scheduled repayments and reductions*));

(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) of Clause 13.1 (*Disposal, Permitted Fundraising and Permitted Securitisation Proceeds and Excess Cashflow*).

13.2 **Application of mandatory prepayments**

(a) A prepayment made under paragraph (b) of Clause 13.1 ( *Disposal, Permitted Fundraising and Permitted Securitisation Proceeds and Excess Cashflow*), Clause 13.3 (*Mandatory prepayments: Certificados Bursatiles Reserve* ) or Clause 13.4 (*Mandatory prepayments: Relevant Convertible/Exchangeable Obligations* ) shall be paid by, or on behalf of, the Parent to the Creditor's Representative under each Facility and shall be applied to reduce the Base Currency Amount of the Exposures of the Participating Creditors across all Facilities as at the date of the prepayment rateably (and will reduce the Repayment Instalments in the order set out in Clause 11.3 ( *Effect of cancellation and prepayment on scheduled repayments and reductions*).

(b) Exposures of Participating Creditors under the Facilities shall be prepaid at the following times:

(i) in the case of any prepayment relating to the amounts of Disposal Proceeds, Permitted Fundraising Proceeds or Permitted Securitisation Proceeds, promptly upon (and in any event within 30 days of) receipt of those proceeds (or, 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

(ii) in the case of any prepayment relating to an amount of Excess Cashflow, within 30 days of delivery pursuant to Clause 22.1 (*Financial statements*) of the consolidated financial statements of the Parent for the relevant Financial Quarter of the Parent.

13.3 **Mandatory prepayments: Certificados Bursatiles Reserve**

(a) In circumstances where, prior to the Debt Reduction Satisfaction Date, a Permitted Fundraising falling within paragraph (c) of that definition occurs or, after the Debt Reduction Satisfaction Date, a Permitted Fundraising falling within paragraphs (a), (b) or (c) of that definition occurs (which may, for the avoidance of doubt, include a fundraising the proceeds of which are applied in accordance with this Clause 13.3) and any Relevant Existing Financial Indebtedness is due to mature within the particular Relevant Prepayment Period, the Parent shall ensure that any Permitted Fundraising Proceeds (but not excluding, for the purposes of this Clause, Excluded Fundraising Proceeds falling within paragraphs (v) and (vi) (to the extent applicable) of the definition of Excluded Fundraising Proceeds) received by any member of the Group from such Permitted Fundraising, shall be applied as follows:

(i) first, to replenish the cash in hand position of the Parent by deducting and retaining from any such proceeds the amount equal to any Shortfall;

(ii) then, as to the remaining proceeds (if any):

(A) if, during the Relevant Prepayment Period, there is an outstanding Repayment Instalment scheduled to fall due prior

to the maturity of any Relevant Existing Financial Indebtedness in that Relevant Prepayment Period, such proceeds shall first be applied in or towards prepayment of that Repayment Instalment to the Participating Creditors (in whole or in part), within 30 days of receipt of those proceeds. Any further remaining proceeds may then be designated by the Parent, by the issue of a CB Reserve Certificate, to be held in the CB Reserve for the purposes of repaying, prepaying or early redeeming any Relevant Existing Financial Indebtedness due to mature within that Relevant Prepayment Period; or

(B) if, during the Relevant Prepayment Period, any Relevant Existing Financial Indebtedness is due to mature prior to the date of an outstanding Repayment Instalment in that Relevant Prepayment Period, an amount of the proceeds may be designated by the Parent, by the issue of a CB Reserve Certificate, to be held in the CB Reserve for the purposes of repaying, prepaying or early redeeming that Relevant Existing Financial Indebtedness. Any further remaining proceeds shall be applied in or towards prepayment of such outstanding Repayment Instalment scheduled to fall due during that Relevant Prepayment Period (in whole or in part), within 30 days of receipt of such proceeds. To the extent there is any additional Relevant Existing Financial Indebtedness due to mature after the date of such Repayment Instalment but before the end of the Relevant Prepayment Period, an amount of such proceeds following prepayment of that Repayment Instalment may be designated by the Parent, by the issue of a CB Reserve Certificate, to be held in the CB Reserve for the purposes of repaying, prepaying or early redeeming such additional Relevant Existing Financial Indebtedness due to mature within that Relevant Prepayment Period;

(iii) if any such Permitted Fundraising Proceeds remain following prepayment and/or designation in accordance with sub-paragraphs (ii)(A) or (ii)(B) above, such remaining proceeds shall be applied in or towards prepayment of the Exposures of the Participating Creditors within 30 days of receipt of such proceeds; and

(iv) if any such Permitted Fundraising Proceeds are not actually applied to repay, prepay or early redeem Relevant Existing Financial Indebtedness as set out in any CB Reserve Certificate, then those proceeds not so applied shall be applied in or towards prepayment of the Exposures of the Participating Creditors as soon as reasonably practicable (and, in any event, within 10 Business Days) from the originally scheduled maturity date of the Relevant Existing Financial Indebtedness as set out in the CB Reserve Certificate.

(b) In accordance with Clause 12.2 (*Voluntary prepayment of Exposures*), a Borrower may, subject to giving requisite notice required under that Clause, prepay the whole or any part of the Exposures of Participating Creditors under the Facilities. If, during a Relevant Prepayment Period, any amounts designated to the CB Reserve in accordance with paragraph (a) above are applied to voluntarily prepay the Exposures of Participating Creditors pursuant to Clause 12.2 (*Voluntary prepayment of Exposures*) or any amounts are utilised to prepay the Exposures of Participating Creditors from any net proceeds of the issuance of the New Equity Securities or any Permitted Fundraisings occurring after the date of issuance of the New Equity Securities, the Parent may apply any CB Cash Replenishment Amount and/or CB Disposal Proceeds Replenishment Amount to replenish the CB Reserve up to an amount equal to the relevant CB Reserve Shortfall.

(c) The Parent shall, if:

(i) any such Permitted Fundraising Proceeds are to be designated to repay, prepay or early redeem any Relevant Existing Financial Indebtedness in accordance with paragraph (a) above, provide the CB Reserve Certificate to the Administrative Agent (for distribution to the Participating Creditors) as soon as reasonably practicable following calculation of the Month End Cash in Hand and, in any event, within 30 days of receipt of such proceeds;

(ii) any cash in hand of the Parent is to be designated to replenish an existing CB Reserve utilising the CB Cash Replenishment Amount in accordance with paragraph (b) above, provide the CB Cash Replenishment Certificate to the Administrative Agent (for distribution to the Participating Creditors), as soon as reasonably practicable following the determination to apply such cash in hand to the CB Reserve and, in any event, within 30 days of such determination; and/or

(iii) any Disposal Proceeds are to be designated to replenish an existing CB Reserve utilising the CB Disposal Proceeds Replenishment Amount in accordance with paragraph (b) above, provide the CB Disposal Proceeds Replenishment Certificate to the Administrative Agent (for distribution to the Participating Creditors), as soon as reasonably practicable following the determination to apply such Disposal Proceeds to the CB Reserve and, in any event, within 30 days of such determination.

13.4 **Mandatory prepayments: Relevant Convertible/Exchangeable Obligations**

The Parent shall ensure that the amount of any Relevant Convertible/Exchangeable Obligations Proceeds and the Cash Collateral Release Amount (if any) shall be applied as follows:

(a) first, the Relevant Convertible/Exchangeable Obligations Proceeds shall be applied in payment of any premiums arising under or related to any Permitted Put/Call Transaction; and

(b) second, the remaining Relevant Convertible/Exchangeable Obligations Proceeds, together with the Cash Collateral Release Amount (if any), shall be applied in accordance with the other provisions of Clause 13 ( *Mandatory Prepayment*) (to the extent applicable) notwithstanding that such proceeds may constitute Excluded Fundraising Proceeds under paragraph (vi) of the definition thereof.

## 14. RESTRICTIONS

### 14.1 Notices of Cancellation or Prepayment

Any notice of cancellation, prepayment, authorisation or other election given by any Party under Clause 12 ( *Illegality, voluntary prepayment and cancellation*), 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.

### 14.2 Interest and other amounts

Any prepayment under this Agreement (whether voluntary, mandatory, by acceleration or otherwise) shall be made together with accrued interest on the amount prepaid and, subject to (and including) any Break Costs, without premium or penalty.

### 14.3 Prepayment in accordance with Agreement

No Borrower shall repay or prepay all or any part of the Exposures of Participating Creditors under the Facilities or cancel or reduce any Facility Limit except at the times and in the manner expressly provided for in this Agreement.

### 14.4 No reinstatement of Facility Limit

No cancellation of commitments and reduction in a Facility Limit under (or required by) this Agreement may be subsequently reinstated.

### 14.5 Administrative Agent's receipt of Notices

If the Administrative Agent receives a notice under Clause 12 ( *Illegality, voluntary prepayment and cancellation*), it shall promptly forward a copy of that notice or election to either the Parent or the affected Participating Creditor, as appropriate.

**SECTION 5**
**INTEREST AND FEES**

## 15. INTEREST

### 15.1 Calculation and payment of interest

(a) Under each Syndicated Bank Facility and Bilateral Bank Facility:

(i) the rate of interest on each Loan for each Interest Period is the percentage rate per annum determined in accordance with the Existing Finance Documents under which that Loan has been made save that the applicable margin will be the Margin, and such interest is payable to the relevant Creditor's Representative at the times and in the manner specified in those Existing Finance Documents; and

(ii) any facility fee or utilisation fee provided for in the Existing Finance Documents for such facility will be deleted and will cease to accrue after the Effective Date, **provided that** any such fees that have accrued on or prior to the Effective Date will continue to be due and payable in accordance with the provisions of the relevant Existing Finance Documents.

(b) Under each Promissory Note, the rate of interest on the Exposures under that Promissory Note is the percentage rate per annum determined in accordance with that Promissory Note, and such interest is payable to the relevant Participating Creditors at the times, and in the manner, specified in that Promissory Note.

(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 any adjustments to the Margin from time to time under paragraphs (a) to (c) of the definition of Margin and Clause 25 ( *Covenant Reset Date*)) and shall be payable on the 15th day of the last month of each Financial Quarter or (at any time after the date falling three Months after the date of this Agreement) such shorter period as is applicable to the Loans under paragraph (c) or of Clause 15.3 ( *Harmonisation of Interest Periods*), and shall be payable all in the manner and on the timing as more particularly set forth in the USPP Note Agreement.

### 15.2 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 Administrative Agent (acting reasonably). Any interest accruing under this Clause 15.2 ( *Default interest*) shall be immediately payable by the Obligor on demand by the Administrative 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.

(d) To the extent that default interest accrues in respect of any unpaid amount under the Existing Finance Documents, default interest will only accrue under this Clause 15.2 (*Default interest*) in respect of such unpaid amount for an Interest Period to the extent (if any) by which the amount of default interest that would have accrued in respect of such amount under this Clause 15.2 ( *Default interest*) but for this paragraph (d) exceeds the amount of default interest accrued in respect of such unpaid sum during that Interest Period under the Existing Finance Documents.

15.3 **Harmonisation of Interest Periods**

(a) The Parent shall procure that as soon as reasonably practicable after the date of this Agreement the Interest Periods in respect of the Exposures of the Participating Creditors under the Facilities are harmonised such that, subject to paragraph (c) below, each Interest Period begins and ends on or about the 15th day of the last Month of a Financial Quarter and has a duration of three Months (provided that if the current Interest Period of a Loan ends within less than 5 days before 15 September 2009, the Parent may select an Interest Period for the relevant Loan that ends on 15 December 2009).

(b) Each Participating Creditor consents (and hereby notifies the relevant Creditor's Representative of its consent) to the selection by the relevant Obligor (during the first three Months after the Effective Date (or, if the Interest Period applicable to any Loan as at the Effective Date extends beyond 15 September 2009, six Months) of an Interest Period ending on or about the 15 th day of the last Month of the next Financial Quarter if reasonably required to effect the harmonisation contemplated in paragraph (a).

(c) The Parent may, by giving written notice to the Administrative Agent (for distribution by the Administrative Agent to the Creditor's Representatives) at least four Business Days prior to the last day of the then current Interest Period, select Interest Periods of 1 Month for all (but not some) of the Loans. If a selection is made by the Parent under this paragraph (c) then, for each Month ending on or before the next Quarter Date, the Interest Period applicable to all

Loans will be 1 Month (and the relevant Borrower will be deemed to have submitted a selection notice, rollover notice or, as the case may be, utilisation request to that effect in respect of (and in accordance with the terms of) each Facility).

15.4 **Retrospective margin uplift**

The Parent shall pay (or procure to be paid) to the Creditor's Representative under each Facility, on the last day of the first Interest Period to end after the Effective Date in relation to a Facility, for the account of:

(a) each Participating Creditor (other than a USPP Noteholder) with an Exposure under a Facility, additional margin in an amount equal to the difference between:

(i) the aggregate of the facility fee and utilisation fee (in each case, if applicable) and margin component of interest that accrued under that Facility for the account of the Participating Creditors from (and including) 1 August 2009 to (but excluding) the Effective Date; and

(ii) the margin component of interest that would have accrued under that Facility in accordance with Clause 15.1 ( *Calculation and payment of interest*) had the Effective Date occurred on 31 July 2009; and

(b) each USPP Noteholder, additional margin in an amount equal to the difference between:

(i) the aggregate of the fees and interest that accrued under that USPP Note for the account of the USPP Noteholder from (and including) 1 August 2009 to (but excluding) the Effective Date; and

(ii) the interest that would have accrued under that USPP Note in accordance with Clause 15.1 ( *Calculation and payment of interest*) had the Effective Date occurred on 31 July 2009.

16. **FEES**

16.1 **Upfront fee**

The Parent shall pay (or procure to be paid) to the Creditor's Representative under each Facility and the Creditor's Representative shall distribute to the respective Participating Creditor under each Facility, an upfront fee in the amount and at the times agreed in a Fee Letter (and the Administrative Agent shall be authorised to execute on behalf of each Participating Creditor such Fee Letter in substantially the form circulated to the Participating Creditors prior the date of this Agreement).

16.2 **Non-issuance fee**

If, between the date of this Agreement and 30 June 2010, the Parent has not issued common equity securities to persons who are not members of the Group for net cash proceeds of at least $1,000,000,000 (or its equivalent in any other currency) then on 1 July 2010 the Parent shall pay (or procure to be paid) to the Creditor's Representative under each Facility, for the account of each Participating Creditor with an Exposure

under a Facility, a fee in an amount equal to 0.75 per cent. of the amount of that Participating Creditor's Exposure under that Facility as at the Reference Date (payable in the currency of the relevant Exposure) as specified in Part II of Schedule 1 ( *The Original Participating Creditors* ).

16.3 **Administrative Agency fee**

The Parent shall pay to the Administrative Agent (for its own account) an agency fee in the amount and at the times agreed in a Fee Letter.

16.4 **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.

16.5 **Other existing fees**

The Borrowers shall pay all fees payable under the Existing Finance Documents in accordance with their terms (except as such terms are expressly modified by the New Finance Documents).

## SECTION 6
## ADDITIONAL PAYMENT OBLIGATIONS

### 17. TAX GROSS-UP, INCREASED COSTS AND INDEMNITIES

#### 17.1 Tax gross-up

(a) Any tax gross up provisions (and any related mitigation provisions) in the Existing Finance Documents will continue in full force and effect in accordance with their terms.

(b) In addition, in relation to any payments to be made under the New Finance Documents in respect of a Facility, any tax gross-up provisions in the Existing Finance Documents for that Facility will apply to such payments as if the Obligors had been "Obligors", "Borrowers" and/or "Guarantors" (as applicable) and the New Finance Documents had been "Finance Documents" and/or the "Agreement" (as applicable) and the "Agent" had been the "Administrative Agent" for the purposes of those Existing Finance Documents.

(c) In relation to any Facility in respect of which the relevant Existing Finance Documents do not contain a tax gross up provision:

(i) each Obligor shall make all payments to be made by it under the Finance Documents in relation to that Facility without any Tax Deduction, unless a Tax Deduction is required by law.

(ii) 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) under the Finance Documents in relation to that Facility, notify the Administrative Agent accordingly. Similarly, a Participating Creditor shall notify the Administrative Agent on becoming so aware in respect of a payment payable to that Participating Creditor. If the Administrative Agent receives such notification from a Participating Creditor it shall notify the Parent and that Obligor.

(iii) if a Tax Deduction is required by law to be made by an Obligor under the Finance Documents in relation to that Facility, 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 Administrative Agent, upon request, evidence of the payment of the applicable Taxes.

#### 17.2 Increased costs

(a) Any increased costs provisions (and any related mitigation provisions) in the Existing Finance Documents will continue in full force and effect in accordance with their terms.

(b) In addition, in relation to any payments to be made or actions to be taken under the New Finance Documents in respect of a Facility (other than a USPP Note), any increased cost provisions in the Existing Finance Documents for that

Facility will apply to such payments or actions as if the Obligors (other than a Security Provider that is not also a Borrower or a Guarantor) had been "Obligors", "Borrowers" and/or "Guarantors" (as applicable) and the New Finance Documents had been "Finance Documents" or the "Agreement" (as applicable), the Administrative Agent had been the "Agent" and the term "Business Day" had the meaning ascribed to it in this Agreement, in each case for the purposes of those Existing Finance Documents.

(c) In relation to any Facility (other than a USPP Note) in respect of which the relevant Existing Finance Documents do not contain an increased costs provision, subject to paragraph (g) below, the Parent shall, within three Business Days of a demand by the Administrative 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 in relation to that Facility as a result of (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation or (ii) compliance with any law or regulation made after the date of this Agreement.

(d) In this Agreement "**Increased Costs**" means:

(i) a reduction in the rate of return from a Facility or on a Finance Party's (or its Affiliate's) overall capital;

(ii) an additional or increased cost; or

(iii) 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 obligations under the Facility (other than a USPP Note) or funding or performing its obligations under any Finance Document (other than the USPP Note Agreement).

(e) A Finance Party intending to make a claim pursuant to paragraph (c) above shall notify the Administrative Agent of the event giving rise to the claim, following which the Administrative Agent shall promptly notify the Parent.

(f) Each Finance Party shall, as soon as practicable after a demand by the Administrative Agent, provide a certificate confirming the amount of its Increased Costs.

(g) Paragraph (c) above 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 any tax indemnity in the Existing Finance Documents; or

(iii) attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation.

(h) For the avoidance of doubt, this Clause 17.2 (*Increased costs*) shall not apply to a USPP Note and any reference in this Agreement to this Clause 17.2 (*Increased costs*) in respect of a USPP Note shall have no effect.

17.3 **Other existing indemnities**

(a) Any indemnities in the Existing Finance Documents will continue in full force and effect in accordance with their terms.

(b) In addition, in relation to any payments to be made or actions to be taken under the New Finance Documents in respect of a Facility, any indemnities in the Existing Finance Documents for that Facility will apply to such payments or actions as if the Obligors (other than a Security Provider that is not also a Borrower or Guarantor) had been "Obligors", "Borrowers" and/or "Guarantors" (as applicable) and the New Finance Documents had been "Finance Documents" for the purposes of those Existing Finance Documents.

17.4 **Currency Indemnity**

Without limiting any provision in an Existing Finance Document that provides for such an indemnity, to the extent permitted under applicable law, 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:

(a) making or filing a claim or proof against that Obligor; or

(b) 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 (i) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (ii) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

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.

17.5 **Tax indemnity**

(a) Any tax indemnity provisions (and any related mitigation provisions) in the Existing Finance Documents will continue in full force and effect in accordance with their terms.

(b) The Parent shall (within three Business Days of demand by the Administrative Agent) pay (or procure to be paid) 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.

(c) 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) (other than in the case of a USPP Noteholder) 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 is compensated for by an increased payment under Clause 17.1 ( *Tax gross-up*).

(d) A Protected Party making, or intending to make a claim under paragraph (a) above shall promptly notify the Administrative Agent of the event which will give, or has given, rise to the claim, following which the Administrative Agent shall notify the Parent.

(e) A Protected Party shall, on receiving a payment from an Obligor under this Clause 17.5, notify the Administrative Agent.

17.6 **Other indemnities**

(a) Without limiting any provision in an Existing Finance Document that provides for such an indemnity, the Parent shall (or shall procure that an Obligor (other than a Security Provider that is not also a Borrower or Guarantor) 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 31 ( *Sharing among the Finance Parties* );

(iii) funding, or making arrangements to fund, its participation in a Loan requested by a Borrower in a Utilisation Request 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 Loan (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 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. Any third party referred to in this paragraph (b) may rely on this Clause 17.6.

17.7 **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 12.1 ( *Illegality*) or Clauses 17.1 (*Tax gross-up*) to 17.6 (*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.

17.8 **Break Costs**

Without limiting any provision in an Existing Finance Document that provides for the payment of break costs:

(a) each Borrower shall, within three Business Days of demand by a Finance Party, pay to that Finance Party its Break Costs attributable to all or any part of a Loan or Unpaid Sum being paid by that Borrower on a day other than the last day of an Interest Period for that Loan or Unpaid Sum;

(b) each Participating Creditor shall, as soon as reasonably practicable after a demand by the Administrative Agent, provide a certificate confirming the amount of its Break Costs for any Interest Period in which they accrue; and

(c) for the avoidance of doubt, this Clause 17.8 (*Break Costs*) shall not apply to a USPP Note and any reference in this Agreement to this Clause 17.8 (*Break Costs*) in respect of a USPP Note shall have no effect.

17.9 **Indemnity to the Administrative Agent and Creditor's Representative**

The Parent shall promptly indemnify the Administrative Agent and any Creditor's Representative (and any of their Affiliates that acts as their agent, sub-agent or delegate in connection with a Finance Document), against any cost, loss or liability reasonably incurred by the Administrative Agent or such Creditor's Representative (or any of their Affiliates that acts as its agent, sub-agent or delegate in connection with a Finance Document) (each 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.

Any third party referred to in this Clause 17.9 can rely on this Clause 17.9.

17.10 **Replacement of Participating Creditor**

(a) If at any time an Obligor (other than a Security Provider that is not also a Borrower or a Guarantor) becomes obliged to repay any amount in accordance with Clause 12.1 (*Illegality*) or to pay additional amounts pursuant to Clause 17.2 ( *Increased costs*) or Clause 17.1 (*Tax gross-up*) to any Participating Creditor in excess of amounts payable to the other Participating Creditors generally then the Parent may, on 10 Business Days' prior written notice to the Administrative Agent and such Participating Creditor, replace (or procure the replacement of) such Participating Creditor by requiring such Participating Creditor to (and such Participating Creditor shall) transfer pursuant to Clause 27 (*Changes to the Participating Creditors*) all (and not part only) of its rights and obligations under the Finance Documents to a Participating Creditor or other person (a "**Replacement Participating Creditor**") selected by the Parent, and which is acceptable to the Administrative Agent (acting reasonably) and which confirms its willingness to assume and does assume all the obligations of the transferring Participating Creditor (including the assumption of the transferring Participating Creditor's participations on the same basis as the transferring Participating Creditor) for a purchase price in cash payable at the time of transfer equal to the outstanding principal amount of such Lender's participation in the outstanding Utilisations and all accrued interest and/or fees, Break Costs and other amounts payable in relation thereto under the Finance Documents.

(b) The replacement of a Participating Creditor pursuant to this Clause shall be subject to the following conditions:

(i) neither the Administrative Agent nor the Participating Creditor shall have any obligation to the Parent to find a Replacement Participating Creditor; and

(ii) in no event shall the Participating Creditor replaced under this Clause 17.10 be required to pay or surrender to such Replacement Participating Creditor any of the fees received by such Participating Creditor pursuant to the Finance Documents.

17.11 **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.

17.12 **No double-recovery**

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 17.

## 18. 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 ( **provided that** no Finance Party may recover more than once under the Finance Documents for the same portion of any cost, loss or liability).

## 19. COSTS AND EXPENSES

19.1 **Transaction expenses**

The Parent shall promptly on demand pay (or procure to be paid) the Administrative 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.

19.2 **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 Administrative Agent and the Security Agent for the amount of all costs and expenses (including legal fees) reasonably incurred by the Administrative 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.

19.3 **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 Participating 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.

19.4 **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.

19.5 **Preservation of existing costs and expenses provisions**

The obligations in this Clause 19 are in addition to any other provisions relating to costs and expenses in the Existing Finance Documents ( **provided that** no Finance Party may recover more than once under the Finance Documents for the same portion of any cost or expense).

**SECTION 7**
**GUARANTEE**

20. **GUARANTEE AND INDEMNITY**

20.1 **Guarantee and indemnity**

Each Guarantor (other than CEMEX, Inc. and (unless it has granted a guarantee pursuant to Clause 24.32 ( *Conditions subsequent*)) CEMEX Australia Holdings) 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) indemnifies each Finance Party immediately on demand against any cost, loss or liability suffered by that Finance Party if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal or is otherwise discharged by the operation of Clause 7.2 ( *Distressed Disposals*) of the Intercreditor Agreement. The amount of the cost, loss or liability shall be equal to the amount which that Finance Party would otherwise have been entitled to recover.

20.2 **Continuing Guarantee**

This 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.

20.3 **Reinstatement**

If any payment by any Obligor or any discharge given by a Finance Party (whether in respect of the obligations of any Obligor or any security for those obligations or otherwise) is avoided or reduced as a result of insolvency or any similar event:

(a) the liability of each Obligor (other than a Security Provider that is not also a Borrower or a Guarantor) shall continue as if the payment, discharge, avoidance or reduction had not occurred; and

(b) each Finance Party shall be entitled to recover the value or amount of that security or payment from each Obligor (other than a Security Provider that is not also a Borrower or a Guarantor), as if the payment, discharge, avoidance or reduction had not occurred.

20.4 **Waiver of defences**

The obligations of each Guarantor (other than CEMEX, Inc. and (unless it has granted a guarantee pursuant to Clause 24.32 ( *Conditions subsequent*)) CEMEX Australia Holdings) under this Clause 20 will not be affected by an act, omission, matter or thing which, but for this Clause 20, would reduce, release or prejudice any of its obligations under this Clause 20 (without limitation and whether or not known to it or any Finance Party) including:

(a) any time, waiver or consent granted to, or composition with, any other Obligor or other person;

(b) 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;

(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 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;

(d) 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;

(e) any amendment (however fundamental) or replacement of a Finance Document or any other document or security;

(f) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security;

(g) any insolvency or similar proceedings;

(h) the existence of any claim, set-off or other right which any of the Guarantors may have at any time against any Obligor, the Administrative Agent, any Participating Creditor or any other person, whether in connection with this transaction or with any unrelated transaction;

(i) 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 Participating Creditors, the Administrative 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;

(j) any change in the name, purposes, business, capital stock (including the ownership thereof) or constitution of any Obligor;

(k) any other act or omission to act or delay of any kind by any Obligor, the Administrative Agent, the Participating 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.

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 CEMEX, Inc. and (unless it has granted a guarantee pursuant to Clause 24.32 ( *Condition Subsequent*)) CEMEX Australia Holdings) 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 20 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 CEMEX, Inc. and (unless it has granted a guarantee pursuant to Clause 24.32 ( *Conditions subsequent*)) CEMEX Australia Holdings) 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 Administrative Agent and the Participating Creditors may at any time and from time to time, upon or without any terms or conditions and in whole or in part, (a) 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 20 shall apply to the such obligations as so changed, extended, renewed or altered; (b) exercise or refrain from exercising any rights against any Obligor or others (including the Guarantors) or otherwise act or refrain from acting; (c) 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 Administrative Agent and the Participating Creditors and Guarantors; (d) 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 Administrative Agent and the Participating 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; (e) 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 (f) 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. Each Guarantor incorporated in Mexico expressly waives, irrevocably and unconditionally:

(a) 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;

(b) 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;

(c) 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;

(d) 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, the *Código Civil Federal* of Mexico and the *Código Civil* of each State of the Mexican Republic and the Federal District of Mexico.

20.5 **Immediate recourse**

Each Guarantor (other than CEMEX, Inc. and (unless it has granted a guarantee pursuant to Clause 24.32 ( *Conditions subsequent*)) CEMEX Australia Holdings) 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 20. This waiver applies irrespective of any law or regulation or any provision of a Finance Document to the contrary.

Each Guarantor also waives any right to be sued jointly with other Guarantors and to share liability resulting from any claim against it.

20.6 **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 20,

**provided that** the operation of this Clause 20.6 shall not be deemed to create any Security.

20.7 **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 Administrative 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:

(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; and/or

(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.

20.8 **Additional security**

This 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.

20.9 **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. and (unless it has granted a guarantee to Clause 24.32 (*Conditions subsequent*)) CEMEX Australia Holdings) under this Clause 20 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 20, then, notwithstanding any other provision hereof to the contrary, the amount of such liability shall, without any further action by such Guarantor, any Participating Creditor, the Administrative 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.

20.10 **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 Participating 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 Administrative Agent made at the request of the Participating Creditors.

(c) The obligations of each of the Guarantors under this Clause 20 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. or (unless it has granted a guarantee pursuant to Clause 24.32 ( *Conditions subsequent*)) CEMEX Australia Holdings) 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 20.10 (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 Administrative Agent, and the Participating Creditors that such obligations which are to be guaranteed by the Guarantors (other than CEMEX, Inc. or (unless it has granted a guarantee pursuant to Clause 24.32 ( *Conditions subsequent*)) CEMEX Australia Holdings) pursuant to this Clause 20 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 Administrative Agent, or allowing the claim of the Administrative Agent, for the benefit of the Administrative Agent, and the Participating 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 Administrative Agent and/or the Participating 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 20, to the extent permitted by applicable law.

20.11 **Dutch guarantee limitation**

Notwithstanding any other provision of this Clause 20 ( *Guarantee and indemnity*) the guarantee, indemnity and other obligations of any Dutch Obligor expressed to be assumed in this Clause 20 ( *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.

20.12 **Spanish Guarantee limitation**

Notwithstanding any other provision of this Clause 20 ( *Guarantee and indemnity*) the guarantee, indemnity and other obligations of any Obligor incorporated in Spain expressed to be assumed in this Clause 20 ( *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 81 of the 1989 Spanish Corporations Act (*Ley de Sociedades Anónimas*) or Article 40.5 of the 1995 Spanish Limited Liability Companies Act ( *Ley de Sociedadas de Responsabilidad Limitada* ).

20.13 **Swiss guarantee limitation**

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.

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).

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).

In respect of the Restricted Obligations, the Swiss Obligor 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 35 per cent. (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 Security Agent 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 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 17 of this Agreement ( *Tax Gross-Up, Increased Costs 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.

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.

If the enforcement of the Restricted Obligations would be limited due to the effects referred to in this Clause 20.13 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*).

## SECTION 8
## REPRESENTATION, UNDERTAKINGS AND EVENTS OF DEFAULT

### 21. REPRESENTATIONS

Each Obligor makes the representations and warranties set out in this Clause 21 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 21.9 (*No default*) to 21.11 (*Financial statements*), 21.13 (*No proceedings pending or threatened*) to, 21.17 (*Environmental Claims*), 21.20 (*Accuracy of Exposures and Existing Financial Indebtedness* ) 21.21 (*Group Structure Chart*), 21.24 (*Governmental Regulations*) to 21.27 (*Pension, Welfare and other Similar Plans*); and

(b) no representation or warranty is made by CEMEX Materials LLC, CEMEX, Inc. or (unless it has acceded as an Additional Guarantor) CEMEX Australia Holdings in respect of the representations and warranties set out in Clauses 21.10 ( *No misleading information*), 21.15 (*Material Adverse Change*) to 21.17 (*Environmental Claims*), 21.20 (*Accuracy of Exposures and Existing Financial Indebtedness* ) to 21.24 (*Governmental Regulations*), 21.26 (*Treasury Transactions*) and, in the case of CEMEX Australia Holdings only, 21.27 ( *Pension, Welfare and other similar plans*).

### 21.1 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.

### 21.2 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.

### 21.3 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, 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.

21.4 **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, the Finance Documents to which it is a party and the transactions contemplated by those Finance Documents.

21.5 **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.

21.6 **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.

21.7 **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 Participating Creditor (other than as disclosed under each relevant Existing Finance Document 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.

21.8 **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 New 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(e) 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 Administrative Agent or any Participating 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 Administrative Agent or any Participating Creditor, that the Administrative Agent or such Participating 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.

21.9 **No default**

(a) No Default or Event of Default (save, for the avoidance of doubt, any such Default or Event of Default that is waived under Clause 8.1 (*Waiver of certain existing defaults*) on the Effective Date) is continuing or might reasonably be expected to result from the making of any Rollover Loan.

(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.

21.10 **No misleading information**

(a) Any factual information provided 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 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 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 New 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.

21.11 **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 Administrative Agent in writing prior to the date of this Agreement.

(c) For the purposes of any repetition of the representation contained in paragraphs (a) and (b) of this Clause 21.11 (pursuant to Clause 21.28 (*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.

21.12 **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 New Finance Document constitutes a direct, unconditional and unsubordinated obligation of each Obligor which is a party to such Finance Document.

21.13 **No proceedings pending or threatened**

Except as disclosed in Schedule 8 (*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.

21.14 **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).

21.15 **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.

21.16 **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.

21.17 **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.

21.18 **No Immunity**

In any proceedings taken in its jurisdiction of incorporation in relation to any New 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.

21.19 **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.

21.20 **Accuracy of Exposures and Existing Financial Indebtedness**

The Exposures of the Participating Creditors under the Facilities as at close of business on the Reference Date are correctly described in Part II of Schedule 1 (*The Original Participating Creditors*) and the list of Existing Financial Indebtedness contained in Schedule 10 ( *Existing Financial Indebtedness*) is, in all material respects, a true, complete and accurate list of all the Group's existing Financial Indebtedness as at the date of this Agreement.

21.21 **Group Structure Chart**

The Group Structure Chart is true, complete and accurate in all material respects.

21.22 **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.

21.23 **Shares**

(a) The shares of any member of the Group which are 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 (other than in the case of CEMEX Trademarks Holding Ltd. (until such time as it accedes as an Additional Security Provider). 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 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) 0.3602% of the issued share capital, being shares owned by Subsidiaries of CEMEX España; and

(B) 0.1716% 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, S.A. de C.V.), the single share held by a minority shareholder that is a member of the Group;

(iv) in the case of CEMEX México, S.A. de C.V., 0.1245% of the issued share capital, being shares owned by CEMEX, Inc.; and

(v) in the case of CEMEX Concretos, S.A. de C.V., 0.0357% of the issued share capital, being shares owned by CEMEX, Inc. and 0.0131%, being shares owned by third parties.

21.24 **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.

21.25 **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 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 17 ( *Tax gross-up increased costs and indemnities*) or Clause 18 (*Stamp Taxes*).

21.26 **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 15 ( *Hedging Parameters*).

21.27 **Pension, Welfare and other Similar Plans**

No steps have been taken to terminate any Pension Plan, and no contribution failure has occurred with respect to any Pension 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 which would reasonably be expected to result in the incurrence by any Obligor, any of its Subsidiaries, or any ERISA Affiliates of any liability, fine or penalty (other than liabilities incurred in the ordinary course of maintaining the Pension Plan), which would have or be reasonably likely to have a Material Adverse Effect. No Obligor, nor any of its Subsidiaries, has any contingent liability with respect to any post-retirement benefit under a Welfare Plan subject to ERISA which would reasonably be expected to have a Material Adverse Effect, other than liability for continuation coverage described in Part 6 of Title 1 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 or as required under any mandatory retirement fund laws.

21.28 **Times at which representations are made**

(a) All the representations and warranties in this Clause 21 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 date of each Utilisation Request and 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.

## 22. INFORMATION UNDERTAKINGS

The undertakings in this Clause 22 remain in force from the Effective Date for so long as any Participating Creditor has any Exposure under the Finance Documents.

### 22.1 Financial statements

The Parent shall supply to the Administrative Agent (for distribution to the Participating 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 Participating Creditors (acting reasonably) by KPMG Cardenas Dosal, S.C. or other independent public accountants of recognised standing acceptable to the Majority Participating Creditors, together with (i) a certificate of such accounting firm to the Participating 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.

22.2 **Compliance Certificate**

(a) The Parent shall supply to the Administrative Agent (for distribution to the Participating Creditors), with each set of consolidated financial statements delivered pursuant to paragraph (a) of Clause 22.1 ( *Financial statements*) above and each set of consolidated financial statements delivered pursuant to paragraph (f) of Clause 22.1 ( *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 23 ( *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 22.1 ( *Financial statements*), the Parent shall provide to the Administrative Agent (for distribution to the Participating Creditors), by no later than 180 days after the end of the relevant Financial Year, a letter (in a form approved by the Administrative 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 Administrative Agent (for distribution to the Participating Creditors), with each set of consolidated financial statements delivered under paragraphs (a) and (f) of Clause 22.1 ( *Financial statements*) in respect of Financial Quarters of the Parent, a certificate signed by an Authorised Signatory of the Parent setting out (in reasonable detail) computations as to Excess Cashflow for the relevant Financial Quarter of the Parent.

22.3 **Requirements as to financial statements**

(a) Each set of financial statements delivered by the Parent pursuant to Clause 22.1 ( *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 22.1 (*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 22.1 ( *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, in relation to any set of financial statements, it notifies the Administrative 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 22.3, its auditors deliver to the Administrative 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 Administrative Agent, to enable the Participating Creditors to determine whether Clause 23 (*Financial covenants*) has been complied with, to determine the amount of any prepayments to be made under paragraph (b)(iv) of Clause 13.1 ( *Disposal, Permitted Fundraising and Permitted Securitisation Proceeds and 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 the Parent (or CEMEX España or a relevant Obligor, as the case may be) 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 Parent (or CEMEX España or a relevant Obligor, as the case may be) and the Administrative Agent (acting on the instructions of the Majority Participating Creditors) shall, at the Parent's (or CEMEX España or a relevant Obligor, as the case may be) request, negotiate in good faith with a view to agreeing such amendments to the financial covenants in Clause 23 (*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 Participating Creditors protection equivalent to that which would have been enjoyed by them had the (or CEMEX España or a relevant Obligor, as the case may be) Parent 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 Administrative Agent and the Parent (or CEMEX España or a relevant Obligor, as the case may be) subject to the consent of the Majority Participating Creditors. If no such agreement is reached within 90 days of the Parent's (or CEMEX España or a relevant Obligor, as the case may be) request, the Parent (or CEMEX España or a relevant Obligor, as the case may be) will remain subject to the obligation to deliver the information specified in paragraph (b) of this Clause 22.3 and the financial covenants in Clause 23 (*Financial covenants*) and the financial ratios to calculate the Margin shall be based on the information delivered.

22.4 **Liquidity forecast**

No later than the thirtieth day in each calendar month, the Parent shall supply to the Administrative Agent (in sufficient copies for all the Participating Creditors, if the Administrative 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 Administrative Agent as a condition precedent under paragraph 4(e) of Part I of Schedule 2 (*Conditions precedent*).

22.5 **Information: miscellaneous**

The Parent shall supply to the Administrative Agent (for distribution to the Participating 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 Administrative Agent (or any Participating Creditor through the Administrative 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 24.11 (*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 22.4 ( *Liquidity forecast*), an updated list of the details of the Existing Financial Indebtedness in substantially the same format as Schedule 10 ( *Existing Financial Indebtedness* ) and an updated list of Excluded Positions, in substantially the same format as Annex 1 ( *Excluded Positions*) to Schedule 15 (*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; and

(h) on the same date on which the liquidity forecast is provided pursuant to Clause 22.4 ( *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.

22.6 **Notification of Default**

(a) Each Obligor shall notify the Administrative 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 Administrative Agent, the Parent shall supply to the Administrative 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).

22.7 **"Know your client" checks**

(a) Each Obligor shall promptly upon the request of the Administrative Agent or any Participating Creditor, and each Participating Creditor shall promptly upon the request of the Administrative Agent, supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Administrative Agent (for itself or on behalf of any Participating Creditor) or any Participating Creditor (for itself or on behalf of any prospective New Participating Creditor) in order for the Administrative Agent, such Participating Creditor or any prospective New Participating 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 Participating Creditor will have no obligation towards the Administrative 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 Administrative Agent, notify the Administrative Agent (which shall promptly notify the Participating Creditors) of its intention to request that one of its Subsidiaries becomes an Additional Guarantor or Additional Security Provider pursuant to Clause 28 ( *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 Administrative Agent or any Participating Creditor supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Administrative Agent (for itself or on behalf of any Participating Creditor) or any Participating Creditor (for itself or on behalf of any prospective New Participating Creditor) in order for the Administrative Agent, such Participating Creditor or any prospective New Participating 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.

22.8 **Appointment of financial adviser**

(a) If, following receipt of any information requested under paragraph (e) of Clause 22.5 ( *Information: miscellaneous* ), the Majority Participating 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 Participating 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).

22.9 **Permitted Liquidity Facilities**

The Parent shall notify the Administrative Agent, on or before the date on which the next succeeding liquidity forecast is provided under Clause 22.4 (*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.

22.10 **Notification of Margin adjustment**

On 30 June 2010, the Parent will give notice to the Administrative Agent (for distribution to the Creditor's Representatives) confirming whether any adjustment to the Margin is required pursuant to paragraph (a) of the definition of Margin.

22.11 **Confirmation as to public information**

The Parent will, by notice in writing to the Administrative Agent at the same time as any information is delivered to the Administrative Agent under the Finance Documents, confirm whether that information is publicly available information or not and any Participating Creditor that is unable to receive non-publicly available information will be able to elect, by notice in writing to the Administrative Agent, not to receive any information confirmed by the Parent to be non-publicly available information.

23. **FINANCIAL COVENANTS**

23.1 **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) (and, solely for the purposes of paragraph (c) of Clause 23.2 ( *Financial condition*), 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 Parent under Applicable GAAP of the Parent 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 (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 Parent and its consolidated Subsidiaries relating to Consolidated Funded Debt of such persons, (2) any amortisation 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 amortisation of deferred financing and debt issuance costs), (3) the net costs under Treasury Transactions in respect of interest rates (but excluding amortisation 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 Parent. 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.

"**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 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, (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, (a) 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 Subordinated Optional Convertible Securities (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 Parent or any member of the Group pending application in accordance with the terms of this 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.

"**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 (a) operating income ( *Utilidad de Operacion*), and (b) 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) (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 Parent or any of its Subsidiaries under such lease shall be included in EBITDA) and (ii) if at any time during such applicable period the Parent 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 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 clause (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; 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 the cash on hand of the Parent on a consolidated basis on the last day of the period and the amount of any unutilised commitments under any Permitted Liquidity Facility on the last day of the period exceed $650,000,000. For the avoidance of doubt, the cash in hand of the Parent for the purposes of calculating Excess Cashflow shall not include any amounts falling within paragraphs (i), (ii), (v) and (vi) of the definition of Excluded Fundraising Proceeds including, without limitation, any amounts standing to the credit of, or to be applied in accordance with this Agreement to, the CB Reserve.

"**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).

"**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.

23.2 **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** |
|---|---|
| 30 June 2010 | 1.75: 1 |
| 31 December 2010 | 1.75: 1 |
| 30 June 2011 | 1.75: 1 |
| 31 December 2011 | 1.75: 1 |
| 30 June 2012 | 1.75: 1 |
| 31 December 2012 | 1.75: 1 |
| 30 June 2013 | 2.00: 1 |
| 31 December 2013 | 2.00: 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 |
|---|---|
| 30 June 2010 | 7.75: 1 |
| 31 December 2010 | 7.75: 1 |
| 30 June 2011 | 7.75: 1 |
| 31 December 2011 | 7.00: 1 |
| 30 June 2012 | 6.50: 1 |
| 31 December 2012 | 5.75: 1 |
| 30 June 2013 | 5.00: 1 |
| 31 December 2013 | 4.25: 1 |

(c) *Capital Expenditure*: The aggregate Capital Expenditure of the Group in respect of any Financial Year specified in column 1 below shall not exceed the amount set out in column 2 below opposite that Financial Year (in each case, reduced by the amount of any Permitted Joint Ventures falling within paragraph (b)(iii)(2) of the definition thereof in that Financial Year):

| Column 1<br>Financial Year ending | Column 2<br>Amount |
|---|---|
| 31 December 2009 | $600,000,000 |
| 31 December 2010 | $ 700,000,000 |
| Each Financial Year thereafter | $ 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.

23.3 **Financial testing**

The financial covenants set out in Clause 23.2 (*Financial condition*) shall be tested semi-annually by reference to the Parent's consolidated financial statements delivered pursuant to Clause 22.1 (*Financial statements*) and/or each Compliance Certificate delivered pursuant to Clause 22.2 (*Compliance Certificate*).

23.4 **Accounting terms**

All accounting expressions which are not otherwise defined herein shall have the meaning ascribed thereto in Applicable GAAP of the Parent.

24. **GENERAL UNDERTAKINGS**

The undertakings in this Clause 24 remain in force from the Effective Date for so long as any Participating Creditor has any Exposure under the Finance Documents.

24.1 **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 Administrative 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.

24.2 **Preservation of corporate existence**

Subject to Clause 24.7 (*Merger*), each Obligor shall (and the Parent shall ensure that each of its Material Subsidiaries will), preserve and maintain its corporate existence and rights.

24.3 **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.

24.4 **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 shall (and shall procure that each of its Subsidiaries will) comply with ERISA and laws relating to IMSS, INFONAVIT or under other mandatory pension or retirement fund laws and will ensure that the levels of contribution to pension schemes are and continue to be sufficient to comply 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.

24.5 **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 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 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 24.9 (*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 6 ( *Existing Security and Quasi-Security*) (or any replacement of Security or Quasi-Security in accordance with paragraph 3 of Schedule 15 ( *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;

(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 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 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*), 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 Parent 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 Parent and its Subsidiaries (taken as a whole) not in excess of $500,000,000.

24.6 **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 a Permitted Transaction.

24.7 **Merger**

(a) Subject to paragraph (b) of this Clause 24.7, unless it has obtained the prior written approval of the Majority Participating Creditors, no Obligor shall (and the Parent shall ensure that none of its Subsidiaries will) enter into any amalgamation, demerger, merger, *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; or (iii) 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 Participating 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 24.7 (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.

24.8 **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 (save (except in the case of the Parent which shall in no event cease or substantially change its business) unless 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).

24.9 **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.

24.10 **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.

24.11 **Environmental Claims**

The Parent shall inform the Administrative 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.

24.12 **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*)).

24.13 **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.

24.14 **Payment restrictions affecting Subsidiaries**

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:

(a) 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

(b) 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 24.14.

The provision of paragraphs (a) and (b) 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; and

(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.

24.15 **Notification of adverse change in Ratings**

The Parent shall promptly notify the Administrative Agent of any change in its Ratings or Outlook.

24.16 **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.

24.17 **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.

24.18 **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.

24.19 **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 24:

(i) intra-Group loans permitted under Clause 24.20 ( *Loans or credit*);

(ii) any Permitted Reorganisation or Permitted Transaction.

24.20 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.

24.21 **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.

24.22 **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.

(b) Paragraph (a) above does not apply to:

(i) a Permitted Distribution; or

(ii) a Permitted Transaction (other than one referred to in paragraph (c) of the definition of that term).

24.23 **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) outstanding 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.

(c) For the avoidance of doubt, 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 shall not be restricted by this Clause 24.23.

24.24 **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.

24.25 **Amendments**

(a) No Obligor shall (and the Parent shall ensure that no member of the Group will) amend, vary, novate, supplement, supersede, waive or terminate any term of an Existing Finance Document or any other document delivered to the Administrative Agent pursuant to Clause 5 ( *Initial conditions precedent*) or Clause 28 (*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 an Existing Finance 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 other Participating Creditors;

(ii) in the case of any 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 Participating 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 falling within paragraph (a) of the definition thereof ( **provided that** nothing in this Clause 24.25 will affect the ability of members of the Group to enter into a Permitted Fundraising); and

(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 Participating Creditors (taken as a whole).

(b) The Parent shall promptly supply to the Administrative Agent a copy of any document relating to any of the matters referred to in paragraphs (i) to (iii) above.

24.26 **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 15 (*Hedging Parameters*).

24.27 **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 Administrative 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.

(c) The Parent will ensure that, under the Transaction Security Documents, save as a result of the operation of Clause 8 ( *Automatic Release of Transaction Security)* of the Intercreditor Agreement the Participating Creditors have Transaction Security over (1) all of the shares in each entity that is a direct or indirect shareholder in CEMEX España (except (A) CEMEX International Finance Company, CEMEX Trading Caribe Ltd, CEMEX Trading LLC, Sunbelt Trading, S.A. and Sunbelt-Re Limited; (B) 0.4326% of the shares in CEMEX Trademarks Holding Ltd. held by CEMEX, Inc. (C) 0.1245% of the shares in CEMEX México, S.A. de C.V. held by CEMEX, Inc.) (D) 0.0357% of the shares in CEMEX Concretos, S.A. de C.V. held by CEMEX, Inc. and 0.0131% of the shares in CEMEX Concretos, S.A. de C.V., being shares owned by third parties; and (E) 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, S.A. de C.V.) and (2) all of the shares in CEMEX España (except (A) 0.3602% of the issued share capital, being shares owned by Subsidiaries of CEMEX España; and (B) 0.1716% 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 existing Transaction Security 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 existing Transaction Security in such jurisdiction, in form and substance satisfactory to the Administrative Agent (acting reasonably).

24.28 **Equity Issuance and Securities Demand**

(a) The Parent shall engage, on the Effective Date or promptly thereafter, one or more banks (collectively, the " **Bank**") to privately place or publicly sell common equity (including in the form of American Depositary Shares) or, with the prior approval of the Majority Participating Creditors, equity-linked securities issued by a member of the Group that are linked solely to equity securities of the Parent otherwise entitled to be issued under this Agreement and that does not result in the issuance of any equity securities by such member of the Group (the "**Securities**") for net cash proceeds of at least US$1,000,000,000 (or its equivalent in any other currency) to persons other than members of the Group. The Parent shall take actions reasonably necessary so that the Bank can, as soon as practicable after the Effective Date, offer and sell, in one or more offerings or placements, the Securities.

(b) If, during the period from the Effective Date to 30 June 2010, the Parent has not issued Securities to persons other than members of the Group for net cash proceeds of at least $1,000,000,000 (or its equivalent in any other currency) then, upon written notice given to the Parent between 1 May 2010 and 1 September 2010 by a Participating Creditor or Participating Creditors the Base Currency Amount of whose Exposures under the Facilities at that time aggregate not less than 25 per cent. of the Base Currency Amount of all the Exposures of the Participating Creditors under all of the Facilities at that time (a "**Securities Demand**"), at any time and from time to time during the period from 1 July 2010 until 31 December 2010, the Parent will cause the issuance and sale of Securities or convertibles and/or debt securities in a maximum amount (unless the Parent, at its sole discretion, determines to increase such amount) such that the net cash proceeds from such issuance are equal to $1,000,000,000 less the amount of net cash proceeds (if any) received by a member of the Group in respect of any issue of Securities or convertibles and/or debt securities carried out during the period from the date of this Agreement to 30 June 2010; **provided that** (i) the Securities or convertibles and/or debt securities will be issued pursuant to documentation which shall contain such terms and conditions as are typical and customary for similar financings and in compliance with applicable law; and (ii) all other arrangements with respect to the Securities or convertibles and/or debt securities shall be reasonably

satisfactory in all respects to the Bank and the Parent in light of the then prevailing market conditions and shall not have been objected to by the Majority Participating Creditors; and (iii) the Parent shall give prior written notice of the terms of the proposed issuance to the Administrative Agent; and (iv) a Securities Demand cannot be given to the Parent on or prior to 1 July 2010 unless there is sufficient evidence that the Parent will not issue Securities for net cash proceeds of at least $1,000,000,000 (or its equivalent in any other currency) prior to that date.

(c) If during the period from 30 September 2010 to (and including) the Cut-off Date, the Group has not received net proceeds equal to or in excess of the New Issuance Threshold from the issuance of Equity Securities then, in addition to the change to the Margin commencing from (and including) the Cut-off Date as provided in paragraph (d) of the definition of Margin, upon written notice delivered to the Parent at any time during the Additional Securities Demand Notice Delivery Period by a Participating Creditor or Participating Creditors the Base Currency Amount of whose Exposures under the Facilities at the time aggregate not less than 25 per cent. of the Base Currency Amounts of all the Exposures of the Participating Creditors under all of the Facilities at that time (an " **Additional Securities Demand**"), at any time and from time to time during the Additional Securities Demand Execution Period, the Parent shall, subject to paragraph (f) of this Clause 24.28, cause the issuance and sale of, or shall cause another member of the Group to cause the issuance and sale of, Additional Securities Demand Securities in an amount such that the aggregate net proceeds of such issuance(s), when taken together with net proceeds from any issuance of Additional Securities Demand Securities since the Cut-off Date, are at least equal to the New Issuance Shortfall.

(d) Notwithstanding any other provision of this Agreement, net proceeds in an aggregate amount equal to the New Issuance Shortfall received from the issuance of any Additional Securities Demand Securities during the Additional Securities Demand Execution Period as a result of the delivery of an Additional Securities Demand shall be applied:

(i) firstly to replenish the cash in hand position of the Parent by deducting and retaining from any such proceeds an amount equal to any Shortfall; and

(ii) then, as to any remaining proceeds, in or towards prepayment of the Exposures of the Participating Creditors promptly following the replenishment referred to in sub-paragraph (i) above and in any event within 30 days of receipt of such proceeds.

(e) For the avoidance of doubt, any proceeds received by any member of the Group other than those envisaged under paragraph (d) of this Clause 24.28 will be utilised in accordance with the relevant provisions of Clause 13 ( *Mandatory Prepayment*) and not paragraph (d) of this Clause 24.28.

(f) After receipt of an Additional Securities Demand, the requirement on the Parent or any member of the Group in paragraph (c) of this Clause 24.28 above to cause the issuance and sale of Additional Securities Demand Securities shall be subject to:

(i) the Additional Securities Demand Securities being issued pursuant to documentation which contains such terms and conditions as are typical and customary for similar issuances of the same type of securities and in compliance with applicable law;

(ii) all other arrangements with respect to the Additional Securities Demand Securities being reasonably satisfactory in all respects to the Parent and any financial institution(s) engaged by the Parent for the purpose of such issuance in light of the then prevailing market conditions and such arrangements shall not have been objected to by the Majority Participating Creditors; and

(iii) the Parent giving prior written notice of the terms of the proposed issuance to the Administrative Agent.

24.29 **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 Administrative Agent confirming that this is the case).

24.30 **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.

24.31 **Margin regulations**

No Borrower shall use any part of the proceeds of the Exposures of the Participating Creditors for any purpose which would result in any violation (whether by any Borrower, the Administrative Agent or the Participating 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).

24.32 **Conditions subsequent**

(a) The Parent undertakes to procure that if, as at 1 January 2010 (or, if the purchaser under the SPA and CEMEX España have agreed to extend the termination date of the SPA to 31 January 2010, 1 February 2010), CEMEX Australia Holdings is still a member of the Group, CEMEX Australia Holdings shall accede to this Agreement as an Additional Guarantor within 15 Business Days of 1 January 2010 (or, if the purchaser under the SPA and CEMEX España have agreed to extend the termination date of the SPA to 31 January 2010, 1 February 2010), and, by such accession, grant a guarantee under Clause 20 ( *Guarantee and indemnity*) of this Agreement.

(b) The Parent shall take all steps necessary to ensure that on or prior to the 15 October 2009 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 15 October 2009, within 10 days of the date on which the Security Agent so confirms (or such longer period as the Administrative Agent may agree), it shall:

(i) procure that a share pledge over shares in CEMEX España substantially in the form distributed to the Participating 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 Administrative Agent (acting reasonably)) and that each person (other than a Participating 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 Administrative Agent and at the time requested by the Administrative Agent during ordinary business hours, appear before a notary in Madrid to notarise or raise to the status of a public document this Agreement ( *otorgar una póliza intervendia 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 Administrative Agent may reasonably require **provided that**:

(A) any such request may only be made by the Administrative 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 15 October 2009 (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 15 October 2009, the date 10 days from the date on which the Security

Agent so confirms, the Administrative Agent confirms at the time of giving each notice under sub-paragraph (i) above that at least 25 of the Participating Creditors (or such lesser number as would represent the remainder of the Participating 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 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.

(c) The Parent shall procure that, on giving the Security Agent reasonable notice and in any event within 30 days of the date of this Agreement (or, if the Security Agent has not so confirmed on or before the date falling 30 days after the date of this Agreement, within 10 days of the date on which the Security Agent confirms its availability to execute the necessary documentation), CEMEX Trademarks Holding Ltd. shall accede to this Agreement as an Additional Security Provider and shall enter into:

(i) a possessory deed of pledge of bearer shares between CEMEX Trademarks Holding Ltd. as pledgor and Wilmington Trust (London) Limited as pledgee and Sunward Acquisitions N.V. as the company; and

(ii) a deed of pledge of registered shares between CEMEX Trademarks Holding Ltd. as pledgor and Wilmington Trust (London) Limited as pledgee and New Sunward Holdings B.V. as the company.

(d) The Parent shall procure that, within 30 days counted from the date of this Agreement, 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, S.A. de C.V. will enter into a Mexican security trust agreement substantially in the form distributed (in Spanish, together with an English translation) to the Participating Creditors prior to the date of this Agreement, under which the shares each of them owns in CEMEX México, S.A de C.V., 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 paragraph (c) of Clause 24.27 (*Further assurance*), transferred to Banco Nacional de México, S.A., Integrante del Grupo Financiero Banamex, División Fiduciaria as trustee (and that legal opinions as to the validity and enforceability thereof under Mexican law and related opinions be issued in respect thereof in form and substance satisfactory to the Administrative Agent (acting reasonably)).

24.33 **Restriction on transfer of Material Operating Subsidiaries**

The Parent shall procure that:

(a) neither:

(i) 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

(ii) 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

(b) neither:

(i) 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

(ii) 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.

24.34 **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.

25. **COVENANT RESET DATE**

With effect from the Covenant Reset Date:

(a) the Margin adjustments under paragraphs (b) and (c) of the definition of "Margin" will cease to apply;

(b) the definition of "Excluded Disposal Proceeds" of Clause 13.1 ( *Disposal, Permitted Fundraising and Permitted Securitisation Proceeds and Excess Cashflow*) shall be amended to include:

"(vii) redundant or obsolete assets; and

(viii) any assets **provided that** such proceeds are re-invested within 120 days of receipt".

(c) paragraph (b)(iv) of Clause 13.1 (*Disposal, Permitted Fundraising and Permitted Securitisation Proceeds and Excess Cashflow* ) shall be deleted, 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 at the beginning of sub-paragraphs (i), (ii) and (iii) of paragraph (b) of Clause 13.1 ( *Disposal, Permitted Fundraising and Permitted Securitisation Proceeds and Excess Cashflow*), and at the end of such sub-paragraph (ii) and (iii) the words "raised in excess of $100,000,000 in any Financial Year" shall be added;

(d) Clause 22.4 (*Liquidity forecast*) and Clause 22.8 (*Appointment of financial adviser*) shall be deleted;

(e) paragraph (c) of Clause 23.2 (*Financial condition*) shall be deleted;

(f) subject to the proviso below:

(i) Clause 24.22 (*Dividends and share redemption*), Clause 24.23 (*Existing Financial Indebtedness and Permitted Fundraising* ), Clause 24.24 (*Share capital*), Clause 24.28 (*Equity Issuance and Securities Demand*) and Clause 24.29 (*Restrictions on exercise of perpetual bond call options*) shall be deleted;

(ii) in paragraph (h) of the definition of "Permitted Disposal", sub-paragraphs (i) and (ii) are deleted;

(iii) in paragraph (k) of the definition of "Permitted Acquisition", the reference to "$100,000,000" shall be replaced with a reference to "$200,000,000";

(iv) in paragraph (b) of the definition of "Permitted Joint Venture", the reference to "$100,000,000" shall be replaced with a reference to "$150,000,000";

(v) in paragraph (j) of the definition of "Permitted Loan", the reference to "$250,000,000" shall be replaced with a reference to "$350,000,000";

(vi) in paragraph (o) of the definition of "Permitted Financial Indebtedness", the reference to "$200,000,000" shall be replaced with a reference to "$350,000,000";

(vii) in paragraph (l) of the definition of "Permitted Guarantee", the reference to "$500,000,000" shall be replaced with a reference to "$750,000,000";

(viii) in paragraph (O) of Clause 24.5 (*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";

(ix) in Clauses 26.5 (*Cross default*), 26.6 (*Insolvency*), 26.10 (*Creditors' process and enforcement of Security*), 26.12 (*Judgment*), each reference to "$50,000,000" shall be replaced with a reference to "$75,000,000"; and

(x) Clause 24.26 (*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 Participating Creditors will also have the benefit of those more restrictive covenants.

(g) The definition of "Repeating Representations" in Clause 1.1 ( *Definitions*) shall have added to the end thereof "save that Clause 21.3 ( *Non-conflict with other obligations*) shall not be repeated with respect to the Transaction Security".

## 26. EVENTS OF DEFAULT

Each of the events or circumstances set out in this Clause 26 is an Event of Default.

### 26.1 Non-payment

An Obligor does not pay on the due date any amount payable to or for the account of a Participating Creditor pursuant to a Finance Document 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.

### 26.2 Financial Covenants and other obligations

Any requirement of Clause 23 (*Financial Covenants*) is not satisfied or the Parent fails to deliver any Compliance Certificate in accordance with Clause 22.2 (*Compliance Certificate*).

### 26.3 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 26.1 (*Non-payment*) and Clause 26.2 (*Financial covenants and other obligations*)).

(b) No Event of Default under paragraph (a) of this Clause 26.3 above will occur if the failure to comply is capable of remedy and is remedied within fifteen Business Days of the Administrative Agent giving written notice to the Parent or an Obligor becoming aware of the failure to comply, whichever is the earlier.

26.4 **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 26.4 above will arise if the circumstances giving rise to the misrepresentation are capable of remedy and are remedied within fifteen Business Days of the Administrative Agent giving written notice to the Parent or an Obligor becoming aware of the failure to comply, whichever is the earlier.

26.5 **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 26.5 if the aggregate amount of Financial Indebtedness falling within paragraphs (a) to (c) of this Clause 26.5 above is less than $50,000,000 (or its equivalent in any other currency or currencies).

26.6 **Insolvency**

(a) Any of the Obligors or Material Subsidiaries is unable or admits inability to pay its debts as they fall due 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 20 ( *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 Participating Creditors in the event of the bankruptcy, winding up or liquidation of such companies or an acceleration under Clause 26.16 ( *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 Participating Creditors in the event of the bankruptcy, winding up or liquidation of CEMEX Corp. or an acceleration under Clause 26.16 ( *Acceleration*).

(c) A moratorium is declared in respect of any indebtedness of any of the Obligors or Material Subsidiaries.

26.7 **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, Irish law examinership, reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise), *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.

26.8 **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).

26.9 **Availability of foreign exchange**

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.

26.10 **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 26.10 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.

26.11 **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 or CEMEX Concretos, S.A. de C.V., the Parent's percentage indirect shareholding in CEMEX España or CEMEX Concretos, S.A. de C.V. 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.

26.12 **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 exceeding $5,000,000) save unless payment of any such sum is suspended pending an appeal.

26.13 **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 Participating 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.

26.14 **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.

26.15 **Failure to perform payment obligations**

Any material adverse change arises in the financial condition of the Group taken as a whole which the Majority Participating 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.

26.16 **Acceleration**

On and at any time after the occurrence of an Event of Default which is continuing and in respect of which the Majority Participating Creditors have authorised the taking of such action, each Participating Creditor may, in relation to any Facility to which it is a party, subject to the provisions of the relevant Existing Finance Documents by notice to the Parent:

(a) cancel any commitments and reduce any Facility Limit under that Facility whereupon they shall immediately be cancelled and reduced; and/or

(b) declare that all or part of the Participating Creditors' Exposures under that Facility, together with accrued interest, and all other amounts accrued under the Finance Documents relating to that Facility 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 Participating Creditors' Exposures under that Facility be payable on demand, whereupon they shall immediately become payable on demand by the relevant Creditor's Representative without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived; and/or

(d) make demand on any Guarantor under this Agreement or the Existing Finance Documents relating to that Facility in respect of amounts due and payable under or in connection with that Facility 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 6.2 ( *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 26.6 ( *Insolvency*) or Clause 26.7 (*Insolvency proceedings*) with respect to an Obligor, all commitments shall be cancelled automatically and immediately each Facility Limit will be reduced to zero automatically and immediately and all Exposures of the Participating Creditors 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

### 27. CHANGES TO THE PARTICIPATING CREDITORS

#### 27.1 Assignments and transfers by the Participating Creditors

A Participating Creditor (the **"Existing Participating Creditor**") may:

(a) assign any of its rights and benefits in respect of any of its Exposures under the Facilities; or

(b) transfer by novation any of its rights, benefits and obligations in respect of any of its Exposures under the Facilities,

to another person (the "**New Participating Creditor**") if: (i) that transfer or assignment is in accordance with the terms of the relevant Existing Finance Documents (in each case as amended by the New Finance Documents); and (ii) the New Participating Creditor is not a member of the Group or an Affiliate of a member of the Group; and (iii) the New Participating Creditor is already a Participating Creditor or has executed and delivered a Participating Creditor Accession Undertaking to the Administrative Agent with a copy to the relevant Creditor's Representative (as well as any equivalent accession document howsoever described under the relevant Facility to the relevant Creditor's Representative); and (iv) the Existing Participating Creditor and New Participating Creditor have given prior written notice of the transfer or assignment (including details of the Exposures to be transferred or assigned) to the Administrative Agent (**provided that** the giving of such notice shall not be a condition to the effectiveness of any transfer or assignment but, for the avoidance of doubt, until the Administrative Agent and Security Agent have received such notice, they will be entitled to act on the basis that no such transfer or assignment has occurred and shall not incur or owe any liability to any Party for so acting); and (v) (at any time at which no Default is continuing) such transfer or assignment would not give rise to a requirement for any relevant Obligor to gross up for withholding tax at a rate higher than the then prevailing rate under the Syndicated Bank Facilities (as limited in accordance with the relevant provisions of any such Syndicated Bank Facility which provides for a limit on withholding tax) which provisions shall continue in full force and effect.

#### 27.2 Conditions of assignment or transfer

Upon an assignment or transfer becoming effective in accordance with Clause 27.1 ( *Assignments and transfers by the Participating Creditors* ):

(a) any Participating Creditor ceasing entirely to be a creditor in respect of any of the Facilities shall be discharged from further obligations towards the other Parties under the New Finance Documents and their respective rights against one another shall be cancelled; and

(b) the New Participating Creditor shall assume the same obligations, and become entitled to the same rights, as if it had been an original party to this Agreement.

27.3 **Assignment by way of security**

In addition to the other assignment rights provided in this Clause 27, each Participating Creditor may assign, as collateral or otherwise, any of its rights under the New Finance Documents (including rights to payments of principal or interest on their Exposures under the Facilities) to any trustee for the benefit of the holders of such Participating Creditor's securities **provided that** no such assignment shall release the assigning Participating Creditor from any of its obligations under the New Finance Documents.

27.4 **Assignment or transfer fee**

The New Participating Creditor shall, on the date upon which an assignment or transfer takes effect, pay to the Administrative Agent (for its own account) a fee of US$1,500.

27.5 **Limitation of responsibility of Existing Participating Creditors**

(a) Unless expressly agreed to the contrary, an Existing Participating Creditor makes no representation or warranty and assumes no responsibility to a New Participating 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 or regulation are excluded.

(b) Each New Participating Creditor confirms to the Existing Participating Creditor, and the other Finance Parties and 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 Participating Creditor 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.

(c) Nothing in any New Finance Document obliges an Existing Participating Creditor to:

(i) accept a re-transfer from a New Participating Creditor of any of the rights and obligations assigned or transferred under this Clause 27; or

(ii) support any losses directly or indirectly incurred by the New Participating Creditor by reason of the non-performance by any Obligor of its obligations under the Finance Documents or otherwise.

27.6 **Copy of Participating Creditor Accession Undertaking to Parent**

The Administrative Agent shall, as soon as reasonably practicable after it has received a Participating Creditor Accession Undertaking, send to the Parent a copy of that Participating Creditor Accession Undertaking.

27.7 **Disclosure of information**

Any Participating Creditor may disclose to any of its Affiliates and any other person:

(a) to (or through) whom that Participating Creditor assigns or transfers (or may potentially assign or transfer) all or any of its rights and obligations under the Finance Documents;

(b) with (or through) whom that Participating Creditor enters into (or may potentially enter into) any sub-participation in relation to, or any other transaction under which payments are to be made by reference to, the Finance Documents;

(c) to whom, and to the extent that, information is required to be disclosed by any applicable law or regulation or audit requirement (internal or otherwise),

any information about any Obligor, the Group and the Finance Documents as that Participating Creditor shall consider appropriate **provided that** (in the case of paragraphs (a) and (b) above) the person to whom the information is to be given has entered into a Confidentiality Undertaking.

27.8 **Security over Participating Creditors' rights**

In addition to the other rights provided to Participating Creditors under this Clause 27, each Participating 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 Participating 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 Participating 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 Participating Creditor as security for those obligations or securities,

except that no such charge, assignment or other Security shall:

(i) release a Participating Creditor from any of its obligations under the Finance Documents or substitute the beneficiary of the relevant charge, assignment or Security for the Participating 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 Participating Creditor under the Finance Documents.

## 28. CHANGES TO THE OBLIGORS

### 28.1 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 New Finance Documents.

### 28.2 Resignation of a Borrower

(a) In this Clause 28.2, Clause 28.4 (*Resignation of a Guarantor*) and Clause 28.8 (*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 24.18 (*Disposals*) or made with the approval of the Majority Participating 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 Administrative Agent a Resignation Letter.

(c) The Administrative 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 Exposures in respect of which it is the Borrower or issuer as provided in paragraph (c) of Clause 13.1 (*Disposal, Permitted Fundraising and Permitted Securitisation Proceeds and Excess Cashflow* ) (and paid all other amounts relating to such Exposures) and is under no actual or contingent obligations as a Borrower under any Finance Documents; or

(B) the Participating 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 Administrative 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 28.4 ( *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 13 (*Mandatory prepayment*).

(d) If the Participating 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 (other than the Existing Finance Documents relating to the relevant Facility);

(ii) the relevant Facility will cease to be a "**Facility**" for the purposes of the Finance Documents (other than the Existing Finance Documents relating to the relevant Facility); and

(iii) the Participating Creditor(s) in respect of that Facility will cease to be " **Participating Creditors**" in respect of that Facility under the Finance Documents (other than the Existing Finance Documents relating to the relevant Facility).

(e) Upon notification by the Administrative 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 New 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 later of (i) the date on which the Third Party Disposal takes effect; and (ii) the date on which the Borrower ceases to be a borrower and /or guarantor under the Existing Finance Documents.

(f) The Administrative Agent may, at the cost and expense of the Parent, require a legal opinion from counsel to the Administrative Agent confirming the matters set out in paragraph (c)(iii) above and the Administrative 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.

28.3 **Additional Guarantors and Additional Security Providers**

(a) Subject to compliance with the provisions of paragraphs (b) and (c) of Clause 22.7 ( *"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 Administrative 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 Guarantor or an Additional Security Provider*) of Schedule 2 in relation to that Additional Guarantor or Additional Security Provider to the Administrative Agent.

(b) The Administrative Agent shall notify the Obligors and the Participating 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 Guarantor or an Additional Security Provider*) of Schedule 2.

28.4 **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 Administrative Agent a Resignation Letter if:

(i) that Guarantor is being disposed of by way of a Third Party Disposal (as defined in Clause 28.2 ( *Resignation of a Borrower*)) and the Parent has confirmed this is the case; or

(ii) all the Participating Creditors have consented to the resignation of that Guarantor.

(b) The Administrative Agent shall accept a Resignation Letter and notify the Parent and the Participating 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 20 ( *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 28.2 (*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 13 (*Mandatory prepayments*).

(c) The resignation of that Guarantor shall not be effective until the later of (i) date of the relevant Third Party Disposal and (ii) the date on which the Guarantor ceases to be a borrower and /or guarantor under the Existing Finance Documents, 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.

28.5 **Release of CEMEX Australia Holdings**

The Participating Creditors agree that CEMEX Australia Holdings shall be automatically released as a Guarantor (and shall have no further rights, liabilities or obligations under the Finance Documents as an Obligor) if:

(a) pursuant to the terms of a share purchase agreement dated on or about 15 June 2009 under which CEMEX España agreed to transfer all the issued share capital it holds in CEMEX Australia Holdings to Vennor Investments Pty Ltd (the **"SPA"**), all of the conditions precedent referred to in the SPA, other than the release of CEMEX Australia Holdings as a Guarantor under this Agreement, have been satisfied or waived and the transactions under the SPA shall promptly after the release of CEMEX Australia Holdings complete in accordance with the terms of the SPA on or before 31 December 2009 (or, if the purchaser under the SPA and CEMEX España have agreed to extend the termination date of the SPA to 31 January 2010, 31 January 2010); and

(b) the Parent has confirmed that it shall procure, if so required, that the Disposal Proceeds from the sale of all the issued share capital in CEMEX Australia Holdings will be applied in accordance with Clause 13 ( *Mandatory prepayments*); and

(c) the Parent has delivered to the Administrative Agent a Resignation Letter (Australia).

28.6 **Resignation of a Security Provider**

(a) The Parent may request that a Security Provider ceases to be a Security Provider by delivering to the Administrative 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 Participating Creditors have consented to the resignation of that Security Provider.

(b) The Administrative Agent shall accept a Resignation Letter and notify the Parent and the Participating 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.

28.7 **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.

28.8 **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

### 29. ROLE OF THE ADMINISTRATIVE AGENT

#### 29.1 Appointment of the Administrative Agent

(a) Each of the Participating Creditors appoints the Administrative Agent to act as its agent under and in connection with the New Finance Documents.

(b) Each of the Participating Creditors, authorises the Administrative Agent to exercise the rights, powers, authorities and discretions specifically given to the Administrative Agent under or in connection with the New Finance Documents (including the appointment of any sub-agents or local agents to assist in the supervision or enforcement of any of the Finance Documents) together with any other incidental rights, powers, authorities and discretions.

#### 29.2 Interests of Participating Creditors

Without limiting paragraphs (a) to (c) of Clause 29.8 (*Majority Participating 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 Administrative Agent shall have regard to the general interests of the Participating Creditors (taken as a whole) and shall not have regard to any interest arising from circumstances particular to individual Participating Creditors.

#### 29.3 Duties of the Administrative Agent

(a) The Administrative Agent shall promptly forward to a Party the original or a copy of any document (including, but not limited to, the Parent's annual financial statements) which is delivered to the Administrative Agent for that Party by any other Party.

(b) The Administrative Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.

(c) If the Administrative 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.

(d) If the Administrative Agent is aware of the non-payment of any principal, interest or fee payable to a Finance Party (other than the Administrative Agent or the Security Agent) under this Agreement it shall promptly notify the other Finance Parties.

(e) The Administrative Agent's duties under the New Finance Documents are solely mechanical and administrative in nature.

#### 29.4 Role of the Co-ordinating Committee Banks

Except as specifically provided in the Finance Documents, the Co-ordinating Committee Banks do not have any obligations or liabilities of any kind to any other Party under or in connection with any Finance Document.

29.5 **No fiduciary duties**

(a) Nothing in this Agreement constitutes the Administrative Agent, any Creditor's Representative, and/or any Co-ordinating Committee Bank as a trustee or fiduciary of any other person.

(b) Neither the Administrative Agent, any Creditor's Representative under a Syndicated Bank Facility, the Security Agent nor the Co-ordinating Committee Banks shall be bound to account to any Participating Creditor for any sum or the profit element of any sum received by it for its own account.

29.6 **Business with the Group**

The Administrative Agent, any Creditor's Representative, the Security Agent and the Co-ordinating Committee Banks may accept deposits from, lend money to and generally engage in any kind of banking or other business with any member of the Group.

29.7 **Rights and discretions**

(a) The Administrative Agent and each Creditor's Representative under a Syndicated Bank Facility 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 Participating Creditors pursuant to Clause 38.1 ( *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 Administrative Agent may assume (unless it has received notice to the contrary in its capacity as agent for the Participating Creditors) and each Creditor's Representative under a Syndicated Bank Facility may assume that:

(i) no Default has occurred (unless it has actual knowledge of a Default arising under Clause 26.1 ( *Non-payment*));

(ii) any right, power, authority or discretion vested in any Party or the Majority Participating Creditors has not been exercised; and

(iii) any notice or request made by the Parent (other than a Utilisation Request) is made on behalf of and with the consent and knowledge of all the Obligors.

(c) The Administrative Agent and each Creditor's Representative under a Syndicated Bank Facility may engage, pay for and rely on the advice or services of any lawyers, accountants, surveyors or other experts.

(d) The Administrative 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 Administrative Agent may disclose to any other Party any information it reasonably believes it has received as agent under this Agreement.

(f) Notwithstanding any other provision of any Finance Document or any Syndicated Bank Facility, as applicable, to the contrary, neither the Administrative Agent, any Creditor's Representative under a Syndicated Bank Facility nor the Co-ordinating Committee Banks are obliged to do or omit to do anything if it would or might in its reasonable opinion constitute a breach of any law and regulation or a breach of a fiduciary duty or duty of confidentiality.

(g) Any Creditor's Representative under a Syndicated Bank Facility may disclose to any other Party any information it reasonably believes it has received as agent under a Syndicated Bank Facility.

29.8 **Majority Participating Creditors' instructions**

(a) Unless a contrary indication appears in a New Finance Document, the Administrative Agent shall (i) exercise any right, power, authority or discretion vested in it as Administrative Agent in accordance with any instructions given to it by the Majority Participating Creditors (or, if so instructed by the Majority Participating Creditors, refrain from exercising any right, power, authority or discretion vested in it as Administrative 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 Participating Creditors.

(b) Unless a contrary indication appears in a New Finance Document, any instructions given by the Majority Participating Creditors will be binding on all the Finance Parties other than the Security Agent.

(c) The Administrative Agent and any Creditor's Representative under a Syndicated Bank Facility may refrain from acting in accordance with the instructions of the Majority Participating Creditors (or, if appropriate, the Participating 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 Participating Creditors, (or, if appropriate, the Participating Creditors) the Administrative Agent may act (or refrain from taking action) as it considers to be in the best interest of the Participating Creditors (taken as a whole).

(e) The Administrative Agent is not authorised to act on behalf of a Participating Creditor (without first obtaining that Participating Creditor's consent) in any legal or arbitration proceedings relating to any New 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.

(f) No Creditor's Representative under a Syndicated Bank Facility shall be liable for any act (or omission) if it acts (or refrains from taking any action) in accordance with an instruction of the Majority Participating Creditors or the required lenders under a Finance Document.

29.9 **Responsibility for documentation**

Neither the Administrative Agent, any Creditor's Representative under a Syndicated Bank Facility nor any Co-ordinating Committee Bank is:

(a) responsible for the adequacy, accuracy and/or completeness of any information (whether oral or written) supplied by the Administrative Agent, an Obligor or any other person given in or in connection with any Finance Document or the Transaction Security; or

(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.

29.10 **Exclusion of liability**

(a) Without limiting paragraph (b) below, neither the Administrative Agent nor any Co-ordinating Committee Bank will be liable for any action taken by it under or in connection with any New 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 New Finance Document (and, for the avoidance of doubt, the Administrative Agent will not be liable in any circumstances for any consequential loss).

(b) No Party (other than the Administrative Agent) may take any proceedings against any officer, employee or agent of the Administrative Agent or any Creditor's Representative under a Syndicated Bank Facility in respect of any claim it might have against the Administrative Agent or any Creditor's Representative under a Syndicated Bank Facility or in respect of any act or omission of any kind by that officer, employee or agent in relation to any New Finance Document and any officer, employee or agent of the Administrative Agent or any Creditor's Representative under a Syndicated Bank Facility may rely on this Clause 29 subject to Clause 1.5 ( *Third Party Rights*) and the provisions of the Third Parties Act.

(c) The Administrative 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 Administrative Agent if the Administrative 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 Administrative Agent for that purpose.

(d) Nothing in this Agreement shall oblige the Administrative Agent, any Creditor's Representative under a Syndicated Bank Facility or any Co-ordinating Committee 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 Participating Creditor and each Participating Creditor confirms to the Administrative Agent, each Creditor's Representative under a Syndicated Bank Facility and each Co-ordinating Committee 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 Administrative Agent, any Creditor's Representative under a Syndicated Bank Facility or any Co-ordinating Committee Bank.

(e) No Creditor's Representative under a Syndicated Bank Facility will be liable for any action taken by it under or in connection with any Syndicated Bank Facility, unless directly caused by its gross negligence or wilful misconduct or wilful breach of such Syndicated Bank Facility.

(f) The Administrative 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 Administrative Agent) constituted gross negligence, wilful misconduct.

29.11 **Participating Creditors' indemnity to the Administrative Agent**

Each Participating Creditor shall (in proportion to its share of the aggregate Base Currency Amount of the Exposures of all of the Participating Creditors under the Facilities or, if the aggregate Base Currency Amount of the Exposures of all of the Participating Creditors under the Facilities are then zero, to its share of the aggregate Base Currency Amount of the Exposures of all of the Participating Creditors under the Facilities immediately prior to their reduction to zero) indemnify the Administrative Agent and its Affiliates (to the extent that 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 Administrative Agent and its Affiliates (to the extent that they act as agents, sub-agents or delegates in relation to the Finance Documents) (otherwise than by reason of the Administrative Agent's or relevant Affiliate's gross negligence or wilful misconduct) in acting as (or, as the case may be, assisting) Administrative Agent under the New Finance Documents (unless the Administrative Agent or Affiliate has been reimbursed by an Obligor pursuant to a New Finance Document).

Any third party referred to in this Clause 29.11 may rely on this Clause 29.11.

29.12 **Resignation of the Administrative Agent**

(a) The Administrative 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 Administrative Agent may resign by giving notice to the other Finance Parties and the Parent, in which case the Majority Participating Creditors (after consultation with the Parent) may appoint a successor Administrative Agent.

(c) If the Majority Participating Creditors have not appointed a successor Administrative Agent in accordance with paragraph (b) above within 30 days after notice of resignation was given, the Administrative Agent (after consultation with the Parent) may appoint a successor Administrative Agent (acting through an office in the European Union).

(d) The retiring Administrative Agent shall, at its own cost, make available to the successor Administrative Agent such documents and records and provide such assistance as the successor Administrative Agent may reasonably request for the purposes of performing its functions as Administrative Agent under the New Finance Documents.

(e) The Administrative Agent's resignation notice shall only take effect upon the appointment of a successor.

(f) Upon the appointment of a successor, the retiring Administrative Agent shall be discharged from any further obligation in respect of the New Finance Documents but shall remain entitled to the benefit of this Clause 29.12. 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.

(g) After consultation with the Parent, the Majority Participating Creditors may, by notice to the Administrative Agent, require it to resign in accordance with paragraph (b) above. In this event, the Administrative Agent shall resign in accordance with paragraph (b) above.

29.13 **Confidentiality**

(a) In acting as agent for the Finance Parties, the Administrative 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 Administrative Agent, it may be treated as confidential to that division or department and the Administrative Agent shall not be deemed to have notice of it.

(c) Notwithstanding any other provision of any Finance Document to the contrary, neither the Administrative Agent, any Creditor's Representative under a Syndicated Bank Facility nor any Co-ordinating Committee Bank is 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.

(d) In acting as agent under a Syndicated Bank Facility, each Creditor's Representative under a Syndicated Bank Facility 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. If information is received by another division or department of such Creditor's Representative, it may be treated as confidential to that division or department and such Creditor's Representative under a Syndicated Bank Facility shall not be deemed to have notice of it.

29.14 **Relationship with the Participating Creditors**

(a) The Administrative Agent may treat each Participating Creditor as a Participating Creditor, entitled to payments under this Agreement and (other than in the case of a USPP Noteholder) acting through its Facility Office unless it has received not less than five Business Days' prior notice from that Participating Creditor to the contrary in accordance with the terms of this Agreement.

(b) Each Participating Creditor shall supply the Administrative Agent with any information that the Security Agent may reasonably specify (through the Administrative Agent) as being necessary or desirable to enable the Security Agent to perform its functions as Security Agent. Each Participating Creditor shall deal with the Security Agent exclusively through the Administrative Agent and shall not deal directly with the Security Agent.

(c) The Administrative Agent may disclose to any Participating Creditor any information received by it in its capacity as Administrative Agent (including, without limitation, details of the identities and Exposures of the Participating Creditors).

29.15 **Credit appraisal by the Finance Parties**

Without affecting the responsibility of any Obligor for information supplied by it or on its behalf in connection with any Finance Document, each Finance Party confirms to the Administrative Agent and each Creditor's Representative under a Syndicated Bank Facility 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, 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 Administrative 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 Syndicated Bank Facility or other Finance Document.

29.16 **Administrative Agent's Management Time**

Any amount payable to the Administrative Agent or a Creditor's Representative under a Syndicated Bank Facility under Clause 17.9 ( *Indemnity to the Administrative Agent and Creditor's Representative*) and Clause 29.11 (*Participating Creditors' indemnity to the Administrative Agent*) shall include the cost of utilising the Administrative Agent's or such Creditor's Representative's. As applicable, management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Administrative Agent or such Creditor's Representative under a Syndicated Bank Facility, as applicable, may notify to the Parent and the Participating Creditors, and is in addition to any fee paid or payable to the Administrative Agent under Clause 16 (*Fees*).

29.17 **Deduction from amounts payable by the Administrative Agent**

If any Party owes an amount to the Administrative Agent under the New Finance Documents the Administrative Agent may, after giving notice to that Party, deduct an amount not exceeding that amount from any payment to that Party which the Administrative Agent would otherwise be obliged to make under the New Finance Documents and apply the amount deducted in or towards satisfaction of the amount owed. For the purposes of the New Finance Documents that Party shall be regarded as having received any amount so deducted.

29.18 **Role of FTI Consulting Canada, ULC**

Each Party (other than the USPP Noteholders) 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 6 April 2009 with, among others, the Parent and certain of the Co-ordinating Committee Banks and shall have no liability whatsoever save to the extent expressly contemplated in that engagement letter and the form of any accompanying reliance letter(s) (whether or not such reliance letter has been signed.

29.19 **Reliance and engagement letters**

Each Finance Party and Secured Party confirms that the Administrative Agent has authority to accept on its behalf (and ratifies the acceptance on its behalf of any letters or reports already accepted by the Administrative 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 itself 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.

## 30. 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.

## 31. SHARING AMONG THE FINANCE PARTIES

### 31.1 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 32 (*Payment mechanics*) or otherwise receives or recovers more than the amount to which it is entitled under the Finance Documents (whether by way of set-off or otherwise) and applies that amount to a payment due under the Finance Documents then:

(a) the Recovering Finance Party shall, within three Business Days, notify details of the receipt or recovery, to the Administrative Agent;

(b) the Administrative 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 Administrative Agent and distributed in accordance with Clause 32 (*Payment mechanics*), without taking account of any Tax which would be imposed on the Administrative Agent in relation to the receipt, recovery or distribution; and

(c) the Recovering Finance Party shall, within three Business Days of demand by the Administrative Agent, pay to the Administrative Agent an amount (the "**Sharing Payment**") equal to such receipt or recovery less any amount which the Administrative Agent determines may be retained by the Recovering Finance Party as its share of any payment to be made, in accordance with Clause 32.5 ( *Partial payments*).

### 31.2 Redistribution of payments

The Administrative 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) in accordance with Clause 32.5 ( *Partial payments*).

31.3 **Recovering Finance Party's rights**

(a) On a distribution by the Administrative Agent under Clause 31.2 ( *Redistribution of payments*), the Recovering Finance Party will be subrogated to the rights of the Finance Parties which have shared in the redistribution.

(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.

31.4 **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 Finance Party which has received a share of the relevant Sharing Payment pursuant to Clause 31.2 ( *Redistribution of payments*) shall, upon request of the Administrative Agent, pay to the Administrative Agent for 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); and

(b) that Recovering Finance Party's rights of subrogation in respect of any reimbursement shall be cancelled and the relevant Obligor will be liable to the reimbursing Finance Party for the amount so reimbursed.

31.5 **Exceptions**

(a) This Clause 31 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 that other Finance Party of the legal or arbitration proceedings; and

(ii) that 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 31 shall not impose any obligation on the Security Agent to pay a Sharing Payment to the Administrative Agent under Clause 31.1 (*Payments to Finance Parties*) or Clause 31.4 (*Reversal of redistribution*).

## SECTION 11
## ADMINISTRATION

### 32. PAYMENT MECHANICS

#### 32.1 Payments to the Administrative Agent

(a) Subject to paragraph (b), on each date on which an Obligor or a Participating Creditor is required to make a payment under a Finance Document, that Obligor or Participating Creditor shall make the same available to the relevant Creditor's Representative, as the case may be (unless a contrary indication appears in a Finance Document (including the USPP Note Agreement)) for value on the due date at the time and in such funds specified by the Creditor's Representative (as applicable) as being customary at the time for settlement of transactions in the relevant currency in the place of payment.

(b) Payments by Obligors or Participating Creditors 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 Administrative Agent specifies.

#### 32.2 Distributions by the Administrative Agent

Each payment received by the Administrative Agent under the Finance Documents for another Party shall, subject to Clause 32.3 ( *Distributions to an Obligor*), Clause 32.4 (*Clawback*) and Clause 29.17 (*Deduction from amounts payable by the Administrative Agent*) be made available by the Administrative Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement (in the case of a payment to a Participating Creditor under or in respect of a Facility, to its Creditor's Representative under that Facility and (other than in the case of a USPP Noteholder) for the account of its Facility Office), to such account as that Creditor's Representative may notify to the Administrative 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 a principal financial centre in a Participating Member State or London).

#### 32.3 Distributions to an Obligor

The Administrative Agent may (with the consent of the Obligor or in accordance with Clause 33 ( *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.

#### 32.4 Clawback

(a) Where a sum is to be paid to the Administrative Agent under the Finance Documents for another Party, the Administrative 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 Administrative Agent pays an amount to another Party and it proves to be the case that the Administrative 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 Administrative Agent shall on demand refund the same to the Administrative Agent together with interest on that amount from the date of payment to the date of receipt by the Administrative Agent, calculated by the Administrative Agent to reflect its cost of funds.

32.5 **Partial payments**

Subject to the provisions of the Intercreditor Agreement:

(a) If the Administrative 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 Administrative 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 Administrative 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 Administrative Agent shall, if so directed by the Majority Participating 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.

32.6 **No 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.

32.7 **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 an Unpaid Sum under this Agreement interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

32.8 **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 an Exposure of any Participating Creditor under a Facility or Unpaid Sum or a part of an Exposure of any Participating Creditor under a Facility or Unpaid Sum shall be made in the currency in which that Exposure 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.

32.9 **Change of currency**

(a) Unless otherwise prohibited by law or regulation, 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 Administrative 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 Administrative Agent (acting reasonably).

(b) If a change in any currency of a country occurs, this Agreement will, to the extent the Administrative 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.

32.10 **Payments discharge obligations under Existing Finance Documents**

For the avoidance of doubt, payments of principal in respect of a Facility made pursuant to the terms of the New Finance Documents will be treated as discharging the equivalent obligations in respect of that Facility under the relevant Existing Finance Documents.

32.11 **Determination and verification of payments**

(a) At least 4 Business Days prior to the date on which an Obligor makes a payment under a Finance Document, the Parent will provide (to the

Administrative Agent for distribution to the Creditor's Representatives in respect of the Facility or Facilities to which the payment relates) a schedule setting out how the payment is to be applied as between each Facility.

(b) To the extent that the payment is a repayment or prepayment of principal in respect of one or more Facilities, the Parent will consult with the Administrative Agent in determining the application of the payment as between each Facility to enable the Administrative Agent to verify the amount and application of the payment before such payment is made.

(c) The Parent will advise the relevant Creditors' Representatives of the amount and currency of any principal payment to be made to such Creditor's Representative under the Finance Documents no later than 10:00 a.m. (London time) 3 Business Days prior to the date on which that payment is (or is required to be) made.

## 33. 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.

## 34. NOTICES

### 34.1 Communications in writing

Any communication to be made under or in connection with the New Finance Documents shall be made in writing and, unless otherwise stated, may be made by fax or letter or (in accordance with Clause 34.5 ( *Electronic communication*)) by email.

### 34.2 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 New Finance Documents is:

(a) in the case of the Parent:

| | |
|---|---|
| Address: | CEMEX, S.A.B. de C.V.<br>Ave Ricardo Margáin Zozaya #325<br>Colonia Valle del Campestre<br>San Pedro Garza García Monterrey, 66265<br>Mexíco |
| Fax: | +52 (81) 8888 4399 |
| Attention: | Financial Operations Manager |
| And to: | CEMEX, S.A.B. de C.V.<br>Calle Hernández de Tejada,<br>28027 Madrid<br>Spain |
| Fax: | +34 (91) 377 6500 |
| Attention: | Financial Operations Manager; |

(b) in the case of each Participating Creditor, or any other Obligor, that notified in writing to the Administrative Agent on or prior to the date on which it becomes a Party; and

(c) in the case of the Administrative 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;

(d) in the case of the Security Agent:

Address: Fifth Floor, 6 Broad Street Place, London EC2M 7JH

Fax: +44 (0) 20 7614 1122
Attention: Elaine K. Lockhart;

or any substitute address or fax number or department or officer as the Party may notify to the Administrative Agent (or the Administrative Agent may notify to the other Parties, if a change is made by the Administrative Agent) by not less than five Business Days' notice.

34.3 **Delivery**

(a) Any communication or document made or delivered by one person to another under or in connection with the New 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 34.2 ( *Addresses*), if addressed to that department or officer.

(b) Any communication or document to be made or delivered to the Administrative Agent or Security Agent will be effective only when actually received by the Administrative Agent or Security Agent and then only if it is expressly marked for the attention of the department or officer identified with the Administrative Agent's signature below (or any substitute department or officer as the Administrative Agent or Security Agent shall specify for this purpose).

(c) All notices from or to an Obligor shall be sent through the Administrative 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 34.3 will be deemed to have been made or delivered to each of the Obligors.

34.4 **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 34.2 ( *Addresses*) or changing its own address or fax number, the Administrative Agent shall notify the other Parties.

34.5 **Electronic communication**

(a) Any communication to be made between the Administrative Agent or the Security Agent and a Participating Creditor and/or any member of the Group under or in connection with the New Finance Documents may be made by electronic mail or other electronic means, if the Administrative Agent, the Security Agent and the relevant Participating 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 Administrative Agent and a Participating Creditor and/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 Participating Creditor and/or the Security Agent and/or any member of the Group to the Administrative Agent only if it is addressed in such a manner as the Administrative 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 34.5 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.

34.6 **English language**

(a) Any notice given under or in connection with any New Finance Document must be in English.

(b) All other documents provided under or in connection with any New Finance Document must be:

(i) in English; or

(ii) if not in English, and if so required by the Administrative 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.

34.7 **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 New 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 New 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 34.7, 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.

34.8 **Use of Websites**

(a) The Parent may satisfy its obligation under this Agreement to deliver any information in relation to those Participating Creditors (the " **Website Participating Creditors**") who accept this method of communication by posting this information onto an electronic website designated by the Parent and the Administrative Agent (the "**Designated Website**") if:

(i) the Administrative Agent expressly agrees (after consultation with each of the Participating Creditors) that it will accept communication of the information by this method;

(ii) both the Parent and the Administrative 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 Administrative Agent.

If any Participating Creditor (a "**Paper Form Participating Creditor**") does not agree to the delivery of information electronically then the Administrative Agent shall notify the Parent accordingly and the Parent shall supply the information to the Administrative Agent in paper form. In any event the Parent shall supply the Administrative Agent with at least one copy in paper form of any information required to be provided by it.

(b) The Administrative Agent shall supply each Website Participating Creditor with the address of and any relevant password specifications for the Designated Website following designation of that website by the Parent and the Administrative Agent.

(c) The Parent shall promptly upon becoming aware of its occurrence notify the Administrative 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 Administrative 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 Administrative Agent and each Website Participating Creditor is satisfied that the circumstances giving rise to the notification are no longer continuing.

(d) Any Website Participating Creditor may request, through the Administrative Agent, one paper copy of any information required to be provided under this Agreement which is posted onto the Designated Website. The Parent shall comply with any such request within ten Business Days.

34.9 **Delivery of information to Creditor's Representatives**

The Administrative Agent may provide a copy of any information, notice or communication that is delivered or addressed to a Participating Creditor to the Creditor's Representative of the Facility to which it relates and shall provide details of the outcome of a decision in relation to a request for a consent, amendment or waiver to the Creditor's Representatives.

## 35. CALCULATIONS AND CERTIFICATES

### 35.1 Accounts

In any litigation or arbitration proceedings arising out of or in connection with a New Finance Document, the entries made in the accounts maintained by a Finance Party are *prima facie* evidence of the matters to which they relate.

### 35.2 Certificates and Determinations

Any certification or determination by a Finance Party of a rate or amount under any New Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

### 35.3 Day count convention

Any interest, commission or fee accruing under a New 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.

### 35.4 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 Participating Creditors will be the amount specified in a certificate issued by the Administrative Agent (and/or any Participating Creditor) in accordance with Clause 35.2 ( *Certificates and Determinations*) as representative of the Participating Creditors reflecting the balance of the accounts referred to in Clause 35.1 ( *Accounts*).

### 35.5 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.

## 36. PARTIAL INVALIDITY

If, at any time, any provision of the New 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 laws or regulations of any other jurisdiction will in any way be affected or impaired.

## 37. 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 New Finance Documents 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 or regulation.

## 38. AMENDMENTS AND WAIVERS

### 38.1 Required consents

(a) Subject to Clause 38.2 (*Exceptions*) any term of the New Finance Documents may be amended or waived only with the consent of the Majority Participating Creditors and the Parent and any such amendment or waiver will be binding on all Parties.

(b) The Administrative Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause 38.

(c) The Parent may effect, as agent of each Obligor, any amendment or waiver permitted by this Clause 38.

### 38.2 Exceptions

(a) An amendment or waiver that has the effect of changing or which relates to:

(i) the definition of "**Majority Participating Creditors**" or "**Super Majority Participating Creditors**" in Clause 1.1 (*Definitions*);

(ii) an extension to the Termination Date or to the date of any scheduled payment of any amount or reduction of any Facility Limit under the Finance Documents;

(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 (or the allocation as among the Participating Creditors of such payment);

(iv) a change in currency of payment of any amount under the Finance Documents;

(v) an increase in or an extension of any Exposure of any Participating Creditor under a Facility or an increase in or an extension of any Facility Limit;

(vi) a change to the Borrowers or any of the Guarantors other than in accordance with Clause 28 ( *Changes to the Obligors*);

(vii) any provision which expressly requires the consent of all the Participating Creditors;

(viii) Clause 4.1 (*Finance Parties' Rights and Obligations*), Clause 20 (*Guarantee and indemnity*), Clause 27 (*Changes to the Participating Creditors*), Clause 28 (*Changes to the Obligors*) or this Clause 38; or

(ix) any amendment to the order of priority or subordination under the Intercreditor Agreement, shall not be made without the prior consent of all the Participating Creditors.

(b) An amendment or waiver which relates to the rights or obligations of the Administrative Agent, a Co-ordinating Committee Bank a Creditor's Representative under a Syndicated Bank Facility or, as the case may be, the Security Agent may not be effected without the consent of the Administrative Agent, that Co-ordinating Committee Bank, the relevant Creditor's Representative under a Syndicated Bank Facility 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) 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); or

(ii) the release of any guarantee and indemnity granted under Clause 20 ( *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 Participating Creditors and in accordance with the terms of the Intercreditor Agreement.

## 39. COUNTERPARTS

Each New 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 New 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 Guarantors 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 will operate to change the governing law of any Existing Finance Document.

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) the courts of England and the courts of each Party's corporate domicile, 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) the Parties agree that the courts of England and such courts of each Party's corporate domicile 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) shall irrevocably appoint the Process Agent as its agent for service of process in relation to any proceedings before the English courts in connection with any New Finance Document and shall procure that the Process Agent confirms its acceptance of that appointment in writing on or before the date of this Agreement; and

(b) agrees that failure by the Process Agent to notify the relevant Obligor of the process will not invalidate the proceedings concerned.

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 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 España Finance LLC | File#: 3654572 |

| 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 España Finance LLC | File #: 3654572 |
| CEMEX Australia Holdings Pty Ltd | ABN: 46 122 401 405 |

| 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 |
| Sunward Acquisitions N.V. | 33235711 |
| Sunward Investments B.V. | 34169379 |
| Sunward Holdings B.V. | 34169530 |
| CEMEX Dutch Holdings B.V. | 34218087 |
| New Sunward Holding B.V. | 34133556 |
| CEMEX International Finance Company | 226652 |

**Part II**

**The Original Participating Creditors**[1]

| Obligation | Original 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$800,000,000) Credit Agreement dated 23 June, 2004 as amended** | **$ 700,000,000** | **CEMEX, S.A.B. de C.V.** | **CEMEX México, S.A. de C.V.; Empresas Tolteca de México, S.A. de C.V.** |
| BANCO BILBAO VIZCAYA ARGENTARIA, S.A., GRAND CAYMAN BRANCH | $ 38,000,000 | | |
| BANCO SANTANDER S.A., NEW YORK BRANCH | $ 42,000,000 | | |
| HSBC MEXICO, S.A., INSTITUCION DE BANCA MULTIPLE, GRUPO FINANCIERO HSBC | $ 30,000,000 | | |
| BNP PARIBAS PANAMA BRANCH | $ 50,000,000 | | |
| BANK OF AMERICA, N.A. | $ 34,000,000 | | |
| BARCLAYS BANK PLC | $ 42,000,000 | | |
| JPMORGAN CHASE BANK, N.A. | $ 10,000,000 | | |
| CITIBANK N.A., NASSAU, BAHAMAS BRANCH | $ 28,000,000 | | |
| CITIBANK (BANAMEX USA) | $ 10,000,000 | | |
| ING BANK, N.V. (ACTING THROUGH ITS CURACAO BRANCH) | $ 42,000,000 | | |
| CALYON NEW YORK BRANCH | $ 42,000,000 | | |
| DEUTSCHE BANK AG NEW YORK BRANCH | $ 20,000,000 | | |
| THE BANK OF NOVA SCOTIA | $ 42,000,000 | | |
| SOCIÉTÉ GÉNÉRALE | $ 10,000,000 | | |
| THE BANK OF TOKYO-MITSUBISHI UFJ, LTD. | $ 42,000,000 | | |
| INTESA SANPAOLO S.p.A., NEW YORK BRANCH | $ 20,000,000 | | |

[1] Promptly following the Effective Date, the Participating Creditors (in consultation with the Parent) under each Facility should confirm to the Administrative Agent exact details of the currency and amount of their Exposures under such Facility as at the Effective Date and to the extent that any changes are required to this Schedule as a result, this Schedule will be updated accordingly by the Administrative Agent (with notice to the Parent, the Creditor's Representatives and the other Participating Creditors).

| Obligation | Original Exposure at the calculation date | Obligor | Guarantor |
|---|---|---|---|
| BAYERISCHE LANDESBANK | $ 30,000,000 | | |
| UNICREDIT SPA – NEW YORK BRANCH | $ 10,000,000 | | |
| Commerzbank AG (formerly Dresdner Bank AG acting through its lending office, Dresdner Bank AG, New York Branch) | $ 20,000,000 | | |
| STANDARD CHARTERED BANK | $ 34,000,000 | | |
| MIZUHO CORPORATE BANK, LTD | $ 42,000,000 | | |
| WACHOVIA BANK, NATIONAL ASSOCIATION | $ 42,000,000 | | |
| COMERICA BANK | $ 20,000,000 | | |
| **CEMEX, S.A.B. de C.V. US$1,200,000,000 Credit Agreement dated 31 May 2005 as amended** | **$ 1,200,000,000** | **CEMEX, S.A.B. de C.V.** | **CEMEX México, S.A. de C.V.; Empresas Tolteca de México, S.A. de C.V.** |
| BANCO BILBAO VIZCAYA ARGENTARIA, S.A., GRAND CAYMAN BRANCH | $ 79,500,000 | | |
| BANCO SANTANDER S.A., NEW YORK BRANCH | $ 88,000,000 | | |
| HSBC BANK PLC, SUCURSAL EN ESPAÑA | $ 50,000,000 | | |
| BNP PARIBAS PANAMA BRANCH | $ 100,000,000 | | |
| THE ROYAL BANK OF SCOTLAND PLC | $ 50,000,000 | | |
| BANK OF AMERICA, N.A. | $ 25,000,000 | | |
| BARCLAYS BANK PLC | $ 89,500,000 | | |
| JPMORGAN CHASE BANK, N.A. | $ 25,000,000 | | |
| CITIBANK, N.A., NASSAU BAHAMAS BRANCH | $ 81,000,000 | | |
| ING BANK, N.V. (ACTING THROUGH ITS CURACAO BRANCH) | $ 88,000,000 | | |
| CALYON NEW YORK BRANCH | $ 88,000,000 | | |
| THE BANK OF NOVA SCOTIA | $ 88,000,000 | | |
| FORTIS BANK SA/NV CAYMAN ISLANDS BRANCH | $ 50,000,000 | | |
| SOCIÉTÉ GÉNÉRALE | $ 50,000,000 | | |
| THE BANK OF TOKYO-MITSUBISHI UFJ, LTD. | $ 25,000,000 | | |
| INTESA SANPAOLO S.p.A., NEW YORK BRANCH | $ 25,000,000 | | |
| CAJA DE AHORROS Y MONTE DE PIEDAD DE MADRID, MIAMI AGENCY | $ 10,000,000 | | |

| Obligation | Original Exposure at the calculation date | Obligor | Guarantor |
|---|---|---|---|
| MORGAN STANLEY BANK, N.A. | $ 25,000,000 | | |
| BAYERISCHE LANDESBANK | $ 50,000,000 | | |
| WACHOVIA BANK, NATIONAL ASSOCIATION | $ 88,000,000 | | |
| BANCA MONTE DEI PASCHI DI SIENA S.P.A. | $ 15,000,000 | | |
| COMERICA BANK | $ 10,000,000 | | |
| **CEMEX, S.A.B. de C.V. US$437,500,000 & Mex$4,773,282,950 Joint Bilateral Financing Facilities Agreement dated 27 January, 2009** | **$ 437,500,000**<br>**Mex$ 4,773,282,950** | **CEMEX, S.A.B. de C.V.** | **CEMEX México, S.A. de C.V.; CEMEX Concretos, S.A. de C.V.** |
| **USD TRANCHE** | **$ 437,500,000** | **CEMEX, S.A.B. de C.V.** | **CEMEX México, S.A. de C.V.; CEMEX Concretos, S.A. de C.V.** |
| BBVA BANCOMER, S.A., INSTITUCION DE BANCA MULTIPLE GRUPO FINANCIERO BBVA BANCOMER | $ 230,000,000 | | |
| BANCO SANTANDER (MEXICO), S.A., INSTITUCION DE BANCA MULTIPLE, GRUPO FINANCIERO SANTANDER | $ 55,000,000 | | |
| CITIBANK, N.A. NASSAU BAHAMAS BRANCH | $ 47,500,000 | | |
| CITIBANK (BANAMEX USA) | $ 25,000,000 | | |
| BANCO NACIONAL DE COMERCIO EXTERIOR, S.N.C. | $ 80,000,000 | | |
| **Mex$ TRANCHE** | **Mex$ 4,773,282,950** | **CEMEX, S.A.B. de C.V.** | **CEMEX México, S.A. de C.V.; CEMEX Concretos, S.A. de C.V.** |
| BBVA BANCOMER, S.A., INSTITUCION DE BANCA MULTIPLE GRUPO FINANCIERO BBVA BANCOMER | Mex$ 2,266,359,200 | | |
| BANCO SANTANDER (MEXICO), S.A., INSTITUCION DE BANCA MULTIPLE, GRUPO FINANCIERO SANTANDER | Mex$ 742,747,500 | | |
| HSBC MEXICO S.A. INSTITUCIÓN DE BANCA MÚLTIPLE, GRUPO FINANCIERO HSBC | Mex$ 785,100,000 | | |
| BANCO NACIONAL DE MÉXICO, S.A. INTEGRANTE DEL GRUPO FINANCIERO BANAMEX | Mex$ 979,076,250 | | |
| **CEMEX España, S.A. €250,000,000 and ¥19,308,000,000 term and revolving facilities agreement dated 30 March 2004 as amended** | **€ 139,133,387.37**<br>**$ 8,696,228.26** | CEMEX España, S.A. | N/A |

| Obligation | Original Exposure at the calculation date | Obligor | Guarantor |
|---|---|---|---|
| **FACILITY C1 (EURO TRANCHE)** | **€ 139,133,387.37** | **CEMEX España, S.A.** | **N/A** |
| BANCO BILBAO VIZCAYA ARGENTARIA, S.A. | € 22,035,138.06 | | |
| BANCO SANTANDER S.A. | € 14,471,725.81 | | |
| HSBC BANK PLC, SUCURSAL EN ESPAÑA | € 14,471,725.81 | | |
| BNP PARIBAS SUCURSAL EN ESPAÑA | € 14,471,725.81 | | |
| THE ROYAL BANK OF SCOTLAND PLC | € 14,471,725.81 | | |
| ING BELGIUM, S.A., SUCURSAL EN ESPAÑA | € 14,471,725.81 | | |
| FORTIS, S.A., SUCURSAL EN ESPAÑA | € 4,460,976.01 | | |
| SOCIÉTÉ GÉNÉRALE | € 17,866,328.16 | | |
| BANCO ESPAÑOL DE CRÉDITO, S.A. MADRID | € 22,412,316.09 | | |
| **FACILITY C2 (USD TRANCHE)** | **$ 8,696,228.26** | **CEMEX España, S.A.** | **N/A** |
| CITIBANK INTERNATIONAL PLC, SUCURSAL EN ESPAÑA | $ 8,696,228.26 | | |
| **CEMEX España, S.A. US$2,300,000,000 RMC Revolving Facilities Agreement dated 24 September 2004 as amended** | **$ 1,050,000,000** | **CEMEX España, S.A.** | **CEMEX España, S.A.** |
| **FACILITY B (Revolving Facility)** | **$ 525,000,000** | **CEMEX España, S.A.** | **CEMEX España, S.A.** |
| BANCO BILBAO VIZCAYA ARGENTARIA, S.A. | $ 45,016,398 | | |
| BANCO SANTANDER S.A. | $ 29,577,409 | | |
| CALYON NEW YORK BRANCH | $ 29,577,409 | | |
| CITIBANK INTERNATIONAL PLC, SUCURSAL EN ESPAÑA | $ 22,516,398 | | |
| BANCO ESPAÑOL DE CRÉDITO, S.A. MADRID | $ 25,375,000 | | |
| BNP PARIBAS, SUCURSAL EN ESPAÑA | $ 29,125,000 | | |
| HSBC BANK PLC, SUCURSAL EN ESPAÑA | $ 22,875,000 | | |
| INSTITUTO DE CREDITO OFICIAL | $ 31,250,000 | | |
| JPMORGAN CHASE BANK N.A., SUCURSAL EN ESPAÑA | $ 25,375,000 | | |
| THE ROYAL BANK OF SCOTLAND PLC | $ 25,375,000 | | |
| WEST LB AG, SUCURSAL EN ESPAÑA | $ 25,375,000 | | |
| UNICREDIT S.P.A. SUCURSAL EN ESPAÑA | $ 10,000,000 | | |
| BARCLAYS BANK PLC | $ 21,560,809 | | |

| Obligation | Original Exposure at the calculation date | Obligor | Guarantor |
|---|---|---|---|
| BAYERISCHE LANDESBANK | $ 11,104,669 | | |
| BANK OF AMERICA, N.A., SUCURSAL EN ESPAÑA | $ 8,988,309 | | |
| BRED BANQUE POPULAIRE | $ 3,750,000 | | |
| CAJA DE AHORROS DE ASTURIAS | $ 4,050,000 | | |
| CAJA DE AHORROS DE GALICIA | $ 2,500,000 | | |
| CAJA DE AHORROS Y MONTE DE PIEDAD DE MADRID | $ 4,500,000 | | |
| CENTROBANCA - BANCA DE CREDITO | $ 12,500,000 | | |
| CAISSE REGIONALE DE CREDIT AGRICOLE MUTUEL DE PARIS ET D'ILE-DE-FRANCE | $ 10,000,000 | | |
| DEUTSCHE BANK LUXEMBOURG S.A. | $ 11,104,669 | | |
| COMMERZBANK AG LONDON BRANCH | $ 5,000,000 | | |
| FORTIS BANK, SUCURSAL EN ESPANA | $ 32,000,000 | | |
| IKB DEUTSCHE INDUSTRIEBANK AG, SUCURSAL EN ESPAÑA | $ 4,987,500 | | |
| ING BELGIUM SA, Sucursal en España | $ 14,850,229 | | |
| LLOYDS TSB BANK, PLC | $ 14,322,978 | | |
| INTESA SANPAOLO S.P.A. SUCURSAL EN ESPAÑA | $ 9,722,500 | | |
| SCOTIABANK EUROPE, PLC, LONDON | $ 12,070,725 | | |
| SOCIÉTÉ GÉNÉRALE | $ 5,000,000 | | |
| BANK OF TOKYO-MITSUBISHI UFJ LTD. SUCURSAL EN ESPAÑA | $ 5,550,000 | | |
| THE GOVERNOR AND COMPANY OF THE BANK OF IRELAND | $ 10,000,000 | | |
| **FACILITY C (Revolving Facility)** | **$ 525,000,000** | **CEMEX España, S.A.** | **CEMEX España, S.A.** |
| BANCO BILBAO VIZCAYA ARGENTARIA, S.A. | $ 45,568,732 | | |
| BANCO SANTANDER S.A. | $ 29,577,409 | | |
| CALYON NEW YORK BRANCH | $ 29,577,409 | | |
| CITIBANK NA INTERNATIONAL PLC, SUCURSAL EN ESPAÑA | $ 23,068,732 | | |
| BANCO ESPAÑOL DE CRÉDITO, S.A. MADRID | $ 25,375,000 | | |
| BNP PARIBAS, SUCURSAL EN ESPAÑA | $ 29,125,000 | | |

| Obligation | Original Exposure at the calculation date | Obligor | Guarantor |
|---|---|---|---|
| FORTIS BANK, SUCURSAL EN ESPANA | $ 32,000,000 | | |
| HSBC BANK PLC, MADRID | $ 22,875,000 | | |
| INSTITUTO DE CRÉDITO OFICIAL | $ 31,250,000 | | |
| JPMORGAN CHASE BANK N.A., SUCURSAL EN ESPAÑA | $ 25,375,000 | | |
| THE ROYAL BANK OF SCOTLAND PLC | $ 25,375,000 | | |
| WEST LB AG, SUCURSAL EN ESPAÑA | $ 25,375,000 | | |
| UNICREDIT S.P.A. SUCURSAL EN ESPAÑA | $ 10,000,000 | | |
| BARCLAYS BANK PLC, SUCURSAL EN ESPAÑA | $ 16,988,309 | | |
| BAYERISCHE LANDESBANK | $ 11,104,669 | | |
| BANK OF AMERICA, N.A., SUCURSAL EN ESPAÑA | $ 8,988,309 | | |
| BRED BANQUE POPULAIRE | $ 13,750,000 | | |
| CAJA DE AHORROS DE ASTURIAS | $ 4,050,000 | | |
| CAJA DE AHORROS DE GALICIA | $ 2,500,000 | | |
| CAJA DE AHORROS Y MONTE DE PIEDAD DE MADRID | $ 9,072,500 | | |
| CENTROBANCA - BANCA DE CREDITO | $ 12,500,000 | | |
| CAISSE REGIONALE DE CREDIT AGRICOLE MUTUEL DE PARIS ET D'ILE-DE-FRANCE | $ 10,000,000 | | |
| COMMERZBANK AG LONDON BRANCH | $ 5,000,000 | | |
| IKB DEUTSCHE INDUSTRIEBANK AG, SUCURSAL EN ESPAÑA | $ 4,987,500 | | |
| ING BELGIUM SA, Sucursal en España | $ 14,850,229 | | |
| LLOYDS TSB BANK, PLC | $ 14,322,978 | | |
| INTESA SANPAOLO SPA SUCURSAL EN ESPAÑA | $ 9,722,500 | | |
| SCOTIABANK EUROPE, PLC, LONDON | $ 12,070,725 | | |
| SOCIÉTÉ GÉNÉRALE | $ 5,000,000 | | |
| BANK OF TOKYO-MITSUBISHI UFJ LTD. SUCURSAL EN ESPAÑA | $ 5,550,000 | | |
| THE GOVERNOR AND COMPANY OF THE BANK OF IRELAND | $ 10,000,000 | | |
| **CEMEX España, S.A. US$6,000,000,000 (originally US$9,000,000,000)** | **$ 1,300,999,999** | **CEMEX España, S.A.** | **N/A** |
| **Rinker Acquisition Facilities Agreement dated 6 December, 2006 as amended** | **$ 1,142,939,394**<br>**€ 419,605,045**<br>**€ 1,320,000,000**<br>**$ 1,185,000,000** | | |

| Obligation | Original Exposure at the calculation date | Obligor | Guarantor |
|---|---|---|---|
| **FACILITY B1** | **$ 1,300,999,999** | **CEMEX España, S.A.** | **N/A** |
| THE BANK OF TOKYO-MITSUBISHI UFJ, LTD. SUCURSAL EN ESPAÑA | $ 105,681,818 | | |
| BARCLAYS BANK PLC | $ 105,681,818 | | |
| BAYERISCHE HYPO- UND VEREINSBANK AG | $ 85,681,818 | | |
| BAYERISCHE LANDESBANK | $ 105,681,818 | | |
| FORTIS BANK, S.A. SUCURSAL EN ESPAÑA | $ 105,681,818 | | |
| CALYON | $ 105,681,818 | | |
| MIZUHO CORPORATE BANK NEDERLAND, N.V. | $ 105,681,818 | | |
| SCOTIABANK EUROPE, PLC | $ 105,681,818 | | |
| SOCIÉTÉ GÉNÉRALE | $ 57,681,818 | | |
| STANDARD CHARTERED BANK | $ 4,318,182 | | |
| WESTLB AG, SUCURSAL EN ESPAÑA | $ 105,681,818 | | |
| THE GOVERNOR AND COMPANY OF THE BANK OF IRELAND | $ 33,333,333 | | |
| MEDIOBANCA - BANCA DI CREDITO FINANZIARIO S.P.A. | $ 70,833,333 | | |
| CAISSE REGIONALE DE CREDIT AGRICOLE MUTUEL DE PARIS ET D'ILE-DE-FRANCE | $ 24,166,667 | | |
| CREDIT INDUSTRIEL ET COMMERCIAL LONDON BRANCH | $ 24,166,667 | | |
| BANCA MONTE DEI PASCHI DI SIENA S.P.A., London Branch | $ 16,666,667 | | |
| BANCO CAIXA GENERAL | $ 12,333,333 | | |
| CAJA DE AHORROS DE ASTURIAS | $ 12,333,333 | | |
| LANDESBANK BADEN-WÜRTTEMBERG, LONDON BRANCH | $ 14,333,333 | | |
| LANDESBANK BADEN-WÜRTTEMBERG, STUTTGART BRANCH | $ 49,363,636 | | |
| WESTPAC EUROPE LIMITED | $ 8,333,333 | | |
| CENTROBANCA - Banca di Credito Finanziario e Mobiliare S.p.A. | $ 35,000,000 | | |
| ATLANTIC SECURITY BANK | $ 5,000,000 | | |

| Obligation | Original Exposure at the calculation date | Obligor | Guarantor |
|---|---|---|---|
| TAKAREKBANK (Magyar) | $ 2,000,000 | | |
| **FACILITY B2** | **$ 1,142,939,394** | **CEMEX España, S.A.** | **N/A** |
| CITIBANK INTERNATIONAL PLC, SUCURSAL EN ESPAÑA | $ 87,666,667 | | |
| THE ROYAL BANK OF SCOTLAND PLC | $116,666,667 | | |
| ABN AMRO Bank N.V. Sucursal en España | $ 75,000,000 | | |
| BANCO SANTANDER, S.A. | $ 100,681,818 | | |
| BANCO ESPAÑOL DE CRÉDITO, S.A. MADRID | $ 38,166,667 | | |
| BANK OF AMERICA, N.A., SUCURSAL EN ESPAÑA | $ 105,681,818 | | |
| CAJA DE AHORROS DE GALICIA | $ 95,681,818 | | |
| HSBC BANK PLC, SUCURSAL EN ESPAÑA | $ 105,681,818 | | |
| INSTITUTO DE CREDITO OFICIAL | $ 105,681,818 | | |
| JPMORGAN CHASE BANK N.A., SUCURSAL EN ESPAÑA | $ 99,681,818 | | |
| LLOYDS TSB BANK, PLC | $ 105,681,818 | | |
| BANCO DE SABADELL, S.A. | $ 50,000,000 | | |
| CAIXA D'ESTALVIS I PENSIONS DE BARCELONA | $ 8,333,333 | | |
| MORGAN STANLEY BANK INTERNATIONAL LIMITED | $ 8,333,333 | | |
| BANCO DE GALICIA | $ 40,000,000 | | |
| **FACILITY B3** | **€ 419,605,045** | **CEMEX España, S.A.** | **N/A** |
| BANCO BILBAO VIZCAYA ARGENTARIA, S.A. | € 88,037,026 | | |
| BNP PARIBAS SUCURSAL EN ESPAÑA | € 79,747,825 | | |
| CAJA DE AHORROS Y MONTE DE PIEDAD DE MADRID | € 79,747,825 | | |
| ING BELGIUM S.A. SUCURSAL EN ESPAÑA | € 79,747,825 | | |
| INTESA SANPAOLO S.P.A., SUCURSAL EN ESPAÑA | € 79,747,825 | | |
| BRED BANQUE POPULAIRE | € 12,576,718 | | |
| **FACILITY C** | **€ 1,320,000,000**<br>**$ 1,185,000,000** | **CEMEX España, S.A.** | **N/A** |

**€ 1,320,000,000**

| Obligation | Original Exposure at the calculation date | Obligor | Guarantor |
|---|---|---|---|
| CITIBANK INTERNATIONAL PLC, SUCURSAL EN ESPAÑA | € 39,453,333 | | |
| THE ROYAL BANK OF SCOTLAND PLC | € 51,333,333 | | |
| ABN AMRO BANK N.V. SUCURSAL EN ESPAÑA | € 33,000,000 | | |
| BANCO BILBAO VIZCAYA ARGENTARIA, S.A. | € 51,333,333 | | |
| BANCO SANTANDER, S.A. | € 44,300,000 | | |
| BANCO ESPAÑOL DE CRÉDITO, S.A. MADRID | € 16,793,333 | | |
| THE BANK OF TOKYO-MITSUBISHI UFJ, LTD. SUCURSAL EN ESPAÑA | € 46,500,000 | | |
| BARCLAYS BANK PLC | € 46,500,000 | | |
| BAYERISCHE HYPO- UND VEREINSBANK AG | € 46,500,000 | | |
| BAYERISCHE LANDESBANK | € 46,500,000 | | |
| BNP PARIBAS SUCURSAL EN ESPAÑA | € 46,500,000 | | |
| FORTIS BANK, S.A. SUCURSAL EN ESPAÑA | € 46,500,000 | | |
| BANK OF AMERICA, N.A., SUCURSAL EN ESPAÑA | € 46,500,000 | | |
| CAJA DE AHORROS DE GALICIA | € 35,500,000 | | |
| CAJA DE AHORROS Y MONTE DE PIEDAD DE MADRID | € 46,500,000 | | |
| CALYON | € 46,500,000 | | |
| HSBC BANK PLC, SUCURSAL EN ESPAÑA | € 46,500,000 | | |
| ING BELGIUM S.A. SUCURSAL EN ESPAÑA | € 46,500,000 | | |
| INSTITUTO DE CREDITO OFICIAL | € 46,500,000 | | |
| INTESA SANPAOLO S.P.A., SUCURSAL EN ESPAÑA | € 46,500,000 | | |
| JPMORGAN CHASE BANK N.A., SUCURSAL EN ESPAÑA | € 43,860,000 | | |
| LLOYDS TSB BANK, PLC | € 46,500,000 | | |
| MIZUHO CORPORATE BANK NEDERLAND, N.V. | € 46,500,000 | | |
| SCOTIABANK EUROPE PLC | € 46,500,000 | | |
| SOCIÉTÉ GÉNÉRALE | € 46,500,000 | | |
| STANDARD CHARTERED BANK | € 20,100,000 | | |
| WESTLB AG, SUCURSAL EN ESPAÑA | € 46,500,000 | | |

| Obligation | Original Exposure at the calculation date | Obligor | Guarantor |
|---|---|---|---|
| BANCO DE SABADELL, S.A. | € 22,000,000 | | |
| THE GOVERNOR AND COMPANY OF THE BANK OF IRELAND | € 14,666,667 | | |
| MEDIOBANCA - BANCA DI CREDITO FINANZIARIO S.P.A. | € 31,166,667 | | |
| BRED BANQUE POPULAIRE | € 7,333,333 | | |
| CAISSE REGIONALE DE CREDIT AGRICOLE MUTUEL DE PARIS ET D'ILE-DE-FRANCE | € 10,633,333 | | |
| CRÉDIT INDUSTRIEL ET COMMERCIAL LONDON BRANCH | € 10,633,333 | | |
| BANCA MONTE DEI PASCHI DI SIENA S.P.A., London Branch | € 7,333,333 | | |
| BANCO CAIXA GENERAL | € 5,426,667 | | |
| CAIXA D'ESTALVIS I PENSIONS DE BARCELONA | € 3,666,667 | | |
| CAJA DE AHORROS DE ASTURIAS | € 5,426,667 | | |
| LANDESBANK BADEN-WÜRTTEMBERG, LONDON BRANCH | € 6,306,667 | | |
| MORGAN STANLEY BANK INTERNATIONAL LIMITED | € 3,666,667 | | |
| WESTPAC EUROPE LIMITED | € 3,666,667 | | |
| CENTROBANCA - Banca di Credito Finanziario e Mobiliare S.p.A. | € 15,400,000 | | |
| **$ 1,185,000,000** | | | |
| CITIBANK INTERNATIONAL PLC, SUCURSAL EN ESPAÑA | $ 35,418,333 | | |
| THE ROYAL BANK OF SCOTLAND PLC | $ 46,083,333 | | |
| ABN AMRO BANK N.V. SUCURSAL EN ESPAÑA | $ 29,625,000 | | |
| BANCO BILBAO VIZCAYA ARGENTARIA, S.A. | $ 46,083,333 | | |
| BANCO SANTANDER, S.A. | $ 39,769,318 | | |
| BANCO ESPAÑOL DE CRÉDITO, S.A. MADRID | $ 15,075,833 | | |
| THE BANK OF TOKYO-MITSUBISHI UFJ, LTD. SUCURSAL EN ESPAÑA | $ 41,744,318 | | |
| BARCLAYS BANK PLC | $ 41,744,318 | | |
| BAYERISCHE HYPO- UND VEREINSBANK AG | $ 41,744,318 | | |
| BAYERISCHE LANDESBANK | $ 41,744,318 | | |

| Obligation | Original Exposure at the calculation date | Obligor | Guarantor |
|---|---|---|---|
| BNP PARIBAS SUCURSAL EN ESPAÑA | $ 41,744,318 | | |
| FORTIS BANK, S.A. SUCURSAL EN ESPAÑA | $ 41,744,318 | | |
| BANK OF AMERICA, N.A., SUCURSAL EN ESPAÑA | $ 41,744,318 | | |
| CAJA DE AHORROS DE GALICIA | $ 31,869,318 | | |
| CAJA DE AHORROS Y MONTE DE PIEDAD DE MADRID | $ 41,744,318 | | |
| CALYON | $ 41,744,318 | | |
| HSBC BANK PLC, SUCURSAL EN ESPAÑA | $ 41,744,318 | | |
| ING BELGIUM S.A. SUCURSAL EN ESPAÑA | $ 41,744,318 | | |
| INSTITUTO DE CREDITO OFICIAL | $ 41,744,318 | | |
| INTESA SANPAOLO S.P.A., SUCURSAL EN ESPAÑA | $ 41,744,318 | | |
| JPMORGAN CHASE BANK N.A., SUCURSAL EN ESPAÑA | $ 39,374,318 | | |
| LLOYDS TSB BANK, PLC | $ 41,744,318 | | |
| MIZUHO CORPORATE BANK NEDERLAND, N.V. | $ 41,744,318 | | |
| SCOTIABANK EUROPE PLC | $ 41,744,318 | | |
| SOCIÉTÉ GÉNÉRALE | $ 41,744,318 | | |
| STANDARD CHARTERED BANK | $ 18,044,318 | | |
| WESTLB AG, SUCURSAL EN ESPAÑA | $ 41,744,318 | | |
| BANCO DE SABADELL, S.A. | $ 19,750,000 | | |
| THE GOVERNOR AND COMPANY OF THE BANK OF IRELAND | $ 13,166,667 | | |
| MEDIOBANCA - BANCA DI CREDITO FINANZIARIO S.P.A. | $ 27,979,167 | | |
| BRED BANQUE POPULAIRE | $ 6,583,333 | | |
| CAISSE REGIONALE DE CREDIT AGRICOLE MUTUEL DE PARIS ET D'ILE-DE-FRANCE | $ 9,545,833 | | |
| CRÉDIT INDUSTRIEL ET COMMERCIAL LONDON BRANCH | $ 9,545,833 | | |
| BANCA MONTE DEI PASCHI DI SIENA S.P.A., London Branch | $ 6,583,333 | | |
| BANCO CAIXA GENERAL | $ 4,871,667 | | |
| CAIXA D'ESTALVIS I PENSIONS DE BARCELONA | $ 3,291,667 | | |

| Obligation | Original Exposure at the calculation date | Obligor | Guarantor |
|---|---|---|---|
| CAJA DE AHORROS DE ASTURIAS | $ 4,871,667 | | |
| LANDESBANK BADEN-WÜRTTEMBERG, LONDON BRANCH | $ 5,661,667 | | |
| MORGAN STANLEY BANK INTERNATIONAL LIMITED | $ 3,291,667 | | |
| WESTPAC EUROPE LIMITED | $ 3,291,667 | | |
| CENTROBANCA - Banca di Credito Finanziario e Mobiliare S.p.A. | $ 13,825,000 | | |
| **CEMEX España, S.A. US$617,500,000 & EUR 587,500,000 Joint Bilateral Financing Facilities Agreement dated 27 January, 2009 (as amended)** | **$ 617,500,000 € 587,500,000** | **CEMEX España, S.A.** | **CEMEX Australia Holdings Pty Ltd.; CEMEX, Inc.** |
| **FACILITY A** | **$ 617,500,000** | **CEMEX España, S.A.** | **CEMEX Australia Holdings Pty Ltd.; CEMEX, Inc.** |
| THE ROYAL BANK OF SCOTLAND PLC | $ 362,500,000 | | |
| BANCO SANTANDER, S.A. | $ 105,000,000 | | |
| BANK OF AMERICA, N.A., SUCURSAL EN ESPAÑA | $ 150,000,000 | | |
| **FACILITY B** | **€ 587,500,000** | **CEMEX España, S.A.** | **CEMEX Australia Holdings Pty Ltd.; CEMEX, Inc.** |
| LLOYDS TSB BANK PLC, SUCURSAL EN ESPAÑA | € 22,500,000 | | |
| BANCO SANTANDER S.A. | € 307,000,000 | | |
| BANCO ESPAÑOL DE CRÉDITO, S.A. MADRID | € 40,000,000 | | |
| BANCO BILBAO VIZCAYA ARGENTARIA, S.A. | € 48,000,000 | | |
| CAIXA D'ESTALVIS I PENSIONS DE BARCELONA | € 70,000,000 | | |
| BANCO CAIXA GERAL, S.A. | € 50,000,000 | | |
| HSBC BANK, PLC, SUCURSAL EN ESPAÑA | € 30,000,000 | | |
| CAJA DE AHORROS Y MONTE DE PIEDAD MADRID | € 20,000,000 | | |
| **New Sunward Holding B.V. US$1,050,000,000 Senior Unsecured Dutch Loan "A & B" Agreement dated 2 June, 2008 (Club Loan)** | **$ 1,050,000,000** | **NEW SUNWARD HOLDING B.V.** | **CEMEX, S.A.B. de C.V.; CEMEX México, S.A. de C.V.** |
| BANCO SANTANDER, S.A. | $ 250,000,000 | | |
| HSBC MÉXICO, S.A., Institución de Banca Multiple, Grupo Financiero HSBC, acting through its Grand Cayman Branch | $ 250,000,000 | | |

| Obligation | Original Exposure at the calculation date | Obligor | Guarantor |
|---|---|---|---|
| THE ROYAL BANK OF SCOTLAND PLC | $ 250,000,000 | | |
| ING BANK, N.V., acting through its Curacao Branch | $ 150,000,000 | | |
| CAJA DE AHORROS Y MONTE DE PIEDAD DE MADRID - Miami Agency | $ 150,000,000 | | |
| **New Sunward Holding B.V. US$700,000,000 Facilities Agreement dated 27 June 2005 (as amended)** | **$ 350,000,000** | **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. | $ 34,916,667 | | |
| SANTANDER OVERSEAS BANK INC | $ 24,250,000 | | |
| BNP PARIBAS | $ 31,166,667 | | |
| THE ROYAL BANK OF SCOTLAND PLC | $ 24,250,000 | | |
| BANK OF AMERICA, N.A. | $ 7,500,000 | | |
| JPMORGAN CHASE BANK, N.A. | $ 24,250,000 | | |
| CITIBANK, N.A. NASSAU BAHAMAS BRANCH | $ 34,916,667 | | |
| ING BANK N.V. | $ 24,250,000 | | |
| CALYON SUCURSAL EN ESPAÑA | $ 24,250,000 | | |
| FORTIS BANK S.A./N.V. | $ 15,000,000 | | |
| LLOYDS TSB BANK PLC | $ 24,250,000 | | |
| THE BANK OF TOKYO-MITSUBISHI UFJ, LTD. | $ 15,000,000 | | |
| BANCO DE SABADELL, S.A. | $ 10,000,000 | | |
| THE GOVERNOR AND COMPANY OF THE BANK OF IRELAND | $ 7,500,000 | | |
| MIZUHO CORPORATE BANK, LTD. | $ 24,250,000 | | |
| WACHOVIA BANK, NATIONAL ASSOCIATION | $ 24,250,000 | | |
| **Part I.B (Bilateral Facilities)** | | | |
| US$500,000,000 Pez Loan between Banco Bilbao Vizcaya Argentaria, S.A. and CEMEX, S.A.B. de C.V. dated 25 June 2008, as further amended | $ 500,000,000 | 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) | $ 170,000,000 | CEMEX Materials LLC | CEMEX España, S.A. |

| Obligation | Original Exposure at the calculation date | Obligor | Guarantor |
|---|---|---|---|
| US$37,500,000 Facility Agreement between CEMEX BNP Paribas (Sydney Branch) and CEMEX Materials LLC, dated 1 October 2007 (as amended) | $ 37,500,000 | 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 $51,000,000 bilateral loan agreement dated 24 June 2008 (as amended), each between the same parties) | € 3,900,291<br>$ 38,431,286 | CEMEX España, S.A. | N/A |
| €40,000,000 Multidivisa Bilateral Loan Agreement between Fortis, S.A., Sucursal en España and CEMEX España, S.A., dated 28 August 2006 | $ 24,616,009<br>€ 10,662,171 | CEMEX España, S.A. | N/A |
| **Part I.C (Promissory Notes)** | | | |
| Promissory Note US$45,434,817 JPMorgan Chase Bank, N.A. | $ 45,434,817 | 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. | $ 20,000,000 | CEMEX, S.A.B. de C.V. | CEMEX México, S.A. de C.V. |
| Promissory Note US$50,000,000 BNP Paribas | $ 50,000,000 | CEMEX, S.A.B. de C.V. | N/A |
| Promissory Note US$49,128,020 Barclays Bank plc | $ 49,128,020 | 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 | $ 50,000,000 | CEMEX, S.A.B. de C.V. | N/A |
| Promissory Note US$6,625,000 ABN AMRO Bank, N.V. | $ 6,625,000 | CEMEX, S.A.B. de C.V. | N/A |
| Promissory Note US$1,296,000 Calyon | $ 1,296,000 | CEMEX, S.A.B. de C.V. | N/A |
| Promissory Note US$ 34,318,339 ING Bank N.V., sucursal Curazao | $ 34,318,339 | CEMEX, S.A.B. de C.V. | N/A |
| Promissory Note Mex$ 739,385,879.95 HSBC México, S.A., Institución de Banca Múltiple, Grupo Financiero HSBC | Mex$739,385,879.95 | CEMEX, S.A.B. de C.V. | N/A |
| Promissory Note US$4,093,054 Bank of America, N.A. | $ 4,093,054 | CEMEX S.A.B. de C.V. | N/A |
| Promissory Note US$4,504,861 The Royal Bank of Scotland plc | $ 4,504,861 | CEMEX S.A.B. de C.V. | N/A |
| Promissory Note US$34,072,566 Merrill Lynch International Bank Limited | $ 34,072,566 | CEMEX S.A.B. de C.V. | N/A |
| Promissory Note US$51,947,000 Citibank N.A. New York | $ 51,947,000 | CEMEX S.A.B. de C.V. | N/A. |

| Obligation | Original Exposure at the calculation date | Obligor | Guarantor |
|---|---|---|---|
| **Part I.D (US Private Placements)** | | | |
| **US$882,407,495.57 Note Purchase Agreement** | **US$ 882,407,495.57** | **CEMEX España Finance LLC** | **CEMEX España, S.A.** |
| Noteholders breakdown as identified in Schedule A to the USPP Note Purchase Agreement | | | |
| **¥1,185,389,696.06 Note Purchase Agreement** | **¥ 1,185,389,696.06** | **CEMEX España Finance LLC** | **CEMEX España, S.A.** |
| Noteholders breakdown as identified in Schedule A to the USPP Note Purchase Agreement | | | |

## Part III

## The Creditors' Representatives

| Representative | Agreement |
|---|---|
| **Part I.A (Syndicated Facilities)** | |
| **English law documents** | |
| The Royal Bank of Scotland plc | CEMEX España, S.A. Joint Bilateral Facilities Agreement |
| | $6,000,000,000 Rinker Acquisition Facilities Agreement |
| Citibank International PLC | $2,300,000,000 RMC Revolving Facilities Agreement |
| Citibank, N.A. | $700,000,000 NSH Facilities Agreement |
| Banco Bilbao Vizcaya Argentaria, S.A. | €250,000,000 and JPY19,308,000,000 Euro/Yen Facilities Agreement |
| **New York law documents** | |
| BBVA Bancomer, S.A., Institución de Banca Múltiple, Grupo Financiero BBVA Bancomer | CEMEX, S.A.B. de C.V. Joint Bilateral Facility |
| ING Capital LLC | NSH Senior Unsecured Maturity Loan A Agreement as amended |
| | NSH Senior Unsecured Maturity Loan B Agreement as amended |
| | CEMEX, S.A.B. de C.V. $700M Revolving Credit Facility as amended |
| Barclays Bank PLC, New York Branch | CEMEX, S.A.B. de C.V. $1,200M Revolving Credit Facility as amended |
| **Part I.B (Bilateral Facilities)** | |
| Banco Bilbao Vizcaya Argentaria, S.A. | US$500,000,000 Credit Agreement between Banco Bilbao Vizcaya Argentaria, S.A. and CEMEX, S.A.B. de C.V. dated 25 June 2008, as further amended |

| Representative | Agreement |
|---|---|
| JP Morgan Chase Bank, N.A. | US$170,000,000 Loan Facility Agreement between JP Morgan Chase Bank, N.A. and CEMEX Materials LLC, dated 1 October 2007 (as amended) |
| BNP Paribas, (Sydney Branch) | US$37,500,000 Facility Agreement between BNP Paribas (Sydney Branch) and CEMEX Materials LLC, dated 1 October 2007 as amended |
| Banco de Sabadell, 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) |
| Fortis, S.A., Sucursal en España | € 40,000,000 Multidivisa Bilateral Loan Agreement between Fortis, S.A., Sucursal en España and CEMEX España, S.A., dated 28 August 2006 |
| **Part I.C (Promissory Notes)** | |
| JPMorgan Chase Bank, N.A. | Promissory Note US$45,434,817 JPMorgan Chase Bank, N.A. |
| | Promissory Note US$20,000,000 JPMorgan Chase Bank, N.A. |
| BNP Paribas | Promissory Note US$50,000,000 BNP Paribas |
| Barclays Bank PLC | Promissory Note US$49,128,020 Barclays Bank plc, dated 31 March 2009 |
| BBVA Bancomer, S.A., Institución de Banca Múltiple Grupo Financiero BBVA Bancomer | Promissory Note US$50,000,000 BBVA Bancomer, S.A., Institucion de Banca Multiple Grupo Financiero BBVA Bancomer |
| ABN AMRO Bank, N.V. | Promissory Note US$6,625,000 ABN AMRO Bank, N.V. |

| Representative | Agreement |
|---|---|
| Calyon | Promissory Note US$1,296,000 Calyon |
| ING Bank N.V., sucursal Curazao | Promissory Note US$34,318,339 ING Bank N.V., sucursal Curazao |
| HSBC México, S.A., Institución de Banca Multiple, Grupo Financiero HSBC | Promissory Note Mex$739,385,880 HSBC México, S.A., Institución de Banca Multiple, Grupo Financiero HSBC |
| Bank of America, N.A. | Promissory Note US$4,093,054 Bank of America, N.A. |
| The Royal Bank of Scotland plc | Promissory Note US$4,504,861 The Royal Bank of Scotland plc |
| Merrill Lynch International Bank Limited | Promissory Note US$34,072,566 Merrill Lynch International Bank Limited |
| Citibank N.A. New York | Promissory Note US$51,947,000 Citibank N.A. New York |

| | | | | |
|---|---|---|---|---|
| **Part I.D (US Private Placements)** | | | | |
| **US$882,407,495.57 Note Purchase Agreement** | **$** | **882,407,495.57** | **CEMEX España Finance LLC** | **CEMEX España, S.A.** |
| Noteholders breakdown as identified in Schedule A to the new USPP Note Agreement | | | | |
| **¥1,185,389,696.06 Note Purchase Agreement** | **¥** | **1,185,389,696.06** | **CEMEX España Finance LLC** | **CEMEX España, S.A.** |
| Noteholders breakdown as identified in Schedule A to the new USPP Note Agreement | | | | |

## 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 (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 of each Original Obligor (except for any Dutch Obligor and any Original Obligor (other than the Parent) incorporated in Mexico) and, in the case of the Parent, a resolution of its shareholder's meeting:

(i) approving the terms of, and the transactions contemplated by, the New Finance Documents to which it is a party and resolving that it execute the New Finance Documents to which it is a party;

(ii) authorising a specified person or persons to execute the New 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 New 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 New 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 New Finance Documents to which it is a party and resolving that it execute the New Finance Documents to which it is a party;

(B) if applicable, authorising a specified person or persons to execute the New 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 New 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) 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) 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 New 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 (B) and/or (C) above in relation to the New Finance Documents; and

(vii) such evidence as may be required (if any) to enable the Finance Parties to comply with the *Wet identificatie financiële dienstverlening*.

(f) A certificate of each Original Obligor (signed by an Authorised Signatory) confirming that borrowing or guaranteeing, as appropriate, the Exposures would not cause any borrowing, guarantee, security or similar limit binding on any Original Obligor to be exceeded.

(g) 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. **New Finance Documents**

(a) This Agreement executed by the members of the Group party to this Agreement and the creditors under each Facility.

(b) The NY Law Amendment Agreement executed by the members of the Group party to the NY Law Amendment Agreement and the Original Participating Creditors with respect to each Facility to which it relates.

(c) The Intercreditor Agreement executed by the member of the Group party to the Intercreditor Agreement and the creditors under each Facility.

(d) The Fee Letters executed by the Parent.

(e) 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 CEMEX Dutch Holdings B.V., Sunward Holdings B.V., Sunward Acquisitions N.V., Corporación Gouda, S.A. de C.V., Mexcement Holdings, S.A. de C.V. and CEMEX International Finance Company as pledgors, the Security Agent as pledgee and New Sunward Holdings B.V. as the company;

(ii) a possessory deed of pledge of bearer shares between Mexcement Holdings, S.A. de C.V., Corporación Gouda, S.A. de C.V. and CEMEX International Finance Company as pledgors, the Security Agent as pledgee and Sunward Acquisitions N.V. as the company;

(iii) a deed of pledge of registered shares between Corporación Gouda, S.A. de C.V. as pledgor, the Security Agent as pledgee and Sunward Investments B.V. as the company;

(iv) a deed of pledge of registered shares between Sunward Investments B.V., Sunward Acquisitions N.V. and CEMEX International Finance Company as pledgors, the Security Agent as pledgee and Sunward Holdings B.V. as the company;

(v) a deed of pledge of registered shares between Sunward Holdings B.V. and CEMEX International Finance Company as pledgors, the Security Agent as pledgee and CEMEX Dutch Holdings B.V. as the company; and

(vi) 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.

(f) A copy of all notices to be sent under the Transaction Security Documents.

(g) 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. **Legal Opinions**

(a) A legal opinion of Clifford Chance LLP, legal advisers to the Administrative Agent in England, as to English law substantially in the form distributed to the Original Participating 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 Participating 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 Participating 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 Participating Creditors and the Security Agent prior to signing this Agreement.

(e) An opinion with respect to the laws and regulations of New York and Delaware from Skadden, Arps, Slate, Meagher & Flom, LLP, substantially in the form distributed to the Original Participating 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 Participating Creditors and the Security Agent prior to signing this Agreement.

(g) An opinion with respect to the laws and regulations of the Commonwealth of Australia from Minter Ellison, substantially in the form distributed to the Original Participating Creditors and the Security Agent prior to signing this Agreement.

(h) An opinion with respect to the USPP Note Agreement from Skadden, Arps, Slate, Meagher & Flom, LLP, substantially in the form distributed to the USPP Noteholders prior to signing the USPP Note Agreement.

(i) An opinion with respect to the laws and regulations of Ireland from A&L Goodbody, substantially in the form distributed to the Original Participating Creditors and the Security Agent prior to signing this Agreement.

(j) An opinion with respect to the laws and regulations of Switzerland from Bär & Karrer AG, substantially in the form distributed to the Original Participating Creditors and the Security Agent prior to signing this Agreement.

(k) An opinion with respect to the laws and regulations of Louisiana from Liskow & Lewis substantially in the form distributed to the Original Participating Creditors and the Security Agent prior to signing the Financing Agreement.

4. **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 Company and the monthly thirteen week management cash flow forecasts to be supplied by the Parent to the Administrative Agent under and in accordance with the terms of Clauses 22.4 ( *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 have been paid or will be paid on or before the Effective Date.

(f) A list of all acquisitions falling within paragraphs (d) of the definition of "Permitted Acquisition" to which members of the Group are contractually committed as at the date of the Agreement.

(g) Evidence that the Promissory Notes have been cancelled or in the case of a lost Promissory Note, an affidavit delivered and exchanged for replacement notes that reflect the terms of this Agreement.

(h) A list of the Group's mark-to-market exposures under Treasury Transactions as at 30 June 2009 (including details of the type of derivative).

(i) A presentation detailing the proposed intra-Group reorganisation relating to the Dutch Holding Company structure.

(j) The USPP Note Agreement and USPP Note Guarantee executed by the parties thereto.

(k) Evidence that each holder of an existing private placement note shall have exchanged such note for a corresponding USPP Note.

**Part II**

**Conditions Precedent Required to be**

**Delivered by an Additional Guarantor or an Additional Security Provider**

**Obligors:**

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) (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 of the Additional Guarantor or Additional Security Provider (other than a Dutch 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 New Finance Documents to which it is a party and resolving that it execute the New Finance Documents to which it is a party;

(B) if applicable, authorising a specified person or persons to execute the New 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 New 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) 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) 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 the 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 New Finance Documents to which it is a party and resolving that it executes the New Finance Documents to which it is a party;

(B) resolving that the execution of the transactions contemplated by the New 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 New 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 New 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 New Finance Documents to which it is a party and resolving that (i) it executes the New Finance Documents to which it is a party and (ii) the execution of the transactions contemplated by the New 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 New 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) Should the legal advisers of the Participating 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.

(h) A certificate of the Additional Guarantor or Additional Security Provider (signed by an Authorised Signatory) confirming that guaranteeing the aggregate Exposures of all of the Participating Creditors under the Facilities would not cause any guaranteeing or similar limit binding on it to be exceeded.

(i) 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 Participating 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 Participating 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.

(b) A copy of any other Authorisation or other document, opinion or assurance which the Administrative 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 Administrative 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

### FORM OF PARTICIPATING CREDITOR ACCESSION UNDERTAKING

To: [*Administrative Agent*]

From: [*The Existing Participating Creditor*] (the "**Existing Participating Creditor**") and [*The New Participating Creditor*] (the "**New Participating Creditor**")

Dated:

**CEMEX – Financing Agreement** [2]

**dated [•] 2009 ("Financing Agreement")**

1. We refer to the Financing Agreement. This is a Participating Creditor Accession Undertaking. Terms defined in the Financing Agreement have the same meaning in this Participating Creditor Accession Undertaking unless given a different meaning in this Participating Creditor Accession Undertaking.
2. The New Participating Creditor confirms that as from [date] it intends to be bound as a party to the Financing Agreement as a Participating Creditor and undertakes to perform all the obligations expressed in the New Finance Documents and the relevant Existing Finance Documents to be assumed by a Participating Creditor and agrees that it shall be bound by all the provisions of the Financing Agreement as if it had been an original party to the Financing Agreement.
3. The New Participating Creditor also confirms that it is a party to the Intercreditor Agreement as a Participating Creditor.
4. The Exposures of the New Participating Creditor under the Facilities are described in the Schedule.
5. The New Participating Creditor expressly acknowledges the limitations on the Existing Participating Creditor's obligations set out in paragraph (c) of Clause 27.5 (*Limitation of responsibility of Existing Participating Creditors*) of the Financing Agreement.
6. This Participating Creditor Accession Undertaking 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 Participating Creditor Accession Undertaking.
7. We confirm that we have carried out and are satisfied with the results of all compliance checks we consider necessary in relation to our participation in the Facilities.
8. This Participating Creditor Accession Undertaking and any non-contractual obligations arising out of or in connection with it are governed by English law.

[2] Intercreditor Agreement accession is also required.

**THE SCHEDULE**

**Exposures/rights and obligations transferred**

[*insert relevant details*]
[[*Facility Office] address, email, fax number and attention details for notices and account details for payments*,]

[Existing Participating Creditor] [New Participating Creditor]

By: By:

This Participating Creditor Accession Undertaking is accepted by the Administrative Agent.

[Administrative Agent]

By:

## SCHEDULE 4

### FORM OF ACCESSION LETTER

To: [*Administrative Agent*]

From: [*Subsidiary*] and [*Parent*]

Dated:

Dear Sirs

**CEMEX – Financing Agreement**

**Dated [•] 2009 ("Financing Agreement")**

1. [Subsidiary] agrees to become an [Additional Guarantor/Additional Security Provider] and to be bound by the terms of the Financing Agreement and the other Finance Documents as an [Additional Guarantor/Additional Security Provider] pursuant to Clause 28.3 (Additional Guarantors and Additional Security Providers)] of the Financing Agreement. [Subsidiary] is a limited liability company duly incorporated under the laws of [name of relevant jurisdiction] with registered number [ • ].

2. [Subsidiary's] administrative details are as follows:

   Address:

   Fax No.:

   Attention:

3. This letter is and any non-contractual obligations arising out of or in connection with it are governed by English law.

4. Terms which are used in this Accession Letter which are not defined in this Accession Letter but are defined in the Financing Agreement shall have the meaning given to those terms in the Financing Agreement.

   [This Accession Letter is entered into by deed.]**

Signed by: _____

_____

[Parent] [Subsidiary]

NOTES:

* Delete as appropriate.

** If the Facilities are fully drawn there may be an issue in relation to past consideration for a proposed Additional Guarantor or Additional Security Provider. This can be overcome by acceding by way of deed.

## SCHEDULE 5

### FORM OF COMPLIANCE CERTIFICATE

To: [•] as Administrative Agent

From: [*Parent*]

Dated:

Dear Sirs

**CEMEX – Financing Agreement**

**dated [•] 2009 ("Financing Agreement")**

1. We refer to the Financing Agreement. This is a Compliance Certificate. Terms defined in the Financing 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) 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 23.2 (*Financial condition*) of the Financing Agreement.

   (b) 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) Clause 23.2 ( *Financial condition*) of the Financing Agreement.

   (c) Capital Expenditure of the Group for the Financial Year ending [•] was $[•] and the amount of Permitted Joint Ventures falling within paragraph (b) of the definition thereof in such Financial Year was [•]. Therefore the requirements of paragraph (c) of Clause 23.2 ( *Financial condition*) of the Financing Agreement [have/have not] been complied with.

## SCHEDULE 6

### EXISTING SECURITY AND QUASI-SECURITY

(Figures in Millions, USD)

| NAME OF CEMEX SUBSIDIARY | COUNTERPARTY | LIEN CONCEPT | MATURITY DATE | SECURED AMOUNT | AGREEMENT TYPE |
|---|---|---|---|---|---|
| RMC Beton Śląsk Sp. z o.o. | SG Equipment Leasing Polska Sp. z o.o. | Plant Equipment Lien | 2011-2013 | $ 1.619 | Equipment Leasing Agreement by and between SG Equipment Leasing Polska Sp. z o.o. and RMC Beton Śląsk Sp. z o.o. dated June 23, 2006. |
| CEMEX Granulats Rhone-Mediterranee | SLIBAIL IMMOBILIER | Plant Equipment Lien | October-2012 | $ 0.669 | 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 | $ 0.123 | Leasing Agreement by and between Slibail Immobilier - SAS Beton de France Normandie dated June 03, 2002. |
| CEMEX Sand, s.r.o. | Impuls Leasing Austria, s.r.o. | Machinery and Equipment for Operations | June 1, 2010 | $ 0.052 | Financial Leasing between CEMEX Sand, s.r.o. and Impulse Leasing Austria dated March 1, 2008 |
| Transbeton Lieferbeton Gesellschaft m.b.H. | Raiffeisenbank Bruck an der Mur eg. Gen. | Plant Equipment Lien | September 1, 2010 | $ 3.225 | 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. |
| CEMEX Kies Hamburg GmbH & Co. KG | Kreissparkasse Herzogfum Lauenburg | Land Lien | March 30, 2014 | $ 0.196 | Leasing Agreement Kreissparkasse Herzogfum Lauenburg - Wunder GmbH, Wunder Kiestransporte GmbH und Günter Wunder Baustoffhandel dated March 22, 1994. |

| NAME OF CEMEX SUBSIDIARY | COUNTERPARTY | LIEN CONCEPT | MATURITY DATE | SECURED AMOUNT | AGREEMENT TYPE |
|---|---|---|---|---|---|
| CEMEX UK Operations Limited | ING Lease (UK) Limited | Plant Equipment Lien | December 31, 2011 | $ 11.179 | Leasing Master Agreement by and between Kleinwort Benson Fleet Finance Limited and Rombus Materials Limited dated December 31, 1997. Assignment and Continuation Schedule dated September 30, 2005 between ING Lease Fleet Finance Limited and CEMEX UK Operations Ltd. |
| CEMEX UK Operations Limited | Lloyds TSB Asset Finance | Plant Equipment Lien | December 31, 2014 | $ 2.703 | Lease Agreement by and between The Rugby Group PLC and UDT Budget Leasing Limited dated December 21, 1998. |
| RMC Beton Śląsk Sp. z o.o. | Bankowy Fundusz Leasingowy S.A. | Plant Equipment Lien | March 15, 2012 | $ 0.013 | Leasing Agreement by and between Bankowy Fundusz Leasingowy, S.A. and RMC Beton Śląsk Sp. z o.o. dated March 11, 2008. |
| Centro Distribuidor de Cemento, S.A. de C.V. | Banco Santander (México), S.A., Institución de Banca Múltiple, Grupo Financiero Santander | Cash Collateral | October 13, 2009 | $ 41.365 | ISDA Master Agreement dated February 14, 2003 / See Annex 1 (Excluded Positions) item (e) in the Hedging Schedule |
| CEMEX, S.A.B. de C.V. | Citigroup Global Markets Inc as agent for Citibank, N.A. | Cash Collateral | October 13, 2009 | $168.289 | ISDA Master Agreement dated April 23, 2008 / See Annex 1 (Excluded Positions) item (b) in the Hedging Schedule |
| CEMEX, S.A.B. de C.V. and CEMEX México, S.A. de C.V. | JPMorgan Chase Bank | Cash Collateral | July 31, 2009 | $ 20,000 | Promissory Note in relation with ISDA Agreement** |
| CEMEX, S.A.B. de C.V. and Subsidiaries | Banco Nacional de Comercio Exterior | Pledge of Cementos Chihuahua, S.A.B. de C.V. shares and Mortgage of Cement Plants in Mérida Yucatan and Ensenada, Baja California* | February 14, 2014 | $ 250.000 | Credit Agreement entered on October 14, 2008 (as amended) secured with Stock Pledge and Cement Plants in Mérida Yucatan and Ensenada, Baja California * |

| NAME OF CEMEX SUBSIDIARY | COUNTERPARTY | LIEN CONCEPT | MATURITY DATE | SECURED AMOUNT | AGREEMENT TYPE |
|---|---|---|---|---|---|
| CEMEX, S.A.B.de C.V., and CEMEX México, S.A. de C.V. | Nacional Financiera S.N.C. | Mortgage of CEMEX México's headquarters Edificio Constitución # 444 in Monterrey, N.L. | October 21, 2010 | $ 33.025 | Bank Guarantee Agreement to issue the government guarantee on CEMEX's short term Certificados Bursátiles entered on October 22, 2008. |
| CEMEX Concretos, S.A. de C.V. and CEMEX México, S.A. de C.V. | Banco de Obras y Servicios, S.N.C. | Mortgage of Planta Yaqui in Hemosillo Sonora | April-2014 | $159.742 | Revolving Credit Agreements |
| CEMEX Deutschland AG | HypoVereinsban (Unicredit) | Cash Collateral | Revolving | $ 7.315 | Bank Guarantees |
| CEMEX Deutschland AG | HypoVereinsban (Unicredit) | Cash Collateral | October 2013 | $ 2.164 | Leasing Agreement for office building in Berlin |
| | | **Total** | | **$ 701.677** | |

* Currently in the process of cancelling the Stock Pledge.

** The Maturity Date is extended pursuant to the terms of the CWEA. JPMorgan will release the Security immediately after the Effective Date.

## SCHEDULE 7

### MATERIAL SUBSIDIARIES

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

CEMEX España, S.A.

CEMEX México, S.A. de C.V.

CEMEX Concretos, S.A. de C.V.

Centro Distribuidor de Cemento, S.A. de C.V.

Corporación Gouda, S.A. de C.V.

CEMEX Central, S.A. de C.V.

CEMEX Colombia, S.A.

Sunbelt Investments, Inc.

CEMEX, Inc.

CEMEX Corp.

CEMEX Materials LLC

CEMEX Construction Materials Florida LLC

CEMEX Australia Pty Limited

Rinker Group Pty Limited

New Sunward Holding B.V.

CEMEX Caracas Investments B.V.

CEMEX Egyptian Investments B.V.

CEMEX Dutch Holdings B.V.

CEMEX Finance Europe B.V.

Sunward Investments B.V.

Sunward Holdings B.V.

CEMEX Trademarks Holding Ltd.

Assiut Cement Company

CEMEX Trading LLC

## SCHEDULE 8

### PROCEEDINGS PENDING OR THREATENED

1. **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 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 ("**NAFTA**") as of 1 January 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 an effective 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.

2. **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 years ended 31 December 2006 and 2007, our environmental capital expenditures and remediation expenses were not material. For the year ended 31 December 2008, our environmental capital expenditures and remediation expenses were of approximately US$62 million. However, our environmental expenditures may increase in the future.

*United States*. CEMEX, Inc. is 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 CEMEX, Inc.'s various operating facilities or elsewhere. We believe that our current procedures and practices for handling and managing materials are generally consistent with the industry standards and legal and regulatory requirements, and that we take appropriate precautions to protect employees and others from harmful exposure to hazardous materials.

Several of CEMEX, Inc.'s previously owned and currently owned facilities have become the subject of various local, state or Federal environmental proceedings and inquiries in the past. While some of these matters have been settled, others are in their preliminary stages and may not be resolved for years. The information developed to date on these matters is not complete. CEMEX, Inc. does not believe it will be required to spend significantly more on these matters than the amounts already disclosed. However, it is impossible for CEMEX, Inc. to determine the ultimate cost that it might incur in connection with such environmental matters until all environmental studies and investigations, remediation work, negotiations with other parties that may be responsible, and litigation against other potential sources of recovery have been completed. With respect to known environmental contingencies, CEMEX, Inc. has recorded provisions for estimated probable liabilities, and we do not believe that the ultimate resolution of such matters will have a material adverse effect on our financial results.

As of 31 March 2009, CEMEX, Inc. and its subsidiaries had accrued liabilities specifically relating to environmental matters in the aggregate amount of approximately US$40.1 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 stage, 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.

The following is a discussion of the environmental regulation and 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*, or 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 auditing our 15 cement plants and awarded all our plants a *Certificado de Industria Limpia* ("**Clean Industry Certificate**") certifying that our plants are in full compliance with environmental laws. The Clean Industry Certificates are strictly renewed every two years. As of this date, all of our cement plants have Clean Industry Certificates or are in the process of renewing them. We expect 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 Ensenada and Huichapan plants. Our Monterrey and Hermosillo plants started using tires as an energy source in September 2002 and November 2003, respectively. In 2004, our Yaqui, Tamuín, Guadalajara and Barrientos plants also started using tires as an energy source, and by the end of 2006, all our cement plants in Mexico were using tires as an alternative fuel. Municipal collection centers in 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 5.41% of the total fuel used in our 15 operating cement plants in Mexico during 2008 was comprised of alternative substituted fuels.

Between 1999 and March 2009, our Mexican operations have invested approximately US$50.24 million in the acquisition of environmental protection equipment and the implementation of the ISO 14001 environmental management standards of the International Organization for Standardization, or ISO. The audit to obtain the renewal of the ISO 14001 certification took place during April 2006. All our operating cement plants in Mexico and an aggregates plant in Monterrey have obtained the renewal of the ISO 14001 certification for environmental management systems.

*United States*. CEMEX Construction Materials Florida, LLC (formerly Rinker Materials of Florida, Inc.), a subsidiary of CEMEX, Inc., holds one federal quarry permit and is the beneficiary of one of ten other federal quarrying permits granted for the Lake Belt area in South Florida. The permit held by CEMEX Florida covers CEMEX Florida's SCL and FEC quarries. CEMEX Florida's Krome quarry is operated under one of the other federal quarry permits. 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. A ruling was issued on 22 March 2006 by a judge of the U.S. District Court for the Southern District of Florida in connection with litigation brought by environmental groups concerning the manner in which the permits were granted. Although not named as a defendant, CEMEX Florida has intervened in the proceedings to protect its interests. The judge ruled that there were deficiencies in the procedures and analysis undertaken by the relevant governmental agencies in connection with the issuance of the permits. The judge remanded the permits to the relevant governmental agencies for further review. As part of this review, on 1 May 2009 the Army Corps of Engineers issued a Final Supplemental Environmental Impact Statement and stated it would be accepting public comments until 8 June 2009. The judge also conducted further proceedings to determine the activities to be conducted during the remand period. In July 2007, the judge issued a ruling that halted certain quarrying operations at three non-CEMEX Florida quarries. The judge left in place CEMEX Florida's Lake Belt permits until the relevant government agencies complete their review. In a May 2008 ruling, the federal appellate court determined that the district court judge did not apply the proper standard of review to the permit issuance decision of the governmental agency, vacated the district court's prior order, and remanded the proceeding to the district court to apply the proper standard of review. In January 2009, the district court judge issued an order withdrawing the extraction permits of the three quarries. The order does not limit the processing of the materials previously excavated, which will be processed throughout the following months. We are appealing this ruling. We are continuing the ongoing process with the Army Corps of Engineers to obtain new permits that would allow mining for 10 to 15 years, depending on demand. This process is well under way, and, if and when issued, new permits would allow all mining activities to resume in the newly permitted areas. If the Lake Belt permits were ultimately permanently set aside or quarrying operations under them permanently restricted, CEMEX Florida would need to source aggregates, to the extent available, from other locations in Florida or import aggregates. This would likely affect profits 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 could also have a material adverse effect on our financial results.

*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 regulator 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 £125 million (approximately US$182 million), and an accounting provision for this amount was made at 31 December 2008.

In 2003, the European Union adopted a directive implementing the Kyoto Protocol on climate change and establishing a greenhouse gas emissions allowance trading scheme within the European Union. The directive requires Member States to impose binding caps on carbon dioxide emissions from installations involved in energy activities, the production and processing of ferrous metals, the mineral industry (including cement production) and the pulp, paper or board production business. Under this scheme, companies with operations in these sectors receive from the relevant Member States allowances that set limitations on the levels of greenhouse gas emissions from their installations. 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. Companies can also use credits issued from the use of the flexibility mechanisms under the Kyoto protocol to fulfill their European obligations. These flexibility mechanisms provide that credits (equivalent to allowances) can be obtained by companies for projects that reduce greenhouse gas emissions in emerging markets. These projects are referred to as Clean Development Mechanism (the " **CDM**") or joint implementation projects, depending on the countries where they take place. Failure to meet the emissions caps is subject to heavy penalties.

Companies can also use, up to a certain level, 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 a certain level, under the European emission trading scheme as allowances. To obtain these emission reduction credits, companies must comply with very specific and restrictive requirements from the United Nations Convention on Climate Change.

As required by the directive, each of the Member States established a National Allocations Plan (" **NAP**") that defines the free allocation to each industrial facility for Phase II of the Emissions Trading Scheme (the "**ETS**") (2008-2012). 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 is the result of various factors, notably a reasonable allocation policy in some countries, our efforts to reduce emissions per unit of clinker, reduced demand for our products, and the use of certain risk-free financial instruments. We expect to be a net seller of allowances over Phase II, even under the assumption of the worst case in terms of allocation (see below). In addition, we are actively pursuing a strategy aimed at generating additional emission credits through the implementation of CDM projects. Despite having already sold a substantial amount of allowances for Phase II, we believe the overall volume of transactions is justified by our most conservative emissions forecast, meaning that the risk of having to buy allowances in the market in the future is very low. As of 31 December 2007, the market value of carbon dioxide allowances for Phase I was €0.03 per ton. As of 31 March 2009, the market value of carbon dioxide allowances for Phase II was approximately €11.45 per ton. We are taking appropriate measures to minimize our exposure to this market while assuring the supply of our products to our customers.

The Spanish NAP has been approved by the Spanish Government, reflecting the conditions that were set forth by the European Commission. The allocations made to our installations allow us to foresee a reasonable availability of allowances; nevertheless,

there remains the uncertainty regarding the allocations that, against the reserve for new entrants, we intend to request for the new cement plant in Andorra (Teruel), whose construction has been postponed.

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. There remains a small uncertainty in the amount of allocation to capacity expansions in Latvia and (to a lesser extent) Germany.

On 9 January 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 closed permanently in November 2008 and its production moved to our South Ferriby plant.

On 29 May 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 court has denied Poland's request for a quick path verdict in the case, keeping the case in the regular proceeding path. The Polish government has thus started to prepare internal rules on division of allowances at the level already accepted by the European Commission. Seven major Polish cement producers, representing 98% of Polish cement production (including CEMEX Polska), have also filed seven separate appeals before the Court of First Instance regarding the European Commission's rejection. On 29 September 2008, the Court of First Instance issued an order rejecting CEMEX Polska's appeal without considering the merits of the case.

The Latvian NAP for Phase II has been approved by the European Commission and the Latvian government. On 30 October 2008, the Latvian Ministry of Environment adopted a decision on distribution of allowances. The number of allowances for our existing cement line has been assigned; however, allocation for our new cement plant, which would come out of the reserve for new entrants, is still uncertain.

Croatia is also in the process of implementing an emissions trading scheme that will be compatible to and linked with the one in force in the European Union. The planned starting date is 2010; the inclusion of our Croatian operations in the emissions trading scheme is not expected to significantly impact our overall position.

In December 2008, the European Commission, Council and Parliament reached an agreement on the new directive that will govern emissions trading after 2012. Although the new directive is much more detailed on the allocation process than the old one, in particular considering a European-wide benchmark to allocate free allowances among installations in the cement sector, there is still significant uncertainty concerning the amount of allowances that will be freely allocated to CEMEX. Therefore, it is premature to make statements about CEMEX's balance in Phase III of the emissions trading scheme (2013 – 2020).

The Club of Environmental Protection, a Latvian environmental protection organization (the " **Applicant**"), has initiated a Latvian court administrative proceeding against the decision made by the Latvian Environmental State Bureau (the " **Defendant**") in order to

amend the environmental pollution permit (the "**Permit**") for the Broceni cement plant in Latvia, owned by CEMEX SIA (the " **Disputed Decision**"). CEMEX SIA was invited to participate in the court proceedings as a third party, whose rights and legal interest may be infringed by the relevant administrative act. On 5 June 2008, the court rendered its judgment, granting the Applicant's claim and revoking the Disputed Decision, declaring it illegal because Defendant failed to perform public inquiry in accordance with legal regulations. The judgment was appealed by both the Defendant and CEMEX SIA before the Court of Appeal, and on 20 May 2009, the Court of Appeal decided that the Defendant must supplement the Permit with the requirements applicable as of 1 January 2008 on the emission limits of hard particles for clinker melting-on stove. This amendment to the Permit will not adversely affect CEMEX SIA's operations in the existing plant, unless the competent authorities decide to lower the emission limit. The rest of the Applicant's claims were rejected by the court. The judgment may be appealed by the Applicant before the Senate of the Supreme Court no later than 19 June 2009. As of 30 June 2009, the Applicant has not appealed the judgment.

3. **Anti-Dumping/Anti-Trust**

*U.S. Anti-Dumping Rulings — Mexico*. Our exports of Mexican gray cement from Mexico to the United States were subject to an anti-dumping order that was imposed by the Commerce Department on 30 August 1990. Pursuant to this order, firms that imported gray Portland cement from our Mexican operations in the United States had to make cash deposits with the U.S. Customs Service to guarantee the eventual payment of anti-dumping duties. As a result, since that year and until 3 April 2006, we paid anti-dumping duties for cement and clinker exports to the United States at rates that fluctuated between 37.49% and 80.75% over the transaction amount. Beginning in August 2003, we paid anti-dumping duties at a fixed rate of approximately US$52.41 per ton, which decreased to US$32.85 per ton starting December 2004 and to US$26.28 per ton in January 2006. As described below, during the first quarter of 2006, the U.S. and Mexican governments entered into an agreement pursuant to which restrictions imposed by the United States on Mexican cement imports will be eased during a three-year transition period and completely eliminated following the transition period.

*U.S./Mexico Anti-Dumping Settlement Agreement*. On 19 January 2006, officials from the Mexican and the United States governments announced that they had reached an agreement in principle that would bring to an end the long-standing dispute over anti-dumping duties on Mexican cement exports to the United States. According to the agreement, restrictions imposed by the United States would be introduced gradually during a three-year transition period and completely eliminated in early 2009 if Mexican cement producers complied with its terms during the transition period, allowing cement from Mexico to enter the U.S. without duties or other limits on volumes. In 2006, Mexican cement imports into the U.S. were subject to volume limitations of three million tons per year. During the second and third years of the transition period, this amount could be increased or decreased in response to market conditions, subject to a maximum increase or decrease of 4.5%. For the second year of the transition period, the amount was increased by 2.7% while for the third year of the transition period, the amount was decreased by 3.1%. Quota allocations to companies importing Mexican cement into the United States were made on a regional basis. The anti-dumping duty during the three-year transition period was lowered to US$3.00 per ton, effective as of 3 April 2006, from the previous amount of US$26.28 per ton.

On 6 March 2006, the Office of the United States Trade Representative and the Commerce Department entered into an agreement with the Mexican *Secretaría de Economía*, providing for the settlement of all administrative reviews and all litigation pending before NAFTA and World Trade Organization panels challenging various anti-dumping determinations involving Mexican cement. As part of the settlement, the Commerce Department agreed to compromise its claims for duties with respect to imports of Mexican cement. The Commerce Department and the *Secretaría de Economía* will monitor the regional export limits through export and import licensing systems. The agreement **provided that** upon the effective date of the agreement, 3 April 2006, the Commerce Department would order the U.S. Customs Service to liquidate all entries covered by all the completed administrative reviews for the periods from 1 August 1995 through 31 July 2005, plus the unreviewed entries made between 1 August 2005 and 2 April 2006, and refund the cash deposits in excess of 10 cents per metric ton. As a result of this agreement, refunds from the U.S. government associated with the historic anti-dumping duties are shared among the various Mexican and American cement industry participants. We received approximately US$111 million in refunds under the agreement. We do not expect to receive further refunds.

As of 31 March 2009, there was no accrued liability for dumping duties. All liabilities accrued for past anti-dumping duties have been eliminated.

*Anti-Dumping in Taiwan*. Five Taiwanese cement producers — Asia Cement Corporation, Taiwan Cement Corporation, Lucky Cement Corporation, Hsing Ta Cement Corporation and China Rebar — filed an anti-dumping case involving imported gray Portland cement and clinker from the Philippines and Korea before the Tariff Commission under the Ministry of Finance (the "**MOF**") of Taiwan.

In July 2001, the MOF informed the petitioners and the respondent producers in exporting countries that a formal investigation had been initiated. Among the respondents in the petition were APO, Rizal and Solid, our indirect subsidiaries. In July 2002, the MOF notified the respondent producers that a dumping duty would be imposed on Portland cement and clinker imports from the Philippines and South Korea beginning on 19 July 2002. The duty rate imposed on imports from APO, Rizal and Solid was fixed at 42%.

In September 2002, APO, Rizal and Solid filed before the Taipei High Administrative Court an appeal in opposition to the anti-dumping duty imposed by the MOF. In August 2004, we received a copy of the decision of the Taipei Administrative High Court, which was adverse to our appeal. The decision has since become final. This anti-dumping duty is subject to review by the government after five years following its imposition. If following that review the government determines that the circumstances giving rise to the anti-dumping order have changed and that the elimination of the duty would not harm the domestic industry, the government may decide to revoke the anti-dumping duty. Based on a petition filed by Asian Cement Corporation, Taiwan Cement Corporation, Lucky Cement Corporation, and Hsing-Ta Cement Co. Ltd. in April 2007,

the MOF decided to institute the investigation on whether to continue to impose the antidumping duty on Type I and Type II Portland Cement and clinker upon the expiration of the five-year period of the duty imposition and issued a public announcement on 2 May 2007, requesting interested parties to present their opinions. In response, APO and Solid submitted a written statement objecting to the continuance of the anti-dumping duty order. On 22 October 2007, the MOF notified interested parties that because of the need for further investigation, the investigation period was extended to 1 March 2008.

On 26 February 2008, the MOF announced that it would instruct the Ministry of Economic Affairs (the " **MOEA**") to continue its investigation to determine whether or not the domestic industry would be damaged if the government were to revoke the anti-dumping duty. On 10 April 2008, the International Trade Commission (the "**ITC**") of the MOEA made a determination that the revocation of the anti-dumping duty would not likely lead to continuation or recurrence of injury to the domestic industry. As required by the Implementation Regulation on the Imposition of Countervailing and Antidumping Duties, the MOEA notified the MOF of ITC's determination. We received a letter, dated May 5, 2008, from the MOF, stating that the anti-dumping duty imposed on gray portland cement and clinker imports from the Philippines and South Korea would be terminated starting 5 May 2008. Since May 2008, no more anti-dumping duties have been imposed.

*Polish Antitrust Investigation*. During the period from 31 May 2006 to 2 June 2006, officers of the Polish Competition and Consumer Protection Office, (the "**Protection Office**") assisted by police officers, conducted a search in the Warsaw office of CEMEX Polska, one of our indirect subsidiaries in Poland, and in offices of other cement producers in Poland. The search took place as a part of the exploratory investigation that the head of the Polish Competition and Consumer Protection Office started on 26 April 2006. On 2 January 2007, CEMEX Polska received a notification from the Protection Office informing about the formal initiation of an antitrust proceeding against all cement producers in Poland, including CEMEX Polska and another of our indirect subsidiaries in Poland. In the notification it was assumed that there was an agreement between all cement producers in Poland regarding prices and other sales conditions of 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 22 January 2007, CEMEX Polska filed its response to the notification, denying that it committed the practices listed by the Protection Office in the notification. In its response, CEMEX Polska also included various formal comments and objections gathered during the proceeding, as well as facts supporting its position and intended to prove that its activities were in line with competition law. On 29 April 2009, the Protection Office notified CEMEX Polska of its decision to extend the antitrust proceeding until 20 June 2009, due to the complexity of the case. As 30 June 2009, we have no information regarding further developments on this legal assessment.

We believe, at this stage, there are no justified factual or legal grounds for fines to be imposed on CEMEX Polska.

*Antitrust Investigation in the United Kingdom and Germany* . Between 4 and 6 November 2008, officers of the European Commission, assisted by local officials, conducted an unannounced inspection at our offices in the United Kingdom and Germany. The European Commission alleges that we may have participated in anti-competitive agreements and/or concerted practices in breach of Article 81 of the EC Treaty and/or Article 53 of the European Economic Area (the "**EEA**") Agreement and abusive conduct in breach of Article 82 of the EC Treaty and/or Article 54 of the EEA Agreement. The allegations extend to several markets worldwide, including in particular the EEA. If those allegations are substantiated, significant penalties may be imposed on our subsidiaries operating in such markets. We fully cooperated and will continue to cooperate with the European Commission officials in connection with the inspection.

*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* ), alleging certain violations of Mexican antitrust laws. We believe these findings have several procedural errors and are unfounded on the merits. We filed our responses to these findings on 27 February 2009 and 19 May 2009. For one of the cases we have obtained a favorable first instance ruling that if sustained on appeal will terminate the investigation. The proceedings for the second case have continued and it is currently in the evidence producing stage, we expect this procedure to continue for several months before resolution.

4. **Tax Matters**

Pursuant to amendments to the Mexican income tax law ( *Ley del Impuesto sobre la Renta* ), which became effective on 1 January 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 will be 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 amendments. On 29 June 2006, we obtained a favorable ruling from the Mexican federal court stating that the amendments were unconstitutional. The Mexican tax authority appealed the ruling, and the proceeding reached the Mexican Supreme Court of Justice. On 9 September 2008, the Mexican Supreme Court ruled against our constitutional challenge of the controlled foreign corporation tax rules in effect in Mexico for tax years 2005 to 2007. Since the Supreme Court's decision does not pertain to an amount of taxes due or other tax obligations, we will self-assess any taxes due through the submission of amended tax returns. We have not yet determined the amount of tax or the periods affected, but the amount is likely to be material. If the Mexican tax authorities do not agree with our self-assessment of the taxes due for past periods, they may assess additional amounts of taxes past due, which may be material and may impact our cash flows.

The Mexican Congress approved several amendments to the Mexican Asset Tax Law ( *Ley del Impuesto al Activo* ) that came into effect on 1 January 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 believe that the Asset Tax Law, as amended, is against the Mexican constitution. We have challenged the Asset Tax Law through appropriate judicial action (*juicio de amparo*).

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 federal tax applicable to all Mexican corporations was enacted, known as the *Impuesto Empresarial a Tasa Única* (Single Rate Corporate Tax, the "**IETU**") which is a form of alternative minimum tax.

*Philippines*. The Philippine Bureau of Internal Revenue (the "**BIR**") had assessed APO, Solid, IQAC, ALQC and CSPI, our operating indirect subsidiaries in the Philippines, for deficiency taxes covering taxable years 1998 to 2005 amounting to a total of approximately 1,994 million Philippine Pesos (approximately US$41.25 million as of 31 March 2009, based on an exchange rate of Philippine Pesos 48.33 to US$1.00, which was the Philippine Peso/Dollar exchange rate on 31 March 2009, as published by the Bangko Sentral ng Pilipinas, the Central Bank of the Republic of the Philippines).

The majority of the tax assessments pending with the Court of Tax Appeals (the "**CTA**") as of 31 March 2009 result primarily from the disallowance of APO's income tax holiday incentives (the "**ITH Case**") for taxable years 1999 to 2001 (approximately Philippine Pesos 1,200 million, or US$24.82 million, as of 31 March 2009, based on an exchange rate of Philippine Pesos 47.52 to US$1.00). However, on 12 February 2009, APO received a decision from the Court of Tax Appeals considering the deficiency income tax assessments for taxable years 1999 to 2001, mentioned above, as cancelled and set aside solely in view of APO's availment of the Tax Amnesty under RA 9480. The CTA considered the ITH Case as "closed and terminated." As of the end of March 2009 the BIR, did not file an appeal to the Supreme Court, thus rendering the subject decision of the CTA in the ITH Case as final and executory. APO is no longer liable for the income tax assessment and is not required to make further payments in this case.

As to the remaining tax cases pending with the CTA, the CTA has given an order in open court requiring counsel for APO and Solid to file a Motion to Cancel Assessment on the basis of APO's and Solid's availment of the benefits of a tax amnesty for taxable year 2005 and prior years. APO and Solid submitted all necessary documents and fully paid the amnesty tax according to law and its implementing rules and regulations. The availment of the amnesty resulted in immunity for our Philippine subsidiaries from their alleged tax liabilities and penalties (civil, criminal, or administrative) arising from their alleged failure to pay the tax for 2005 and prior years. This includes APO's alleged income tax liability for 1999, 2000 and 2001, which continues to be pending with the CTA. The amnesty program, however, does not cover withholding tax liabilities. With this development, we expect the dismissal of all tax assessment cases against APO and Solid which are pending with the CTA following the CTA resolution in the APO ITH Case.

5. **Other Legal Proceedings**

On 5 August 2005, a lawsuit was filed against a subsidiary of CEMEX Colombia, claiming that it was liable along with the other members of the *Asociación Colombiana de Productores de Concreto* (the "**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 US$45 million. 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. The court completed the evidentiary stage, and on 17 August 2006 dismissed the charges against the members of ASOCRETO. The other defendants (one ex-director of the Distrital Institute of Development, the legal representative of the constructor and the legal representative of the contract auditor) were formally accused. The decision was appealed, and on 11 December 2006, the decision was reversed and the two ASOCRETO officers were formally accused as participants (determiners) in the execution of a state contract without fulfilling all legal requirements thereof. The first public hearing took place on 20 November 2007. In this hearing, the judge dismissed an annulment petition filed by the ASOCRETO officers. The petition was based on the fact that the officers were formally accused of a different crime from the one for which they were being investigated. This decision was appealed, but the decision was confirmed by the Superior Court of Bogotá. On 21 January 2008, CEMEX Colombia was subject to a judicial order, issued by the court, sequestering a quarry called El Tujuelo, 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 10 days to deposit with the court in cash CoP$337,800 million (approximately US$132.7 million as of 31 March 2009, based on an exchange rate of CoP$2.544 to US$1.00, which was the Colombian Peso/Dollar exchange rate on 31 March 2009, as published by the *Banco de la República de Colombia*, the central bank of Colombia), 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 9 March 2009, the Superior Court of Bogotá reversed this decision, allowing CEMEX to offer a security in the amount of US$8 million. The measure does not affect the normal activity of the quarry. At this stage, we are not able to assess the likelihood of an adverse result or the potential damages which could be borne by CEMEX Colombia.

On 5 August 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 is seeking €102 million (approximately US$142.6

million) 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 US$158.6 million plus interest). On 21 February 2007, the District Court decided to allow 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 14 May 2008. The lawsuit will proceed at the level of the Court of First Instance. As of 31 March 2009, only one defendant had decided to file a complaint before the Federal High Court. In the meantime, CDC had acquired new assigners and announced an increase in the claim to €131 million (approximately US$183.1 million). As of 31 March 2009, we had accrued liabilities regarding this matter for a total amount of approximately €20 million (approximately US$27.9 million).

After an extended consultation period, in April 2006, the cities of Kaštela and Solin in Croatia published their respective (physical) Master Plans defining the development zones within their respective municipalities, adversely impacting the mining concession granted to Dalmacijacement, our subsidiary in Croatia, by the Government of Croatia in September 2005. During the consultation period, Dalmacijacement 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 Dalmacijacement´s mining concession. Immediately after publication of the Master Plans, Dalmacijacement filed a series of lawsuits and legal actions before the local and federal courts to protect its acquired rights under the mining concessions. Among the legal actions taken and filed by Dalmacijacement were as follows: (i) on 17 May 2006, a constitutional appeal before the Constitutional Court in Croatia, seeking a declaration by the court concerning Dalmacijacement'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; (ii) on 17 May 2006, a possessory action against the cities of Kaštela and Solin seeking the enactment of interim measures prohibiting implementation of the Master Plans and including a request to implead the Republic of Croatia into the proceeding on our side; this possessory action has been definitively dismissed; and (iii) on 17 May 2006, an administrative proceeding before the State Lawyer, seeking a declaration from the Government of Croatia confirming that Dalmacijacement acquired rights under the mining concessions. Dalmacijacement received the State Lawyer's opinion which confirms the Dalmacijacement's acquired rights according to the previous decisions ("**old concession**"). The Administrative Court in Croatia has ruled in favor of Dalmacijacement, validating the legality of the mining concession granted to Dalmacijacement by the Government of Croatia, in September 2005. We are still waiting for an official declaration from the Constitutional Court regarding an open question that Dalmacijacement 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.

On 21 April 2007, the First Instance Court for the Commonwealth of Puerto Rico issued a summons against Hormigonera Mayagüezana Inc., seeking damages in the amount of US$39 million, after the death of two people in an accident in which a Hormigonera Mayagüezana Inc. concrete mixer truck was involved. This case was handled by the insurance company (AON) since the claim was covered by CEMEX insurance policy. The insurance company settled the case on June 2009 for approximately US$1.05 million, which was covered completely by the insurance policies and not CEMEX Puerto Rico. A final ruling adjudicating the controversy is still pending.

In November 2008, AMEC/Zachry, the general contractor for the Brooksville South expansion project in Florida, filed a lawsuit against CEMEX Construction Materials Florida, LLC, alleging delay damages, seeking an equitable adjustment to the contract and payment of change orders. In its claim, AMEC/Zachry is seeking US$60 million as compensation. CEMEX Construction Materials Florida, LLC filed a counterclaim against AMEC. In February 2009, AMEC/Zachry filed an amended complaint asserting a claim by AMEC E&C Services, Inc. against CEMEX Materials LLC as the guarantor of the Design/Build contract. CEMEX answered the suit, denying any breach of contract and asserting affirmative defenses and counterclaims against AMEC/Zachry for breach of contract. CEMEX has also brought certain third-party claims against AMEC, plc and FLSmidth. CEMEX has brought a claim against AMEC, plc for breach of contract, and has brought claims for breach of contract, negligent misrepresentation, and various indemnity claims against FLSmidth. In March 2009, FLSmidth filed a motion to dismiss CEMEX's third-party complaint. In May 2009, AMEC/Zachry filed a Motion to Leave to file a Second Amended Complaint requesting that the Court allow it to join FLSmidth as a co-defendant in the lawsuit and assert claims for negligence and negligent misrepresentation directly against FLSmidth. CEMEX also filed a Motion for Leave requesting that the Court allow it to file a First Amended Complaint asserting (to the extent AMEC/Zachry's motion is granted joining FLSmidth as a co-defendant) cross-claims against FLSmidth, including each claim previously asserted against FLSmidth, but also adding a claim for tortuous interference, or, if AMEC/Zachry's Motion for Leave is denied, allowing CEMEX to add its claim for tortuous interference against FLSmidth in its capacity as a third-party defendant. Both Motions for Leave are pending with the Court. At this preliminary stage of the proceeding, we are not able to assess the likelihood of an adverse result or the potential damages which could be borne by CEMEX Construction Materials Florida, LLC or CEMEX Materials LLC.

On 30 July 2008, the Panamanian Autoridad de Aeronáutica Civil denied a request by Cemento Bayano, S.A. to erect structures above the permitted imaginary line applicable to the surroundings of the Calzada Larga Airport. This imaginary line 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 structures to be constructed for this new line pass the permitted height. Cemento Bayano has formally requested the abovementioned authority to reconsider its denial. On 14 October 2008, the Panamanian Autoridad de Aeronáutica Civil granted permission for constructing the tallest building of the second line, under the following conditions: (a) Cemento Bayano, S.A. 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, S.A. 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 13 March 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. We are still waiting for a ruling in respect of the additional ten structures.

On 4 October 2007, all Egyptian cement producers (including CEMEX) were referred to the public prosecutor for an alleged agreement on price fixing. The country manager and the director of sales of CEMEX Egypt were both named as defendants. The case was referred to the Criminal Court on February 13, 2008. Hearings on this matter have taken place, during which witnesses were heard and defenses were presented. The final court hearing was held on August 25, 2008. At this hearing, the court announced its decision imposing the maximum penalty of 10 Million Egyptian Pounds (approximately US$1.8 million) on each entity accused. CEMEX Egypt is required to pay 20 Million Egyptian Pounds (approximately US$3.6 million), since two executives were accused. An appeal has been filed by all cement companies to challenge the judgment of the First Instance Court. The last appeal hearing was held on 31 December 2008. The Courts of Appeal decided to support the accusation and confirm the penalty. We decided not to proceed with a further appeal and pay the fine.

On 12 August 2007, the Australian Takeovers Panel published a declaration of unacceptable circumstances, namely, that CEMEX's 7 May 2007 announcement that it would allow Rinker shareholders to retain the final dividend of US$0.25 per Rinker share constituted a departure from CEMEX's announcement on 10 April 2007 that its offer of US$15.85 per share was its "best and final offer." On 27 September 2007, the Panel ordered CEMEX to pay compensation of US$0.25 per share to Rinker shareholders for the net number of Rinker shares they disposed of a beneficial interest during the period from 10 April 2007 to 7 May 2007. CEMEX believes that the market was fully informed by its announcements on 10 April 2007, and notes that the Takeovers Panel has made no finding that CEMEX breached any law. On 27 September 2007, the Review Panel made an order staying the operation of the orders until further notice pending CEMEX's application for judicial review of the Panel's decision. CEMEX applied to the Federal Court of Australia for such a judicial review. That application was dismissed on 23 October 2008. CEMEX appealed that decision to the Full Court of the Federal Court of Australia, which heard the appeal in May 2009 and a judgment has been rendered. CEMEX has deposited A$15 million (approximately US$12 million based on the accounting A$/Dollar exchange rate in effect on 29 May 2009 of A$1.2734 to US$1.00) in a special purpose account from which qualifying claims will be paid.

*Expropriation of CEMEX Venezuela and ICSID Arbitration*. On 18 August 2008, Venezuelan officials took physical control of the facilities of CEMEX Venezuela, following the issuance of several governmental decrees purporting to authorize the take

over by Venezuela of all of CEMEX Venezuela's assets, shares and business. At around the same time, the Venezuelan government removed the board of CEMEX Venezuela and replaced its senior management. Venezuela has paid no compensation to CEMEX Venezuela's shareholders for such action. On October 16, 2008, CEMEX Caracas Investments B.V. and CEMEX Caracas Investments II B.V. (collectively, "**CEMEX Caracas**"), which held a 75.7% interest in CEMEX Venezuela, filed a request for arbitration against Venezuela before the International Centre for Settlement of Investment Disputes ("**ICSID**") seeking relief for the expropriation of their interest in CEMEX Venezuela. In the ICSID proceedings against Venezuela, CEMEX Caracas is seeking: (a) a declaration that Venezuela is in breach of its obligations under a bilateral investment treaty between the Netherlands and Venezuela, the Venezuelan Foreign Investment Law and customary international law; (b) an order that Venezuela restore to CEMEX Caracas their interest in, and control over, CEMEX Venezuela; (c) in the alternative, an order that 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 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 arbitral tribunal has already been constituted and the first hearing will take place in the following months. We are unable at this preliminary stage to estimate the likely range of potential recovery or to determine what position Venezuela will take in these proceedings, the nature of the award that may be issued by the Tribunal or the likely extent of collection of any possible monetary award issued to CEMEX Caracas.

Additionally, Venezuela claims that the vessels Marianela, Corregidora and Edalan (the "**Vessels**") are property of the former CEMEX Venezuela. The Vessels were properly transferred by CEMEX Venezuela to Sunbulk Shipping, N.V. prior to the nationalization; therefore we believe that Venezuela has no ownership rights over the Vessels. The Government of Venezuela has obtained an interim measure in a Venezuelan court ordering that no transfer or disposition of the Vessels should take place (this was obtained long after the transfer had been done) and they requested the Panamanian courts, which is the country where the Vessels are flagged, to execute this measure on one of the Vessels that was on its way to Panama. The Panamanian court arrested one of the Vessels however we were able to procure its and are contesting the order in Panama. Furthermore, we are requesting an interim measure to prevent Venezuela from taking any actions in respect of the Vessels, to preserve the subject matter which is the expropriation.

The Texas General Land Office is alleging that CEMEX failed to pay approximately US$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. CEMEX is analyzing this claim and intends to defend it vigorously.

On 31 July 2008, we agreed to sell our operations in Austria (consisting of 26 aggregates and 41 ready-mix concrete plants) and Hungary (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, for €310 million (approximately US$433 million). On 11 February 2009, the Hungarian Competition Commission (HCC) approved the sale subject to the condition that the purchaser sell the ready-mix concrete plant operating in Salgótarján to a third party within the next year. On 28 April 2009, the Austrian Cartel Court (Kartellgericht) approved the sale subject to the implementation of certain remedies. Contrary to its duties under the Share Purchase Agreement, Strabag SE filed on 9 June 2009 an appeal against the decision of the Austrian Cartel Court. This appeal had the effect that the merger control proceeding was extended. On 8 June 2009 the Austrian Competition Authority also filed an appeal. On 1 July 2009, CEMEX received notice from Strabag SE of its withdrawal from the Share Purchase Agreement since merger control approval could not be obtained by 30 June 2009. On 8 July 2009, Strabag SE withdrew from its appeal against the decision of the Austrian Cartel Court. Since then CEMEX has provided Strabag SE written notice that it considers its withdrawal from the Share Purchase Agreement invalid due to Strabag SE's continued breach of the Share Purchase Agreement. CEMEX believes the Share Purchase Agreement still to be valid and is considering taking appropriate legal recourse.

## SCHEDULE 9

### THE FACILITIES

Syndicated Bank Facilities

### DEFINITIONS

**English Law Documents**

| | |
|---|---|
| **Euro/Yen Facility** | EUR 250,000,000 and JPY 19,308,000,000 facilities agreement dated 30 March 2004 (as amended) between CEMEX España, S.A. as borrower and, among others, Banco Bilbao Vizcaya Argentaria, S.A. as agent. |
| **Joint Bilateral Facility** | USD 617,500,000 and EUR 587,500,000 facilities agreement dated 27 January 2009 (as amended) between CEMEX España, S.A. as borrower and, among others, The Royal Bank of Scotland plc as agent. |
| **NSH Facility** | USD 700,000,000 facilities agreement dated 27 June 2005 (as amended) between, New Sunward Holding B.V., as borrower, and among others, Citibank, N.A. as agent. |
| **Rinker Facility** | As defined in Clause 1.1 (*Definitions and Interpretation*) |
| **RMC Facility** | As defined in Clause 1.1 (*Definitions and Interpretation*) |

**New York Law Documents**

**Syndicated Bank Facilities**

| | |
|---|---|
| **NY Joint Bilateral Facility** | Joint Bilateral Facility dated 27 January 2009, between CEMEX, S.A.B. de C.V., as borrower, and among others, BBVA Bancomer, S.A., Institución de Banca Múltiple, Grupo Financiero BBVA Bancomer, as administrative agent. |
| **NSH Senior Unsecured Maturity Loan Facilities** | USD 525,000,000 Senior Unsecured Maturity Loan "A" Agreement and USD 525,000,000 Senior Unsecured Maturity Loan "B" Agreement, each dated 31 December 2008 (as amended) between New Sunward Holding B.V., as borrower and, among others, ING Capital LLC, as agent. |
| **$700mm Facility** | USD 700,000,000 Amended and Restated Credit Agreement, dated 6 June 2005 (as amended) between CEMEX, S.A.B. de C.V., as borrower and, among others, ING CAPITAL LLC, as administrative agent. |
| **$1.2bn Facility** | USD 1,200,000,000 Credit Agreement, dated 31 May 2005 (as amended) between CEMEX, S.A.B. de C.V., as borrower and, among others, Barclays Bank plc as agent. |

**Bilateral Bank Facilities**

| | |
|---|---|
| **$500mm Credit Facility** | Credit Agreement dated 25 June 2008 (as amended), among CEMEX, S.A.B. de C.V., as borrower, and Banco Bilbao Vizcaya Argentaria, S.A. New York Branch, as lender. |
| **BNPP Bilateral** | USD 37,500,000 First Amended and Restated Loan and Letter of Credit Facility Agreement (undated) (as amended) between CEMEX Materials LLC (f/k/a Rinker Materials LLC), as borrower, and BNP Paribas (Sydney Branch), as lender. |
| | Amended and Restated Guarantee dated 1 October 2007 between CEMEX España, S.A., a guarantor, and BNP Paribas (Sydney Branch), as lender. |
| **JPMC Bilateral** | USD 90,000,000 – USD 80,000,000 First Amended and Restated Loan and Letter of Credit Facility Agreement as amended on 27 January 2009, among CEMEX Materials LLC (f/k/a Rinker Materials LLC), as borrower, and JP Morgan Chase Bank, N.A., as lender. |
| | Guarantee as amended on 27 January 2009 between CEMEX España, S.A., as guarantor, and JP Morgan Chase Bank, N.A., as lender. |

**Part 1A**

Syndicated Bank Facilities

**ENGLISH LAW FACILITIES**

| | | Rinker Facility | Joint Bilateral Facility | RMC Facility | Euro/Yen Facility | NSH Facility |
|---|---|---|---|---|---|---|
| 1. | Existing Acceleration Clause | Clause 24.16 | Clause 23.15 | Clause 24.15 | Clause 23.15 | Clause 22.1 |
| 2. | Existing Change of Control Provisions | Clause 9.2 | Clause 8.2 | N/A | N/A | N/A |
| 3. | Existing Drawdown Conditions | N/A | N/A | Clause 4.2 | N/A | Clause 4.2 |
| 4. | Existing Events of Default | Clause 24.1 – Clause 24.15 and Clause 24.17 | Clause 23.1 – Clause 23.14 | Clause 24.1 – Clause 24.14 | Clause 23.1 – Clause 23.14 | Clause 22.1 paragraphs (a) to (o) |
| 5. | Existing Extension and | No Extension Option | Clause 7 | N/A | N/A | No Extension Option |
| | Term Out Provisions | Term Out Clause 8 | No Term Out Option | No Term Out Option | No Term Out Option | No Term Out Option |
| 6. | Existing Financial Covenants | Clause 22 | Clause 21 | Clause 22 | Clause 21 | Clause 21.13 |
| 7. | Existing General Undertakings | Clause 23 | Clause 22 | Clause 23 | Clause 22 | Clause 21 |
| 8. | Existing Illegality Clause | Clause 9.1 | Clause 8.1 | Clause 9.1 | Clause 8.1 | Clause 8.1 |
| 9. | Existing Information Undertakings | Clause 21 | Clause 20 | Clause 21 | Clause 20 | Clause 20 |
| 10. | Existing Mandatory Prepayment Provisions | Clause 9.7<br>Clause 9.8 | Clause 8.6<br>Clause 8.7 | N/A | N/A | N/A |
| 11. | Existing Representations and Warranties | Clause 20 | Clause 19 | Clause 20 | Clause 19 | Clause 19 |
| 12. | Existing Sharing Provisions | Clause 29 | Clause 28 | Clause 29 | Clause 28 | Clause 27 |
| 13. | Existing Single Lender Repayment Clause | Clause 9.6 | Clause 8.5 | Clause 9.5 | Clause 8.6 | Clause 8.5 |
| 14. | Existing Optional Currency Provisions | Clause 6 | N/A | Clause 6 | Clause 6 | Clause 6 |

| | | Rinker Facility | Joint Bilateral Facility | RMC Facility | Euro/Yen Facility | NSH Facility |
|---|---|---|---|---|---|---|
| 15. | Existing Notification Requirements | Clause 4.5 Conditions relating to Optional Currencies | Clause 7.1 Request for Extension | Clause 8.1 Request for Extension | Clause 4.5 Extension Request | Clause 8.2 Voluntary cancellation |
| | | | Clause 8.4 Voluntary prepayment of Loans | Clause 9.2 Voluntary cancellation | Clause 6.1 (a) (ii) Selection of currency | Clause 8.4 Voluntary Prepayment of Facility B Loans |
| | | | Clause 8.5 Right of repayment and cancellation in relation to a single Lender | Clause 9.4 Voluntary prepayment of Loans | Clause 8.2 Voluntary cancellation | Clause 8.5 (a) Voluntary Prepayment of Facility C Loan |
| | | Clause 9.3 Voluntary cancellation | Clause 10.1 Selection of Interest Periods | Clause 9.5 (a) Right of repayment and cancellation in relation to a single Lender | Clause 8.3 Voluntary prepayment of Facility A Loan | Clause 8.6 Right of repayment and cancellation in relation to a single Lender |
| | | Clause 9.5 Voluntary prepayment of Loans | Clause 14.2 (b) Tax gross-up | Clause 14.2 (b) Tax gross-up | Clause 8.4 Voluntary Prepayment of Facility B Loans | Clause 10.1 Selection of Interest Periods |
| | | Clause 9.6 Right of repayment and cancellation in relation to a single Lender | Clause 20.5 Notification of default | Clause 21.6 (b) "Know your client" checks | Clause 8.5 Voluntary Prepayment of Facility C Loan | 20.3 (b) Money laundering obligations |
| | | Clause 11.1 Selection of Interest Periods | Clause 20.6 (b) "Know your client" checks | Clause 21.7 Notarisations | Clause 8.6 Right of repayment and cancellation in relation to a single Lender | Clause 20.5 Notification of default |
| | | Clause 14.2 (b) Tax gross-up | Clause 22.7 Disposal Proceeds | Clause 23.7 (a) Disposal Proceeds | Clause 10.1 (a) Selection of Interest Periods | Clause 20.6 (b) "Know your client" checks |
| | | Clause 21.3 (c) Requirements as to financial statements | Clause 22.19 Notification of adverse change in Ratings | Clause 23.18 Notification of adverse change in Ratings | Clause 13.2 Tax gross-up | Clause 20.7 Notices |
| | | Clause 21.5 Notification of default | Clause 25.4 (b) Resignation of Guarantor | Clause 26.4 (b) (ii) Resignation of Guarantor | Clause 20.3 Requirements as to financial statements | Clause 30 Notices |
| | | Clause 21.6 (b) 21.6 "Know your client" checks | Clause 31 Notices | Clause 26.5 Removal of Guarantor | Clause 20.5 Notification of default | |
| | | Clause 21.7 Notarisations | | Clause 32 Notices | Clause 20.7 Notarisations | |
| | | Clause 23.7 (a) Disposal Proceeds | | | Clause 22.17 Notification of adverse change in Rating | |

| | | Rinker Facility | Joint Bilateral Facility | RMC Facility | Euro/Yen Facility | NSH Facility |
|---|---|---|---|---|---|---|
| | | Clause 23.18 (b)(ii) and (f) The Offer | | | Clause 25.3 Resignation of Guarantor | |
| | | Clause 26.4 (b) Resignation of Guarantor | | | Clause 31 Notices | |
| | | Clause 26.6 (d) Removal of Guarantor | | | | |
| | | Clause 32 Notices | | | | |
| | | Clause 36.3 Reallocation of Facility B Commitments | | | | |
| 16. | Existing Guarantor Release Restriction | Clause 26.4 | Clause 25.4 | Clause 26.4 | Clause 25.3 | Clause 24.3 |

## NEW YORK FACILITIES

| | | NY Joint Bilateral Facility | $700mm Facility | $1.2bn Facility | NSH Senior Unsecured Maturity Loan Facilities |
|---|---|---|---|---|---|
| 1. | Existing Acceleration Clause | Section 10.02 Remedies | Section 11.02 Remedies | Section 10.02 Remedies | Section 10.02 Remedies |
| 2. | Existing Change of Control Provisions | Section 10.01 (n) Change of Ownership or Control | Section 11.01 (n) Change of Ownership or Control | Section 10.01 (n) Change of Ownership and Control | Section 10.01 (n) Change of Ownership and Control |
| 3. | Existing Drawdown Conditions | No Existing Drawdown Conditions | Section 2.01 (c) Revolving Loans Borrowings<br>Section 2.02 (c) Borrowing Mechanics for Swing Line Loans<br>Section 5.02 Conditions Precedent to Borrowings, Continuation or Conversion of the Loans and Issuances of Standby L/Cs | Section 2.01 (c) Revolving Loan Borrowings<br>Section 4.02 Conditions Precedent to Borrowings and Continuation or Conversion of the Loans | No Existing Drawdown Conditions |
| 4. | Existing Events of Default | Section 10.01 Events of Default | Section 11.01 Events of Default | Section 10.01 Events of Default | Section 10.01 Events of Default |
| 5. | Existing Extension and Term Out Provisions | Section 3.13 Extension of Termination Date | Section 2.02 (c) (iv) Borrowing Mechanics for Swing Line Loans<br>Section 4.02 Extension of Termination Date<br>Section 4.14 Loan Extension | Section 3.13 Loan Extension | No Extension Option |
| 6. | Existing Financial Covenants | Section 8.01 Financial Conditions | Section 9.01 Financial Conditions | Section 8.01 Financial Conditions | Section 8.01 Financial Conditions |
| 7. | Existing General Undertakings | Section 7.03 Compliance with Laws and Contractual Obligations | Section 8.03 Compliance with Laws and Contractual Obligations, Etc. | Section 7.03 Compliance with Laws and Contractual Obligations | Section 7.03 Compliance with Laws and Contractual Obligations, Etc. |
| | | Section 7.04 Payment of Obligations | Section 8.04 Payment of Obligations | Section 7.04 Payment of Obligations | Section 7.04 Payment of Obligations |
| | | Section 7.05 Maintenance of Insurance | Section 8.05 Maintenance of Insurance | Section 7.05 Maintenance of Insurance | Section 7.05 Maintenance of Insurance |
| | | Section 7.06 Conduct of Business and Preservation of Corporate Existence | Section 8.06 Conduct of Business and Preservation of Corporate Existence | Section 7.06 Conduct of Business and Preservation of Corporate Existence | Section 7.06 Conduct of Business and Preservation of Corporate Existence |
| | | Section 7.07 Books and Records | Section 8.07 Books and Records | Section 7.07 Books and Records | Section 7.07 Books and Records |
| | | Section 7.08 Maintenance of Properties | Section 8.08 Maintenance of Properties, Etc. | Section 7.08 Maintenance of Properties | Section 7.08 Maintenance of Properties, Etc. |

| | | NY Joint Bilateral Facility | $700mm Facility | $1.2bn Facility | NSH Senior Unsecured Maturity Loan Facilities |
|---|---|---|---|---|---|
| | | Section 7.09 Use of Proceeds | Section 8.09 Use of Proceeds | Section 7.09 Use of Proceeds | Section 7.09 Pari Passu Ranking |
| | | Section 7.10 Pari Passu Ranking | Section 8.10 Pari Passu Ranking | Section 7.10 Aggregate Exposure | Section 7.10 Transactions with Affiliates |
| | | Section 7.11 Transactions with Affiliates | Section 8.11 Transactions with Affiliates | Section 7.11 Pari Passu Ranking | Section 7.11 Maintenance of Governmental Approvals |
| | | Section 7.12 Maintenance of Governmental Approvals | Section 8.12 Maintenance of Governmental Approvals | Section 7.12 Transactions with Affiliates | Section 7.12 Inspection of Property |
| | | Section 7.13 Inspection of Property | Section 8.13 Measurement Date | Section 7.13 Maintenance of Governmental Approvals | |
| | | Section 7.14 Asset Sales | Section 8.14 Inspection of Property | Section 7.14 Measurement Date | |
| | | | | Section 7.15 Inspection of Property | |
| | | Section 8.02 Liens | Section 9.02 Liens | Section 8.02 Liens | Section 8.02 Liens |
| | | Section 8.03 Consolidations and Mergers | Section 9.03 Consolidations and Mergers | Section 8.03 Consolidations and Mergers | Section 8.03 Consolidations and Mergers |
| | | Section 8.04 Sales of Assets, Etc. | Section 9.04 Sales of Assets, Etc. | Section 8.04 Sales of Assets, Etc. | Section 8.04 Sales of Assets, Etc. |
| | | Section 8.05 Change in Nature of Business | Section 9.05 Change in Nature of Business | Section 8.05 Change in Nature of Business | Section 8.05 Change in Nature of Business |
| | | Section 8.06 Margin Regulations | Section 9.06 Margin Regulations | Section 8.06 Margin Regulations | Section 8.06 Margin regulations |
| | | Section 8.07 Limitations on Indebtedness | Section 9.07 Limitations on Indebtedness | Section 8.07 Limitations on Indebtedness | Section 8.07 Limitations on Indebtedness |
| 8. | Existing Illegality Clause | Section 3.09 Illegality | Section 4.10 Illegality | Section 3.09 Illegality | Section 3.06 Illegality |
| 9. | Existing Information Undertakings | Section 7.01 Financial Reports and Other Information | Section 8.01 Financial Reports and Other Information | Section 7.01 Financial Reports and Other Information | Section 7.01 Financial Reports and Other Information |
| 10. | Existing Mandatory Prepayment Provisions | Section 2.01 (h) Mandatory Prepayment | Section 9.04 Sales of Assets | Section 2.01 (h) Mandatory Prepayment | Section 8.04 Sales of Assets, etc. |
| | | Section 8.04 Sales of Assets | | Section 8.04 Sales of Assets | |
| | | The second sentence of Section 2.01(i) Payments generally | | | |

| | | NY Joint Bilateral Facility | $700mm Facility | $1.2bn Facility | NSH Senior Unsecured Maturity Loan Facilities |
|---|---|---|---|---|---|
| 11. | Existing Representations and Warranties | Section 5 Representations and Warranties of the Borrower | Section 6 Representations and Warranties of the Borrower | Section 5 Representations and Warranties of the Borrower | Section 5 Representations and Warranties of the Borrower |
| | | Section 6 Representations and Guarantees of the Guarantors | Section 7 Representations and Guarantees of the Guarantors | Section 6 Representations and Guarantees of the Guarantors | Section 6 Representations and Guarantees of the Guarantors |
| 12. | Existing Sharing Provisions | Section 3.12 Sharing of Payments, Etc. | Section 4.13 Sharing of Payments, Etc. | Section 3.12 Sharing of Payments | Section 3.09 Sharing of Payments in connection with the Loans, Etc. |
| 13. | Existing Single Lender Repayment Clause | Section 3.11 Substitute Lenders | Section 4.12 Substitute Lenders | Section 3.11 Substitute Lenders | Section 3.08 Substitute Lenders |
| 14. | Existing Notification Requirements | Section 13.01 Notices | Section 15.01 Notices | Section 13.01 Notices | Section 13.01 Notices |
| | | Section 7.02 Notice of Default and Litigation | Section 8.02 Notice of Default and Litigation | Section 7.02 Notice of Default and Litigation | Section 7.02 Notice of Default and Litigation |
| | | Section 10.03 Notice of Default | Section 11.03 Notice of Default | Section 10.03 Notice of Default | Section 11.03 Notice of Default |
| 15. | Existing Optional Currency Provisions | No Existing Optional Currency Provisions | N/A | N/A | No Existing Optional Currency Provisions |
| 16. | Existing Guarantor Release Restriction Clause | The words “and irrevocably” in Section 9.01 (The Guaranty) | The words “and irrevocably” in Section 10.01 (The Guaranty) | The words “and irrevocably” in Section 9.01 (The Guaranty) | The words “and irrevocably” in Section 9.01 (The Guaranty) |
| | | The phrase “remain in full force and effect… all Commitments have been terminated, and shall” in the first sentence of Section 9.02 (Nature of Liability) | The phrase “remain in full force and effect… all Commitments have been terminated, and shall” in the first sentence of Section 10.02 (Nature of Liability) | The phrase “remain in full force and effect… all Commitments have been terminated, and shall” in the first sentence of Section 9.02 (Nature of Liability) | The phrase “remain in full force and effect… all Commitments have been terminated, and shall” in the first sentence of Section 9.02 (Nature of Liability) |
| | | The phrase “shall be unconditional, irrevocable and absolute and, without limiting the generality of the foregoing,” of the introductory clause to Section 9.03 (Unconditional Obligations) | The phrase “shall be unconditional, irrevocable and absolute and, without limiting the generality of the foregoing,” of the introductory clause to Section 10.03 (Unconditional Obligations) | The phrase “shall be unconditional, irrevocable and absolute and, without limiting the generality of the foregoing,” of the introductory clause to Section 9.03 (Unconditional Obligations) | The phrase “shall be unconditional, irrevocable and absolute and, without limiting the generality of the foregoing,” of the introductory clause to Section 9.03 (Unconditional Obligations) |
| | | Section 10.01(n) Change of Ownership or Control | Section 10.10 General Limitation on Guaranty | Section 10.01(n) Change of Ownership or Control | Section 10.01(n) Events of Default: Change of Ownership or Control |
| | | Section 13.02(b)(iii) | Section 11.01(n) Events of Default: Change of Ownership or Control | Section 13.02(b)(v) | Section 13.02(b)(v) Amendments and Waivers |
| | | | Section 15.02(b)(vii) Amendments and Waivers | | |

**Part 1B**

**Bilateral Bank Facilities**

**NEW YORK FACILITIES**

| | | $500M Credit Facility | $37.5M BNPP Bilateral[1] | JPMC Bilateral[1] |
|---|---|---|---|---|
| 1. | Existing Acceleration Clause | Section 10.02 Remedies | The remainder of Clause 16 (Events of Default), immediately following 16(p) | Clause 16(b) Acceleration |
| 2. | Existing Change of Control Provisions | Section 10.01 (n) Change of Ownership or Control | Clause 16 (o) subsidiary | Clause 8.3 Change of Control |
| | | | | Clause 16 (a)(x) Ownership of Borrower |
| 3. | Existing Drawdown Conditions | None | Clause 4 Drawdown | Clause 13.3 Conditions precedent to Drawdown |
| | | | Clause 13.3 Conditions precedent to Drawdown | Clause 4 Principal Amounts and Drawdown |
| 4. | Existing Events of Default | Section 10.01 Events of Default | Clause 16 (a) – (p) Events of Default | Clause 16 (a) Events of Default |
| 5. | Existing Extension and Term Out Provisions | No Extension Option | Clause 8.2 Extension of Repayment Date | Clause 8.2 Extension of Repayment Date |
| 6. | Existing Financial Covenants | Section 8.01 Financial Conditions | Clause 15.1 Financial Covenants | Guarantee Clause 5.1 Financial Covenants |
| | | | Guarantee Clause 5.1 Financial Covenants | |
| 7. | Existing General Undertakings | Section 7.03 Compliance with Laws and Contractual Obligations, Etc. | Clause 15.2 General undertakings | Clause 15 Undertakings |
| | | | Clause 15.3 Negative Pledge | |
| | | Section 7.04 Payment of Obligations | Clause 15.4 Term of undertakings | |
| | | Section 7.05 Maintenance of Insurance | | |
| | | Section 7.06 Conduct of Business and Preservation of Corporate Existence | | |
| | | Section 7.07 Books and Records | | |

[1] Unless otherwise indicated, provisions listed for the BNPP and JPMC Facilities are provisions in Schedule 1 of the Loan Facility Agreement for each Facility.

| | | $500M Credit Facility | $37.5M BNPP Bilateral[1] | JPMC Bilateral[1] |
|---|---|---|---|---|
| | | Section 7.08 Maintenance of Properties, Etc. | | |
| | | Section 7.09 Use of Proceeds | | |
| | | Section 7.10 Pari Passu Ranking | | |
| | | Section 7.11 Transactions with Affiliates | | |
| | | Section 7.12 Maintenance of Governmental Approvals | | |
| | | Section 7.13 Measurement Date | | |
| | | Section 7.14 Inspection of Property | | |
| | | Section 7.15 Payment of Bridge Facility | | |
| | | Section 8.02 Liens | | |
| | | Section 8.03 Consolidations and Mergers | Guarantee Clause 5.2 (d)-(j) General undertakings | Guarantee Clause 5.2 (d)-(i) General undertakings |
| | | Section 8.04 Sales of Assets, Etc. | Guarantee Clause 5.3 Term of undertakings | Guarantee Clause 5.3 Negative Pledge, Financial Indebtedness and other undertakings |
| | | Section 8.05 Change in Nature of Business | | |
| | | Section 8.06 Margin Regulations | | |
| | | Section 8.07 Limitation on Indebtedness | | Guarantee Clause 5.4 Terms of Undertakings |
| 8. | Existing Illegality Clause | Section 3.06 Illegality | Clause 12.6 Lender Illegality | Clause 12.6 Lender Illegality |
| | | | Clause 12.7 Borrower or Guarantor Illegality | Clause 12.7 Borrower or Guarantor Illegality |
| 9. | Existing Information Undertakings | Section 7.01 Financial Reports and Other Information | Guarantee Clause 5.2 (a) Corporate reporting and information | Guarantee Clause 5.2(a) Financial Statements |
| | | | Guarantee Clause 5.2 (b) Accounting Principles | Guarantee Clause 5.2 (b) Compliance Certificate |
| | | | Guarantee Clause 5.2 (c) Compliance Certificate | Guarantee Clause 5.2 (c) Requirements as to financial statements |
| | | | | Guarantee Clause 5.3(o) Information Undertaking |
| 10. | Existing Mandatory Prepayment Provisions | Section 8.04 Sales of Assets, etc. | No Mandatory Prepayment | Clause 8.4 (b) Additional Repayments |
| | | | | Guarantee Clause 5.3 (b) Disposal Proceeds |
| | | | | Clause 8.5 Effect of Cancellation and Prepayment on Facility A Scheduled Repayments |

| | | $500M Credit Facility | $37.5M BNPP Bilateral[1] | JPMC Bilateral[1] |
|---|---|---|---|---|
| 11. | Existing Representations and Warranties | Section 5 Representations and Warranties of the Borrower | Clause 14 Representations and Warranties | Clause 14 Representations and Warranties |
| | | Section 6 Representations and Warranties of the Guarantor | Guarantee Clause 4 Representations and Warranties | Guarantee Clause 4 Representations and Warranties |
| 12. | Existing Sharing Provisions | No Sharing Provisions | No Sharing Provisions | No Sharing Provisions |
| 13. | Existing Single Lender Repayment Clause | No Existing Single Lender Repayment Provisions | No Single Lender Repayment Provisions | No Single Lender Repayment Provisions |
| 14. | Existing Optional Currency Provisions | No Optional Currency Provisions | No Optional Currency Provisions | No Optional Currency Provisions |
| 15. | Existing Notification Requirements | Section 7.02 Notice of Default and Litigation | Clause 29 Notices | Clause 29 Notices |
| | | Section 11.01 Notices | Guarantee Clause 14 Notices | Guarantee Clause 14 Notices |
| 16. | Existing Guarantor Release Restriction Clause | The words “and irrevocably” in Section 9.01 (The Guaranty) | | |
| | | The phrase “remain in full force and effect… all Commitments have been terminated, and shall” in the first sentence of Section 9.02 (Nature of Liability) | Guarantee Clause 2.2 Unconditional nature of obligation | Clause 16 (a)(x) Ownership of Borrower |
| | | The phrase “shall be unconditional, irrevocable and absolute and, without limiting the generality of the foregoing,” of the introductory clause to Section 9.03 (Unconditional Obligations) | Guarantee Clause 2.9 Continuing Guarantee | Guarantee Clause 2.2 Unconditional Obligations<br>Guarantee Clause 2.9 Continuing Guarantee |
| | | Section 10.01(n) Change of Ownership or Control | Guarantee Clause 2.10 | Guarantee Clause 2.10 |
| | | | Guarantee Clause 10.2 | Guarantee Clause 10.2 |

## SCHEDULE 10

### EXISTING FINANCIAL INDEBTEDNESS

| Obligation | Type | Outstanding Principal Amounts (Notional for Equity Derivatives) | Obligor | Guarantor(s) | Bank Party | Security | Maturity | Security |
|---|---|---|---|---|---|---|---|---|
| **Part I.A** | **Public Debt Instruments** | | | | | | | |
| US$200,000,000 9.625% Indenture dated October 1,1999 | Public Debt Instrument | $61,516,000 | CEMEX, S.A.B. de C.V. | CEMEX México, S.A. de C.V.; Empresas Tolteca de México, S.A. de C.V. | | No | October 1, 2009 | |
| US$170,000,000 Rinker 2025 Indenture, dated 1 April 2003 | Public Debt Instrument | $166,762,053 | CEMEX Materials LLC | CEMEX Corp. | | No | July 21, 2025 | |
| €900,000,000 4.75% Eurobond dated 5 March 2007 | Public Debt Instrument | €900,000,000 | CEMEX Finance Europe B.V. | CEMEX España, S.A. | | No | March 5, 2014 | |
| NSHFV $900m Perpetual Debenture Indenture (C10) dated 18 December 2006 | Public Debt Instrument | $900,000,000 | New Sunward Holding Financial Ventures B.V. | CEMEX, S.A.B. de C.V.; CEMEX México, S.A. de C.V.; New Sunward Holding B.V. | | No | Perpetual - but interest rate steps-up if not called on December 31, 2016 | |
| NSHFV €730m Perpetual Debenture Indenture (C10-EUR) dated 9 May 2007 | Public Debt Instrument | €730,000,000 | New Sunward Holding Financial Ventures B.V. | CEMEX, S.A.B. de C.V.; CEMEX México, S.A. de C.V.; New Sunward Holding B.V. | | No | Perpetual - but interest rate steps-up if not called on June 30, 2017 | |
| £4,669,678 CEMEX UK Loan Notes, dated 1 March 2005 | Public Debt Instrument | £3,458,020 | CEMEX UK | CEMEX, S.A.B. de C.V. | | No | December 31, 2009 | |
| NSHFV US$350m Perpetual Debenture Indenture (C5) dated 18 December 2006 | Public Debt Instrument | $350,000,000 | New Sunward Holding Financial Ventures B.V. | CEMEX, S.A.B. de C.V.; CEMEX México, S.A. de C.V.; New Sunward Holding B.V. | | No | Perpetual - but interest rate steps-up if not called on December 31, 2011 | |
| NSHFV US$750m Perpetual Debenture Indenture (C8)† dated 12 February 2007 | Public Debt Instrument | $750,000,000 | New Sunward Holding Financial Ventures B.V. | CEMEX, S.A.B. de C.V.; CEMEX México, S.A. de C.V.; New Sunward Holding B.V. | | No | Perpetual - but interest rate steps up if not called on December 31, 2014 | |

| Obligation | Type | Outstanding Principal Amounts (Notional for Equity Derivatives) | Obligor | Guarantor(s) | Bank Party | Security | Maturity | Security |
|---|---|---|---|---|---|---|---|---|
| **Part I.B** | **Tax Exempt Bonds** | | | | | | | |
| **Part I.C** | **Mexican Public Debt Instruments** | | | | | | | |
| **Programa de Certificados Bursátiles dated 11 August 2004 for up to Mex$ 5,000,000,000 (no further issuances can be made under this program, as it has matured)** | | | | | | | | |
| Certificado Bursátil CMX0001 05 Mex$ 1,500MM, dated 15 April 2005 | Mexican Public Debt Instrument | Mex$ 1,500,000,000 | CEMEX, S.A.B. de C.V. | CEMEX México, S.A. de C.V.; Empresas Tolteca de México, S.A. de C.V. | | No | April 9, 2012 | |
| **Programa Dual Revolvente de Certificados Bursátiles dated 14 March 2006 as amended for up to Mex$ 30,000,000,000 for short and long term issuances (and with a sublimit of Mex$ 2,500,000,000 in respect of short term issuances)** | | | | | | | | |
| Certificado Bursátil CEMEX 06 Mex $ 1,750MM, dated 17 March 2006 | Mexican Public Debt Instrument | Mex$ 1,750,000,000 | CEMEX, S.A.B. de C.V. | CEMEX México, S.A. de C.V.; Empresas Tolteca de México, S.A. de C.V. | | No | March 10, 2011 | |
| Certificado Bursátil Mex $ 1,500MM CEMEX 06, dated 28 April 2006 | Mexican Public Debt Instrument | Mex$ 1,500,000,000 | CEMEX, S.A.B. de C.V. | CEMEX México, S.A. de C.V.; Empresas Tolteca de México, S.A. de C.V. | | No | March 10, 2011 | |
| Certificado Bursátil CMX0002 06 Mex$ 750MM, dated 17 March 2006 | Mexican Public Debt Instrument | Mex$ 750,000,000 | CEMEX, S.A.B. de C.V. | CEMEX México, S.A. de C.V.; Empresas Tolteca de México, S.A. de C.V. | | No | March 10, 2011 | |
| Certificado Bursátil Mex $ 2,500MM CEMEX 06-2, dated 29 September 2006 | Mexican Public Debt Instrument | Mex$ 2,500,000,000 | CEMEX, S.A.B. de C.V. | CEMEX México, S.A. de C.V.; Empresas Tolteca de México, S.A. de C.V. | | No | September 22, 2011 | |
| Certificado Bursátil Mex$ 1,500MM CEMEX 06-2, dated 13 October 2006 | Mexican Public Debt Instrument | Mex$ 1,500,000,000 | CEMEX, S.A.B. de C.V. | CEMEX México, S.A. de C.V.; Empresas Tolteca de México, S.A. de C.V. | | No | September 22, 2011 | |
| Certificado Bursátil Mex$ 2,950MM CEMEX 06-3, dated 15 December 2006 | Mexican Public Debt Instrument | Mex$ 2,950,000,000 | CEMEX, S.A.B. de C.V. | CEMEX México, S.A. de C.V.; Empresas Tolteca de México, S.A. de C.V. | | No | March 8, 2012 | |

| Obligation | Type | Outstanding Principal Amounts (Notional for Equity Derivatives) | Obligor | Guarantor(s) | Bank Party | Security | Maturity | Security |
|---|---|---|---|---|---|---|---|---|
| Certificado Bursátil Mex$ 3,000MM CEMEX 07, dated 2 February 2007 | Mexican Public Debt Instrument | Mex$ 3,000,000,000 | CEMEX, S.A.B. de C.V. | CEMEX México, S.A. de C.V.; Empresas Tolteca de México, S.A. de C.V. | | No | January 26, 2012 | |
| Certificado Bursátil Mex$ 3,000MM CEMEX 07-2, dated 28 September 2007 | Mexican Public Debt Instrument | Mex$ 3,000,000,000 | CEMEX, S.A.B. de C.V. | CEMEX México, S.A. de C.V.; Empresas Tolteca de México, S.A. de C.V. | | No | September 21, 2012 | |
| Certificado Bursátil UDI 511.5896MM CEMEX 07U, dated 30 November 2007 | Mexican Public Debt Instrument | UDI 511,598,600 | CEMEX, S.A.B. de C.V. | CEMEX México, S.A. de C.V.; Empresas Tolteca de México, S.A. de C.V. | | No | November 26, 2010 | |
| Certificado Bursátil UDI 116.5308MM CEMEX 07-2U, dated 30 November 2007 | Mexican Public Debt Instrument | UDI 116,530,800 | CEMEX, S.A.B. de C.V. | CEMEX México, S.A. de C.V.; Empresas Tolteca de México, S.A. de C.V. | | No | November 17, 2017 | |
| Certificado Bursátil Mex$ 1,000MM CEMEX 08, dated 25 April 2008 | Mexican Public Debt Instrument | Mex$ 1,000,000,000 | CEMEX, S.A.B. de C.V. | CEMEX México, S.A. de C.V.; Empresas Tolteca de México, S.A. de C.V. | | No | November 5, 2010 | |
| Certificado Bursátil Mex$ 450.0459MM CEMEX 08-2, dated 11 December 2008 | Mexican Public Debt Instrument | Mex$ 450,045,900 | CEMEX, S.A.B. de C.V. | CEMEX México, S.A. de C.V.; Empresas Tolteca de México, S.A. de C.V. | | No | September 15, 2011 | |
| Certificado Bursátil UDI 124.8171MM CEMEX 08U, dated 11 December 2008 | Mexican Public Debt Instrument | UDI 124,817,100 | CEMEX, S.A.B. de C.V. | CEMEX México, S.A. de C.V.; Empresas Tolteca de México, S.A. de C.V. | | No | September 15, 2011 | |

| Obligation | Type | Outstanding Principal Amounts (Notional for Equity Derivatives) | Obligor | Guarantor(s) | Bank Party | Security | Maturity | Security |
|---|---|---|---|---|---|---|---|---|
| **Part I.D** | **Bilateral Bank Facilities** | | | | | | | |
| US$250,000,000 Crédito Simple Bancomext, dated 14 October 2008 | Bilateral Bank Facility | $250,000,000 | CEMEX, S.A.B. de C.V. | CEMEX México, S.A. de C.V. | Banco Nacional de Comercio Exterior, S.N.C. | Yes | February 14, 2014. | Pledge of Cementos Chihuahua, S.A.B. de C.V. Shares[2] and Mortgage of Cement Plants in Mérida Yucatan and Ensenada, Baja California. |
| Mex$ 126,562,263.59 Crédito Santander Nota Estructurada, dated 17 April 2008 | Bilateral Bank Facility | Mex$ 126,562,264 | CEMEX, S.A.B. de C.V. | CEMEX México, S.A. de C.V. | Banco Santander (México), S.A., Institución de Banca Múltiple, Grupo Financiero Santander | No | April 16, 2013 | |
| US$ 8,000,000 Banco Industrial de Guatemala | Bilateral Bank Facility | $8,000,000 | Global Cement, S.A. | N/A | Banco Industrial, S.A. | No | June 15, 2014 | |
| Kreissparkasse loan | Bilateral Bank Facility | € 1,078 | CEMEX Kies Hamburg GmbH & Co. KG | N/A | Kreissparkasse Schwarzenbek | No | September 30, 2009 | |
| **Part II** | **Short Term Certificados Bursatiles, working capital and other operating facilities** | | | | | | | |
| **Part II.A** | **Short Term Certificados Bursatiles** | | | | | | | |
| **Programa Dual Revolvente de Certificados Bursátiles dated 14 March 2006 as amended for up to Mex$ 30,000,000,000 for short and long term issuances (and with a sublimit of Mex$ 2,500,000,000 in respect of short term issuances)** | | | | | | | | |
| Certificado Bursátil Corto Plazo ABN, dated August 6, 2009 | Short Term Certificado Bursátil | Mex$ 484,640,000 | CEMEX, S.A.B. de C.V. | CEMEX México, S.A. de C.V.; Empresas Tolteca de México, S.A. de C.V.; Nacional Financiera S.N.C. Institución de Banca de Desarrollo | | No | September 3, 2009 | |
| Certificado Bursátil Corto Plazo ABN, dated July 23, 2009 | Short Term Certificado Bursátil | Mex$ 378,132,000 | CEMEX, S.A.B. de C.V. | CEMEX México, S.A. de C.V.; Empresas Tolteca de México, S.A. de C.V.; Nacional Financiera S.N.C. Institución de Banca de Desarrollo | | No | August 20, 2009 | |

[2] Currently in the process of cancelling the stock pledge.

| Obligation | Type | Outstanding Principal Amounts (Notional for Equity Derivatives) | Obligor | Guarantor(s) | Bank Party | Security | Maturity | Security |
|---|---|---|---|---|---|---|---|---|
| **Part II.B** | **Bilateral Bank Facilities** | | | | | | | |
| US$150,000,000 Loan Facility Agreement between Australia and New Zealand Banking Group Limited and CEMEX Australia Pty Limited, dated 19 March, 2009 (as amended) | Bilateral Bank Facility | $150,000,000 | CEMEX Australia Pty Limited | CEMEX España, S.A. | Australia and New Zealand Banking Group Limited | No | The earlier of (i) October 31, 2010 and (ii) the Holcim sale. | |
| Mex$ 5,000,000,000 Crédito Banobras, dated 22 April 2009 | Bilateral Bank Facility | Mex$ 2,086,626,018 | CEMEX Concretos, S.A. de C.V. | CEMEX México, S.A. de C.V. | Banco Nacional de Obras y Servicios Públicos, S.N.C. | Yes | April, 2014 | Mortgage of Planta Yaqui in Hemosillo, Sonora |
| Caisse Régionale de Crédit Agricole Mutuel du Gard bank loan | Bilateral Bank Facility | €292,685 | CEMEX Granulats, S.A. | N/A | Caisse Régionale de Crédit Agricole Mutuel du Gard | No | February 29, 2012 | |
| Mex$140,000,000 Crédito ABC Capital, dated 29 June 2009 | Bilateral Bank Facility | Mex$ 140,000,000 | CEMEX México, S.A. de C.V. | N/A | ABC Capital, S.A. de C.V., SOFOM, E.N.R. | No | June 29, 2009 | |
| €18,000,000 Bankinter Multidivisa Bilateral Loan Agreement, dated 21 December 2004 (multicurrency) | Bilateral Bank Facility | $14,345,624 €1,177,316 | CEMEX España, S.A. | N/A | Bankinter, S.A. | No | March 6, 2010 Annual Maturity | |
| US$ 29,000,000 Promissory Note Commerce Bank, dated June 30, 2009 | Bilateral Bank Facility | $15,000,000 | CEMEX, S.A.B. de C.V. | CEMEX México, S.A. de C.V.; CEMEX Concretos, S.A. de C.V. | Mercantil Commercebank, N.A. | No | September 22, 2009 | |
| US$30,000,000 Credit Agreement, dated 31 August 2005 (as amended) | Bilateral Bank Facility | $30,000,000 | CEMEX de Puerto Rico, Inc. | N/A | Banco Bilbao Vizcaya Argentaria Puerto Rico | No | August 31, 2009 | |
| CZK 2,810,000 bilateral line due 31 December 2009 | Bilateral Bank Facility | CZK 2,810,000 | CEMEX Czech Republic k.s. | N/A | Unicredit S.P.A. | No | December 31, 2009 | |
| DOP 150,000,000 Promissory Note Banco Popular, dated 18 December 2008 | Bilateral Bank Facility | DOP 150,000,000 | CEMEX Dominicana, S.A. | N/A | Banco Popular Dominicano, C. por A. | No | February 15, 2010 | |

| Obligation | Type | Outstanding Principal Amounts (Notional for Equity Derivatives) | Obligor | Guarantor(s) | Bank Party | Security | Maturity | Security |
|---|---|---|---|---|---|---|---|---|
| DOP 150,000,000 Promissory Note Banco Popular, dated 18 December 2008 | Bilateral Bank Facility | DOP 150,000,000 | CEMEX Dominicana, S.A. | N/A | Banco Popular Dominicano, C. por A. | No | February 15, 2010 | |
| DOP 245,000,000 Promissory Note Banco Leon, dated 17 December 2008 | Bilateral Bank Facility | DOP 245,000,000 | CEMEX Dominicana, S.A. | N/A | Banco Múltiple León, S.A. | No | July 31, 2009 | |
| DOP 250,000,000 Promissory Note BHD, dated 12 February 2009 | Bilateral Bank Facility | DOP 250,000,000 | CEMEX Dominicana, S.A. | N/A | Banco BHD, S.A. Banco Multiple | No | February 17, 2010 February 18, 2010 | |
| COP 20,000,000,000 Promissory Note - BBVA, dated 4 November 2008 | Bilateral Bank Facility | COP 18,000,000,000 | CEMEX Colombia, S.A. | N/A | Banco Bilbao Vizcaya Argentaria, S.A. | No | July 29, 2009 | |
| COP 25,000,000,000 Promissory Note Banco de Bogota, dated May 11, 2009 | Bilateral Bank Facility | COP 25,000,000,000 | CEMEX Colombia, S.A. | N/A | Banco de Bogotá | No | August 10, 2009 | |
| COP 15,000,000,000 Promissory Note Banco de Occidente, dated 31 October 2008 | Bilateral Bank Facility | COP 15,000,000,000 | CEMEX Colombia, S.A. | N/A | Banco de Occidente | No | July 21, 2009 | |
| COP 15,000,000,000 Promissory Note Banco de Occidente, dated 31 October 2008 | Bilateral Bank Facility | COP 15,000,000,000 | CEMEX Colombia, S.A. | N/A | Banco de Occidente | No | July 28, 2009 | |
| COP 10,350,000,000 Promissory Note Banco de Credito, dated 17 July 2007 | Bilateral Bank Facility | COP 10,350,000,000 | CEMEX Colombia, S.A. | N/A | Banco de Crédito | No | July 27, 2009 | |
| COP 10,350,000,000 Promissory Note Banco de Credito, dated 17 July 2007 | Bilateral Bank Facility | COP 10,350,000,000 | CEMEX Colombia, S.A. | N/A | Banco de Crédito | No | July 27, 2009 | |
| US$4,000,000 Promissory Note Philippines Banco de Oro, dated 24 March 2008 | Bilateral Bank Facility | $4,000,000 | APO Cement Corporation | N/A | Banco de Oro Unibank, Inc. | No | August 18, 2009 | |
| US$4,000,000 Promissory Note Philippines Banco de Oro, dated 24 March 2008 | Bilateral Bank Facility | $4,000,000 | Solid Cement Corporation | N/A | Banco de Oro Unibank, Inc. | No | August 18, 2009 | |

| Obligation | Type | Outstanding Principal Amounts (Notional for Equity Derivatives) | Obligor | Guarantor(s) | Bank Party | Security | Maturity | Security |
|---|---|---|---|---|---|---|---|---|
| **Part II.C** | **Overdrafts** | | | | | | | |
| £30,000,000 Overdraft UK - RBS | Overdraft | £26,589,774 | CEMEX Investments Limited | N/A | National Westminster Bank plc | No | September 3, 2009 | |
| €20,000,000 Credit Line France - BNP Paribas, dated 13 March 2009 | Overdraft | €20,000,000 | CEMEX France Services (GIE) | N/A | BNP Paribas | No | July 31, 2009 | |
| €3,000,000 BNP Paribas | Overdraft | €1,965,000 | CEMEX France Services (GIE) | N/A | BNP Paribas | | Overdraft | |
| €16,000,000 Credit Line France - Societe Generale, dated 2 March 2009 | Overdraft | €16,000,000 | CEMEX France Services (GIE) | N/A | Société Générale | No | August 6, 2009 | |
| €8,000,000 Societe Generale Overdraft | Overdraft | €967,000 | CEMEX France Services (GIE) | N/A | Société Générale | No | Overdraft | |
| Mex$ 170,000,000 Overdraft (CEMEX México) | Overdraft | Mex$ 0 | CEMEX México, S.A. de C.V. | N/A | HSBC México, S.A., Institución de Banca Multiple, Grupo Financiero HSBC | No | Overdraft | |
| Mex$ 5,000,000 Overdraft (Empresas Tolteca) | Overdraft | Mex$ 0 | Empresas Toltecas de México, S.A. de C.V. | N/A | HSBC México, S.A., Institución de Banca Multiple, Grupo Financiero HSBC | No | Overdraft | |
| Mex$ 5,000,000 Overdraft (Petrocemex) | Overdraft | Mex$ 0 | Petrocemex, S.A. de C.V. | N/A | HSBC México, S.A., Institución de Banca Multiple, Grupo Financiero HSBC | No | Overdraft | |
| HUF 1,000,000,000 Overdraft line Hungary with Raiffeisen Bank | Overdraft | HUF 357,295,913 | CEMEX Hungaria Epitoanyagok Kft | N/A | Raiffeisen Bank Zrt. | No | Overdraft | |
| €2,000,000 BRED (France) | Overdraft | €933,000 | CEMEX France Services (GIE) | N/A | BRED Banque Populaire | No | Overdraft | |
| ISL 50,000,000 (Israel) | Overdraft | ISL 0 | ReadyMix Industries (Israel) LTD | N/A | First International Bank of Israel, Ltd. | No | Overdraft | |

| Obligation | Type | Outstanding Principal Amounts (Notional for Equity Derivatives) | Obligor | Guarantor(s) | Bank Party | Security | Maturity | Security |
|---|---|---|---|---|---|---|---|---|
| PLN 5,000,000 (Poland) | Overdraft | PLN 0 | CEMEX Polska Sp. Z.o.o. | N/A | ING Bank Slaski S.A. | No | Overdraft | |
| AED 7,346,000 (UAE) | Overdraft | AED 0 | CEMEX Topmix LLC | N/A | Standard Chartered Bank Dubai | No | Overdraft | |
| AED 17,000,000 (UAE) | Overdraft | AED 2,932,843.44 | CEMEX Topmix LLC | N/A | HSBC Bank Middle East Limited | No | Overdraft | |
| EGP 13,155,443 (Egypt) | Overdraft | EGP 2,488,576 | Assuit Cement Co. And CEMEX Ready Mix Co. | N/A | Citibank Egypt N.A. | No | Overdraft | |
| EGP 25,000,000 (Egypt) | Overdraft | EGP 11,825,439 | Assiut Cement Co. | N/A | MISR Bank | No | Overdraft | |
| EGP 22,828,525 (Egypt) | Overdraft | EGP 0 | Assuit Cement Co. And CEMEX Ready Mix Co. | N/A | HSBC Bank Egypt S.A.E | No | Overdraft | |
| €5,000,000 (Austria) | Overdraft | €0 | CEMEX Austria AG | N/A | Investkredit ank AG | No | Overdraft | |
| CZK 15,000,000 | Overdraft | CZK 0 | CEMEX Czech Republic k.s. | N/A | UniCredit Bank Czech Republic, a.s. | No | Overdraft | |
| $500,000 (CEMEX NI Ltd) | Overdraft | $0 | CEMEX (NI) Ltd | N/A | Ulster Bank plc (RBS) | No | September 4, 2009 | |
| £500,000 (CEMEX Island Aggs) | Overdraft | £0 | CEMEX Island Aggregates Ltd | N/A | Natwest Offshore Bank plc (RBS) | No | September 3, 2009 | |
| £500,000 (Island Barn Aggs) | Overdraft | £0 | Island Barn Aggregates Limited | N/A | National Westminster Bank plc (RBS) | No | July 31, 2009 | |
| £125,000 (Mersey Sand) | Overdraft | £0 | Mersey Sand Suppliers Limited | N/A | National Westminster Bank plc (RBS) | No | July 31, 2009 | |
| £250,000 (Brett Hall Aggs) | Overdraft | £0 | Brett Hall Aggregates Limited | N/A | National Westminster Bank plc (RBS) | No | September 4, 2009 | |
| £250,000 (Humber Sand) | Overdraft | £0 | Humber Sand and Gravel Limited | N/A | National Westminster Bank plc (RBS) | No | July 31, 2009 | |
| £250,000 (CEMEX Readymix East Anglia) | Overdraft | £0 | CEMEX Readymix East Anglia Limited | N/A | National Westminster Bank plc (RBS) | No | September 4, 2009 | |

| Obligation | Type | Outstanding Principal Amounts (Notional for Equity Derivatives) | Obligor | Guarantor(s) | Bank Party | Security | Maturity | Security |
|---|---|---|---|---|---|---|---|---|
| **Part III** | **Capital Leases** | | | | | | | |
| £5,502,047 ING Lease Agreement, dated 21 December 1998 | Capital Lease | £4,584,786 | CEMEX Investments Limited | N/A | ING Bank. N.V | No | December 31, 2009 | |
| £2,839,850 ING Lease Agreement, dated 21 December 1998 | Capital Lease | £1,986,986 | CEMEX Investments Limited | N/A | ING Bank. N.V | No | December 1, 2010 | |
| £1,588,896 Lloyds Lease Agreement, dated 26 June 2006 | Capital Lease | £1,588,896 | CEMEX Investments Limited | N/A | Lloyds TSB | No | December 31, 2014 | |
| Leasing Agreement by and between Slibail Immobilier and Morrillon Corvol Rhone Mediterranee dated July 24, 2000. | Capital Lease | €557,590 | CEMEX Granulats Rhone-Mediterranee | N/A | Slibail Immobilier | No | | |
| Asset Finance Leasing | Capital Lease | £10,645,528 | CEMEX UK | N/A | HSBC Bank plc | No | | |
| Equipment leasing | Capital Lease | PLN 4,817,253 | RMC Beton Slask Sp. Z.o.o. | N/A | SG Equipment Leasing Polska Sp. z o.o | No | | |
| Bankowy Funduzs Leasingowy S.A. | Capital Lease | PLN 40,774 | RMC Beton Slask Sp. Z.o.o. | N/A | Bankowy Funduzs Leasingowy S.A. | No | | |
| Financial Leasing between CEMEX Sand, s.r.o. and Impulse Leasing Austria dated March 2008 | Capital Lease | CZK 1,104,000 | CEMEX Sand, s.r.o | N/A | Impulse Leasing Austria s.r.o. | No | | |
| 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. | Capital Lease | €2,287,699 | Transbeton Lieferbeton Gesellschaft m.b.H. | N/A | Raiffeisenbank Bruck an der Mur eg. Gen. | No | | |
| Financial Leases | Capital Lease | €540,258 | Denis Tarrant and Sons Limited | N/A | National Irish Asset Finance Limited | No | | |
| Financial Leases | Capital Lease | $7,365,755 | CEMEX Construction Materials Pacific LLC | N/A | Wells Fargo Leasing Corporation | No | | |

| Obligation | Type | Outstanding Principal Amounts (Notional for Equity Derivatives) | Obligor | Guarantor(s) | Bank Party | Security | Maturity | Security |
|---|---|---|---|---|---|---|---|---|
| **Part IV** | **Inventory financing and factoring arrangements** | | | | | | | |
| **Part IV.A** | **Inventory Financing** | | | | | | | |
| Mex$ 327,724,470 AFIRME Servicio de Comercialización 45,000 toneladas, dated 11 March 2009 | Inventory Financing | Mex$ 305,876,172 | CEMEX México, S.A. de C.V. | N/A | Almacenadora Afirme, S.A. de C.V. | No | November 18, 2010 | |
| **Part IV.B** | **Factoring arrangements** | | | | | | | |
| € 20,000,000 Contrato de Factoring (non-recourse factoring agreement) | Factoring arrangement | €9,626,000 | CEMEX España, S.A., Hormicemex, S.A. & Aricemex, S.A. | N/A | BBVA Factoring E.F.C. , S.A. | No | | |
| € 21,530,000 Contrato de Factoring (non-recourse factoring agreement) | Factoring arrangement | €4,411,000 | CEMEX España, S.A., Hormicemex, S.A. & Aricemex, S.A. | N/A | Banco de Sabadell, S.A. | No | | |

**SCHEDULE 11**

**Part I**

**Form of Resignation Letter**

To: [●] as Administrative Agent

And to: [●] as Security Agent

From: [resigning Obligor] and [Parent]

Dated:

Dear Sirs

**[Parent] - Financing Agreement**
**dated [●] (the "Financing Agreement")**

1. We refer to the Financing Agreement. This is a Resignation Letter. Terms defined in the Financing Agreement have the same meaning in this Resignation Letter unless given a different meaning in this Resignation Letter.

2. Pursuant to [Clause 28.2 (*Resignation of a Borrower*)]/[Clause 28.4 (*Resignation of a Guarantor*)]/[Clause 28.6 (*Resignation of a Security Provider*)] of the Financing Agreement, we request that [resigning Obligor] be released from its obligations and liabilities as a [Borrower]/[Guarantor]/[Security Provider] under the Financing Agreement and the Finance Documents and shall have no further rights, liabilities or obligations under the Finance Documents as a [Borrower]/[Guarantor]/[Security Provider] [except that the resignation shall not take effect (and the Borrower will continue to have rights and obligations under the Finance Documents) until the later of (i) the date on which the Third Party Disposal takes effect; and (ii) the date on which the Borrower ceases to be a borrower and/or guarantor under the Existing Finance Documents.]

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 13 ( *Mandatory prepayment*) of the Financing Agreement.

   (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 are reasonably incurred and which would have been payable by [resigning Obligor] in connection with the Finance Documents but for the release set out in paragraph 2 above.

| | |
|---|---|
| [Parent] | [resigning Obligor] |
| By: | By: |

NOTES:

* Insert where resignation only permitted in case of a Third Party Disposal.

** Insert any other conditions required by the Financing Agreement.

**Part II**

**Form of Resignation Letter (Australia)**

To: [•] as Administrative Agent

From: [resigning Obligor] and [Parent]

Dated:

Dear Sirs

**[Parent] - Financing Agreement**
**dated [•] (the "Financing Agreement")**

1. We refer to the Financing Agreement. This is a Resignation Letter (Australia). Terms defined in the Financing Agreement have the same meaning in this Resignation Letter (Australia) unless given a different meaning in this Resignation Letter (Australia).

2. Pursuant to Clause 28.5 (*Release of CEMEX Australia Holdings*) of the Financing Agreement, we request that CEMEX Australia Holdings be released from its obligations and liabilities as a Guarantor under the Financing Agreement and the Finance Documents and shall have no further rights, liabilities or obligations under the Finance Documents as an Obligor.

3. We confirm that:

   (a) pursuant to the terms of a share purchase agreement dated on or about 15 June 2009 under which CEMEX España agreed to transfer all the issued share capital it holds in CEMEX Australia Holdings to Vennor Investments Pty Ltd (the **"SPA**"), all of the conditions precedent referred to in the SPA, other than the release of CEMEX Australia Holdings as a Guarantor under this Agreement, have been satisfied or waived and the SPA shall promptly after the release of CEMEX Australia Holdings, complete in accordance with the terms of the SPA on or before 31 December 2009; and

   (b) the Parent shall procure that, if so required, the Disposal Proceeds from the sale of all the issued share capital in CEMEX Australia Holdings will be applied in accordance with Clause 13 (*Mandatory prepayment*).

4. This Resignation Letter (Australia) 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 are reasonably incurred and which would have been payable by CEMEX Australia Holdings in connection with the Finance Documents but for the release set out in paragraph 2 above.

[Parent]

By:

CEMEX Australia Holdings Pty Limited

By:

## SCHEDULE 12

### PERMITTED JOINT VENTURES

| Name | Investment (U.S. Dollars) | Country |
|---|---|---|
| Cement Australia Pty Ltd | $ 184,153,486 | Australia |
| Ready Mix USA LLC | $179,639,365 | USA |
| CEMEX Southeast LLC | $ 353,695,464 | USA |
| Control Administrativo Mexicano, S.A. de C.V. | $ 339,336,648 | México |

## SCHEDULE 13

### CONFIDENTIALITY UNDERTAKING

**[Letterhead of Potential Purchaser]**

To: [*Insert name of Seller*]

From: [*Insert name of Potential Purchaser*]

Dated:

Dear Sirs

**CEMEX – Financing Agreement**
**dated [•] 2009 ("Financing Agreement")**

We are considering acquiring an interest in the Financing Agreement which, subject to the terms of the Financing 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 Financing 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 Financing 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 Financing 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 Financing 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 acquire an interest in the Financing Agreement by way of novation, the date on which we acquire such an interest; (b) if we enter into the Acquisition other than by way of novation, the date falling twelve months after termination of that Acquisition; or in any other case 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 or delay in exercising any right or remedy under this letter will operate as a waiver thereof nor will any single or partial exercise of any right or remedy preclude any further 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 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 14

### DISPOSALS

1. *Australia Piece of Land*. Sale of Land process agreement dated 18 June 2009 between Cockburn Cement Limited, Fifth Lettuce Pty Limited, Rugby Holdings Pty Limited, Adelaide Brighton Limited and CEMEX Australia Pty Limited, pursuant to which Fifth Lettuce Pty Limited (a CEMEX group company) has the rights to receive 90% of the net proceeds from the sale of a piece of land in Australia owned by Cockburn Cement Limited in exchange for Fifth Lettuce Pty Limited relinquishing its rights under a Development Deed signed in 1999 between Cockburn Cement Limited and Fifth Lettuce Pty Limited. The estimated sale price of the piece of land is between AUD60,000,000 and AUD80,000,000.

2. *UK Rail Business*. Confidentiality Agreement dated 24 June 2009, and Exclusivity Agreement to be dated either July or August 2009 (currently circulating for signature) entered into between Leonhard Moll Betonwerke and CEMEX UK Operations Limited pursuant to which Leonhard Moll Betonwerke is to purchase CEMEX UK Operation Limited's rail business in the form of an asset sale subject to the completion of a satisfactory due diligence by Leonhard Moll Betonwerke and a final agreement on the sale terms. The closing of the transaction could take place during the fourth quarter of 2009. The estimated sale price is between £20,000,000 and £25,000,000.

3. *Rugby and South Ferriby MBT Plants*. Memorandum of Understanding to be dated as of July or August 2009 (currently circulating for signature) pursuant to which, (i) in relation to the Rugby Plant, a Joint Venture between Waste Recycling Group Limited and CEMEX UK would be created under which CEMEX UK Operations Limited (or any affiliate) will sell property preliminary valued at £10,000,000 in exchange for £5,500,000 in cash and equity in the Joint Venture equivalent to £4,500,000. The Joint Venture is to build a MBT plant for an expected total invest of £65,000,000; and, (ii) in relation to the South Ferriby Plant, a Joint Venture between Waste Recycling Group Limited and CEMEX UK would also be created under which CEMEX UK Operations Limited (or any affiliate) will sell property at a value to be determined in exchange for cash and equity (also to be determined) in the Joint Venture. The Joint Venture is to build a MBT plant for a total investment of over US$10,000,000. The exact values are still unknown as site visits are still taking place and engineering plans are still being reviewed.

4. *Ready Mix USA*. Limited Liability Company Agreement and related asset contribution agreement dated approximately 1 July, 2005, between CEMEX, Inc. and Ready Mix USA pursuant to which two jointly-owned limited liability companies, CEMEX Southeast, LLC, a cement company, and Ready Mix USA, LLC, a ready-mix concrete company, were created to serve the construction materials market in the southeast region of the United States. CEMEX, Inc. (through its affiliates) owns a 50.01% interest, and Ready Mix USA owns a 49.99% interest, in the profits and losses and voting rights of CEMEX Southeast, LLC, while Ready Mix USA owns a 50.01% interest, and CEMEX, Inc. (through its affiliates) owns a 49.99%

interest, in the profits and losses and voting rights of Ready Mix USA, LLC. CEMEX Southeast, LLC is managed by CEMEX, Inc. (through its affiliates), and Ready Mix USA, LLC is managed by Ready Mix USA. Under the Ready Mix USA, LLC agreements, CEMEX, Inc. (through its affiliates) is required to contribute to the Ready Mix USA joint venture any ready-mix concrete and concrete block assets CEMEX, Inc. (through its affiliates) acquires inside the joint venture region, while any aggregates assets acquired inside the region may be added at the option of the non-acquiring member. The value of the contributed assets is to be determined by the board within 30 days of the asset acquisition, and is based on a formula based on the last fiscal year earnings of the assets. The non-acquiring member has 30 days to elect the financing method for the contributed assets following board approval of the valuation, and if no option is elected within 30 days the right to select the option is transferred to the contributing member. Following the financing election, the contribution or sale of the assets must be completed within 180 days. If not completed within that period, the non-acquiring member has the right for 365 days to require the ready-mix concrete and concrete block assets to be sold to a third party. Aggregates assets may be retained by the acquiring member if the non-acquiring member elects not to have the aggregates assets contributed. The expectation is that the value of this disposal will be more than US$10,000,000.

5. *CER's*. Disposal of Certificates of Emission Reductions ("**CERs**") by CEMEX International Finance Company ("**CIFCO**") under a Emission Reduction Purchase Agreement ("**ERPA**") entered by and between CIFCO and Gazprom Marketing & Trading Limited ("**Gazprom**") under the ERPA CIFCO agreed to sell and transfer 1 million CERs to Gazprom on or before 29 November 2012 at a value of Euros €19,7775 per CER.

6. *CEMEX Australia-HOLCIM*. Share purchase agreement dated on or about 15 June 2009 under which CEMEX España, S.A. agreed to transfer all the issued share capital it holds in CEMEX Australia Holdings Pty Limited to Vennor Investments Pty Limited (the "**SPA**") (a HOLCIM group company) for approximately AUD2.02 billion, subject to fulfillment of various closing conditions, including confirmatory due diligence, regulatory approvals and funds from buyer financing being disbursed, among others.

## SCHEDULE 15
### 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) entered into between members of the Group and Participating Creditors 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 March 24, 2009 and, with respect to the positions specified in paragraphs (c) and (d) 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 entered into with a Participating Creditor or an equity call option purchased from a Participating Creditor 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 Participating Creditor 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 6 ( *Existing Security and Quasi-Security* ) to this Agreement **provided that** such collateral or margin was posted in accordance with the Derivatives Side Letter. 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 (K) and (O) of the definition of Permitted Security set out in Clause 24.5 ( *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 6 ( *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 6 ( *Existing Security and Quasi-Security* ) in respect of such Excluded Position complies with paragraphs (K) and (O) of the definition of Permitted Security in Clause 24.5 ( *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 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. (References: 6032 – 1000760 and 6032 – 1000761);

(b) the trust put options that are governed by the ISDA Master Agreement dated as 23 April 2008 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 22 January 2009 between Credit Suisse International and Centro Distribuidor de Cemento S.A. de C.V. (References: External ID: 16059563 - Risk ID: 10008383);

(d) the Axtel share forward transaction that is governed by a long form Confirmation dated 1 April 2008 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-MX344247);

(e) the PEZ transactions that are governed by an ISDA Master Agreement dated as of 12 October 2000 between Banco Santander S.A., Institución de Banca Múltiple, Grupo Financiero Santander and Centro Distribuidor de Cemento, S.A. de C.V. (References: 4763217.25 - 4763238.25, 4763415.25 - 4763431.25, 4763342.25 - 4763323.25, 4763271.25 - 4763311.25, 4763438.25 - 4763454.25, 4763375.25 - 4763392.25);

(f) 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.;

(g) any forward transactions under the Electricity Sales and Purchase Agreement between Sempra Energy Solutions LLC and RMC Pacific Materials Inc. dated as of 31 October 2007; and

(h) all EU Emissions Allowance transactions under the “Contrato de Swap de CERs por EUAs”, dated 23 September 2008 between Caleras de San Cucao, S. A. and CEMEX International Finance Company.

## SCHEDULE 16

## EXISTING GUARANTEES

| Obligation | Outstanding Principal Amount | Usd Amount | Obligor | CEMEX Guarantor(s) | Security | Maturity | Security |
|---|---|---|---|---|---|---|---|
| US$200,000,000 9.625% Indenture dated October 1,1999 (Includes an US$65MM LC dated as of October 18, 2006, in favour of the bondholders) | $61,516,000 | $61,516,000.00 | CEMEX, S.A.B. de C.V. | CEMEX México, S.A. de C.V.; Empresas Tolteca de México, S.A. de C.V. | No | October 1, 2009 | |
| US$170,000,000 Loan Facility Agreement between JPMorgan Chase Bank, N.A. and CEMEX Materials LLC, dated 1 October 2007 (as amended) | $90,000,000 (Facility A Limit); $80,000,000 (Facility B Limit) | $170,000,000.00 | CEMEX Materials LLC | CEMEX España, S.A. | No | Facility A: For amortization schedule, refer to Debt Maturities Document provided by CEMEX; Facility B: April 1, 2011 | |
| €900,000,000 4.75% Eurobond dated 5 March 2007 | € 900,000,000 | $1,272,780,000.00 | CEMEX Finance Europe B.V. | CEMEX España, S.A. | No | March 5, 2014 | |
| Certificado Bursátil CMX0001 05 Mex$ 1,500MM, dated 15 April 2005 | Mex$ 1,500,000,000 | $113,400,113.40 | CEMEX, S.A.B. de C.V. | CEMEX México, S.A. de C.V.; Empresas Tolteca de México, S.A. de C.V. | No | April 9, 2012 | |
| CEMEX, S.A.B. de C.V. US$1,200,000,000 Credit Agreement dated 31 May 2005 (as amended) | $1,200,000,000 | $1,200,000,000.00 | CEMEX, S.A.B. de C.V. | CEMEX México, S.A. de C.V.; Empresas Tolteca de México, S.A. de C.V. | No | June 7, 2011 | |
| Certificado Bursátil CEMEX 06 Mex$ 1,750MM, dated 17 March 2006 | Mex$ 1,750,000,000 | $132,300,132.30 | CEMEX, S.A.B. de C.V. | CEMEX México, S.A. de C.V.; Empresas Tolteca de México, S.A. de C.V. | No | March 10, 2011 | |
| Certificado Bursátil Mex$ 1,500MM CEMEX 06, dated 28 April 2006 | Mex$ 1,500,000,000 | $113,400,113.40 | CEMEX, S.A.B. de C.V. | CEMEX México, S.A. de C.V.; Empresas Tolteca de México, S.A. de C.V. | No | March 10, 2011 | |
| Certificado Bursátil CMX0002 06 Mex$ 750MM, dated 17 March 2006 | Mex$ 750,000,000 | $56,700,056.70 | CEMEX, S.A.B. de C.V. | CEMEX México, S.A. de C.V.; Empresas Tolteca de México, S.A. de C.V. | No | March 10, 2011 | |
| Certificado Bursátil Mex$ 2,500MM CEMEX 06-2, dated 29 September 2006 | Mex$ 2,500,000,000 | $189,000,189.00 | CEMEX, S.A.B. de C.V. | CEMEX México, S.A. de C.V.; Empresas Tolteca de México, S.A. de C.V. | No | September 22, 2011 | |

| Obligation | Outstanding Principal Amount | Usd Amount | Obligor | CEMEX Guarantor(s) | Security | Maturity | Security |
|---|---|---|---|---|---|---|---|
| Certificado Bursátil Mex$ 1,500MM CEMEX 06-2, dated 13 October 2006 | Mex$ 1,500,000,000 | $113,400,113.40 | CEMEX, S.A.B. de C.V. | CEMEX México, S.A. de C.V.; Empresas Tolteca de México, S.A. de C.V. | No | September 22, 2011 | |
| Certificado Bursátil Mex$ 2,950MM CEMEX 06-3, dated 15 December 2006 | Mex$ 2,950,000,000 | $223,020,223.02 | CEMEX, S.A.B. de C.V. | CEMEX México, S.A. de C.V.; Empresas Tolteca de México, S.A. de C.V. | No | March 8, 2012 | |
| 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 | $437,500,000 Mex$ 4,773,282,950 | $798,360,552.56 | CEMEX, S.A.B. de C.V. | CEMEX México, S.A. de C.V.; CEMEX Concretos, S.A. de C.V. | No | February 28, 2011; For additional amortization, refer to Debt Maturities Document provided by CEMEX | |
| US$500,000,000 Pez Loan between Banco Bilbao Vizcaya Argentaria, S.A. and CEMEX, S.A.B. de C.V. dated 25 June 2008, as further amended | $500,000,000 | $500,000,000.00 | CEMEX, S.A.B. de C.V. | CEMEX México, S.A. de C.V. | No | April 29, 2011 | |
| Certificado Bursátil Mex$ 3,000MM CEMEX 07, dated 2 February 2007 | Mex$ 3,000,000,000 | $226,800,226.80 | CEMEX, S.A.B. de C.V. | CEMEX México, S.A. de C.V.; Empresas Tolteca de México, S.A. de C.V. | No | January 26, 2012 | |
| Certificado Bursátil Mex$ 3,000MM CEMEX 07-2, dated 28 September 2007 | Mex$ 3,000,000,000 | $226,800,226.80 | CEMEX, S.A.B. de C.V. | CEMEX México, S.A. de C.V.; Empresas Tolteca de México, S.A. de C.V. | No | September 21, 2012 | |
| Certificado Bursátil UDI 511.5896MM CEMEX 07U, dated 30 November 2007 | UDI 511,598,600 | $164,634,537.37 | CEMEX, S.A.B. de C.V. | CEMEX México, S.A. de C.V.; Empresas Tolteca de México, S.A. de C.V. | No | November 26, 2010 | |
| Certificado Bursátil UDI 116.5308MM CEMEX 07-2U, dated 30 November 2007 | UDI 116,530,800 | $37,500,091.57 | CEMEX, S.A.B. de C.V. | CEMEX México, S.A. de C.V.; Empresas Tolteca de México, S.A. de C.V. | No | November 17, 2017 | |
| Certificado Bursátil Mex$ 1,000MM CEMEX 08, dated 25 April 2008 | Mex$ 1,000,000,000 | $75,600,075.60 | CEMEX, S.A.B. de C.V. | CEMEX México, S.A. de C.V.; Empresas Tolteca de México, S.A. de C.V. | No | November 5, 2010 | |
| Certificado Bursátil Mex$ 450.0459MM CEMEX 08-2, dated 11 December 2008 | Mex$ 450,045,900 | $34,023,504.06 | CEMEX, S.A.B. de C.V. | CEMEX México, S.A. de C.V.; Empresas Tolteca de México, S.A. de C.V. | No | September 15, 2011 | |

| Obligation | Outstanding Principal Amount | Usd Amount | Obligor | CEMEX Guarantor(s) | Security | Maturity | Security |
|---|---|---|---|---|---|---|---|
| Certificado Bursátil UDI 124.8171MM CEMEX 08U, dated 11 December 2008 | UDI 124,817,100 | $40,166,657.05 | CEMEX, S.A.B. de C.V. | CEMEX México, S.A. de C.V.; Empresas Tolteca de México, S.A. de C.V. | No | September 15, 2011 | |
| US$250,000,000 Crédito Simple Bancomext, dated 14 October 2008[1] (as amended) | $250,000,000 | $250,000,000.00 | CEMEX, S.A.B. de C.V. | CEMEX México, S.A. de C.V. | YES | February 14, 2014 | Stock pledge of Cementos Chihuahua, S.A.B. de C,V, shares and mortgage of cement plants in Merida, Yucatan and Ensenada Baja California |
| Mex$ 126,562,263.59 Crédito Santander Nota Estructurada, dated 17 April 2008* | Mex$ 126,562,264 | $9,568,116.73 | CEMEX, S.A.B. de C.V. | CEMEX México, S.A. de C.V. | No | April 16, 2013 | |
| Certificado Bursátil Corto Plazo ABN, dated 8 July 2009 | Mex$ 484,640,000 | $36,638,820.64 | CEMEX, S.A.B. de C.V. | CEMEX México, S.A. de C.V.; Empresas Tolteca de México, S.A. de C.V.; Nacional Financiera S.N.C. Institución de Banca de Desarrollo***** | No | August 6, 2009 | |
| Certificado Bursátil Corto Plazo ABN, dated 23 July 2009 | Mex$ 378,132,000 | $28,586,807.79 | CEMEX, S.A.B. de C.V. | CEMEX México, S.A. de C.V.; Empresas Tolteca de México, S.A. de C.V.; Nacional Financiera S.N.C. Institución de Banca de Desarrollo***** | No | August 20, 2009 | |
| Mex$ 2,086,626,018 Crédito Banobras, dated 22 April 2009 | Mex$ 2,086,626,018 | $157,749,084.71 | CEMEX Concretos, S.A. de C.V. | CEMEX México, S.A. de C.V. | YES | April 29, 2014 | Mortgage of Planta Yaqui in Hemosillo Sonora |
| CEMEX, S.A.B. de C.V. US$700,000,000 (originally US$800,000,000) Credit Agreement dated 23 June, 2004 | $680,000,000 | $680,000,000.00 | CEMEX, S.A.B. de C.V. | CEMEX México, S.A. de C.V.; Empresas Tolteca de México, S.A. de C.V. | No | June 23, 2010 | |

[1] Stock pledge in process of being cancelled.

| Obligation | Outstanding Principal Amount | Usd Amount | Obligor | CEMEX Guarantor(s) | Security | Maturity | Security |
|---|---|---|---|---|---|---|---|
| CEMEX, S.A.B. de C.V. US$700,000,000 (originally US$800,000,000) Credit Agreement dated 23 June, 2004 | $20,000,000 | $20,000,000.00 | CEMEX, S.A.B. de C.V. | CEMEX México, S.A. de C.V.; Empresas Tolteca de México, S.A. de C.V. | No | July 31, 2009 | |
| US$29,000,000 Promissory Note Mercantil Commercebank, N.A., dated 30 June 2009 | $15,000,000 | $15,000,000.00 | CEMEX, S.A.B. de C.V. | CEMEX México, S.A. de C.V.; CEMEX Concretos, S.A. de C.V. | No | August 20, 2009 and September 22, 2009 | |
| Promissory Note US$45,434,817 JPMorgan Chase Bank, N.A., dated 17 March 2009 | $45,434,817 | $45,434,817.00 | CEMEX, S.A.B. de C.V. | CEMEX México, S.A. de C.V. | No | July 31, 2009 | |
| Promissory Note US$20,000,000 JPMorgan Chase Bank, N.A., dated 17 April 2009 | $20,000,000 | $20,000,000.00 | CEMEX, S.A.B. de C.V. | CEMEX México, S.A. de C.V. | YES | July 31, 2009 | CASH COLLATERAL (US$20mm) |
| Promissory Note US$34,072,566 Merrill Lynch International Bank Limited dated 6 April 2009 | $34,072,566 | $34,072,565.81 | Escazu Investments# | CEMEX, S.A.B. de C.V. | No | June 30, 2009 | |
| Promissory Note US$51,947,000 Citibank N.A. New York, dated 6 April 2009 | $51,947,000 | $51,947,000.00 | Escazu Investments# | CEMEX, S.A.B. de C.V. | No | June 30, 2009 | |
| New Sunward Holding B.V. US$1,050,000,000 Senior Unsecured Dutch Loan “A” Agreement dated 2 June, 2008 (Club Loan) | $525,000,000 | $525,000,000.00 | NEW SUNWARD HOLDING B.V. | CEMEX, S.A.B. de C.V.; CEMEX México, S.A. de C.V. | No | June 30, 2011 | |
| New Sunward Holding B.V. US$1,050,000,000 Senior Unsecured Dutch Loan “B” Agreement dated 2 June, 2008 (Club Loan) | $525,000,000 | $525,000,000.00 | NEW SUNWARD HOLDING B.V. | CEMEX, S.A.B. de C.V.; CEMEX México, S.A. de C.V. | No | June 30, 2011 | |
| New Sunward Holding B.V. US$700,000,000 Facilities Agreement dated 27 June 2005 (as amended) | $350,000,000 | $350,000,000.00 | 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. | No | June 25, 2010 | |
| US$170,000,000 Rinker 2025 Indenture, dated 1 April 2003 | $166,762,053 | $166,762,053.00 | CEMEX Materials LLC | CEMEX Corp. | No | July 21, 2025 | |
| US$37,500,000 Facility Agreement between CEMEX BNP Paribas (Sydney Branch) and CEMEX Materials LLC, dated 1 October 2007 (as amended) | $37,500,000 (Tranche 2) | $37,500,000.00 | CEMEX Materials LLC | CEMEX España, S.A. | No | 31-Jul-09 | |

| Obligation | Outstanding Principal Amount | Usd Amount | Obligor | CEMEX Guarantor(s) | Security | Maturity | Security |
|---|---|---|---|---|---|---|---|
| US$150,000,000 Loan Facility Agreement between Australia and New Zealand Banking Group Limited and CEMEX Australia Pty Limited, dated 19 March, 2009 (as amended) | $150,000,000 | $150,000,000.00 | CEMEX Australia Pty Limited | CEMEX España, S.A., Rinker Group Pty Ltd (Cross-Guarantee, Corporate Guarantee and Indemnity dated as of March 17, 2009) | No | The earlier of (i) October 31, 2010 and (ii) the Holcim sale | |
| CEMEX España, S.A. US$2,300,000,000 RMC Revolving Facilities Agreement dated 24 September 2004 (as amended) | $1,050,000,000 | $1,050,000,000.00 | CEMEX España, S.A. | CEMEX España, S.A. | No | May 30, 2009 September 24,2009 July 1, 2011, July 1, 2012 | |
| CEMEX España, S.A. US$617,500,000 & EUR 587,500,000 Joint Bilateral Financing Facilities Agreement dated 27 January, 2009 (as amended) | $617,500,000 € 587,500,000 | $1,448,342,500.00 | CEMEX España, S.A. | CEMEX Australia Holdings Pty Ltd.; CEMEX Inc. | No | February 28, 2011; For additional amortization, refer to Debt Maturities Document provided by CEMEX | |
| US$882,407,495.57 Note Purchase Agreement | | | CEMEX España Finance LLC | CEMEX España, S.A. | No | Tranche 1 Notes due and payable on June 15, 2010; Tranche 2 Notes due and payable on June 15, 2013; Tranche 3 Notes due and payable on June 13, 2015 | |
| ¥1,185,389,696.06 Note Purchase Agreement dated 15 April 2004 (as amended) | | $116,542,065.92 | CEMEX España Finance LLC | CEMEX España, S.A. | No | Tranche 1 Notes due and payable on April 15, 2010; Tranche 2 Notes due and payable on April 15, 2011 | |
| US$325,000,000 Note Purchase Agreement dated 13 June 2005 (as amended) | $133,000,000 (Series A); $192,000,000 (Series B) | $325,000,000.00 | CEMEX España Finance LLC | CEMEX España, S.A. | No | Series A Notes due and payable on June 13, 2010 and Series B Notes due and payable on June 13, 2015 | |
| NAFINSA GUARANTE OF CBs dated 22 October 2008 | Mex$ 431,386,000 | $32,612,814.21 | CEMEX, S.A.B. de C.V. | CEMEX México, S.A. de C.V. | YES | October 2009 | CEMEX Mexico Headquarters Building |

| Obligation | Outstanding Principal Amount | Usd Amount | Obligor | CEMEX Guarantor(s) | Security | Maturity | Security |
|---|---|---|---|---|---|---|---|
| Mex$ 1,170,000,000 Contrato de Apertura de Crédito Simple dated 17 December 2001 (as amended) | $943,374,835 | $71,319,208.81 | ABC CAPITAL, S.A. DE C.V., Sociedad Financiera de Objeto Múltiple, Entidad No Regulada | CEMEX México, S.A. de C.V. | No | | |
| Banco Santander, S.A., Institución de Banaca Multiple Grupo Financiero Sanander ISDA Master Agreement dated 7 April 2008* | Mex$ 86,036,080.25 | $6,504,334.17 | Banco Nacional de México, S. A. Integrante del Grupo Financiero Banamex, as Trustee at the Trust Number 110975-6 | CEMEX, S.A.B de C.V. | No | | |
| Banco Santander Mexicano, S.A., Institución de Banca Múltiple, Grupo Financiero Santander Serfin ISDA Mater Agreement dated 14 February 2003 *** | $71,170,259 | $71,170,259.00 | Centro Distribuidor de Cemento, S.A. de C.V.# | CEMEX, S.A.B de C.V. | No | | |
| Banco Santander Mexicano, S.A., Institución de Banca Múltiple, Grupo Financiero Santander Serfin ISDA Mater Agreement dated 14 February 2003 **** | $3,366,506 | $3,366,506 | Centro Distribuidor de Cemento, S.A. de C.V.# | CEMEX, S.A.B de C.V. | No | | |

† This is just one part of the structure.

| FX Rates (June 23, 2009) | |
|---|---|
| USD/Mex$ | 13.2275 |
| USD/JPY | 94.97 |
| UDI/Mex$ | 4.256664 |
| USD/GBP | 1.6475 |
| USD/EUR | 1.4142 |

* Due to fluctuations amount exceeds USD$10 M on given dates

** Call Options for Nota Estructurada (MtM Figure is a liability, this figure varies according to the market's conditions)

*** Put Spread Derivative - PEZ (MtM Figure is a liability for Centro Distribuidor de Cemento, S.A. de C.V., this figure varies according to the market's conditions)

**** IRT Forwards (MtM Figures is positive for Centro Distribuidor de Cemento, S.A. de C.V., this figure varies according to the market's conditions)

***** Nacional Financiera S.N.C. Institución de Banca de Desarrollo is a Mexican governmental bank and its guarantee is limited to half of the outstanding amount of the Certificado Bursátil Corto Plazo

**Exhibit 4.35.2**

**CLIFFORD CHANCE LLP**

**CLEARY GOTTLIEB STEEN & HAMILTON LLP**

**COMPOSITE CONFORMED COPY**

DATED 14 AUGUST 2009

CITIBANK INTERNATIONAL PLC
as Administrative Agent

The Participating Creditors
(as named herein)

CEMEX, S.A.B. DE C.V. AND CERTAIN OF ITS SUBSIDIARIES
as Original Borrowers, Original Guarantors and Original Security Providers

WILMINGTON TRUST (LONDON) LIMITED
acting as Security Agent

and others

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# INTERCREDITOR AGREEMENT

(as amended on 1 December 2009 and 25 October 2010)

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**CONTENTS**

**THIS AGREEMENT** is dated 14 August 2009 (as amended on 1 December 2009 and 25 October 2010) and made between:

(1) **CITIBANK INTERNATIONAL PLC** as Administrative Agent;

(2) **THE FINANCIAL INSTITUTIONS AND USPP NOTEHOLDERS** named on the signing pages as Participating Creditors (the "**Original Participating Creditors**");

(3) **THE FINANCIAL INSTITUTIONS** named on the signing pages as Participating Creditors' Representatives;

(4) **CEMEX, S.A.B. de C.V.** (the "**Parent**");

(5) **THE SUBSIDIARIES** of the Parent named on the signing pages as Original Borrowers (together with the Parent, the "**Original Borrowers**");

(6) **THE SUBSIDIARIES** of the Parent named on the signing pages as Original Guarantors (together with the Parent, the "**Original Guarantors**");

(7) **THE SUBSIDIARIES** of the Parent named on the signing pages as Original Security Providers (together with the Parent, the "**Original Security Providers**"); 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 Financing Agreement, and in connection with the grant by the Original Guarantors of certain guarantees in favour of the Participating Creditors and the grant by the Original Security Providers of Security pursuant to the Transaction Security Documents in favour of the Participating Creditors.

(B) Under the Existing Notes Documents the Parent and the Original Debtors may not grant Security in favour of the Participating 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 Participating Creditor Liabilities.

**IT IS AGREED** as follows:

## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In this Agreement:

"**Additional Guarantor**" means a company that becomes an Additional Guarantor as defined in the Financing Agreement in accordance with clause 28 (*Changes to the Obligors*) thereof.

"**Additional Notes**" means any notes, *certificados bursátiles* (including any further *certificados bursátiles* issued under and in accordance with any of the programmes under

which *certificados bursátiles* listed at paragraphs (a) to (n) of the definition of "Certificados Bursátiles" below were issued), bonds or other debt securities, convertible or exchangeable securities or loan facility:

(a) the proceeds of which are applied:

(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, to the extent required under the Financing Agreement; or

(iii) to the extent required under the Financing Agreement, to refinance any EUR 900,000,000 4.75% Eurobonds issued by CEMEX Finance Europe B.V. and guaranteed by CEMEX, España, S.A. dated 5 March 2007 (as amended from time to time); 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 Financing Agreement.

"**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 Financing Agreement, an issuer or a borrower or a guarantor under any Additional Notes Documents as permitted by the Financing Agreement and, if not a Debtor under this Agreement, which has acceded to this Agreement as a Debtor in accordance with Clause 13.7 ( *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 Financing Agreement in accordance with clause 28 (*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 Administrative Agent, each Participating Creditor's Representative 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 Administrative 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.

"**Bilateral Bank Facilities**" means the facilities described in Part IB of Part II of schedule 1 ( *The Original Participating Creditors*) to the Financing Agreement.

"**Borrower**" means an Original Borrower unless it has ceased to be a Borrower in accordance with Clause 13.9 ( *Resignation of a Debtor/Security Provider*) and, for the purposes of Clause 9.2 ( *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 Existing Guarantee Liabilities or Guarantee Liabilities) it may have as a principal debtor

to a Participating 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 Financing 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, 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 Australia Holdings**" means CEMEX Australia Holdings Pty Limited.

"**CEMEX España**" means CEMEX España, S.A.

"**CEMEX México**" means CEMEX México, S.A. de C.V.

"**Certificados Bursátiles**" means the following debt securities issued by the Parent 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:

(a) *certificado bursátil* CMX0001 05 in an amount of Mex$1,500,000,000 dated 15 April 2005;

(b) *certificado bursátil* CEMEX 06 in an amount of Mex$1,750,000,000 dated 17 March 2006;

(c) *certificado bursátil* CMX0002 06 in an amount of Mex$750,000,000 dated 17 March 2006;

(d) *certificado bursátil* CEMEX 06 in an amount of Mex$1,500,000,000 dated 28 April 2006;

(e) *certificado bursátil* CEMEX 06-2 in an amount of Mex$2,500,000,000 dated 29 September 2006;

(f) *certificado bursátil* CEMEX 06-2 in an amount of Mex$1,500,000,000 dated 13 October 2006;

(g) *certificado bursátil* CEMEX 06-3 in an amount of Mex$2,950,000,000 dated 15 December 2006;

(h) *certificado bursátil* CEMEX 07 in an amount of Mex$3,000,000,000 dated 2 February 2007;

(i) *certificado bursátil* CEMEX 07-2 in an amount of Mex$3,000,000,000 dated 28 September 2007;

(j) *certificado bursátil* CEMEX 07U in an amount of UDI 511,598,600 dated 30 November 2007;

(k) *certificado bursátil* CEMEX 07-2U in an amount of UDI 116,530,800 dated 30 November 2007;

(l) *certificado bursátil* CEMEX 08 in an amount of Mex$1,000,000,000 dated 25 April 2008;

(m) *certificado bursátil* CEMEX 08-2 in an amount of Mex$450,045,900 dated 11 December 2008; and

(n) *certificado bursátil* CEMEX 08U in an amount of UDI 124,817,100 dated 11 December 2008.

"**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 5 ( *Form of Compliance Certificate*) of the Financing 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 Financing Agreement).

"**Core Bank Facilities**" means the Syndicated Bank Facilities, the Bilateral Bank Facilities and the Promissory Notes.

"**Creditor**" means an Agent, a Participating Creditor or a Refinancing Creditor.

"**Creditor/Administrative Agent/Security Agent Accession Undertaking** " means:

(a) an undertaking substantially in the form set out in Schedule 2 ( *Form of Creditor/Administrative Agent/Security Agent Accession Undertaking*); or

(b) in the case of a Participating Creditor only, a Participating Creditor/Administrative Agent/Security Agent Accession Undertaking (as defined in the Financing Agreement),

as the context may require.

"**Debt Claim Recoveries**" has the meaning given to such term in Clause 9.2 ( *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 13.7 ( *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 Financing Agreement).

"**Debtor Liabilities**" means, in relation to a member of the Group, any liabilities owed to any Debtor (whether actual or contingent and whether incurred solely or jointly) by that member of the Group.

"**Default**" means an Event of Default or any event or circumstance specified in clause 26 ( *Events of Default*) of the Financing 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.

"**Disposal Proceeds**" has the meaning given to that term in Clause 7 ( *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 Participating Creditor 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 Financing 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:

(i) the acceleration of any Liabilities or the making of any declaration that any Liabilities are prematurely due and payable (other than as a result of it becoming unlawful for a Participating 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 are payable on demand;

(iii) the making of a demand in relation to a Liability that is payable on demand;

(iv) the making of any demand against any member of the Group in relation to any Guarantee Liabilities or Existing 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 (including exercising any put or call option against any member of the Group for the redemption or purchase of any 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; and

(vii) the suing for, commencing or joining of any legal or arbitration proceedings against any member of the Group to recover any 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 has given any Security, guarantee or indemnity or other assurance against loss in respect of the Liabilities (other than any action permitted under Clause 13 (*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 has given any Security, guarantee, indemnity or other assurance against loss in respect of any of the 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, 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 Participating Creditor 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 Financing Agreement.

"**Existing Finance Documents**" means each of the facility agreements and other documents listed in schedule 9 ( *The Facilities*) to the Financing Agreement and the "Finance Documents" as defined in any Existing Facility Agreement and "Facility Transaction Documents" as defined in Exhibit G to the NY Law Amendment Agreement (but in each case excluding any document that is designated a "Finance Document" or a "Facility Transaction Document" by a Debtor or a Security Provider and the relevant Participating Creditor's Representative under an Existing Facility Agreement after the date of the Financing Agreement), the USPP Note Agreement and the USPP Note Guarantee.

"**Existing Guaranteed Debt**" means each of the Facilities under which at the date of the Financing Agreement, an Original Debtor owes Guarantee Liabilities to a Finance Party.

"**Existing 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.

"**Existing Notes**" means the Parent Notes, the US$350M Perpetuals, the EUR730M Perpetuals, the US$750M Perpetuals, the US$900M Perpetuals and the Certificados Bursátiles.

"**Existing Notes Creditor**" means each holder from time to time of Existing Notes.

"**Existing Notes Documents**" means the Parent Notes Indenture, the US$350M Perpetuals Indenture, the EUR730M Perpetuals Indenture, the US$750M Perpetuals Indenture, the US$900M Perpetuals Indenture and the *título únicos* pursuant to which the 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 Participating Creditor Exposure or a Refinancing Creditor Exposure.

"**Facility**" means a Core Bank Facility and each USPP Note.

"**Final Discharge Date**" means the first date on which all Participating Creditor Liabilities have been fully and finally discharged to the satisfaction of the Administrative Agent (acting reasonably), whether or not as the result of an enforcement, and none of the Participating Creditors are under any further obligation to provide financial accommodation to any of the Debtors under the Finance Documents.

"**Finance Document**" means each New Finance Document and each Existing Finance Document.

"**Finance Parallel Debt**" has the meaning given to such term in Clause 10.2 ( *Finance Parallel Debt (Covenant to pay the Security Agent)* ).

"**Finance Party**" means the Administrative Agent, the Security Agent, each Participating Creditor's Representative or a Participating Creditor.

"**Finance Secured Documents**" means each of the Finance Documents and the Refinancing Documents.

"**Finance Secured Parties**" means each of the Secured Parties other than the Noteholder Trustees and the Noteholders from time to time.

"**Financial Indebtedness**" has the meaning given to the term "Financial Indebtedness" in the Financing Agreement.

"**Financial Quarter**" means the period commencing on the day after one Quarter Date and ending on the next Quarter Date.

"**Financing Agreement**" means the financing agreement entered into between, amongst others, the Parent, the Original Obligors (as defined therein), the Original Participating Creditors and others dated on or about the date of this Agreement.

"**Group**" means the Parent and each of its Subsidiaries for the time being.

"**Guarantee Clause**" means:

(a) in relation to any Existing Guaranteed Debt, any clause contained in the Existing Finance Documents relating to that Existing Guaranteed Debt pursuant to which an Original Guarantor has liabilities under such Existing Finance Documents (present or future, actual or contingent and whether incurred solely or jointly) to any Finance 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 Existing Finance Documents);

(b) in relation to the Financing Agreement, clause 20 ( *Guarantee and Indemnity*) 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).

"**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.

"**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 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 13.9 ( *Resignation of a Debtor/Security Provider*) and has not subsequently become an Additional Guarantor pursuant to Clause 13.7 (*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 19 ( *Consents, Amendments and Override* ).

"**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 Participating Creditor or Participating 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 Participating 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) 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.

"**Material Subsidiary**" means, as at the date of the Financing Agreement, those companies set out in schedule 7 ( *Material Subsidiaries*) thereto and, after the date of the Financing 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 Financing 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 Financing 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*.

"**New Finance Document**" means the Financing Agreement, the NY Law Amendment Agreement, this Agreement, each Transaction Security Document and any Accession Letter, Fee Letter, Resignation Letter or Resignation Letter (Australia) (as each such term is defined in the Financing Agreement) and any other document designated as a "**New Finance Document**" in accordance with the Financing Agreement.

"**Noteholder**" means an Existing Notes Creditor or an Additional Notes Creditor.

"**Noteholder Documents**" means the Existing Notes Document 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 10.3 ( *Notes Parallel Debt (Covenant to pay the Security Agent)*).

"**Notes Parallel Debt Recoveries**" has the meaning given to such term in paragraph (e) of Clause 10.3 ( *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.

"**NY Law Amendment Agreement**" means the omnibus amendment agreement dated on or about the date of this Agreement between, amongst others, the Parent and the Participating Creditors with Participating Creditor Exposures under those Facilities that are governed by the laws of the State of New York.

"**Original Debtor**" means an Original Borrower or an Original Guarantor.

"**Parent Notes**" means the US$200,000,000 9.625% Notes due 2009 issued by the Parent.

"**Parent Notes Indenture**" means the indenture dated as of 1 October 1999 among the Parent as issuer, CEMEX México and Empresas Tolteca as guarantors and U.S. Bank Trust National Association as trustee pursuant to which the Parent Notes were issued.

"**Participating Creditor**" means:

(a) any Original Participating Creditor; and

(b) any person which becomes a party to the Financing Agreement in accordance with clause 27 ( *Changes to the Participating Creditors*) thereof and which accedes to this Agreement in accordance with Clause 13.6 ( *Creditor/Administrative Agent/Security Agent Accession Undertaking* ),

which in each case has not ceased to be a party to the Financing Agreement in accordance with the terms thereof.

"**Participating Creditor Acceleration Event**" means, on or after the occurrence of an Event of Default which is continuing, and in respect of which a Participating Creditor or Participating Creditors the Base Currency Amount of whose Exposures under the Facilities at that time represent, in aggregate, 66 2/3 per cent. or more of the Base Currency Amount of all of the Exposures of the Participating Creditors under all of the Facilities at that time (the "**Majority Participating Creditors**") have authorised the taking of such action, the exercise by the Majority Participating Creditors of their rights under any of paragraphs (a) to (d) of clause 26.16 (*Acceleration*) of the Financing Agreement.

"**Participating Creditor Exposures**" 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 which holds a USPP Note, the principal amount owed to that Participating Creditor under that USPP Note at that time.

"**Participating 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 Participating Creditors under the Finance Documents.

"**Participating 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.

"**Party**" means a party to this Agreement.

"**Payment**" means, in respect of any Liabilities, a payment, prepayment, repayment, redemption, defeasance or discharge of those Liabilities.

"**Permitted Payments**" means any Payments (in the case of any Participating Creditor or any Participating Creditor Representative) permitted to be received under clause 31 (*Sharing among the Finance Parties*) of the Financing Agreement or made in accordance with the terms of clause 32 ( *Payment Mechanics*) of the Financing Agreement or (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.

"**Promissory Notes**" means the promissory notes described in Part IC of Part II to schedule 1 ( *The Original Participating Creditors*) to the Financing 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 Date**" means the date of the Financing Agreement.

"**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 Financing Agreement;

(b) the proceeds of which are applied to refinance the Facilities to the extent required under the Financing 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 Financing Agreement.

"**Refinancing Creditor**" means any creditor which enters into a Refinancing Document and which accedes to this Agreement in accordance with Clause 13.3 (*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 Guarantee Liabilities to a Refinancing Creditor pursuant to a Refinancing.

"**Refinancing Obligor**" means any member of the Group which, as permitted by the Financing 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 13.7 ( *New Debtor/Security Provider*)).

"**Refinancing Party**" means each Refinancing Creditor and each Refinancing Creditor Representative.

"**Relevant Liabilities**" means:

(a) in the case of a Participating Creditor:

(i) the Liabilities owed to Participating Creditors ranking (in accordance with the terms of this Agreement) *pari passu* with or in priority to that Participating Creditor (as the case may be) together with all Agent Liabilities owed to any Agent of those Participating 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, of any Security Provider) to the Security Agent; and

(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, to the extent applicable in relation to the Transaction Security granted by it, any Security Provider), the Liabilities owed to the Participating 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 11 (*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 10.2 (*Finance Parallel Debt (Covenant to pay the Security Agent)*) and Clause 10.3 (*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 Participating Creditors and Refinancing Creditors from time to time but, in the case of the Agents and each Participating 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 13.6 (*Creditor/Administrative 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 10.9 ( *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 4 ( *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 13.9 ( *Resignation of a*

*Debtor/Security Provider*) and has not subsequently become an Additional Security Provider pursuant to Clause 13.7 ( *New Debtor/Security Provider*), and "**Security Provider**" means any of them.

"**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 Participating Creditor or Participating 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 Participating Creditors under all of the Facilities at that time.

"**Syndicated Bank Facilities**" means the facilities described in Part 1A 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 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).

"**Termination Date**" means 14 February 2014.

"**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) a security trust agreement (*contrato de fideicomiso de garantía*) 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 Sunward Investments B.V. between Corporacíon Gouda S.A. de C.V. as pledgor and the Security Agent as pledgee, governed by Dutch law;

(c) pledge of shares in the capital of Sunward Holdings B.V. between Sunward Investments B.V., Sunward Acquisitions N.V. and CEMEX International Finance Company as pledgors and the Security Agent as pledgee, governed by Dutch law;

(d) pledge of shares in the capital of CEMEX Dutch Holdings B.V. between Sunward Holdings B.V. and CEMEX International Finance Company as pledgors and the Security Agent as pledgee, governed by Dutch law;

(e) pledge of shares in the capital of NSH between CEMEX Dutch Holdings B.V., Sunward Holdings B.V., Sunward Acquisitions N.V., Corporación Gouda, S.A. de C.V., Mexcement Holdings, S.A. de C.V. and CEMEX International Finance Company as pledgors and the Security Agent as pledgee, governed by Dutch law;

(f) pledge of shares in the capital of NSH between CEMEX Trademarks Holding Ltd. as pledgor and the Security Agent as pledgee, governed by Dutch law;

(g) supplemental pledge of shares in the capital of NSH between, among others, Corporación Gouda, S.A. de C.V., CEMEX Trademarks Holding Ltd., CEMEX International Finance Company and Mexcement Holdings S.A. de C.V. as pledgors and the Security Agent as pledgee, governed by Dutch law;

(h) pledge of shares in the capital of Sunward Acquisitions N.V. between Mexcement Holdings S.A. de C.V., Corporación Gouda, S.A. de C.V. and CEMEX International Finance Company as pledgors and the Security Agent as pledgee, governed by Dutch law;

(i) pledge of shares in the capital of Sunward Acquisitions N.V. between CEMEX Trademarks Holding Ltd. as pledgor and the Security Agent as pledgee, governed by Dutch law;

(j) pledge of shares in 99.57 per cent. of the capital of CEMEX Trademarks Holdings, 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

(k) a notarial deed (*póliza*) of pledge agreement over 99.468 per cent. of the shares in CEMEX España granted by NSH, the Parent and Sunward Acquisitions N.V. before the notary of Madrid, Mr. Rafael Monjó Carrió,

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 9.1 ( *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 consolidated, amended and restated note purchase agreement described in Part II of schedule 1 ( *The Original Participating Creditors*) to 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.

"**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) any "**Agent**", "**Borrower**", "**Debtor**", "**Guarantor**", "**Noteholder**", "**Noteholder Trustee**", "**Parent**", "**Participating Creditor**", "**Party**", "**Refinancing Creditor**", "**Security Provider**" 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**", "**Participating Creditor**", "**Refinancing Creditor**", any "**Party**" 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 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, 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 23 (*Financial Covenants*) of the Financing 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 23 (*Financial Covenants*) of the Financing 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 Inversion*.

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 10.12 ( *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 12.1 (*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 9 (*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 Participating 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 Participating 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 Participating 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.

3. **EFFECT OF INSOLVENCY EVENT**

3.1 **Payment of distributions**

(a) After the occurrence of an Insolvency Event, and until the Final Discharge Date, any Secured Party, 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 owed to that Secured Party, 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 9 ( *Application of Proceeds*).

3.2 **Set-Off**

Prior to the Final Discharge Date, to the extent that any Debtor, Security Provider or Material Subsidiary's 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 which benefited from that set-off shall pay an amount equal to the amount of the Liabilities owed to it which are discharged by that set-off to the Security Agent for application in accordance with Clause 9 ( *Application of Proceeds*).

3.3 **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.

3.4 **Filing of claims**

After the occurrence of an Insolvency Event, each Creditor irrevocably authorises the Security Agent (acting in accordance with Clause 3.6 ( *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 to give rise to an Enforcement Event and (ii) in accordance with Clause 6 (*Enforcement of Transaction Security*));

(b) demand, sue, prove and give receipt for any or all of that member of the Debtor's, Security Provider's or Material Subsidiary's 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; 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.

3.5 **Actions of Creditors**
Each Creditor will:

(a) do all things that the Security Agent (acting in accordance with Clause 3.6 ( *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, unable to take, the actions contemplated by this Clause 3 and (acting in accordance with Clause 3.6 ( *Security Agent instructions*)) requests that a Creditor take that action, undertake that action itself in accordance with the instructions of the Security Agent (acting in accordance with Clause 3.6 (*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 3.6 (*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).

3.6 **Security Agent instructions**
For the purposes of Clause 3.4 (*Filing of claims*) and Clause 3.5 (*Actions of Creditors*) 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 6.2 (*Enforcement instructions*)) in the absence of any such instructions but subject to Clause 10.10 ( *Excluded Obligations*), as the Security Agent sees fit.

4. **TURNOVER OF RECEIPTS**

4.1 **Turnover by the Creditors**
Subject to Clause 4.3 (*Permitted assurance and receipts*), if at any time prior to the Final Discharge Date, any Creditor receives or recovers:

(a) any Payment or distribution of, or on account of or in relation to, any of the Liabilities which is not either:

(i) a Permitted Payment; or

(ii) made in accordance with Clause 9 (*Application of Proceeds*);

(b) other than where Clause 3.2 (*Set-Off*) applies, any amount by way of set-off in respect of any of the 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 3.2 ( *Set-Off*) applies, any amount:

(i) on account of, or in relation to, any of the Liabilities:

(A) after the occurrence of a Participating Creditor Acceleration Event; or

(B) 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 owed to it after the occurrence of a Participating Creditor Acceleration Event;

(d) the proceeds of any enforcement of any Transaction Security except in accordance with Clause 9 ( *Application of Proceeds*); or

(e) other than where Clause 3.2 (*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 owed by any Debtor or Security Provider which is not in accordance with Clause 9 ( *Application of Proceeds*) and which is made as a result of, or after, the occurrence of an Insolvency Event,

that Creditor 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.

4.2 **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 9 ( *Application of Proceeds*) will be reduced by an amount equal to the amount of such receipt or recovery.

4.3 **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 13 ( *Changes to the Parties* ),

which is permitted 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.

4.4 **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.

4.5 **Saving provision**

If, for any reason, any of the trusts expressed to be created in this Clause 4 should fail or be unenforceable, the affected Creditor, 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.

5. **REDISTRIBUTION**

5.1 **Recovering Creditor's rights**

(a) Any amount paid by a Creditor (a "**Recovering Creditor**") to the Security Agent under Clause 3 ( *Effect of Insolvency Event*) or Clause 4 (*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, 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).

5.2 **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.

## 6. ENFORCEMENT OF TRANSACTION SECURITY

6.1 **Enforcement Event**

The Transaction Security shall be immediately enforceable on the occurrence of an Enforcement Event.

6.2 **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 6.1 ( *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 they see 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 to conclusively rely on and comply with instructions given in accordance with this Clause 6.2 ( *Enforcement instructions*).

6.3 **Exercise of voting rights**

(a) Each Creditor 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 6.3 ( *Exercise of voting rights*) as directed by the Instructing Group.

6.4 **Waiver of rights**

To the extent permitted under applicable law and subject to Clause 6.2 ( *Enforcement instructions*), paragraph (c) of Clause 7.2 (*Distressed Disposals*) and Clause 9 (*Application of Proceeds*), each Creditor, each Debtor 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.

## 7. PROCEEDS OF DISPOSALS OF CHARGED PROPERTY

### 7.1 Non-Distressed Disposals

(a) In this Clause 7.1:

"**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 Administrative Agent that such disposal is permitted under the Financing 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 applied in mandatory prepayment of the Participating Creditor Liabilities, then the Disposal Proceeds shall be applied in or towards Payment of the Participating Creditor Liabilities in accordance with the terms of the Financing Agreement and the consent of any other Secured Party, Debtor or Security Provider shall not be required for that application.

### 7.2 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 6.2 (*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, 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 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; and

(B) its Guarantee Liabilities and Existing Guarantee 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 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 Guarantee Liabilities and Existing Guarantee 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 9 (*Application of Proceeds*) as if those proceeds were the proceeds of an enforcement of the Transaction Security.

(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 6.2 (*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 10.10 ( *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.

7.3 **Creditors', Debtors' and Security Providers' actions**
Each Creditor, 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 7.2, the Security Agent requests; or

(ii) in any other case, the Security Agent reasonably requests,

in order to give effect to this Clause 7 (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 7); and

(b) if the Security Agent is not entitled to take any of the actions contemplated by this Clause 7 or is otherwise prevented from taking or, with respect to any Creditor, unable to take the actions contemplated by this Clause 7 and requests that a Creditor take that action, each Creditor 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 7 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 7.1 ( *Non-Distressed Disposals)* or Clause 7.2 (*Distressed Disposals*) as the case may be.

## 8. AUTOMATIC RELEASE OF TRANSACTION SECURITY

### 8.1 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 Base Currency Amount of the Exposures of the Participating Creditors under the Facilities has, since the Reference Date, been reduced by an aggregate amount equal to at least 41.4 per cent. of the aggregate Exposures of the Participating Creditors under the Facilities as at the Reference Date;

(b) 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 Financing Agreement (as each such term is defined therein) was not greater than 3.50:1; and

(c) no Default is continuing,

(and subject to receipt of written notice from the Administrative Agent in accordance with Clause 8.3 ( *Notification by Administrative 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.

8.2 **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 Base Currency Amount of the Exposures of the Participating Creditors under the Facilities has, since the Reference Date, been reduced by an aggregate amount equal to at least 50.96 per cent. of the aggregate Exposure of the Participating Creditors under the Facilities as at the Reference Date;

(b) 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 Financing Agreement (as each such term is defined therein) was not greater than 3.50:1; and

(c) no Default is continuing,

(and subject to receipt of written notice from the Administrative Agent in accordance with Clause 8.3 ( *Notification by Administrative 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 8.1 ( *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.

8.3 **Notification by Administrative Agent**
The Administrative Agent shall promptly notify the Security Agent in writing on the date at which the conditions set out in Clause 8.1 ( *Release of Mexican Security Trust Agreement*) have been satisfied and on the date at which the conditions set out in Clause 8.2 ( *Release of Transaction Security —other jurisdictions*) have been satisfied.

8.4 **Creditors', Debtors' and Security Providers' actions**
Each Creditor, Debtor and Security Provider will:

(a) do all things that 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 contemplated by Clause 8.1 (*Release of Mexican Security Trust Agreement*) and Clause 8.2 (*Release of Transaction Security—other jurisdictions*));

(b) if the Security Agent is not entitled to take any of the actions contemplated by this Clause 8 or is otherwise prevented from taking or, with respect to any Creditor, unable to take the actions contemplated by this Clause 8 and requests that a Creditor take that action, each Creditor 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 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.

## 9. APPLICATION OF PROCEEDS

### 9.1 Order of application - Transaction Security Recoveries

Subject to Clause 9.3 (*Prospective liabilities*), all amounts from time to time received or recovered by the Security Agent prior to the Final Discharge Date 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 10.2 ( *Finance Parallel Debt (Covenant to pay the Security Agent)*) or Clause 10.3 (*Notes Parallel Debt (Covenant to pay the Security Agent))* (for the purposes of this Clause 9.1, the "**Transaction Security 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 9.1, to the extent permitted by applicable law (and subject to the provisions of this Clause 9.1 ( *Application of Proceeds—Transaction Security Recoveries*)), in the following order of priority:

(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 related taxes incurred thereon by the Security Agent), any Receiver or any Delegate or the Mexican Security Trustee;

(b) 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 3.5 ( *Actions of Creditors*) or Clause 7.3 (*Creditors', Debtors' and Security Providers' actions*);

(c) in payment to:

(i) the Administrative Agent on its own behalf and on behalf of the Participating Creditors;

(ii) each Refinancing Creditor Representative on its own behalf and on behalf of the Refinancing Creditors which it represents;

(iii) each Noteholder Trustee on its own behalf and on behalf of the relevant Noteholders which it represents; and

(iv) any Noteholder not represented by a Noteholder Trustee,

for application towards the discharge of the Agent Liabilities, the Participating 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;

(d) 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

(e) the balance, if any, in payment to the relevant Debtor.

9.2 **Order of application—Debt Claim Recoveries**

Subject to Clause 9.3 (*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 10.2 ( *Finance Parallel Debt (Covenant to pay the Security Agent)* ) but excluding:

(a) any amounts received or recovered in connection with the realisation or enforcement of all or any part of the Transaction Security; and

(b) any amounts received from a Borrower which are required to be applied in repayment or prepayment of (i) the Facilities pursuant to clauses 11 (*Repayment*), 12 (*Illegality, Voluntary Prepayment and Cancellation*) or clause 13 (*Mandatory Prepayment*) of the Financing Agreement or, as the case may be, (ii) the Refinancing Debt in accordance with the repayment or prepayment provisions of the relevant Refinancing Documents,

(for the purposes of this Clause 9.2, 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 9.2, to the extent permitted by applicable law (and subject to the provisions of this Clause 9.2 ( *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 Guarantee Liabilities (but not Existing Guarantee Liabilities), or (z) a Debtor which is a Borrower and a Guarantor and owes Borrowing Liabilities and Guarantee Liabilities (but not Existing 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 3.5 (*Actions of Creditors*), paragraph (a) of Clause 7.3 (*Creditors', Debtors' and Security Providers' actions*) or Clause 8.4 (*Creditors', Debtors' and Security Providers' actions*);

(C) in payment to the Administrative 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 Administrative 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 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 Existing Guarantee Liabilities (in addition to (or, as the case may be, instead of) Guarantee Liabilities), or (y) a Guarantor which owes Existing Guarantee Liabilities (in addition to (or, as the case may be, instead of) 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 Participating Creditor (without double counting) in connection with any action taken at the request of the Security Agent under Clause 3.5 (*Actions of Creditors*), paragraph (a) of Clause 7.3 (*Creditors', Debtors' and Security Providers' actions*) or Clause 8.4 (*Creditors', Debtors' and Security Providers' actions*);

(C) in payment to:

(1) the Administrative Agent for application to those Finance Parties to which (in each case) such Borrower or Guarantor owes Borrowing Liabilities or Existing Guarantee Liabilities towards the discharge of such Liabilities in accordance with the terms of the relevant Existing Finance Documents under which such Borrowing Liabilities or Existing Guarantee Liabilities arose; 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, Existing Guarantee Liabilities of such Borrower or Guarantor pursuant to sub paragraph (C) above, in payment to:

(1) the Administrative 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 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.

9.3 **Prospective liabilities**

Following a Participating Creditor 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 9.1 (*Order of Application—Transaction Security Recoveries*) or Clause 9.2 (*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 Participating 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.

9.4 **Investment of proceeds**

Prior to the application of the proceeds of the Security Property in accordance with Clause 9.1 ( *Order of Application—Transaction Security Recoveries*) or Clause 9.2 (*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 9.4.

9.5 **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.

9.6 **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).

9.7 **Good Discharge**

(a) Any payment to be made in respect of the Secured Obligations by the Security Agent:

(i) may be made to the Administrative Agent on behalf of the Participating Creditors and the Participating Creditors' Representatives;

(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 9.7 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 9.7, 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.

9.8 **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.

9.9 **Application and consideration**

In consideration for the covenants given to the Security Agent by each Debtor in Clause 10.2 ( *Finance Parallel Debt (Covenant to pay the Security Agent)*) and Clause 10.3 (*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 9.1 ( *Order of Application—Transaction Security Recoveries*).

## 10. THE SECURITY AGENT

### 10.1 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 affected 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 (f) of Clause 10.3 ( *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 10 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 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 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.

10.2 **Finance Parallel Debt (Covenant to pay the Security Agent)**

(a) Notwithstanding any other provision of this Agreement, each Debtor hereby irrevocably and unconditionally undertakes to pay to the Security Agent, as creditor in its own right and not as representative of the other Finance Secured Parties, sums equal to and in the currency of each amount payable by such Debtor to each of the Finance Secured Parties under each of the Finance Secured Documents as and when that amount falls due for payment under the relevant Finance Secured Document or would have fallen due but for any discharge resulting from failure of another Finance 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 10.2, irrespective of any discharge of such Debtor's obligation to pay those amounts to the other Finance 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) Any amount due and payable by a Debtor to the Security Agent under this Clause 10.2 shall be decreased to the extent that the other Finance Secured Parties have received (and are able to retain) payment in full of the corresponding amount under the other provisions of the Finance Secured Documents and any amount due and payable by a Debtor to the other Finance

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 10.2.

(d) Each of the Parties to this Agreement accepts the provisions of this Clause 10.2.

10.3 **Notes Parallel Debt (Covenant to pay the Security Agent)**

(a) Notwithstanding any other provision of this Agreement, each Debtor hereby 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 10.3, 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) Notwithstanding the foregoing, prior to an Enforcement Event, the Security Agent shall not demand payment of the amounts payable by each Debtor under this Clause 10.3 in connection with the realisation or enforcement of all or part of the Transaction Security.

(d) Each Notes Secured Party, by accepting the benefits of this Agreement, shall be deemed to accept the provisions of this Clause 10.3 and, where an amount is received by the Security Agent on its behalf under this Clause 10.3, to have waived its rights to seek payment of the corresponding amount under the other provisions of the Notes Secured Documents.

(e) 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 10.3 (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 9.7 ( *Good Discharge*)) in accordance with Clause 9 (*Application of Proceeds*).

(f) Where, having given notice in accordance with paragraph (e) of this Clause 10.3, 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 10.1 ( *Trust*).

10.4 **Parallel debt recoveries**

Amounts received or recovered in connection with the realisation or enforcement of the Transaction Security pursuant to Clause 10.2 ( *Finance Parallel Debt (Covenant to pay the Security Agent)* ) and Clause 10.3 (*Notes Parallel Debt (Covenant to pay the Security Agent)* ) shall be held *pari passu* by the Security Agent and shall be distributed to the Finance Secured Parties and Notes Secured Parties in accordance with Clause 9 ( *Application of Proceeds*) (or, in the case of the Notes Secured Parties, held on trust as contemplated by paragraph (f) of Clause 10.3 ( *Notes Parallel Debt (Covenant to pay the Security Agent)*) above).

10.5 **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.

10.6 **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 Administrative Agent, the Participating 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 Administrative Agent, the Participating 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 6 (*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 10.8 ( *Security Agent's discretions*) to Clause 10.25 (*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 7.1 (*Non-Distressed Disposals*);

(B) Clause 9.1 (*Order of application—Transaction Security Recoveries*);

(C) Clause 9.2 (*Order of application—Debt Claim Recoveries*);

(D) Clause 9.3 (*Prospective liabilities*);

(E) Clause 9.6 (*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 Participating Creditors (as defined in the Financing Agreement) via the Administrative 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.

10.7 **Security Agent's actions**

Without prejudice to the provisions of Clause 6 (*Enforcement of Transaction Security*) and Clause 10.6 (*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.

10.8 **Security Agent's discretions**
The Security Agent may:

(a) assume, without enquiry (unless it has received actual written notice to the contrary from the Administrative 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 (c) of Clause 8.1 (*Release of Mexican Security Trust Agreement*) and paragraph (c) of Clause 8.2 (*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 Administrative Agent in accordance with Clause 8.3 (*Notification by the Administrative 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 6 ( *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.

10.9 **Security Agent's obligations**
The Security Agent shall promptly:

(a) copy to the Administrative 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 Administrative Agent and each Refinancing Creditor Representative of any event notified to the Security Agent under paragraph (b) of Clause 16.3 (*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.

10.10 **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;

(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, Administrative 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.

10.11 **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 the transactions contemplated in 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;

(b) the legality, validity, effectiveness, efficacy, adequacy or enforceability of any 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 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, the Security Property or otherwise, whether in accordance with an instruction from the Administrative 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, 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 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.

10.12 **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 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.

10.13 **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.

10.14 **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 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 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.

10.15 **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 Administrative 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.

10.16 **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.

10.17 **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.

10.18 **Refrain from illegality**

Notwithstanding anything to the contrary expressed or implied in the 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.

10.19 **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.

10.20 **Winding up of trust**

If the Security Agent, having made enquiry of the Agents and the Noteholders Trustees, determines that (a) all of the Secured Obligations owed to the Secured Parties and all other obligations secured by the Security Documents 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 (a) of Clause 10.1 ( *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).

10.21 **Winding up of trust—Notes Secured Creditors**

The trust created pursuant to paragraph (a) of Clause 10.1 ( *Trust*)) shall be wound up at the date falling 5 years from the date of this Agreement, 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 9 (*Application of proceeds*).

10.22 **Perpetuity period**

The perpetuity period under the rule against perpetuities, if applicable to this Agreement, shall be the period of eighty years from the date of this Agreement (save with respect to the trust created for the benefit of the Notes Secured Parties only pursuant to paragraph (b) of Clause 10.1 ( *Trust*), where it shall be the period of 5 years from the date of this Agreement).

10.23 **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.

10.24 **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.

10.25 **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.

10.26 **Debtors and Security Providers: Power of Attorney**

(a) Each Debtor 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 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 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.

10.27 **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, even if advised of the possibility of such losses, liability or damages.

10.28 **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.

10.29 **Provisions survive termination**

The provisions of Clauses 10.6 to 10.8 (inclusive) and 10.10 to 10.28 (inclusive) shall survive any termination or discharge of this Agreement.

## 11. CHANGE OF SECURITY AGENT AND DELEGATION

11.1 **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 Participating Creditors (via the Administrative 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 Administrative 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 13.5 ( *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 10.20 ( *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 10 ( *The Security Agent*), 15.1 (*Debtors' indemnity*) and 15.3 (*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.

11.2 **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.

11.3 **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 Administrative 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.

## 12. NOTEHOLDER TRUSTEES AND NOTEHOLDERS

12.1 **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 Participating 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 Participating 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 12.1.

12.2 **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.

## 13. CHANGES TO THE PARTIES

13.1 **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 Finance Documents or the Liabilities except as permitted by this Clause 13.

(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.

13.2 **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.

13.3 **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 13.6 ( *Creditor/Administrative Agent/Security Agent Accession Undertaking*).

13.4 **Change of Participating Creditor or Refinancing Creditor**

A Participating 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 Participating Creditor or, as the case may be, Refinancing Creditor) acceded to this Agreement as a Creditor pursuant to Clause 13.6 ( *Creditor/Administrative Agent/Security Agent Accession Undertaking* ).

13.5 **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 13.6 ( *Creditor/Administrative Agent/Security Agent Accession Undertaking* ).

13.6 **Creditor/Administrative Agent/Security Agent Accession Undertaking**

With effect from the date of acceptance pursuant to Clause 13.8 ( *Additional parties*) by (i) the Security Agent and (ii) (in the case of a Participating Creditor, a Participating Creditor's Representative or a successor Security Agent) the Administrative Agent or (iii) (in the case of a Refinancing Creditor) the relevant Refinancing Creditors Representative, of a Creditor/Administrative 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/Administrative 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 11.1)) 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 Participating 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.

13.7 **New Debtor/Security Provider**

(a) If any member of the Group:

(i) accedes to the Financing Agreement as an Additional Guarantor or Additional Security Provider (in each case as defined therein) in accordance with clause 28.3 (*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 Financing 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 13.8 (*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.

13.8 **Additional parties**

(a) Each of the Parties appoints the Security Agent to receive on its behalf each Debtor/Security Provider Accession Deed and Creditor/Administrative 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/Administrative 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.

13.9 **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 28 ( *Changes to the Obligors*) of the Financing Agreement, then in the Resignation Letter delivered by it to the Administrative 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 28 ( *Changes to the Obligors*) of the Financing Agreement, and is accepted by the Administrative 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).

13.10 **Release of CEMEX Australia Holdings**

The Parties agree and acknowledge that CEMEX Australia Holdings shall be automatically released as a Guarantor (and shall have no further rights, liabilities or obligations under this Agreement as a Debtor) on the giving of a notice by the Parent to the Administrative Agent in accordance with clause 28.5 (*Release of CEMEX Australia Holdings)* of the Financing Agreement.

14. **COSTS AND EXPENSES**

14.1 **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.

14.2 **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.

14.3 **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.

14.4 **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.

14.5 **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.

14.6 **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 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.

## 15. INDEMNITIES

15.1 **Debtors' indemnity**

Each Debtor shall promptly indemnify the Security Agent, every Receiver and Delegate and the Mexican Security Trustee 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 14 ( *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 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; 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 15.1 ( *Debtors' indemnity*) will not be prejudiced by any release or disposal under Clause 7.2 ( *Distressed Disposals*) taking into account the operation of that Clause 7.2, Clause 10.20 (*Winding up of trust*) or Clause 10.21 (*Winding up of trust—Notes Secured Creditors*). To the extent that the Security Agent, a Receiver or a Delegate recovers any amount pursuant to an indemnity contained in any other Finance Document, there shall be no double recovery under this Clause 15.1 of such amount.

15.2 **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 15.1 ( *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.

15.3 **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 (unless the relevant Security Agent, Receiver or Delegate has been reimbursed by a Debtor or a Security Provider pursuant to a Debt Document) and the Debtors shall jointly and severally indemnify each Creditor against any payment made by it under this Clause 15.

15.4 **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 7.2 ( *Distressed Disposals*).

15.5 **No financial assistance**

No indemnity given by any Debtor pursuant to this Clause 15 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.

16. **INFORMATION**

16.1 **Information and dealing**

(a) The Creditors shall provide to the Security Agent from time to time (through (i) the Administrative Agent in the case of a Participating 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 Participating Creditor shall deal with the Security Agent exclusively through the Administrative 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 Administrative Agent (and the Administrative Agent shall, on request, provide the Security Agent with the aggregate amount of the Participating Creditor Exposures and details of Participating Creditor Exposures on an individual basis by Participating 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 Administrative 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 Participating 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.

16.2 **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.

16.3 **Notification of prescribed events**

(a) If a Participating Creditors Acceleration Event occurs the Administrative 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.

## 17. NOTICES

17.1 **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.

17.2 **Security Agent's communications with Creditors and Noteholders**

The Security Agent shall be entitled to carry out all dealings:

(a) with the Participating Creditors and the Participating Creditors' Representatives through the Administrative Agent and may give to the Administrative Agent, as applicable, any notice or other communication required to be given by the Security Agent to a Participating Creditor or a Participating Creditor's Representative;

(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.

17.3 **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.

17.4 **Delivery**

(a) Except as otherwise provided in Clause 17.6 ( *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 17.3 ( *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 17.4 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).

17.5 **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 17.3 ( *Addresses*) or changing its own address or fax number, the Security Agent shall notify the other Parties.

17.6 **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.

17.7 **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).

17.8 **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 10 ( *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.

18. **PRESERVATION**

18.1 **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.

18.2 **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.

18.3 **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.

18.4 **Waiver of defences**

The provisions of this Agreement will not be affected by an act, omission, matter or thing which, but for this Clause 18.4, 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.

18.5 **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.

## 19. CONSENTS, AMENDMENTS AND OVERRIDE

### 19.1 Required consents

(a) Subject to paragraphs (b) and (c) below and to Clause 19.4 ( *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, the allocation of any payment as among the Participating Creditors or the manner in which the proceeds of enforcement of the Transaction Security are distributed or which relates to the definition of "Instructing Group" or "Super Majority Instructing Group" in Clause 1.1 ( *Definitions*), Clause 3.1 (*Payment of distributions*), Clause 3.4 (*Filing of claims*), Clause 3.6 (*Security Agent instructions*), Clause 4.1 (*Turnover by the Creditors*), Clause 4.2 (*Adjustments*), Clause 5 (*Redistribution*), Clause 9 (*Application of Proceeds*), paragraphs (d)(iii), (e) or (f) of Clause 10.6 (*Instructions to Security Agent and exercise of discretion*) or this Clause 19 (*Consents, Amendments and Override*) shall not be made without the consent of the Participating 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 Finance Agreement); or

(ii) the release of any guarantee and indemnity granted under the Financing Agreement or of any Transaction Security unless permitted under the Financing 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 Financing 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 19.2 (*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 38.2 (*Exceptions*) of the Financing Agreement shall not be made without the consent of the Participating Creditors.

19.2 **Amendments and waivers: Transaction Security Documents**

(a) Subject to paragraph (b) below and to Clause 19.4 ( *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 19.4 ( *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.

19.3 **Effectiveness**

Any amendment, waiver or consent given in accordance with this Clause 19 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 19 (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).

19.4 **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 19.2 ( *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 19.2 ( *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 7 ( *Proceeds of Disposals of Charged Property)*.

(d) Paragraphs (a) and (b) above shall apply to a Participating Creditor's Representative and to a Refinancing Creditor Representative only to the extent that Agent Liabilities, are then owed to that Participating Creditor's Representative or Refinancing Creditor Representative.

(e) After the occurrence of an Enforcement Event, no amendment, supplement or waiver shall, without the written consent of each Noteholder Trustee (or, in the case of any Noteholder not represented by a Noteholder Trustee, that Noteholder) adversely affect the rights of the Noteholders to equal and rateable security to the extent and for the periods contemplated by this Agreement.

19.5 **Calculation of Exposures**

(a) For the purpose of ascertaining whether any relevant percentage of Participating Creditor Exposures has been obtained under this Agreement, the Administrative Agent shall provide the Security Agent, promptly on request, with a list of the Participating 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.

19.6 **Deemed consent**

If, at any time prior to the Final Discharge Date, the Participating Creditors give a Consent in respect of the Finance Documents then, if that action was permitted by the terms of this Agreement, the Debtors 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 to which they are a party; and

(b) do anything (including executing any document) that the Participating Creditors may reasonably require to give effect to paragraph (a) of this Clause 19.6.

19.7 **Excluded consents**

Clause 19.6 (*Deemed consent*) does not apply to any Consent which has the effect of:

(a) increasing or decreasing the 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.

19.8 **No liability**
None of the Participating Creditors or the Administrative 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 19.

19.9 **Agreement to override**
Unless expressly stated otherwise in this Agreement, this Agreement overrides anything in the Debt Documents to the contrary (except for any Transaction Security Documents governed by Dutch law).

## 20. 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.

## 21. 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.

## 22. ENFORCEMENT

22.1 **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) the courts of England and the courts of each Party's corporate domicile, 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) the Parties agree that the courts of England and such courts of each Party's corporate domicile 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.

22.2 **Jurisdiction of English Courts in other cases**
Subject to Clause 22.1 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 22.2 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.

22.3 **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) shall irrevocably appoint 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 shall procure that the Process Agent confirms its acceptance of that appointment in writing on or before the date of this Agreement; 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 Administrative Agent. Failing this, the Administrative 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 21 (*Governing Law*) and this Clause 22.

22.4 **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 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 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 22.4 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 Administrative Agent, the Participating 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 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. This deed and any non-contractual obligations arising out of or in connection with it are is 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/ADMINISTRATIVE 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 Participating Creditor/Agent/Security Agent/Refinancing Party* ]]

THIS UNDERTAKING is made on [*date*] by [*insert full name of new Participating Creditor/ Administrative Agent* ] (the "**Acceding [Participating Creditor/Administrative Agent/Participating Creditor's Representative/Administrative Agent/Security Agent/Refinancing Creditor/Refinancing Creditor Representative**]") in relation to the intercreditor agreement (the "I**ntercreditor Agreement**") dated [•] between, among others, Wilmington Trust (London) Limited as security agent, Citibank International PLC as Administrative Agent, the Participating 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 [Participating Creditor/Administrative Agent/Participating Creditor's Representative/Security Agent/Refinancing Creditor/Refinancing Creditor Representative] being accepted as a [Participating Creditor/Administrative Agent/Security Agent/Refinancing Creditor/Refinancing Creditor Representative] for the purposes of the Intercreditor Agreement, the Acceding [Participating Creditor/Administrative Agent/Security Agent/Refinancing Creditor/Refinancing Creditor Representative] confirms that, as from [date], it intends to be party to the Intercreditor Agreement as a [Participating Creditor/Administrative Agent/Participating Creditor's Representative/Security Agent/Refinancing Creditor/Refinancing Creditor Representative] and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by a [Participating Creditor/Administrative Agent/Participating Creditor's Representative/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 [Participating 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 Administrative Agent ·

for and on behalf of

[*Insert full name of Administrative Agent*]]

[Accepted by the Refinancing Creditor Representative†

for and on behalf of

[*Insert full name of Refinancing Creditor Representative*]]

· For change of Participating Creditor, Participating Creditor's Representative and Security Agent.
† For change of Refinancing Creditor.

Exhibit 4.41.4

Translation into English for the benefit of Wilmington Trust

Monterrey, Nuevo León, January 11, 2011

Banco Nacional de México, S.A.,
Integrante del Grupo Financiero Banamex,
División Fiduciaria
Calzada del Valle No. 350 Oriente
1er. Piso
Col. Del Valle
San Pedro Garza García, Nuevo León 66220
Mexico

Attention: Nelly Wing

Wilmington Trust (London) Limited
6 Broad Street Place
Fifth Floor
London EC2M 7JH
United Kingdom

Attention: Elaine K. Lockhart

Reference is made to the Irrevocable Security Trust Agreement in Respect of Stock No. F/111388-5, dated September 3, 2009, as amended from time to time (the "Agreement"), entered into among 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 Café"), Interamerican Investments, Inc. ("Interamerican"), CEMEX México, S.A. de C.V. ("CEMEX México"), and Centro Distribuidor de Cemento, S.A. de C.V. ("Cedice"), as settlors (CEMEX SAB, Tolteca, Impra Café, Interamerican, CEMEX México and Cedice, together, the " Settlors"); CEMEX México, Cedice, Mexcement Holdings, S.A. de C.V. ("Mexcement") and Corporación Gouda, S.A. de C.V. ("Gouda"), as issuers (CEMEX México, Cedice, Mexcement and Gouda, together, the "Issuers"); Banco Nacional de México, S.A., Integrante del Grupo Financiero Banamex, División Fiduciaria, in its capacity as trustee (the "Trustee"); and Wilmington Trust (London) Limited, on its own behalf and in its capacity as Security Agent, for the benefit of the Participating Creditors, the Refinancing Creditors (and their respective successors and assigns) and the other Secured Parties (the " Beneficiary"). Unless otherwise defined herein, capitalized terms defined in the Agreement, are used herein as therein defined.

On January 11, 2011, CEMEX, S.A.B. de C.V. issued U.S.$ 1,000,000,000 of 9.000% senior secured notes due 2018, guaranteed by CEMEX México, CEMEX España, S.A. and New Sunward Holding B.V. (together, the "Additional Notes"). Because the purpose of the Additional Notes is to refinance existing indebtedness and, as a consequence thereof, the Additional Notes will be part of the Refinancing Debt and the holders of the Additional Notes will be a Refinancing Party, in both cases pursuant to the Agreement, by means of this letter the Settlors and the Issuers hereby inform the Trustee and the Beneficiary, and confirm, that the Additional Notes are secured in accordance with the terms provided in the Agreement, and are part of the Secured Obligations and the holders of the Additional Notes are Secured Parties.

We appreciate you acknowledging receipt of this letter, by signing in the space provided below.

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

By /s/ Roger Saldaña
Name: Roger Saldaña
Title: Attorney-in-Fact

Empresas Tolteca de México, S.A. de C.V.

By /s/ Roger Saldaña
Name: Roger Saldaña
Title: Attorney-in-Fact

Impra Café, S.A. de C.V.

By /s/ Roger Saldaña
Name: Roger Saldaña
Title: Attorney-in-Fact

Interamerican Investments, Inc.

By /s/ Roger Saldaña
Name: Roger Saldaña
Title: Attorney-in-Fact

Cemex México, S.A. de C.V.

By /s/ Roger Saldaña
Name: Roger Saldaña
Title: Attorney-in-Fact

Centro Distribuidor de Cemento, S.A. de C.V.

By /s/ Roger Saldaña
Name: Roger Saldaña
Title: Attorney-in-Fact

Mexcement Holdings, S.A. de C.V.

By /s/ Roger Saldaña
Name: Roger Saldaña
Title: Attorney-in-Fact

Corporación Gouda, S.A. de C.V.

By /s/ Roger Saldaña
Name: Roger Saldaña
Title: Attorney-in-Fact

Acknowledgment of receipt:

Banco Nacional de México, S.A.,
Integrante del Grupo Financiero Banamex,
División Fiduciaria

By /s/ Elva Nelly Wing
Name: Elva Nelly Wing
Title: Trust Delegate
Date:

Wilmington Trust (London) Limited

By /s/ Elaine Lockhart
Name: Elaine Lockhart
Title: Director
Date:

Exhibit 4.41.5

Translation into English for the benefit of Wilmington Trust

Monterrey, Nuevo León, March 4, 2011

Banco Nacional de México, S.A.,
Integrante del Grupo Financiero Banamex,
División Fiduciaria
Calzada del Valle No. 350 Oriente
1er. Piso
Col. Del Valle
San Pedro Garza García, Nuevo León 66220
Mexico

Attention: Ms. Nelly Wing

Wilmington Trust (London) Limited
6 Broad Street Place
Fifth Floor
London EC2M 7JH
United Kingdom

Attention: Ms. Elaine K. Lockhart

Reference is made to the Irrevocable Security Trust Agreement in Respect of Stock No. F/111388-5, dated September 3, 2009 (the " Agreement"), entered into among 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 Café"), Interamerican Investments, Inc. ("Interamerican"), CEMEX México, S.A. de C.V. ("CEMEX México"), and Centro Distribuidor de Cemento, S.A. de C.V. ( "Cedice"), as settlors (CEMEX SAB, Tolteca, Impra Café, Interamerican, CEMEX México and Cedice, together, the " Settlors"); CEMEX México, Cedice, Mexcement Holdings, S.A. de C.V. ("Mexcement") and Corporación Gouda, S.A. de C.V. ("Gouda"), as issuers (CEMEX México, Cedice, Mexcement and Gouda, together, the "Issuers"); Banco Nacional de México, S.A., Integrante del Grupo Financiero Banamex, División Fiduciaria, in its capacity as trustee (the "Trustee"); and Wilmington Trust (London) Limited, on its own behalf and in its capacity as Security Agent, for the benefit of the Participating Creditors, the Refinancing Creditors (and their respective successors and assigns) and the other Secured Parties (the " Beneficiary"). Unless otherwise defined herein, capitalized terms defined in the Agreement, are used herein as therein defined.

On March 4, 2011, CEMEX España, S.A., acting through its Luxembourg Branch, issued US$125,331,000.00 of 9.25% senior secured notes due 2020, guaranteed by CEMEX SAB, CEMEX México and New Sunward Holding B.V. (together, the " Additional Notes"). Because the purpose of the Additional Notes is to refinance existing indebtedness and, as a consequence, the Additional Notes will be deemed as Refinancing Debt, and the holders of the Additional Notes will be deemed a Refinancing Party, in both cases pursuant to the Agreement, by means of this letter the Settlors and the Issuers hereby inform the Trustee and the Beneficiary, and confirm, that the Additional Notes are secured in accordance with the terms set forth in the Agreement, and are Secured Obligations and the holders of the Additional Notes are Secured Parties.

We appreciate you acknowledging receipt of this letter, by signing in the space provided below.

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

By /s/ Roger Saldaña
Name: Roger Saldaña
Title: Attorney-in-Fact

Empresas Tolteca de México, S.A. de C.V.

By /s/ Roger Saldaña
Name: Roger Saldaña
Title: Attorney-in-Fact

Impra Café, S.A. de C.V.

By /s/ Roger Saldaña
Name: Roger Saldaña
Title: Attorney-in-Fact

Interamerican Investments, Inc.

By /s/ Roger Saldaña
Name: Roger Saldaña
Title: Attorney-in-Fact

Cemex México, S.A. de C.V.

By /s/ Roger Saldaña
Name: Roger Saldaña
Title: Attorney-in-Fact

Centro Distribuidor de Cemento, S.A. de C.V.

By /s/ Roger Saldaña
Name: Roger Saldaña
Title: Attorney-in-Fact

Mexcement Holdings, S.A. de C.V.

By /s/ Roger Saldaña
Name: Roger Saldaña
Title: Attorney-in-Fact

Corporación Gouda, S.A. de C.V.

By /s/ Roger Saldaña
Name: Roger Saldaña
Title: Attorney-in-Fact

Acknowledgment of receipt:

Banco Nacional de México, S.A.,
Integrante del Grupo Financiero Banamex,
División Fiduciaria

By /s/ Elva Nelly Wing
Name: Elva Nelly Wing
Title: Trust Delegate
Date:

Wilmington Trust (London) Limited

By /s/ Elaine Lockhart
Name: Elaine Lockhart
Title: Director
Date:

Exhibit 4.41.6

Translation into English for the benefit of Wilmington Trust

Monterrey, Nuevo León, April 5, 2011

Banco Nacional de México, S.A.,
Integrante del Grupo Financiero Banamex,
División Fiduciaria
Calzada del Valle No. 350 Oriente
1er. Piso
Col. Del Valle
San Pedro Garza García, Nuevo León 66220
Mexico

Attention: Nelly Wing

Wilmington Trust (London) Limited
6 Broad Street Place
Fifth Floor
London EC2M 7JH
United Kingdom

Attention: Elaine K. Lockhart

Reference is made to the Irrevocable Security Trust Agreement in Respect of Stock No. F/111388-5, dated September 3, 2009, as amended from time to time (the "Agreement"), entered into among 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 Café"), Interamerican Investments, Inc. ("Interamerican"), CEMEX México, S.A. de C.V. ("CEMEX México"), and Centro Distribuidor de Cemento, S.A. de C.V. ("Cedice"), as settlors (CEMEX SAB, Tolteca, Impra Café, Interamerican, CEMEX México and Cedice, together, the " Settlors"); CEMEX México, Cedice, Mexcement Holdings, S.A. de C.V. ("Mexcement") and Corporación Gouda, S.A. de C.V. ("Gouda"), as issuers (CEMEX México, Cedice, Mexcement and Gouda, together, the "Issuers"); Banco Nacional de México, S.A., Integrante del Grupo Financiero Banamex, División Fiduciaria, in its capacity as trustee (the "Trustee"); and Wilmington Trust (London) Limited, on its own behalf and in its capacity as Security Agent, for the benefit of the Participating Creditors, the Refinancing Creditors (and their respective successors and assigns) and the other Secured Parties (the " Beneficiary"). Unless otherwise defined herein, capitalized terms defined in the Agreement, are used herein as therein defined.

On April 5, 2011, CEMEX, S.A.B. de C.V. issued U.S.$800,000,000 floating rate senior secured notes due September 30 2015 , guaranteed by CEMEX México, CEMEX España, S.A. and New Sunward Holding B.V. (together, the "Additional Notes"). Because the purpose of the Additional Notes is to refinance existing indebtedness and, as a consequence thereof, the Additional Notes will be part of the Refinancing Debt and the holders of the Additional Notes will be a Refinancing Party, in both cases pursuant to the Agreement, by means of this letter the Settlors and the Issuers hereby inform the Trustee and the Beneficiary, and confirm, that the Additional Notes are secured in accordance with the terms provided in the Agreement, and are part of the Secured Obligations and the holders of the Additional Notes are Secured Parties.

We appreciate you acknowledging receipt of this letter, by signing in the space provided below.

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

By /s/ Roger Saldaña
Name: Roger Saldaña
Title: Attorney-in-Fact

Empresas Tolteca de México, S.A. de C.V.

By /s/ Roger Saldaña
Name: Roger Saldaña
Title: Attorney-in-Fact

Impra Café, S.A. de C.V.

By /s/ Roger Saldaña
Name: Roger Saldaña
Title: Attorney-in-Fact

Interamerican Investments, Inc.

By /s/ Roger Saldaña
Name: Roger Saldaña
Title: Attorney-in-Fact

Cemex México, S.A. de C.V.

By /s/ Roger Saldaña
Name: Roger Saldaña
Title: Attorney-in-Fact

Centro Distribuidor de Cemento, S.A. de C.V.

By /s/ Roger Saldaña
Name: Roger Saldaña
Title: Attorney-in-Fact

Mexcement Holdings, S.A. de C.V.

By /s/ Roger Saldaña
Name: Roger Saldaña
Title: Attorney-in-Fact

Corporación Gouda, S.A. de C.V.

By /s/ Roger Saldaña
Name: Roger Saldaña
Title: Attorney-in-Fact

Acknowledgment of receipt:

Banco Nacional de México, S.A.,
Integrante del Grupo Financiero Banamex,
División Fiduciaria

By /s/ Elva Nelly Wing
Name: Elva Nelly Wing
Title: Trust Delegate
Date:

Wilmington Trust (London) Limited

By /s/ Elaine Lockhart
Name: Elaine Lockhart
Title: Director
Date: 6/4/2011

**Exhibit 4.44.5**

**CLIFFORD**
**CHANCE**

**NEW SUNWARD HOLDING B.V.**

como Pignorante / as Pledgor

y /and

**WILMINGTON TRUST (LONDON) LIMITED**

como Agente de Garantías / as Security Agent

y / and

las Partes Garantizadas / the Secured Parties

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**CONTRATO DE EXTENSIÓN Y CONSTITUCIÓN DE PRENDAS DE ACCIONES**
(Extension and Creation of Share Pledges Agreement)

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## ÍNDICE

En Madrid, a 23 de diciembre de 2010

Con mi intervención, D. Rafael Monjo Carrió, Notario del Ilustre Colegio de Madrid, con residencia en esta ciudad.

**INTERVIENEN**

**De una parte,**

**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, el "**Pignorante**").

Representada por D. Juan Pelegrí y Girón, de nacionalidad española, mayor de edad, provisto de documento nacional de identidad número 01.489.996-X en vigor, y domicilio a efectos profesionales en Madrid, C/ Hernández de Tejada, número 1, como apoderado, en virtud de las facultades conferidas en el poder otorgado ante el Notario de Amsterdam D. J.F.A. Aerts, el 7 de agosto de 2009, que se encuentra debidamente apostillado conforme a la Convención de la Haya de 1961.

**Y de otra parte,**

Las entidades referidas en el **Anexo 1** del presente Contrato (los "**Acreedores Participantes**").

Las entidades referidas en el **Anexo 2** del presente Contrato.

**WILMINGTON TRUST (LONDON) LIMITED,** entidad constituida de conformidad con las leyes de lnglaterra y Gales, con domicilió social en 6 Broad Street Place, Londres EC2M 7JH, inscrita en el Registro de Sociedades con

In Madrid, on 23 December 2010

With my intervention, Mr. Rafael Monjo Carrió, Notary Public of the Madrid Notaries Association, with domicile in this city.

**APPEAR**

**On the one hand,**

**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, the "**Pledgor**").

Represented by Mr. Juan Pelegrí y Girón, of Spanish nationality, of legal age, bearer of identity card number 01( ).489.996-X currently in force, with professional address at C.V. Madrid, C/ Hernández de Tejada, número 1, acting as attorney by virtue of the faculties conferred in the power of attorney granted before the Notary of Amsterdam Mr. J.F.A. Aerts, on 7 August 2009, which is duly apostilled according to 1961 Hague Convention.

**And on the other hand,**

The entities referred to in **Annex 1** hereto (the "**Participant Creditors**").

The entities referred to in **Annex 2** hereto.

**WILMINGTON TRUST (LONDON) LIMITED,** an entity duly incorporated under the laws of England and Wales with registered offices at 6 Broad Street Place, London EC2M 7JH, registered with the Companies Home under the

número 05650152 (en lo sucesivo, el "**Agente de Garantías**").

Representada por María Luisa Alonso Horcada, de nacionalidad española, mayor de edad, con domicilio profesional en Madrid, Paseo de la Castellana 110, titular de D.N.I. número 51702956-Z en vigor, como apoderado, en virtud de las facultades conferidas en el poder otorgado ante el Notario de Londres Don Edward Gardiner, el 20 de diciembre de 2010, que se encuentra debidamente apostillado conforme a la Convención de la Haya de 1961.

El Agente de Garantías actúa en el presente Contrato en su propio nombre y derecho y, asimismo:

- por cuenta y en beneficio 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), y
- en nombre y representación de las entidades referidas en el **Anexo 2** (los "**Trustees de los Bonistas**") en virtud de los correspondientes apoderamientos.

Las entidades enumeradas anteriormente serán denominadas, conjuntamente, como las "**Partes**".

**EXPONEN**

**I.** Que la Sociedad (tal y como este término se define a continuación); el Pignorante; **CEMEX, S.A.B. DE C.V.,** entidad de nacionalidad mexicana, con domicilio social en Ciudad de Monterrey, N.L. (Mexico), 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**") y **SUNWARD ACQUISITIONS N.V.,** entidad de

number 05650152 (hereinafter, the "**Security Agent**").

Represented by María Luisa Alonso Horcada, of Spanish nationality, of legal age, with professional address at Madrid, Paseo de la Castellana 110, and bearer of Spanish Identity Card number 51702956-Z currently in force, acting as attorney by virtue of the faculties conferred in the power of attorney granted before the Notary public of London Mr. Edward Gardiner, on 20 December 2010, which is duly apostilled according to 1961 Hague Convention.

The Security Agent acts in this Agreement in its own name and on its own behalf and, in addition:

- for the benefit of the remaining Secured Parties (as defined below) by virtue of the Intercreditor Agreement (as this term is defined below), and
- in the name and on behalf of the entities referred to in Annex 2 (the "**Noteholders Trustees**") by virtue of the relevant powers of attorney.

The entities listed above shall be jointly referred to as the "**Parties**".

**WHEREAS**

**I.** That the Company (as this term is defined below); the Pledgor; **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**") and **SUNWARD ACQUISITIONS N.V.,** a company duly

nacionalidad holandesa, con domicilio social en Amsteldijk 166, 1079 LH Ámsterdam (Países Bajos), inscrita en la Cámara de Comercio e Industria de Ámsterdam (*Kamer van Koophandel en Fabrieken voor Amsterdam*) con número 33235711 y con número de identificación fiscal N-0035445-F (en lo sucesivo, "**Acquisitions**") forman parte del Grupo CEMEX (en lo sucesivo, el "**Grupo**").

**II.** Que Parent suscribió, en el marco de un proceso de refinanciación de la deuda del Grupo, un contrato sometido a Derecho inglés denominado "*Financing Agreement*" suscrito con fecha 14 de agosto de 2009, elevado a público el 29 de septiembre de 2009 ante el Notario de Madrid, D. Rafael Monjo Carrió (en adelante, dicho contrato tal como sea novado en cada momento será denominado el "**Contrato de Financiación**") con los Acreedores Participantes de los que Wilmington Trust (London) Limited actúa como Agente de Garantías, y del que también son parte, entre otros, en condición de "*Original Borrower*", "*Original Guarantors*" y "*Original Security Provider*" en el caso de Parent y Holdings y "Original Security Provider" en el caso de Acquisitions (tal y como estos términos se definen en el Contrato de Financiación), una serie de compañías del Grupo, entre ellas el Pignorante y la Sociedad.

De acuerdo con la Cláusula 27 (*Changes to the Participating Creditors*) y con la Cláusula 28 (*Changes to Obligors*) del Contrato de Financiación, respectivamente, podrán adherirse al Contrato de Financiación nuevos Acreedores Participantes así como "*Guarantors*" adicionales.

**III.** Que, en virtud del Contrato de Financiación, los Acreedores Participantes acordaron los términos

incorporated under the laws of The Netherlands, having its registered office at Amsteldijk 166, 1079 LH Amsterdam, The Netherlands and also registered with the Chamber of Commerce and Industries for Amsterdam (*Kamer van Koophandel en Fabrieken voor Amsterdam*) under the number 33235711 and with tax identification number N-0035445-F (hereinafter, "**Acquisitions**") 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, entered into an English law governed financing agreement executed on 14 August 2009, raised to the status of Spanish public document on 29 September 2009 before the Notary of Madrid, Mr. Rafael Monjo Carrió (hereinafter, such agreement, as amended from time to time shall be referred to as the "**Financing Agreement**"), with the Participating Creditors amongst which Wilmington Trust (London) Limited acts as Security Agent, and to which a number of companies within the Group including the Pledgor and the Company, in their capacity as Original Borrower, Original Guarantors and Original Security Provider in the case of Parent and Holding and Original Security Provider in the case of Acquisitions (as each of these terms is defined in the Financing Agreement), are also parties.

Pursuant to Clause 27 (*Changes to Participating Creditors*) and Clause 28 (*Changes to Obligors*) of the Financing Agreement, respectively, it is anticipated that additional Participating Creditors and additional Guarantors may accede to the Financing Agreement.

**III.** That, pursuant to the Financing Agreement, the Participating Creditor's agreed the terms

en virtud de los cuales, durante el Período de Superposición (*Override Period*), los mismos están dispuestos a seguir poniendo a disposición las Facilidades Crediticias (*Facilities*) así como modificar, variar, anular y complementar ciertos de los términos de los Documentos Financieros Existentes (*Existing Finance Documents*) (tal y como se definen en el Contrato de Financiación).

EI Contrato de Financiación incluye en su Parte II del Anexo l una lista de Los Acreedores Participantes Originales (*The Original Participating Creditors*) con sus respectivas Exposiciones (*Exposures*).

EI Contrato de Financiación incluye en su Parte 1A y Parte 1C del Anexo 10 un listado de Bonos Existentes (*Existing Notes*) en relación con los Trustees de los Bonos Existentes (*Existing Notes Trustees*) (tal y como estos términos se definen en el Contrato de Relación entre Acreedores definido más adelante). Dicho Anexo se actualiza mensualmente incluyendo también los Bonos Adicionales (*Additional Notes*).

**IV.** Que, determinados Acreedores Participantes, determinadas instituciones financieras en su condición de agentes administrativos, determinadas sociedades del Grupo definidas como Prestamistas (*Borrowers*) y Garantes (*Guarantors*), han suscrito un contrato denominado "*omnibus amendment and waiver agreement*" el 14 de agosto de 2009, el cual está sujeto al derecho del Estado de Nueva York (en lo sucesivo, dicho contrato tal y como sea novado en cada momento, el "**Omnibus Agreement**").

Que, en virtud del Omnibus Agreement, los Acreedores Participantes partes del mismo acordaron, en relación con los Contratos de Financiación Existentes (*Existing Facility Agreements*) sujetos al derecho del Estado de New York, modificar, variar sustituir y

upon which, during the Override Period, they are willing to continue to make available the Facilities and amend, vary, override and supplement certain terms of the Existing Finance Documents (as defined in the Financing Agreement).

The Financing Agreement includes as Schedule 1 Part II a list of the Original Participating Creditors together with their Exposures.

The Financing Agreement includes as Schedule 10, Part 1A and Part 1C a list of the Existing Notes in relation to the Existing Notes Trustees (as such terms are defined in the Intercreditor Agreement defined below). Such Schedule is updated monthly, also including the Additional Notes.

**IV.** That, certain of the Participating Creditors, certain financial institutions in their capacity as administrative agents, certain companies of the Group defined therein as the Borrowers and Guarantors, have entered into an omnibus amendment and waiver agreement executed on 14 August 2009, which is governed by the State New York law (hereinafter, such agreement as amended from time to time, the "**Omnibus Agreement**")

That, pursuant to the Omnibus Agreement, the Participating Creditors party thereto agreed, in relation to the Existing Facility Agreements which are governed by the State New York law, to amend, vary override and supplement certain terms of such Existing

complementar determinados términos de dichos Contratos de Financiación Existentes (*Existing Facility Agreements*) a los efectos de que se ajusten al Contrato de Financiación.

**V.** Que, los Acreedores Participantes, el Agente de Garantías y ciertas compañías del Grupo como "Original Debtors", suscribieron con fecha 14 de agosto de 2009 un contrato de relación entre acreedores denominado "Intercreditor Agreement". En adelante, dicho contrato tal y como sea novado en cada momento, será denominado el " **Contrato de Relación entre Acreedores**".

De acuerdo con la Cláusula 12 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 10.

Se adjunta como Anexo 3 al presente Contrato una copia del Contrato de Relación entre Acreedores, tal y como éste ha sido modificado hasta el 25 de octubre de 2010.

**VI.** Que a fecha 29 de septiembre de 2009 el Pignorante, Parent y Acquisitions formalizaron ante el Notario de Madrid D. Rafael Monjo Carrió un contrato de constitución de derechos reales de prenda (el "**Contrato de Prendas**") en garantía de las Obligaciones Garantizadas (tal y como este término se define en la Estipulación 1 .2 siguiente) a favor de las Partes Garantizadas (tal y como este término se define en la Estipulacin 1.2 siguiente) sobre:

Facility Agreements in order that they conform to the terms of the Financing Agreement.

**V.** That, the Participating Creditors, the Security Agent, Parent and certain companies of the Group defined therein as the Original Debtors, have entered into an intercreditor agreement executed on 14 August 2009. Hereinafter, such agreement as amended from time to time, shall be referred to as the **"Intercreditor Agreement**".

Pursuant to Clause 12 of the lntercreditor 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 10.

A copy of the lntercreditor Agreement, as amended as of 25 October 2010, is attached herewith as **Annex 3**.

**VI.** That on 29 September 2009 the Pledgor, Parent and Acquisitions granted before the Notary of Madrid Mr. Rafael Monjo Carrió an agreement of creation of in rem pledge rights (the " **Pledge Deed**") warranting the Secured Obligations (as this term is defined in Clause 1.2 below) in favour of the Secured Parties (as this term is defined in Clause 1.2 below) over:

- 893.625.326 acciones de 1,17 euros de valor nominal cada una, propiedad de Holding (en lo sucesivo, las "**Acciones Holding**"), que a fecha de 29 de septiembre de 2009 eran representativas del 99,2403% del capital social de la **CEMEX ESPAÑA, S.A.** (en lo sucesivo, "**CEMEX ESPAÑA**" o la "**Sociedad**"). En adelante, la prenda sobre las Acciones Originales Holding será denominada la "**Prenda sobre las Acciones Holding**".
- 2.050.000 acciones de 1,17 euros de valor nominal cada una, propiedad de Parent (en lo sucesivo, las "**Acciones Parent**"), que a fecha de 29 de septiembre de 2009 eran representativas del 0,2276% del capital social de la Sociedad. En lo sucesivo, la prenda sobre las Acciones Originales Parent, será denominada Ia "**Prenda sobre las Acciones Parent**".
- 1.957 acciones de 1,17 euros de valor nominal cada una, propiedad de Acquisitions (en lo sucesivo, las "**Acciones Acquisitions**"), que a fecha 29 de septiembre de 2009 eran representativas del 0,0002% del capital social de la Sociedad. En lo sucesivo, la prenda sobre las Acciones Originales Acquisitions será denominada la "**Prenda sobre las Acciones Acquisitions**".

En adelante, la Prenda sobre las Acciones Holding, la Prenda sobre las Acciones Parent y la Prenda sobre las Acciones Acquisitions serán denominadas, conjuntamente, las "**Prendas Originales**" y las Acciones Holding, las Acciones Parent y las Acciones Acquisitions, serán denominadas, conjuntamente, las "**Acciones Originales**".

**VII.** Que con efectos desde el 23 de octubre de 2009, el Pignorante adquirió de Acquisitions las Acciones Originales Acquisitions en virtud de la escritura de fusión por absorción otorgada el 22

- 893,625,326 shares of 1.17 euro par value each belonging to Holding (hereinafter, the "**Holding Shares**"), that on 29 September 2009 represent 99.2403% of the share capital of CEMEX S.A. (hereinafter, "**CEMEX ESPAÑA**" or the "**Company**"). Hereinafter the pledge over the Holding Original Shares shall be referred to as the "**Original over Holding Shares**".
- 2,050,000 shares of 1.17 euro par value each belonging to Parent (hereinafter, the "**Parent Shares**"), that on 29 September 2009 represent 0.2276% of the share capital of the Company. Hereinafter, the pledge over the Parent Original Shares will be referred to as the "**Pledge over Parent Shares**".
- 1,957 shares of 1.17 euro par value each belonging to Acquisitions (hereinafter, the "**Acquisitions Shares**"), that on 29 September 2009 represent 0.0002% of the share capital of the Company. Hereinafter, the pledge over the Acquisition Original Shares shall be referred to as the "**Pledge over Acquisitions Shares**".
- Hereinafter, the Pledge over Holding Shares, the Pledge over Parent Shares and the Pledge over Acquisitions Shares, shall be jointly referred to as the "**Original Pledges**" and the Holding Shares, the Parent Shares and the Acquisitions Shares shall be jointly referred to as the "**Original Shares**".

**VII.** That as from 23 October 2009 the Pledgor acquired from Acquisitions, the Original Acquisitions Shares by means of the merger deed granted on 22 October 2009 before the

de octubre de 2009 ante la notario (*kandidaatnotaris*) Da. Catelijne Schoenmaker, que actuaba en sustitución del notario (*notaris*) de Amsterdam D. Kjell Stelling.

**VIII.** Que con fecha 18 de marzo de 2010 el Pignorante adquirió novecientas cinco (905) acciones representativas a dicha fecha del 0,00009% del capital social de la Sociedad, tal y como resulta de la póliza de propiedad número 020100318350000 expedida en la misma fecha por el Depositario -según este término se define más adelante- (las "**Acciones Adquiridas**"). Las Acciones Adquiridas están libres de cargas y gravámenes de cualquier tipo, conforme se acredita en el certificado de legitimación (en lo sucesivo, el "**Certificado de Legitimación de las Acciones Adquiridas**") expedido con el número de referencia 201003250000046 el 20 de diciembre de 2010 por Banco Bilbao Vizcaya Argentaria, S.A. (en lo sucesivo, el"**Depositario**"), entidad actualmente encargada del registro contable de las Acciones Adquiridas.

**IX.** Que con fecha 14 de diciembre de 2009, The Bank of New York Mellon, en representación y beneficio de los tenedores de bonos senior garantizados y la Sociedad firmaron una escritura de adhesión ante el Notario de Madrid, D. Rafael Monjo Carrió, con el número 1.355 de su orden de protocolo, a los efectos de adherirse al Contrato de Prendas y garantizar la emisión de bonos senior por importe de trescientos cincuenta millones (€ 350.000.000) de euros con tipo de interés del nueve coma seiscientos veinticinco por ciento (9,625%) y vencimiento en 2017, regida por el derecho del Estado Nueva York y llevada a cabo por, entre otros, Cemex Finance LLC como emisor y The Bank of New York Mellon como trustee mediante un contrato de emisión de bonos (*Indenture*) (la "**Emisión de Bonos 2009 Euros**") por medio de un derecho real de prenda concurrente con las Prendas (la "**Prenda Emisión 2009 Euros**".

Notary (*kandidaat-notaris*) Ms. Catelijnc Schoenmaker, who acted as substitute of the Notary (*notaris*) of Amsterdam Mr. Kjell Stelling.

**VIII.** That on 18 March 2010 the Pledgor has acquired nine hundred and five (905) shares representing 0.00009% of the share capital of the Company, as evidenced by the ownership deed number 020100318350000 issued on that date by the Custodian -as defined below- (the "**Acquired Shares**"). The Acquired Shares are free and clear of any lien or encumbrance whatsoever as evidenced by the ownership certificate (*certjficado de legitimación*), hereinafter the "**Ownership Certificate of the Acquired Shares**", with reference number 201003250000046 and issued on 20 December 2010 by Banco Bilbao Vizcaya S.A., (hereinafter, the "**Custodian**") managing company of the registry where the Acquired Shares are recorded.

**IX.** That on 14 December 2009, The Bank of New York Mellon, acting on behalf and for the benefit of the noteholders of the senior secured notes and the Company executed an accession deed (*escritura de adhesión*) before the Notary of Madrid Mr. Rafael Monjo Carrió, under number 1355 of his records, in order to accede to the Pledge Deed and secure the issue of senior notes for an amount of three hundred and fifty million euros (EUR 350,000,000) with a rate of interest of nine point six hundred and twenty five percent (9.625%) and maturity on 2017, governed by the law of the State of New York, and carried out by Cemex Finance LLC as issuer and The Bank of New York Mellon as trustee by means of an Idenlure (the "**EUR 2009 Note Issue**") by means of a right *in rem* of pledge concurrent with the Pledges (the "**EUR 2009 Issue Pledge**").

**X.** Que con fecha 14 de diciembre de 2009, The Bank of New York Mellon, en representación y beneficio de los tenederos de bonos senior garantizados y la Sociedad firmaron una escritura de adhesión ante el Notario de Madrid, D. Rafael Monjo Carrió, con el número 1.356 de su orden de protocolo, a los efectos de adherirse al Contrato de Prendas y garantizar la emisión de bonos senior por importe de mil doscientos cincuenta millones ($ 1.250.000.000) de dólares estadounidenses con tipo de interés del nueve coma cinco por ciento (9,5%) y vencimiento en 2016, regida por el derecho del Estado Nueva York y llevada a cabo por, entre otros, Cemex Finance LLC como emisor y The Bank of New York Mellon como trustee mediante un contrato de emisión de bonos (*Indenture*) (la "**Emisión de Bonos 2009 Dólares**") por medio de un derecho real de prenda concurrente con las Prendas (la "**Prenda Emisión 2010 Dólares**"). Los fondos obtenidos de la Emisión de Bonos 2009 Dó1ares se destinaron, entre otros fines, a amortizar íntegramente el endeudamiento incurrido en virtud de la emisión de bonos (9,625%) con vencimiento en 2009 y por importe de doscientos millones ($ 200.000.000) de dólares estadounidenses en virtud del contrato de emisión de bonos suscrito el 1 de octubre de 1999 por, entre otros, CEMEX, S.A.B. de C.V. como emisor y U.S. Bank Trust National Association como trustee.

**XI.** Que con fecha 19 de enero de 2010 Cemex Finance LLC emitió bonos senior garantizados adicionales por importe de quinientos millones de dólares estadounidenses ($ 500.000.000) bajo el referido contrato de emisión de bonos (*Indenture*) en las mismas condiciones que la Emisión de Bonos 2009 Dólares (la "**Ampliación de la Emisión de Bonos 2009 Dólares**"). El 19 de enero de 2010 The Bank of

**X.** That on 14 December 2009, The Bank of New York Mellon, acting on behalf and for the benefit of the noteholders of the senior secured notes and the Company executed an accession deed (*escritura de adhesión*) before the Notary of Madrid Mr. Rafael Monjo Carrió, under number 1356 of his records, in order to accede to the Pledge Deed and secure the issue of senior notes for an amount of one thousand two hundred and fifty million US dollars (USD 1,250,000,000) with a rate of interest of nine point five percent (9.5%) and maturity on 2016, governed by the law of the State of New York, and carried out by Cemex Finance LLC as issuer and The Bank of New York Mellon as trustee by means of an Indenture (the "**USD 2009 Note Issue**") by means of a right *in rem* of pledge concurrent with the Pledges (the "**USD 2009 Issue Pledge**"). The funds obtained under the USD 2009 Note Issue were applied, among other issues, to the complete repayment of the debt owed under the issue of notes (9.625%) with maturity on 2009 and for an amount of two hundred million US dolars (USD 200,000,000) by virtue of the note issue agreement executed on 1 October 1999 by, amongst others, CEMEX, S.A.B, de C.V. as issuer and US Bank Trust National Association as trustee.

**X.** That on 19 January 2010 Cemex Finance LLC issued additional senior secured notes for an amount of five hundred million US dollars (USD 500,000,000) under the aforementioned Indenture in the same terms and conditions set out in the USD 2009 Note Issue (the "**Increase of the USD 2009 Note Issue**"). On 19 January 2010 The Bank of New York Mellon, acting on behalf and for

New York Mellon, en representación y beneficio de los tenedores de bonos senior garantizados adicionales y la Sociedad firmaron una escritura de extensión de la escritura de adhesión otorgada el 14 de diciembre de 2009, a los efectos de extender la Prenda Emisión 2010 Dólares para garantizar la Ampliación de la Emisión de Bonos 2009 Dólares (la "**Prenda Emisión 2010 Dólares Extendida**").

**XII.** Que con fecha 12 de mayo de 2010, The Bank of New York Mellon, en representación y beneficio de los tenedores de bonos senior garantizados y la Sociedad firmaron una escritura de adhesión ante el Notario de Madrid, D. Rafael Monjo Carrió, con el número 968 de su orden de protocolo, a los efectos de adherirse al Contrato de Prendas y garantizar la emisión de bonos senior por importe de mil sesenta y siete millones seiscientos sesenta y cinco mil dólares estadounidenses ($ 1.067.665.000) con tipo de interés del nueve coma veinticinco por ciento (9, 25%) y vencimiento en 2020 y ciento quince millones trescientos cuarenta y seis mil euros (€ 115.346.000) con tipo de interés del ocho coma ochocientos setenta y cinco por ciento (8,875%) y vencimiento en 2017, regida por el derecho del Estado Nueva York y llevada a cabo por, entre otros, la Sociedad, actuando a través de su sucursal en Luxemburgo, como emisor y The Bank of New York Mellon como trustee mediante un contrato de emisión de bonos (*Indenture*) (la "**Emisión de Bonos 2010**") por medio de un derecho real de prenda concurrente con las Prendas (la "**Prenda Emisión 2010**").

**XIII.** En adelante, las Prenda Originales, la Prenda Emisión 2009 Euros, la Prenda Emisión 2010 Dólares Extendida y la Prenda Emisión 2010, serán denominadas, conjuntamente, las "**Prendas**".

**XIV.** Que la Junta General de la Sociedad reunida el 19 de noviembre de 2010 acordó una ampliación

the benefit of the noteholders of the additional senior secured notes and the Company executed an extension deed of the accession deed (*escritura de adhesión*) granted on 14 December 2009, in order to extend the USD 2009 Issue Pledge and secure the Increase of the USD 2009 Note Issue (the "**Extended USD 2009 Issue Pledge**").

**XII.** That on 12 May 2010, The Bank of New York Mellon, acting on behalf and for the benefit of the noteholders of the senior secured notes and the Company executed an accession deed (*escritura de adhesión*) before the Notary of Madrid Mr. Rafael Monjo Carrió, under number 968 of his records, in order to accede to the Pledge Deed and secure the issue of senior notes for an amount of one thousand sixty seven million six hundred and sixty five thousand US dolars (USD 1,067,665,000) with a rate of interest of nine point twenty five percent (9.25%) and maturity on 2020, and one hundred and fifteen million three hundred and forty six thousand euros (EUR 115,346,000) with a rate of interest of eight point eight hundred and seventy five percent (8.875%) and maturity on 2017 governed by the law of the State of New York, and carried out by, amongs others, the Company acting through its Luxemburg branch issuer and The Bank of New York Mellon as trustee by means of an Indenture (the "**2010 Note Issue**") by means of a right *in rem* of pledge concurrent with the Pledges (the "**2010 Issue Pledge**").

**XIII.** Hereinafter, the Original Pledges, the USD 2009 Issue Pledge, the Extended USD 2009 Issue Pledge and the 2010 Issue Pledge, shall be jointly referred to as the "**Pledges**".

**XIV.** That Shareholders General Meeting held on 19 November 2010 agreed on a share capital

del capital social de la Sociedad (la "**Ampliación de Capital**"), en los términos establecidos en la escritura autorizada en la misma fecha por el Notario de Madrid Don Rafael Monjo Carrió, con el número 2.419 de su protocolo, en virtud de la cual se emitieron 426.585.515 nuevas acciones de 1,17 euros de valor nominal cada una (las "**Nuevas Acciones**").

**XV.** Que el Pignorante es el legítimo propietario de la totalidad de las Nuevas Acciones, representativas del 32,15% del capital social de la Sociedad. Las Nuevas Acciones están libres de cargas y gravámenes de cualquier tipo, conforme se acredita en el certificado de legitimación (en lo sucesivo, el "**Certificado de Legitimación de las Nuevas Acciones**") con el número de referencia 201012160900012 expedido el 20 de diciembre de 2010 por el Depositrario, entidad actualmente encargada del registro contable de las Nuevas Acciones (en lo sucesivo, el "**Registro Nuevas Acciones**").

**XVI.** Que de conformidad con lo establecido en la Estipulación 5.2 del Contrato de Prendas, al haberse inscrito la ampliación de capital de CEMEX ESPAÑA, el Pignorante debe documentar la extensión de las Prendas a las Nuevas Acciones debiendo otorgar ante Notario un contrato complementario.

**XVII.** En virtud de lo anterior, las Partes han acordado el otorgamiento de este Contrato de Extensión y Constitución 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.

increase of the Company (the "**Share Capital Increase**") according to the terms established on the deed authorized on the same date by the notary of Madrid Mr. Rafael Monjo Carrió, with number 2.419 of his protocol, by virtue of which 426,585,515 new shares of 1.17 euro par value each were created (the "**New Shares**").

**XV.** That the Pledgor is the legitimate owner of all the New Shares representing the 32,15% of the share capital of the Company. The New Shares are free and clear of any lien or encumbrance whatsoever as evidenced by the ownership certificate ( *certificado de legitimación*), hereinafter the "**Ownership Certificate of the New Shares**", with reference number 201012160900012 and issued on 20 December 2010 by the Custodian managing company of the registry where the New Shares are recorded, (hereinafter, the "**New Shares Registry**").

**XVI.** That, pursuant to Clause 5.2 of the Pledge Deed, once that the share capital increase of CEMEX ESPAÑA has been registered, the Pledgor must document the extension of the Pledges over the New Shares, by granting a complementary agreement before the relevant notary.

**XVIII.** In light of the above, the Parties have agreed to enter into this Agreement of Extension and Creation 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 Financing 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. Adermás, 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.

1.2 Adicionalmente, los siguientes términos tendrán el significado que a continuación se les asigna:

"**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).

"**Partes Garantizadas**" tendrá el significado que al mismo término se le otorga en el Contrato de Relación entre Acreedores.

"**Supuesto de Ejecución**" tendrá el significado que al mismo término se le otorga en el Contrato de Relación entre Acreedores.

"**Grupo Instructor**" tendrá el significado que al mismo término se le otorga en el Contrato de Relación entre Acreedores.

"**Fecha de Cancelación**" significa Ia fecha en que las Garantías de Ia Operación (*Transaction Security*) (tal y como este término se define en el

The Parties hereby agree that this Agreement shall not in any way prejudice or affect the terms and conditions contained in the Financing Agreement or the Intercreditor Agreement. Further, this Agreement shall be subject to the terms of the lntercreditor 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 In addition, the following terms shall have the meaning ascribed to them below:

"**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 Document, 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).

"**Secured Parties**" shall have the meaning given to it in the Intercreditor Agreement.

"**Enforcement Event**" shall have the meaning given to it in the Intercreditor Agreement.

"**Instructing Group**" shall have the meaning given to it in the Intercreditor Agreement.

"**Release Date**" means the date on which the Transaction Security (as obtained in the Intercreditor Agreement) shall be automatically released pursuant to Clause 8.2 of the lntercreditor Agreement.

Contrato de Relación entre Acreedores) se liberen automáticamente de conformidad con lo previsto en la Cláusula 8.2 del Contrato de Relación entre Acreedores.

"**Fecha de Liberación Final**" tendrá el significado que al mismo término se le otorga en el Contrato de Relación entre Acreedores.

2. **EXTENSIÓN Y CONSTITUCIÓN DE PRENDAS**

A tenor de lo previsto en la Cláusula 5.2 del Contrato de Prendas, en caso de ampliación de capital las Prendas se extenderán 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. A este fin, el Pignorante documenta en este acto la extensión de las Prendas a las Nuevas Acciones. Asimismo, el Pignorante constituye en garantía del cumplimiento íntegro y puntual de cada una de las Obligaciones Garantizadas sendos derechos reales de prendas de primer rango sobre las Acciones Adquiridas, que cada una de las Partes Garantizadas acepta en su propio nombre y derecho o a través del Agente de Garantiás, conforme a lo previsto en la Estipulación 10 siguiente (las "**Nuevas Prendas**").

3. **DESPLAZAMIENTO POSESORIO**

3.1 A los efectos previstos en el articulo 10 de la ley 24/1988, de 28 de julio, del Mercado de Valores, y el artículo 13 del RD 116/1992, el Depositario, mediante su comparecencia en el presente Contrato, se da por notificado del otorgamiento del presente Contrato e:

3.1.1 Inscribe en este mismo acto la extensión de las Prendas y la constitución de las Nuevas Prendas en los correspondientes Registros de anotaciones en cuenta y procede al desglose de las Nuevas Acciones y de las Acciones Adquiridas;

"**Final Discharge Date**" shall have the meaning given to it in the Intercreditor Agreement.

2. **EXTENSION AND CREATION OF PLEDGES**

In accordance with Clause 5.2 of the Pledge Deed, in the event that a capital share increase, the Pledges shall be extended to the 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). Consequently, the Pledgor documents hereby the extension of the Pledges over the New Shares. Furthermore, the Pledgor creates several first ranking concurrent pledges over the Acquired Shares as security for the full and punctual performance of each of the Secured Obligations, which the Secured Parties hereby accept in its own name and on its own behalf or through the Security Agent, in accordance with Clause 10 below (the "**New Pledges**").

3. **DELIVERY OF THE POSSESSION**

3.1 In accordance to article 10 of the Law 24/1988, dated 28 July, on the Securities Market, and article 13 of RD 116/1992, the Custodian, by means of it appearance as a party to this Agreement, acknowledges the execution of this Agreement and:

3.1.1 hereby records the extension of the Pledges and the creation of each of the New Pledges in the relevant book entries Registries;

3.1.2 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"**).

3.2 El Notario entrega en este acto al Agente de Garantías los certificados de prendas originales recibidos del Depositario, que permanecerán en su poder hasta que proceda la extinción y cancelación de las Prendas de acuerdo con la Estipulación 9 del Contrato de Prendas.

El Agente de Garantías se compromete a conservar y custodiar los Certificados de Prendas y a devolverlos al Pignorante inmediatamente después de la extinción y cancelación de las Prendas y las Nuevas Prendas de acuerdo con to dispuesto en la Estipulación 9 del Contrato de Prenda.

## 4. DECLARACIONES DEL PIGNORANTE

4.1 El Pignorante declara y manifiesta a favor de las Partes Garantizadas:

4.1.1 Que la Sociedad es una sociedad existente y válidamente constituida en España y está inscrita en el Registro Mercantil de Madrid.

4.1.2 Que el Depositario es la entidad encargada del Registro Nuevas Acciones, así como del registro contable de las Acciones Adquiridas.

4.1.3 Que tiene capacidad para suscribir y cumplir el presente Contrato y ha realizado todas las actuaciones necesarias para autorizar el otorgamiento y cumplimiento del mismo.

3.1.2 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**").

3.2 The Notary hereby delivers to the Security Agent the original pledges certificates received from the Custodian, and the Security Agent shall keep the Pledges Certificates until the Pledges are released pursuant to Clause 9 of the Pledge Deed.

The Security Agent undertakes to safe keep the Pledges Certificates and to return them to the Pledgor immediately upon the cancellation of the Pledges in accordance with Clause 9 of the Pledge Deed.

## 4. REPRESENTATIONS OF THE PLEDGOR

4.1 The Pledgor represents in favour of the Secured Parties:

4.1.1 That the Company exists and is validly incorporated under the laws of Spain and is registered with the Mercantile Registry of Madrid.

4.1.2 That the Custodian is the managing company of the New Shares Registry and of the Registry where the Acquired Shares are recorded.

4.1.3 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.

4.1.4 Que los derechos reales de prenda constituyen obligaciones válidas del Pignorante, exigibles frente a los mismos con arreglo a lo dispuesto en este Contrato.

4.1.5 Que la aceptación y cumplimiento por el Pignorante 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 de la Sociedad; (c) no se opone a ningún documento, acuerdo o contrato que sea vinculante para el Pignorante ni para la Sociedad ni (d) requiere autorización, consentimiento, licencia o permiso.

4.1.6 Que el Pignorante ostenta legítimamente la plena propiedad de las Nuevas Acciones y las Acciones Adquiridas y tiene pleno poder de disposición sobre las mismas.

4.1.7 Que las Nuevas Acciones y las Acciones Adquiridas: (a) no están sometidas a ninguna carga, gravamen o derecho de opción de 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.

4.1.8 Sujeto a la aceptación por parte de las Partes Garantizadas, mediante este Contrato se extienden y otorgan, respectivamente, derechos reales de prenda de primer rango sobre las Nuevas Acciones y las Acciones Adquiridas a favor de las Partes Garantizadas en garantía de las Obligaciones Garantizadas.

4.1.4 That the rights *in rem* of pledges constitute valid and binding obligations to the Pledgor, in accordance with the terms of this Agreement.

4.1.5 That the acceptance and performance by the Pledgor 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 in any respect; (c) does not oppose to any document, agreement or contract binding for the Pledgor or the Company; and (d) does not require any authorisation, consent, licence or permit.

4.1.6 The Pledgor is the owner of the New Shares and the Acquired Shares and has the full title to dispose of its Shares.

4.1.7 That the New Shares and the Acquired Shares: (a) are free from any lien, encumbrance, option right or statutory or contractual restriction to their transmission; (b) have been validly issued by the Company; and (c) are fully subscribed and paid up.

4.1.8 Subject to acceptance by the Secured Parties, first ranking pledges over the New Shares are extended and first ranking pledges over the Acquired Shares are created in favour of the Secured Parties as security for the performance of the Secured obligations.

5. **CONTRATO ÚNICO**

Las Partes acuerdan que se aplicará a la extensíon de las Prendas a las Nuevas Acciones y a las Nuevas Prendas constituidas en virtud del presente Contrato los mismo términos y condiciones previstas en el Contrato de Prendas. El presente Contrato no modifica los términos y condiciones del Contrato de Prendas, que quedará sujeto a sus propios términos y condiciones.

6. **TRIBUTOS Y GASTOS**

Serán de cuenta del Pignorante 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 exiensión, 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 el Pignorante de sus obligaciones bajo este Contrato.

7. **NOTIFICACIONES**

7.1 Las Partes efectuarán todas las notificaciones relativas a este Contrato mediante escrito firmado por persona con poder suficiente y enviado a la otra parte 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.

5. **SOLE AGREEMENT**

The Parties hereby agree that the terms and conditions set out in the Pledge Deed shall apply to extension of the Pledges over the New Shares and to the New Pledges created hereunder. This Agreement shall not alter or affect the terms and conditions contained in the Pledge Deed but shall remain subject to its own terms and conditions.

6. **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 Pledgor.

7. **NOTICES**

7.1 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 notice shall be confirmed within the following five (5) calendar days by means of a letter with acknowledgement of receipt.

7.2 Los domicilios de cada una de las partes a efectos de comunicaciones son:

7.2.1 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 96 48 |

7.2.2 Para el Agente de Garantías y las Partes Garantizadas

| | |
|---|---|
| Domicilio: | 6 Broad Street Place, Londres EC2M 7JH |
| Atención: | Elaine K. Lockhart |
| Fax: | +44 (0) 20 7614 1122 |

7.2.3 Para la Sociedad:

| | |
|---|---|
| Domicilio: | C/ Hernández de Tejada 1, 28027, Madrid (España) |
| Atención: | D. Juan Pelegri y Girón |
| Telf: | +34 91 377 92 54 |
| Fax: | + 34 91 377 96 48 |

7.3 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 Estipulación 7.1 anterior.

## 8. SUBSANACIÓN O COMPLEMENTO DEL CONTRATO

El Pignorante deberá, 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.

## 9. AGENTE DE GARANTÍAS

9.1 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 al Pignorante o la Sociedad.

9.2 Los derechos concedidos al Agente de Garantías

7.2 The address of each of the parties for the purposes of notices are as follows:

7.2.1 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 96 48 |

7.2.2 For the Security Agent and the Secured Parties:

| | |
|---|---|
| Address: | 6 Broad Street place, London EC2M 7JH |
| Attention of: | Elaine K. Lockhart |
| Fax: | +44 (0) 20 7614 1122 |

7.2.3 For the Company:

| | |
|---|---|
| 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 96 48 |

7.3 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 7.1 above.

## 8. FURTHER ASSURANCES

The Pledgor 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.

## 9. SECURITY AGENT

9.1 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 Pledgor or the Company.

9.2 The permissive rights of the security Agent

para realizar actuaciones bajo el presente Contrato no se interpretarán como una obligación o deber del Agente de Garantías de realizarlas.

9.3 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.

9.4 El Agente de Garantías, cuando actúe como tal, se considerará que actúa a través de su division 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.

9.5 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 immunidades hubieren sido establecidas en el presente Contrato, *mutatis*

to take action under this Agreement shall not be construed as an obligation or duty for it to do so.

9.3 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.

9.4 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.

9.5 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 lntercreditor 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.

*mutandi, y* no incurrirá en responsabilidad alguna frente al Pignorante, la Sociedad o cualquier otra Persona.

9.6 Los términos de esta Estipulación 9 permanecerán en vigor más allá de la terminación del presente Contrato.

## 10. ADHESIÓN Y RATIFICACIÓN

10.1 Las Partes Garantizadas en cuyo beneficio ha actuado el Agente de garantías podrán adherirse al presente Contrato y ratificar el contenido del mismo, aceptando la extensión de las Prendas y las Nuevas Prendas constituidas en su favor, mediante la comparecencia ante el notario interviniente.

10.2 Las Partes instruyen al notario interviniente para que documente las adhesiones y ratificaciones mencionadas en el apartado anterior mediante el otorgamiento de las correspondientes pó1izas o escrituras por parte de las Partes Garantizadas en cuestión.

10.3 El notario interviniente acepta las instrucciones recibidas.

## 11. LEY Y JURISDICCIÓN

11.1 Este Contrato se regirá e interpretará de conformidad con la legislación española.

11.2 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.

## 12. 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.

9.6 The provisions of this Clause 9 shall survive any termination of this Agreement.

## 10. ACCESSION AND RATIFICATION

10.1 The Secured Parties on whose benefit the Security Trustee has acted herein may accede to this Agreement and ratify its content, accepting the Pledges and the New Pledges created in their favour, by appearing before the intervening notary.

10.2 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.

10.3 The intervening notary accepts the aforementioned instructions.

## 11. LAW AND JURISDICTION

11.1 This Agreement will be governed by and construed in accordance with Spanish law.

11.2 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.

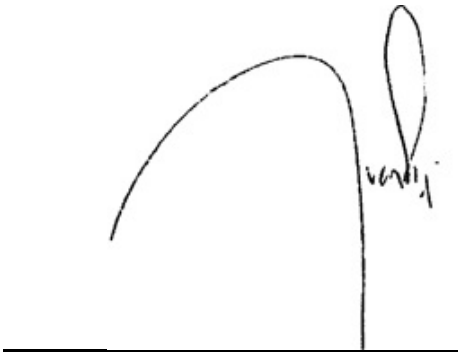
## 12. LANGUAGE

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 to be used for information purposes only.

**Las Partes se manifiestan conformes con el contenido de este Contrato tal y como aparece redactado, extendido en _____ hojas incluidos sus anexos, que otorgan y firman únicamente en Ia última página con mi intervención que sello y rubrico todos los folios, quedando el original en mi archivo.**

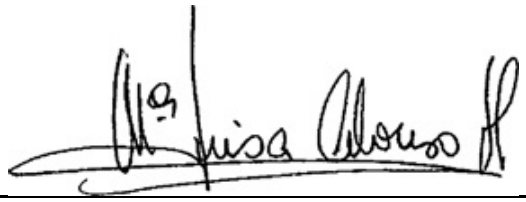
**Y yo, el Notario, hechas las advertencias legales oportunas, doy fe de Ia identidad de las Partes, de la Iegitimidad de sus firmas, y de todo lo convenido en este Contrato, que firmo y sello en el lugar y fecha del encabezamiento.**

**NEW SUNWARD HOLDING B.V.**



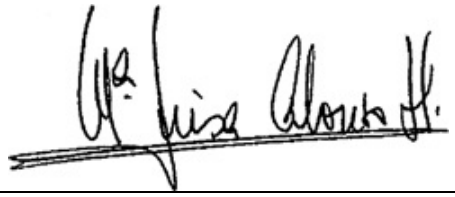
**p.p.D. Juan Pelegrí y Girón**

**WILMINGTON TRUST (LONDON) LIMITED**



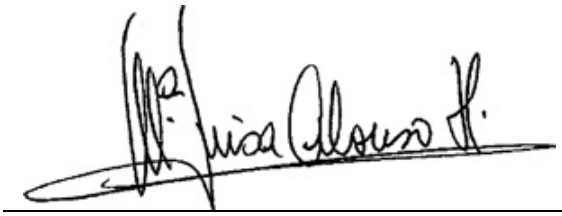
**p.p. Dª. María Luisa Alonso Horcada**

**BARCLAYS BANK PLC SUCURSAL EN ESPAÑA**
**CAISSE REGIONALE DE CREDIT AGRICOLE MUTUEL DE PARIS ES D'ILE-DE FRANCE**
**CREDIT INDUSTRIELE ET COMMERCIAL, SUCURSAL EN LONDRES**
**DEUTSCHE BANK LUXEMBOURG S.A.**
**FORTIS BANK S.A./N.V.**
**FORTIS S.A., SUCURSAL EN ESPAÑA**
**HSBC BANK PLC, SUCURSAL EN ESPÑA**
**INTESA SANPAOLO S.P.A. SUCURSAL EN NUEVA YORK**
**JP MORGAN EUROPE LIMITED**



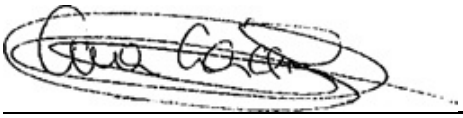
**p.p. Dª. Maria Luisa Alonso Horcada**

**SCOTIABANK EUROPE PLC**
**SCOTIABANK EUROPE PLC, SUCURSAL EN LONDRES**
**THE GOVERNOR AND COMPANY OF THE BANK OF IRELAND**
**THE ROYAL BANK OF SCOTLAND PLC**
**WILMINGTON TRUST (SECURITY AGENT)**
**SCOTISH RE (U.S.). INC.**
**GENERAL AMERICAN LIFE INSURANCE**
**NEW ENGLAND LIFE INSURANCE**
**METLIFE INSURANCE COMPANY OF CONNECTICUT**
**METROPOLITAN LIFE INSURANCE COMPANY**
**METROPOLITAN TOWER LIFE INSURANCE COMPANY**
**WESTERN NATIONAL LIFE INSURANCE COMPANY (FORMERLY AIG ANNUITY INSURANCE COMPANY)**
**AMERICAN GENERAL LIFE AND ACCIDENT INSURANCE COMPANY**
**AMERICAN INTERNATIONAL LIFE ASSURANCE COMPANY OF NEW YORK**
**THE VARIABLE ANNUITY LIFE INSURANCE COMPANY**
**ING LIFE INSURANCE & ANNUITY COMPANY**
**ING USA LIFE INSURANCE AND ANNUITY COMPANY**
**RELIASTAR LIFE INSURANCE COMPANY**
**SECURITY OF DENVER INSURANCE COMPANY**
**NEW YORK LIFE INSURANCE AND ANNUITY CORPORATION**
**NEW YORK LIFE INSURANCE AND ANNUITY CORPORATION, INSTITUTIONALLY OWNED LIFE INSURANCE SEPARATE ACCOUNT**
**NEW YORK LIFE INSURANCE COMPANY**
**THRIVENT FINANCIAL FOR LUTHERANS**
**HARTFORD ACCIDENT AND INDEMNITY COMPANY**
**HARTFORD LIFE AND ACCIDENT INSURANCE COMPANY**
**HARTFORD LIFE INSURANCE COMPANY**
**AMCO INSURANCE COMPANY**
**NATIONWIDE LIFE AND ANNUITY INSURANCE COMPANY**
**NATIONWIDE LIFE INSURANCE COMPANY**
**NATIONWIDE MULTIPLE MATURITY SEPARATE ACCOUNT**
**NATIONWIDE MUTUAL INSURANCE COMPANY**
**THE GUARDIAN LIFE INSURANCE COMPANY OF AMERICA**
**BERKSHIRE LIFE INSURANCE COMPANY OF AMERICA**
**MONUMENTAL LIFE INSURANCE COMPANY**
**ALLIED IRISH BANKS PLC**
**BARCLAYS BANK PLC**
**BENEFICIAL LIFE INSURANCE COMPANY**

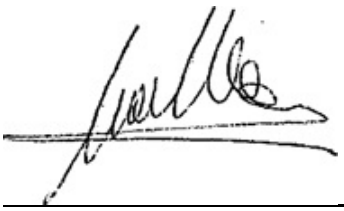


**p.p. Dª. María Luisa Alonso Horcada**

**BANCO POPULAR ESPAÑOL, S.A.**

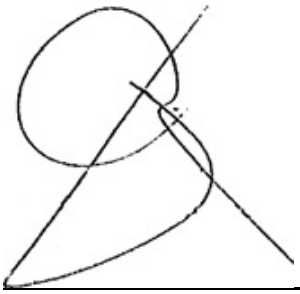


**p.p. Dª. Ana Cáceres Ares**

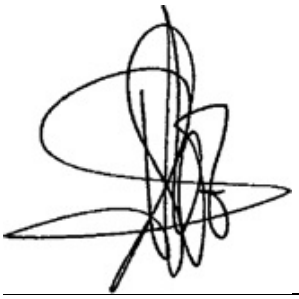


**p.p.D. Eduardo Martin Martinez**

**BANCO DE SABADELL, S.A.**

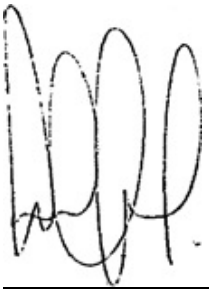


**p.p.D. Diego Rusillo Delgado**



**p.p.D. Francisco Javier González Moñux**

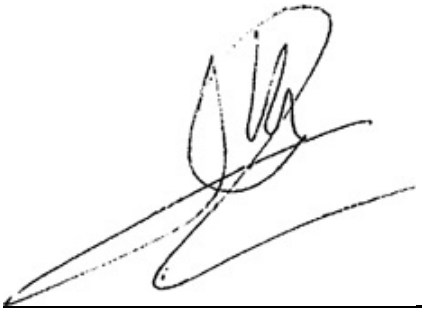
**BANCO ESPAÑOL DE CRÉDITO, S.A**



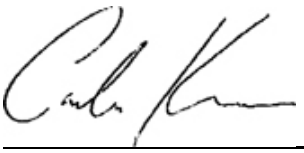
**p.p. Don Inigo de Roda González**

**p.p. D. Francisco de Borja Bertrán Sundheim**

**CAJA DE AHORROS Y MONTE DE PIEDAD DE MADRID**



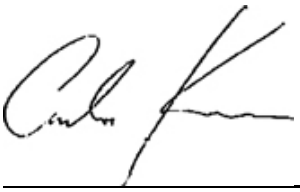
**p.p.D. Antonio San Segundo Hernández**



**p.p. D. Carlos Karam Benayas**

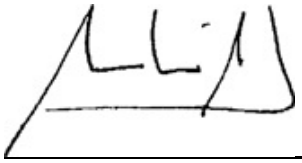
**CAJA DE AHORROS Y MONTE DE PIEDAD DE MADRID, AGENCIA EN MIAMI**

**p.p.D. Antonio San Segundo Hernández**



**p.p. D. Car1os Karam Benayas**

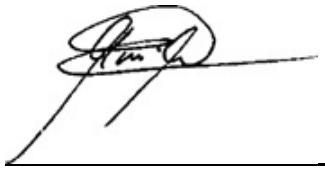
**IKB DEUTSCHE INDUSTRIEBANK AG, SUCURSAL EN ESPAÑA**



**p.p. Dña. Ana María Bohórquez Rodríguez**

**ING BANK, N.V.**

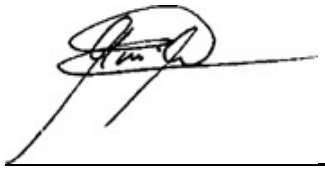
**p.p. D. Gustavo Alberto de Rosa**



**p.p. Dña. Mónica Martínez Mendizábal**

**ING BANK, N.V., ACTUANDO A TRAVES DE SU SUCURSAL EN CURAÇAO**

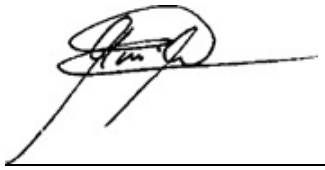
**p.p. D. Gustavo Alberto de Rosa**



**p.p. Dña. Mónica Martínez Mendizábal**

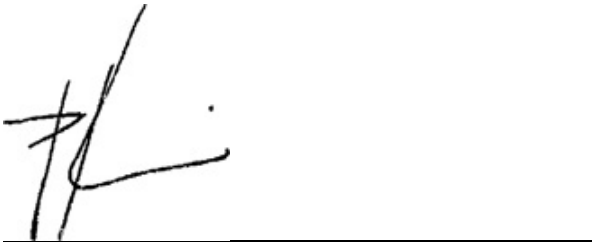
**ING BELGIUM S.A., SUCURSAL EN ESPAÑA**

**p.p. D. Gustavo Alberto de Rosa**

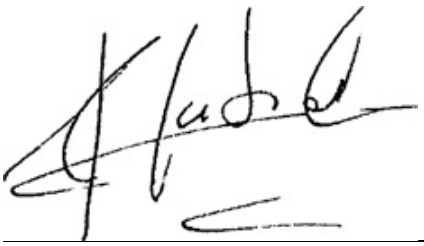


**p.p. Dña. Mónica Martinez Mendizábal**

**INTESA SANPAOLO, SUCURSAL EN ESPAÑA**

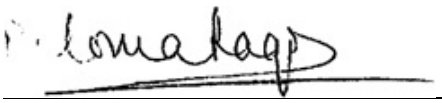


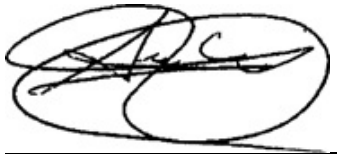
**p.p. D. Juan Facundo Pontoni**



**p.p. D. Ricardo Petidier Torregrossa**

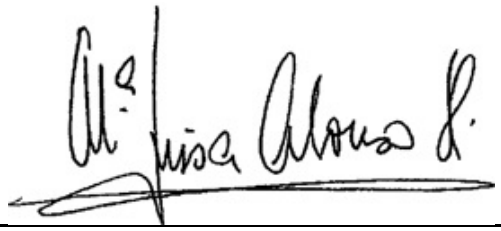
**SOCIÉTÉ GÉNÉRALE**





**p.p. Dña. Paloma Lago Fernández-Purón** **p.p.D. Juan Carlos Lopez-Barbas**

**THE BANK OF NEW YORK MELLON**
**THE BANK OF NEW YORK MELLON, INSTITUCIÓN DE BANCA MÚLTIPLE**
**SCOTIA INVERLAT CASA DE BOLSA, S.A. DE C.V., GRUPO FINANCIERO**
**SCOTIABANK INVERLAT**



**p.p. Wilmington Trust (London) Limited**
**Dª. María Luisa Alonso Horcada**

**Cou mí intervención**
**D. Rafael Monjó Carrió**

**ANEXO 1**
**ACREEDORES PARTICIPANTES**

**ANNEX 1**
**PARTICIPATING CREDITORS**

**ANEXO 2**
**TRUSTEES DE LOS BONISTAS**

**ANNEX 2**
**NOTEHOLDERS TRUSTEES**

**ANEXO 3**
**COPIA DEL CONTRATO DE RELACIÓN ENTRE ACREEDORES**

**ANNEX 3**
**COPY OF THE INTERCREDITOR AGREEMENT**

**Exhibit 4.44.6**

OFFICIAL TRANSLATION, David A. González Vessi, Authorized Translator from English-Spanish, Spanish-English, Approval Number 983/2011 dated as of January 31, 2011.
PAGE 1

[SEAL OF RAFAEL MONJO CARRIO.- NOTARY PUBLIC OF MADRID]

***JOINDER DEED ISSUED BY THE CORPORATE ENTITIES NAMED "THE BANK OF NEW YORK MELLON" AND "CEMEX ESPAÑA, S.A."***

**NUMBER FIFTY SEVEN**

In the city of Madrid, my residence as of the eleventh day of January two thousand eleven.

Before me, **ANTONIO PÉREZ-COCA CRESPO**, Notary of Madrid and its Illustrious College, as alternate of my colleague Mr. **RAFAEL MONJO CARRIO,** by reason of an accident, and acting under his official Notary Book.

**APPEARED**

**MR. JUAN PERLAZA**, of British nationality, with majority of age, with domicile located at and for purposes of this deed located at Calle José Abascal, 45 in Madrid, bearer of valid Passport Number 300919078.

**MR. JUAN PELEGRINI Y GIRÓN,** with majority of age, with domicile in Madrid located at, and for purposes of this deed, calle Hernández de Tejada, number l; bearer of National Identity Document number 01489996-X.

**LEGAL PERSONALITY**

**The first one,** in the name and on behalf of **THE BANK OF NEW YORK MELLON** (hereinafter referred to as the **"Bank**"), entity incorporated in accordance with the laws of the State of New York (United States of America), with its corporate domicile located at One Wall Street, New York, N.Y. 10286, United States of America, and furthermore, acting on behalf of and for the benefit of the holders of the Senior Secured Notes in the amount of 1,000 million United States Dollars, at an interest rate of 9,000%, due 2018 and redeemable at the fourth, fifth and sixth anniversaries of their initial issuance, issued in accordance with an Indenture

[SEAL OF RAFAEL MONJO CARRIO.- NOTARY PUBLIC OF MADRID]

governed under the laws of the State of New York, **issued as of January 11, 2011** by and between among others, CEMEX, S.A.B. DE C.V., a commercial corporation duly incorporated in accordance with the laws of Mexico, as issuer and The Bank of New York Mellon, as trustee (hereinafter referred, together with its amendments or novations the "**Indenture**").

Exercising the current power of attorney, issued by a Notary Public of the State of New York Mr. Danny Lee, dated as of January 11, 2011, copy of which has been delivered to me, and whose original has been duly apostilled in accordance with The Hague Convention of October 5, 1961, and attached hereto.

**The second one**, in the name and on behalf of the corporate entity **CEMEX ESPAÑA, S.A.**, entity governed in accordance with the laws of Spain (in the past known as *Compañía Valenciana de Cementos Pórtland, S.A.*), and its corporate domicile in Madrid is located at calle Hernández de Tejada, number 1, whose corporate purpose, among others, is the manufacture, commercialization and distribution of all kinds of sacks, bags and similar articles, made of paper or any other materials, suitable for cement packaging, etc.

It was incorporated with un-definitive term by means of a deed authorized by a Notary Public, in the city of Valencia, Mr. Juan Bautista Roch Contelles, dated as of April 30, 1917, duly adapted to the current legislation by means of a deed authorized by a Notary Public, in the city of Valencia, Mr. Antonio Soto Bisquert, dated as of July 13, 1990; the incorporation of the Company was RECORDED in the Commercial Registry of Valencia in Volume 122, Book 28 regarding corporations, third section, first inscription; and the adaptation was recorded in such Registry in Volume 2854, Book 10, general section, page V2533, inscription 165; furthermore, the bylaws of the Company were restated by means of another public deed number 6796 authorized by a Notary Public in Madrid, Mr. Antonio Francés y de Mateo, dated as of August 12, 1993, that caused the inscription number 200th.

[SEAL OF RAFAEL MONJO CARRIO.- NOTARY PUBLIC OF MADRID]

The Company changed its corporate domicile to the current domicile by means of public deed number 1,489 authorized by a Notary Public in Valencia, Mr. Antonio Soto Bisquert, dated as of June 29, 1995, and recorded in the Registry of Commerce of Madrid, Volume 9743 and 9744, section 8th, Book of Corporations, pages 1 and 166, sheet number M-156542 inscriptions first and second.

The corporate name of the Company was changed to its current corporate name by resolutions adopted by the General Shareholders Meeting held as of June twenty-four, two thousand two, which were officially formalized before me, the same date, under public deed number 662, causing the inscription number 122º.

The Company is the bearer of C.I.F. number: A46004214.

Exercising his corporate authority by means of a power of attorney issued by the Board of Directors during a meeting held as of November nineteenth, two thousand ten, officially formalized by public deed number 51 as of January 11, two thousand eleven by Mr. Rafael Monjo Carrio, as evidenced with a copy of such deed that I hereby attest to have in front of me.

In accordance with the provisions of article 98 of the Law 24/2001, and further to the Resolution issued by the Director General in charge of Public Registries and Notary Publics dated as of April 12, 2002, I hereby attest that to my knowledge, such individuals have sufficient corporate authority to execute this public deed in accordance with the terms set forth herein.

Such individuals have, in accordance with my knowledge, sufficient legal capacity and legal standing to issue this Joinder Deed and, for such purposes, said individuals on behalf of the companies which they represent and for all legal purposes, make the following:

[SEAL OF RAFAEL MONJO CARRIO.- NOTARY PUBLIC OF MADRID]

**STATEMENTS**

**I.** That, in accordance with a contract issued by means of a public deed number 4599 issued by Rafael Monjo Carrio dated as of September 29, 2009 (hereinafter referred to as "**Pledge Deed"**), CEMEX, S.A.B. de C.V., New Sunward Holding B.V. and Sunward Acquisitions N.V. (the later one absorbed by New Sunward Holding B.V. as of October 23, 2009) constituted pledge rights (hereinafter referred to as the " **Pledges**") over their shares of stock of the company CEMEX España, S.A.

**II.** That, in accordance with a contract issued by means of a public deed number 5768 dated as of December 23, 2010 issued by Rafael Monjo Carrio (hereinafter referred to as "**Extension Pledge Deed**"), CEMEX, S.A.B. de C.V., New Sunward Holding B.V. (i) constituted new pledge rights with respect to 905 (nine hundred five) shares of stock of CEMEX España, S.A. acquired from a minority shareholder; and (ii) extended the Pledges to 426.585.515 new shares of CEMEX España, S.A. issued by means of a capital stock increase approved during a General Meeting, and such resolutions were formalized under public number 2.419 issued by Rafael Monjo Carrio as of November 19, 2010. Hereinafter, any references to the Pledges will include for all purposes the new shares of stock of Cemex España, S.A. issued during such capital stock increase, and the shares acquired from the minority shareholder acquired from a minority shareholder issued in connection of a capital increase.

**III.** That, given the improvement in the conditions of the financial markets, it allows Cemex to issue notes to be issued among other things to reduce its debt with financial creditors that are part of the Creditors Agreement (as such term is defined in the Pledge Deed), CEMEX, S.A.B. de C.V. has requested such financial creditors to make some amendments to the Creditors Agreement for the purpose

[SEAL OF RAFAEL MONJO CARRIO.- NOTARY PUBLIC OF MADRID]

of increasing the flexibility of the CEMEX Group to issue notes and to apply the proceeds obtained by such issuances. Such amendments were approved by said financial creditors, and as of December 1, 2009 it was executed an amendment novation agreement that does not extinguish the Creditors Agreement. As a result of such amendments, it is stated that the creditors of the CEMEX Group, by virtue of the issuance of the notes such as the Indenture, shall be considered as Additional Notes Creditors and, as a consequence, shall be considered as Secured Parties further to the terms of the Creditors Agreement and the Pledge Deed and the Extension Pledge Deed, and shall be entitled to obtain the benefits of the Pledges, by means of a joinder of the Pledge Deed and the Extension Pledge Deed in accordance with Clause 16 of the Pledge Deed, and Clause 10 of the Extension Pledge Deed.

**IV.** That, in accordance with Clause 16 of the Pledge Deed and Clause 10 of the Extension Pledge Deed, the Secured Parties in which benefit the Guaranty Agent acted, among them the Bank, in its capacity of trustee for the holders of notes issued under the Indenture, may join the Pledge Deed and the Extension Pledge Deed and ratify the contents of such deeds, accepting the constituted Pledges in their favor as a guaranty of the corresponding Secured Obligations, my means of appearing before a Notary Public in Madrid, Mr. Rafael Monjo Carrio.

Such joinder agreements shall be formalized by means of a joinder deed, all of which without need of a new consent by the pledgor or the pledgees, since their consent were granted in accordance with the Creditors Agreement (as such agreement was novated dated as of December 1, 2009 and October 25, 2010) and the terms of the Pledge Deed and the Extension Pledge Deed.

[SEAL OF RAFAEL MONJO CARRIO.- NOTARY PUBLIC OF MADRID]

**V.** That the Bank hereby expressly state that the joinder agreement referred to in the foregoing statements is formalized as an execution instrument of the rights granted to the Bank in accordance with the Pledge Deed and the Extension Pledge Deed, in order for the payment obligations related to the Indenture be guaranteed by a first priority pledge interest over the Shares (as such term is defined in the Pledge Deed), the New Shares and the Acquired Shares (as such terms are defined in the Extension Pledge Deed), concurrently with the remaining Pledges.

**VI.** That in accordance with the foregoing, the Bank intends to issue this Joinder Deed (hereinafter referred to as the " **Deed**") in accordance with the following.

## CLAUSES

**FIRST. - JOINDER AGREEMENT TO THE PLEDGE DEED AND THE EXTENSION PLEDGE DEED.**

By means of this Deed, the Bank hereby joins, ratify and approve the terms and conditions of the Pledge Deed and the Extension Pledge Deed, whose entire contents the Bank hereby states to know, and such joinder agreement has full value and legal effects, accepting that the payment obligations related to the Indenture be guaranteed by the first priority pledge over the Shares (as such term is defined in the Pledge Deed), the New Shares and the Acquired Shares (as such terms are defined in the Extension Pledge Deed) concurrently with the remaining Pledges.

The Bank hereby REQUEST the undersigned Notary Public, to **NOTIFY** this Joinder Agreement to **WILMINGTON TRUST (LONDON) LIMITED**, with domicile located at 6 Broad Street Place, London EC2M 7JH (attention Elaine K. Lockhart), in its capacity of Guaranty Agent, and the undersigned Notary hereby accept such request.

[SEAL OF RAFAEL MONJO CARRIO.- NOTARY PUBLIC OF MADRID]

CEMEX España, S.A. hereby appears to this act for the purpose of notifying itself of the contents of such joinder agreement.

**SECOND. - GOVERNING LAW AND JURISDICTION.**

2.1 This Deed is governed by the laws of Spain.

2.2 The parties hereto expressly submit themselves to the jurisdiction of the Courts and Tribunals sitting in the capital city of Madrid, to resolve any and all claims related to the enforceability, interpretation, compliance and execution of this Deed.

TREATMENT OF INFORMATION. - The parties hereto accept the incorporation of information and the copy of the identification documents to the files of this Notary with the purposes of rendering the notarial activity and to effect notification of information in accordance with the Law of Public Administrations (*Ley de las Administraciones Públicas*) and, as the case may be, to the Notary Public that succeeds the undersigned Notary in this city. The parties may exercise their rights of access, rectification, cancelation and opposition before the undersigned Notary.

I hereby attest and issue this deed.

And I, the Notary, HEREBY ATTEST:

a. - That I identify the individuals appearing before me by the identification documents described above, which were shown to me.

b. - That on my own judgment, the individuals appearing before me have the capacity and have legal standing to issue this deed.

c. - That the execution of this deed is lawful, and its execution derives to the free will of the individuals appearing before me, which were informed of its contents.

[SEAL OF RAFAEL MONJO CARRIO.- NOTARY PUBLIC OF MADRID]

d. - That I read this deed to the individuals appearing before me, and were previously notified of their right to read the deed by themselves, and such individuals stated to be aware of its contents, and hereby give their consent, all of the foregoing in accordance with article 193 of the Notary Regulations.

e. - That this public instrument is being issued in seven pages of stamp paper for exclusive use of notarial documents, Series 9L, numbers 1690562, 1690563, 1690564, 1690565, 1690566, 1690567, all of them, I the undersigned Notary hereby attest.

Signatures of the appearing individuals follow: Signed: ANTONIO PÉREZ-COCA CRESPO. Seal of approval.

**CERTIFICATION**

The undersigned, DAVID A. GONZALEZ VESSI, Official Translator authorized by the Superior Court of the State of Nuevo Leon, further to Approval number 983/2011 issued as of January 31, 2011, HEREBY CERTIFIES THAT:

The preceding document is a true and accurate translation from the Spanish language to the English language of a copy of Public Deed Number 57 issued as of January 11, 2011 by a Notary Public residing in the city of Madrid, Spain. This certification is issued for any and all legal purposes.

Monterrey, N.L., as of May 13th, 2011

DAVID A GONZALEZ VESSI

the "**Indenture**").

carry out any of the following acts, in the terms and conditions that the Attorney may deem appropriate:

1. Negotiate, execute, accept, amend, extend, accede or ratify one or several pledge agreements (the "**Share Pledges**") over all or part of the shares (*acciones*) of the Spanish company CEMEX España, S.A. (Tax Identification Number A46004214, registered with the Commercial Registry of Madrid, in volume 9,743 and 9,744, sheet 1 to 166, section 8, page no. M-156542), whereby one or more share pledges are created to secure *inter alia* the full and punctual performance of all or part of the obligations assumed by the Issuer and each of the Note Guarantors in favour of, among others, the relevant Noteholders, as well as other secured obligations assumed by the Company and its subsidiaries.

2. Execute or ratify the abovementioned documents, in a public or private document and appear before a Spanish Notary Public to grant the notarial deeds (*pólizas*) or public deeds (*escrituras públicas*) of the abovementioned documents and, in particular (without limitation), appear before a Spanish notary public (*Notario*) to notarize or raise to the status of public document (*elevar a documento público*) the Share Pledges, the Indenture and any other agreements, documents, notices or letters related thereto.

3. Carry out whichever other actions, declarations, agreements, letters or execute whichever other public or private document the Attorney deems desirable or necessary for the validity of the documents previously mentioned, as well as (in particular without limitation) to accept the extension of the Share Pledges to any other shares of CEMEX España, S.A. that the pledgors that created the Share Pledges may hold from time to time, and to acknowledge the creation of any pledges or any other security agreement

importe máximo principal agregado de 523.775.000 euros (según sea modificado, el "**Contrato de Emisión de Bonos**").

realizar cualesquiera de las siguientes actuaciones, en los términos y condiciones que el Apoderado crea apropiados:

1. Negociar, celebrar, firmar, ejecutar, ratificar, aceptar, modificar, extender, adherirse y otorgar en los términos y condiciones que el Apoderado crea convenientes la constitución de una o varias prendas (las "**Prendas sobre las Acciones**") sobre todas o parte de las acciones de la sociedad española CEMEX España, S.A. (C.I.F. número A46004214 e inscrita en el Registro Mercantil de Madrid, en el Tomo 9.743, folio 9.744, hoja 1 y 166, sección 8, página M-156542), mediante las cuales se constituyan una o varias prendas sobre acciones para garantizar el completo y puntual cumplimiento de todas o parte de las obligaciones asumidas por el Emisor y cada uno de los Garantes de Bonos en favor de, entre otros, los respectivos Bonistas, al igual que otras obligaciones garantizadas asumidas por la Sociedad y sus filiales.

2. Firmar o ratificar los anteriores documentos y contratos en documento privado o público, comparecer ante Notario Público español para intervenga en póliza o eleve a público los mencionados documentos, y, en especial (sin limitación), comparecer ante Notario para elevar a documento público las Prendas sobre las Acciones, el Contrato de Emisión de Bonos y cualquiera otros contratos, documentos o cartas relacionados o previstos en los citados contratos o documentos.

3. Realizar cualesquiera otros actos o declaraciones, y firmar contratos, cartas, u otorgar cualesquiera otros documentos públicos o privados que el Apoderado considere necesarios o convenientes para la validez de los documentos a los que se ha hecho referencia anteriormente y, en particular (aunque sin limitación), para aceptar la extensión de las Prendas sobre las Acciones a cualesquiera otras acciones de CEMEX España, S.A. de las que sean titulares en cada momento los pignorantes que constituyeron las

[SEAL OF RAFAEL MONJO CARRIO.- NOTARY PUBLIC OF MADRID]

granted in accordance with the preceding paragraph.

Prendas sobre las Acciones, y para tomar conocimiento de la constitución o extensión de cuantas prendas u otros derechos de garantía se otorguen de acuerdo con los apartados anteriores.

4. Carry out whichever other actions, declarations, agreements, letters or execute whichever other public or private document the Attorney deems desirable or necessary to maintain and protect the Share Pledges or any other security interest related to the documents referred to in the preceding paragraphs.

4. Realizar cualesquiera otros actos o declaraciones, y firmar contratos, cartas, u otorgar cualesquiera otros documentos públicos o privados que el Apoderado considere necesarios o convenientes para conservar y proteger la validez de las Prendas sobre las Acciones o cualesquiera otros derechos de garantía se otorguen de acuerdo con los apartados anteriores.

5. To appear before the Spanish administrative authorities and execute, in the name and on behalf of the Grantor, the necessary documents for obtaining the Spanish tax identification by filing the necessary tax forms including, but not limited to, form 036, and specifically to request the provisional and final Spanish Tax Identification Number for the Grantor.

5. Comparecer ante las autoridades administrativas españolas y firmar, en nombre del Poderdante, cuantos documentos sean necesarios para la obtención de identificación fiscal presentando los modelos fiscales que sean necesarios incluyendo, pero sin limitación, el modelo 036, y específicamente solicitar el NIF provisional y definitivo para el Poderdante.

6. To appear before any Spanish administrative authorities and, in particular, but not limited to, the Foreign Investments' Registry of the Ministry of Finance and the Bank of Spain executing, delivering and filing, in the name and on behalf of the Grantor, any document, statement, payment, application or official forms (including those of a tax nature) that may be necessary or advisable in connection with the execution or compliance with the Indenture and the Share Pledges.

6. Comparecer ante cuantas autoridades administrativas españolas y, en particular, pero sin limitación ante, el Registro de Inversiones Exteriores del Ministerio de Economía y el Banco de España, otorgando, comunicando y cumplimentando, en nombre y representación del Poderdante, cuantos documentos, declaraciones, pagos, solicitudes, o impresos oficiales (incluidos los de índole fiscal) que resulten necesarios o convenientes para la celebración o cumplimiento las Prendas sobre las Acciones y el Contrato de Emisión de Bonos.

7. As a result of the authority granted in the preceding paragraphs, to agree on the terms and conditions the Attorney deems appropriate and to issue and receive any binding declarations.

7. En el ejercicio de la autoridad conferida en los párrafos precedentes, fijar los términos y condiciones que considere apropiados y emitir y recibir todo tipo de declaraciones de voluntad y manifestaciones.

8. Grant deeds of formalization, acknowledgement, ratification, confirmation, modification or amendment of any of the

8. Otorgar escrituras o pólizas de formalización, reconocimiento, ratificación, confirmación, modificación o rectificación de cualquiera de

[SEAL OF RAFAEL MONJO CARRIO.- NOTARY PUBLIC OF MADRID]

| | |
|---|---|
| agreements, and/or public deeds referred to above. | los contratos, escrituras o pólizas referidos anteriormente. |
| 9. To request the issue of copies of any of the aforementioned public documents. | 9. Solicitar copias de las citadas pólizas o escrituras. |
| 10. All the powers granted herein can be exercised by the Attorney, even if this would result in the self-contracting (*autocontratación*) or multi-representation (*multirrepresentación*) or conflict of interest (*conflicto de interés*) figures. | 10. La totalidad de las facultades incluidas en este poder podrán ser ejercitadas por el Apoderado aun cuando en el ejercicio de las mismas incurrieran en las figuras de autocontratación multirrepresentación o conflicto de interés. |
| The deed and text of the present power of attorney will be interpreted exclusively according to the Spanish Language translation. | La minuta y redacción del presente poder será, en todo caso, interpretado conforme a la dicción y sentido del texto que se incluye en lengua española. |
| This power of attorney terminates on May 12, 2011, without any further notice to be given. | El presente poder expirará el 12 de mayo de 2011, sin que sea necesario realizar ningún tipo de notificación al respecto. |
| The Grantor hereby undertakes to confirm and ratify, if so requested by the Attorney, each and every actions taken by the Attorney in accordance with the terms of this power of attorney. | El Poderdante se compromete a confirmar y ratificar, si es requerido para ello por el Apoderado, todas y cada una de las actuaciones realizadas por el Apoderado de conformidad con los términos de este poder. |
| In New York, on May 12 2010. | En Nueva York, el 12 de mayo de 2010. |

**The Bank of New York Mellon**

By: Mr. Patrick Tadie

By: Mr. Kevin Cremin

[SEAL OF RAFAEL MONJO CARRIO.- NOTARY PUBLIC OF MADRID]

**NOTARIAL CERTIFICATE**

I, Notary Public of New York hereby certify that:

**I.** The Bank of New York Mellon is a corporation duly organized and existing under the laws of the State of New York, with corporate domicile at One Wall Street, New York, N.Y. 10286, U.S.A., with an I.R.S. employer identification number of 13-5160382, and with the required capacity to grant this Power of Attorney.

**II.** This Power of Attorney has been validly executed by M. Patrick Tadie and Mr. Kevin Cremin who have the required authority to grant this Power of Attorney in the name and on behalf of The Bank of New York Mellon.

**III.** The above is the true hand-written signature of Mr. Patrick Tadie and Mr. Kevin Cremin.

**IV.** That the Grantor has the necessary authority to act in the name and on behalf of the Noteholders.

**V.** The acts and transactions effected by the Attorney appointed in this Power of Attorney in the name and on behalf of The Bank of New York Mellon, within the scope of such Power of Attorney, will be acts or transactions validly effected by The Bank of New York Mellon.

Executed before me, on May 12, 2010.

**CERTIFICADO NOTARIAL**

Yo, Notario de Nueva York, por la presente certifico que:

**I.** The Bank of New York Mellon es una sociedad existente y válidamente constituida de acuerdo con las leyes del estado de Nueva York, con domicilio social en One Wall Street, New York, N.Y. 10286, (U.S.A.), con número I.R.S. 13-5160382 y con la capacidad necesaria para otorgar este poder.

**II.** El presente poder ha sido válidamente emitido por D. Patrick Tadie y D. Kevin Cremin quienes tiene capacidad legal para otorgar dicho poder en nombre y representación de The Bank of New York Mellon.

**III.** La anterior firma es la firma manuscrita auténtica de D. Patrick Tadie y D. Kevin Cremin.

**IV.** El Poderdante tiene autoridad necesaria para actuar en nombre y representación de los Bonistas.

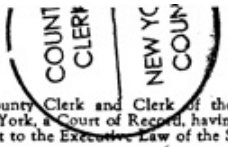
**V.** Los actos realizados y negocios celebrados por el Apoderado designado en este poder en nombre y representación de The Bank of New York Mellon, dentro del ámbito del presente poder, serán actos o negocios válidamente realizados o celebrados por The Bank of New York Mellon.

Firmado ante mí, el 12 de mayo de 2010.

Signed by:

DANNY LEE, NOTARY PUBLIC
State of New York, NO. 01LE6161129
Qualified in New York County
Commission Expires February 20, 20 14

[SEAL OF RAFAEL MONJO CARRIO.- NOTARY PUBLIC OF MADRID]




778808 Form 1

State of New York
County of New York, } ss.:

I, NORMAN GOODMAN, County Clerk and Clerk of the Supreme Court of the State of New York, in and for the County of New York, a Court of Record, having by law a seal,

DO HEREBY CERTIFY pursuant to the Executive Law of the State of New York, that

Danny Lee

whose name is subscribed to the annexed affidavit, deposition, certificate of acknowledgment or proof, was at the time of taking the same a NOTARY PUBLIC in and for the State of New York duly commissioned, sworn and qualified to act as such; that pursuant to law, a commission or a certificate of his official character, with his autograph signature has been filed in my office; that at the time of taking such proof, acknowledgment or oath, he was duly authorized to take the same; that I am well acquainted with the handwriting of such NOTARY PUBLIC or have compared the signature on the annexed instrument with his autograph signature deposited in my office, and I believe that such signature is genuine.

IN WITNESS WHEREOF, I have hereunto set my hand affixed my official seal this

MAY 12 2010

FEE PAID $3.00

*County Clerk and Clerk of the Supreme Court, New York County*

[SEAL OF RAFAEL MONJO CARRIO.- NOTARY PUBLIC OF MADRID]

MAIL RECEIPT
RR385573637ES

**SENDER**: [SEAL OF RAFAEL MONJO CARRIO, NOTARY PUBLIC.- C/Monte Esquinza, 6, 28010 Madrid]

**ADDRESSEE**: Wilmington Trust (London) Limited
6 Broad Street Place
City: London EC27 7JH.
968 M.S. ALFONSO
Certified Letter
Date: 17/05/2010
Weight: 66 grams
Hour: 12:57
Cost: €4,59

[SEAL OF RAFAEL MONJO CARRIO.- NOTARY PUBLIC OF MADRID]

**NOTICE**

The loss, misplace or damage made to a certified mail gives the right to a fixed indemnization determined in accordance with the current rates, and such amount will be the limit of responsibility.

For packages containing documents and merchandises of certain value, or in the event of packages in which the sender has a special interest, other services may be used to guarantee the value of the contents, as Declared Goods, Secured Items and Express Postage with optional insurance.

**Claims:** The term to claim any kind of certified mail with indemnization rights is four months for deliveries within the national territory and six months for international deliveries.

For certified deliveries, against reimbursement, said term applies if the delivery was not made to the addressee. If the delivery was made, and the addressee did not pay the total amount of the postage, the service will have two years to claim the amount.

**The completeness of the services implies the acceptance of the conditions for claims and indemnification.**

**Any questions or doubts request information.**

[SEAL OF RAFAEL MONJO CARRIO.- NOTARY PUBLIC OF MADRID]

**SPAIN MAIL SERVICE**

Mail Service: Status of Delivery

Spain Mail Service Customer Service

Individuals Companies Virtual Office

To send Documents: Status of Delivery

To send Packages:

Money: **STATUS OF DELIVERY**

A.P.E. Delivery Number: RR385573637ES

| Bancorreos | Dates | Status |
|---|---|---|
| Other Products | 17/05/2010 | Admitted |
| Museum | 17/05/2010 | In transit |
| Customer Service | 18/05/2010 | Exit from International Office |
| | 18/05/2010 | Arrival to International Destination Office |
| | 19/05/2010 | Delivered |

If you want more postal information of the country of destination, please see the local postal office.

[SEAL OF RAFAEL MONJO CARRIO.- NOTARY PUBLIC OF MADRID]

**CERTIFICATION**

The undersigned, DAVID A. GONZALEZ VESSI, Official Translator authorized by the Superior Court of the State of Nuevo Leon, further to Approval number 983/2011 issued as of January 31, 2011, HEREBY CERTIFIES THAT:

The preceding document is a true and accurate translation from the Spanish language to the English language of Public Deed Number 57 dated as of January 11, 2011 issued by Mr. Rafael Monjo Carrió, Notary Public residing in the city of Madrid, Spain. This certification is issued for any and all legal purposes.

Monterrey, N.L., as of May __, 2011

DAVID A GONZALEZ VESSI

**Exhibit 4.44.7**

RAFAEL MONJO CARRIÓ
Notario
C/ Monte Esquinza, 6
28010 MADRID
Tel.: 91 418 32 80 Fax.: 91 319 90 46

**COPY**

***JOINDER DEED ISSUED BY THE CORPORATE ENTITIES NAMED "THE BANK OF NEW YORK MELLON" AND "CEMEX ESPAÑA, S.A."***

**NUMBER FOUR HUNDRED FIFTY THREE**

In the city of Madrid, my residence as of the fourth day of March two thousand eleven.

Before me, **RAFAEL MONJO CARRIO,** Notary of Madrid and its Illustrious College.

**APPEARED**

**MR. JUAN PERLAZA**, of British nationality, with majority of age, with domicile located at and for purposes of this deed located at Calle José Abascal, 45 in Madrid, bearer of valid Passport Number 300919078.

**MR. JUAN PELEGRINI Y GIRÓN,** with majority of age, with domicile in Madrid located at, and for purposes of this deed, calle Hernández de Tejada, number l; bearer of National Identity Document number 01489996-X.

**LEGAL PERSONALITY**

**The first one,** in the name and on behalf of **THE BANK OF NEW YORK MELLON** (hereinafter referred to as the **"Bank**"), entity incorporated in accordance with the laws of the State of New York (United States of America), with its corporate

[SEAL OF RAFAEL MONJO CARRIO.- NOTARY PUBLIC OF MADRID]

domicile located at One Wall Street, New York, N.Y. 10286, United States of America, and furthermore, acting on behalf of and for the benefit of the holders of the Senior Secured Notes in the amount of two thousand two hundred three million seven hundred ninety five thousand United States Dollars (US$2,203,795,000.00), which originally was executed for the amount of One Thousand Sixty Seven Million Six Hundred Sixty Five Thousand United States Dollars (US$1,067,665,000.00) with an interest rate of 9,25%, due 2020, and redeemable at the beginning of the fifth anniversary of the original issuance, and for a maximum amount of Five Hundred Twenty Three Million Seven Hundred Seventy Five Thousand Euros (€523,775,000), out of which it was originally subscribed the amount of One hundred fifteen million three hundred forty six thousand Euros (€115,346,000), at an interest rate of 8,875%, due 2017 and redeemable at the beginning of the fourth anniversary of their initial issuance, both securities issued in accordance with an Indenture governed under the laws of the State of New York, issued as of May 12th, 2010 by and between among others, CEMEX España, S.A., Luxembourg Branch, a branch created under the laws of Luxembourg, as issuer and The Bank of New York Mellon, as trustee (hereinafter referred, together with its amendments or

[SEAL OF RAFAEL MONJO CARRIO.- NOTARY PUBLIC OF MADRID]

novations the "**Indenture").** The Indenture was formalized by means of a public deed issued by Cemex España before the undersigned Notary, under Public Deed Number 814 dated as of April 23rd, two thousand ten, and supplemented by public deeds number 876 dated as of April 29 th, two thousand ten, and by public deed number 919 dated as of May 4 th, 2010, both issued before the undersigned Notary. Such Public Deeds were duly recorded in the Commerce Registry of the city of Madrid as of May 7 th, 2010 under recording number 229. Exercising the current power of attorney, issued by a Notary Public of the State of New York Mr. Danny Lee, dated as of May 12, 2010, whose original has been duly apostilled in accordance with The Hague Convention of October 5, 1961, and delivered to me, which document I will make part of this deed by means of a notarial procedure executed before me as of May 12, 2010 under number nine hundred seventy eight of my official book.

**The second one**, in the name and on behalf of the corporate entity **CEMEX ESPAÑA, S.A.**, entity governed in accordance with the laws of Spain (in the past known as *Compañía Valenciana de Cementos Pórtland, S.A.*), and its corporate domicile in Madrid is located at calle Hernández de Tejada, number 1, whose corporate purpose, among others, is the manufacture, commercialization and distribution of all kinds of sacks, bags and similar articles, made of paper or any other materials, suitable for cement packaging, etc.

[SEAL OF RAFAEL MONJO CARRIO.- NOTARY PUBLIC OF MADRID]

It was incorporated with un-definitive term by means of a deed authorized by a Notary Public, in the city of Valencia, Mr. Juan Bautista Roch Contelles, dated as of April 30, 1917, duly adapted to the current legislation by means of a deed authorized by a Notary Public, in the city of Valencia, Mr. Antonio Soto Bisquert, dated as of July 13, 1990; the incorporation of the Company was RECORDED in the Commercial Registry of Valencia in Volume 122, Book 28 regarding corporations, third section, first inscription; and the adaptation was recorded in such Registry in Volume 2854, Book 10, general section, page V2533, inscription 165; furthermore, the bylaws of the Company were restated by means of another public deed number 6796 authorized by a Notary Public in Madrid, Mr. Antonio Francés y de Mateo, dated as of August 12, 1993, that caused the inscription number 200th.

The Company changed its corporate domicile to the current domicile by means of public deed number 1,489 authorized by a Notary Public in Valencia, Mr. Antonio Soto Bisquert, dated as of June 29, 1995, and recorded in the Registry of Commerce of Madrid, Volume 9743 and 9744, section 8th, Book of Corporations, pages 1 and 166, sheet number M-156542 inscriptions first and second.

[SEAL OF RAFAEL MONJO CARRIO.- NOTARY PUBLIC OF MADRID]

The corporate name was changed by resolutions adopted by the General Shareholders Meeting held as of June twenty-four, two thousand two, which were officially formalized before me, the same date, under public deed number 662, causing the inscription number 122º.

The Company is the bearer of C.I.F. number: A46004214.

Exercising his corporate authority by means of a power of attorney issued before me as of July twenty-seventh, two thousand and nine, under number 2,013 of my official book.

In accordance with the provisions set forth in article 98 of the Law 24/2001, and further to the Resolution issued by the Director General in charge of Public Registries and Notary Publics dated as of April 12, 2002, I hereby attest that to my knowledge, such individuals have sufficient corporate authority to execute this public deed in accordance with the terms set forth herein.

Such individuals have, in accordance with my knowledge, sufficient legal capacity and legal standing to issue this **JOINDER DEED** and, for such purposes, said individuals on behalf of the companies which they represent and for all legal purposes, make the following:

[SEAL OF RAFAEL MONJO CARRIO.- NOTARY PUBLIC OF MADRID]

**STATEMENTS**

**I.** That, in accordance with a contract issued by means of a public deed number 4599 dated as of September 29, 2009 (hereinafter referred to as "**Pledge Deed"**), CEMEX, S.A.B. de C.V., New Sunward Holding B.V. and Sunward Acquisitions N.V. (the later one absorbed by New Sunward Holding B.V. as of October 23, 2009) constituted pledge rights (hereinafter referred to as the "**Pledges**") over their shares of stock of the company CEMEX España, S.A.

**II.** That, in accordance with a contract issued by means of a public deed number 5768 dated as of December 23, 2010 issued by the undersigned Notary (hereinafter referred to as "**Extension Pledge Deed"**), New Sunward Holding B.V. (i) constituted new pledge rights with respect to 905 (nine hundred five) shares of stock of CEMEX España, S.A., which were acquired from a minority shareholder; and (ii) extended the Pledges to 426.585.515 newly issued shares of CEMEX España, S.A., which were issued by means of a capital stock increase approved during a General Meeting, and such resolutions were formalized under public number 2.419 issued by the undersigned Notary as of November 19, 2010. Hereinafter, any references to the Pledges will include the Pledges, as such term was modified upon the extension of the new shares of stock of Cemex España, S.A. issued during such capital stock increase, and the shares acquired from the minority shareholder, and the new Pledges have the same priority rank as a result of the referred Extension Pledge Deed.

[SEAL OF RAFAEL MONJO CARRIO.- NOTARY PUBLIC OF MADRID]

**III.** That, given the improvement in the conditions of the financial markets, it allows Cemex to issue notes to be issued among other things to reduce its debt with financial creditors that are part of the Creditors Agreement (as such term is defined in the Pledge Deed), CEMEX, S.A.B. de C.V. has requested such financial creditors to make some amendments to the Creditors Agreement for the purpose of increasing the flexibility of the CEMEX Group to issue notes and to apply the proceeds obtained by such issuances. Such amendments were approved by said financial creditors, and as of December 1, 2009 it was executed an amendment novation agreement that does not extinguish the Creditors Agreement. As a result of such amendments, it is stated that the creditors of the CEMEX Group, by virtue of the issuance of the notes such as the Indenture, shall be considered as Additional Notes Creditors and, as a consequence, shall be considered as Secured Parties further to the terms of the Creditors Agreement, the Pledge Deed and the Extension Pledge Deed, and shall be entitled to obtain the benefits of the Pledges, by means of a joinder of the Pledge Deed and the Extension Pledge Deed in accordance with Clause 16 of the Pledge Deed and Clause 10 of the Extension Pledge Deed.

[SEAL OF RAFAEL MONJO CARRIO.- NOTARY PUBLIC OF MADRID]

**IV.** That, in accordance with Clause 16 of the Pledge Deed, and Clause 10 of the Extension Pledge Deed, the Secured Parties in which benefit the Guaranty Agent acted, among them the Bank, in its capacity of trustee for the holders of notes issued under the Indenture, may join the Pledge Deed and the Extension Pledge Deed, and ratify the contents of such deeds, accepting the constituted Pledges in their favor as a guaranty of the corresponding Secured Obligations, my means of appearing before a Notary Public in Madrid, Mr. Rafael Monjo Carrio.

Such joinder agreements shall be formalized by means of a joinder deed, all of which without need of a new consent by the pledgor or the pledgees, since their consent were granted in accordance with the Creditors Agreement (as such agreement was novated dated as of December 1, 2009 and as of October 25, 2010) and the terms of the Pledge Deed and the Extension Pledge Deed.

**V.** That as of today, the amount originally issued by the Bond Issuance has been increased in an amount equal to One Hundred Twenty Five Million Three Hundred Thirty Three Thousand United States Dollars (US$125,331,000.00) by means of a public deed number 394 issued by Cemex España before the undersigned Notary dated as of February twenty-eighth,

[SEAL OF RAFAEL MONJO CARRIO.- NOTARY PUBLIC OF MADRID]

two thousand eleven, and duly recorded in the Registry of Commerce of the city of Madrid as of March three, two thousand eleven under inscription number 244.

**VI.** That the Bank hereby expressly state that the joinder agreement referred to in the foregoing statements is formalized as an execution instrument of the rights granted to the Bank in accordance with the Pledge Deed and the Extension Pledge Deed, in order for the payment obligations related to the Indenture be guaranteed by a first priority pledge interest over the Shares (as such term is defined in the Pledge Deed), the New Shares and the Acquired Shares (as such terms are defined in the Extension Pledge Deed), concurrently with the remaining Pledges.

**VI.** That in accordance with the foregoing, the Bank intends to issue this Joinder Deed (hereinafter referred to as the " **Deed**") in accordance with the following

## CLAUSES

### FIRST. - JOINDER AGREEMENT TO THE PLEDGE DEED AND THE EXTENSION PLEDGE DEED.

By means of this Deed, the Bank hereby joins, ratify and approve the terms and conditions of the Pledge Deed and the Extension Pledge Deed, whose entire content the Bank hereby states to know, and such joinder agreement has full value and legal effects, accepting that the payment obligations related to the Indenture be guaranteed by the

[SEAL OF RAFAEL MONJO CARRIO.- NOTARY PUBLIC OF MADRID]

first priority pledge over the Shares (as such term is defined in the Pledge Deed), the New Shares and the Acquired Shares (as such terms are defined in the Extension Pledge Deed), concurrently with the remaining Pledges concurrently with the remaining Pledges.

The Bank hereby REQUEST the undersigned Notary Public, to **NOTIFY** this Joinder Agreement to **WILMINGTON TRUST (LONDON) LIMITED**, with domicile located at 6 Broad Street Place, London EC2M 7JH (attention Elaine K. Lockhart), in its capacity of Guaranty Agent, and the undersigned Notary hereby accept such request.

CEMEX España, S.A. hereby appears to this act for the purpose of notifying itself of the contents of such joinder agreement.

**SECOND. - GOVERNING LAW AND JURISDICTION.**

2.1 This Deed is governed by the laws of Spain.

2.2 The parties hereto expressly submit themselves to the jurisdiction of the Courts and Tribunals sitting in the capital city of Madrid, to resolve any and all claims related to the enforceability, interpretation, compliance and execution of this Deed.

TREATMENT OF INFORMATION.- The parties hereto accept the incorporation of information and the copy of the identification documents to the files of this Notary with

[SEAL OF RAFAEL MONJO CARRIO.- NOTARY PUBLIC OF MADRID]

the purposes of rendering the notarial activity and to effect notification of information in accordance with the Law of Public Administrations ( *Ley de las Administraciones Públicas* ) and, as the case may be, to the Notary Public that succeeds the undersigned Notary in this city. The parties may exercise their rights of access, rectification, cancelation and opposition before the undersigned Notary.

I hereby attest and issue this deed.

And I, the Notary, HEREBY ATTEST:

a. - That I identify the individuals appearing before me by the identification documents described above, which were shown to me.

b. - That on my own judgment, the individuals appearing before me have the capacity and have legal standing to issue this deed.

c. - That the execution of this deed is lawful, and its execution derives to the free will of the individuals appearing before me, which were informed of its contents.

d. - That I read this deed to the individuals appearing before me, and were previously notified of their right to read the deed by themselves, and such individuals stated to be aware of its contents, and hereby give their consent, all of the foregoing in accordance with article 193 of the Notary Regulations.

[SEAL OF RAFAEL MONJO CARRIO.- NOTARY PUBLIC OF MADRID]

e. - That this public instrument is being issued in eight pages of stamp paper for exclusive use of notarial documents, Series AG, numbers 5.180.809 and the following seven serial numbers, I the undersigned Notary hereby attest.

Signatures of the appearing individuals follow: Signed: RAFAEL MONJO CARRIÓ. Seal of approval.

**NOTARIAL PROCEEDING**: To attest that as of March seventh, two thousand eleven, I left in the Postal Office, located at Branch 2825494, at the Ministry of Public Administration, as a Certificate and Return Receipt of a notice letter, and the officer in charge has confirmed that such notice was entered under number RR26804595ES.

This Notarial Procedure is extended in the attached public deed, which in its last page Serial number AG 5180816. City of Madrid as of March seventh, two thousand eleven.- Signed.- RAFAEL MONJO CARRIO,. Notary Seal of Approval.-

**NOTARIAL PROCEEDING.-** Made by the undersigned, **RAFAEL MONJO CARRIÓ**, Notary of MADRID to attest, that as of the fourteenth day of April, two thousand eleven, in order to know the status of the delivery of the notice, I connect myself using one of my computers to the website named www.correos.es, and I hereby confirm that such notice has

[SEAL OF RAFAEL MONJO CARRIO.- NOTARY PUBLIC OF MADRID]

been delivered to the addressee as of the tenth day of March, two thousand eleven, and I hereby attach to this deed the printout of such electronic inquiry.

Of all the contents of this notarial proceeding, I hereby issue this certification under this page of stamped paper for exclusive use of notarial documents, Series AG, number 5222256, which I, RAFAEL MONJO CARRIÓ, hereby attest.

ATTACHED DOCUMENTS FOLLOWS

[SEAL OF RAFAEL MONJO CARRIO.- NOTARY PUBLIC OF MADRID]

**SPAIN MAIL SERVICE**

Mail Service: Status of Delivery

Spain Mail Service Customer Service

Individuals Companies Virtual Office ZIP Codes

To send Documents: Individuals Package Locators Status of Delivery

To send Packages:

Money: **STATUS OF DELIVERY**

A.P.E. NUMBER OF PACKAGE: rr268040595ES

| Bancorreos | Dates | Status |
|---|---|---|
| Customer Service | | |
| Corporate Information | 07/03/2011 | Sent |
| | 07/03/2011 | In transit |
| | 8/03/2011 | Exit from International Origin Office |
| | 09/03/2011 | Arrival to International Delivery Office |
| | 10/03/2011 | Delivered |

IT IS FIRST TRUE COPY taken from its Original issued in favor of “CEMEX ESPAÑA, S.A.”, and issued in ten official pages for notarial exclusive use, Serial AG, numbers 5222142 and the following 9 consecutive numbers, that I sign and seal in the city of Madrid, as of April fourteenth, two thousand eleven.- I ATTEST.

SIGNATURE AND SEAL OF APPROVAL

[SEAL OF RAFAEL MONJO CARRIO.- NOTARY PUBLIC OF MADRID]

**CERTIFICATION**

The undersigned, DAVID A. GONZALEZ VESSI, Official Translator authorized by the Superior Court of the State of Nuevo Leon, further to Approval number 983/2011 issued as of January 31, 2011, HEREBY CERTIFIES THAT:

The preceding document is a true and accurate translation from the Spanish language to the English language of a copy of Public Deed Number 453 issued as of March 4, 2011 by RAFAEL MONJO CARRIÓ in favor of CEMEX ESPAÑA, S.A. This certification is issued for any and all legal purposes.

Monterrey, N.L., as of May 13th, 2011

DAVID A GONZALEZ VESSI

**Exhibit 4.44.8**

RAFAEL MONJO CARRIÓ
Notario
C/ Monte Esquinza, 6
28010 MADRID
Tel.: 91 418 32 80 Fax.: 91 319 90 46

***JOINDER DEED ISSUED BY THE CORPORATE ENTITIES NAMED "THE BANK OF NEW YORK MELLON" AND "CEMEX ESPAÑA, S.A."***

**NUMBER SEVEN HUNDRED FOURTEEN**

In the city of Madrid, my residence as of the fifth day of April two thousand eleven.

Before me, **RAFAEL MONJO CARRIO,** Notary of Madrid and its Illustrious College.

**APPEARED**

**MR. JUAN PERLAZA**, of British nationality, with majority of age, with domicile located at and for purposes of this deed located at Calle José Abascal, 45 in Madrid, bearer of valid Passport Number 300919078.

**MR. FRANCISCO JAVIER GARCÍA RUIZ DE MORALES,** with majority of age, with domicile in Madrid located at, and for purposes of this deed, calle Hernández de Tejada, number l; bearer of National Identity Document number 9.772.997-K.

[SEAL OF RAFAEL MONJO CARRIO.- NOTARY PUBLIC OF MADRID]

**LEGAL PERSONALITY**

**The first one,** in the name and on behalf of **THE BANK OF NEW YORK MELLON** (hereinafter referred to as the **"Bank**"), entity incorporated in accordance with the laws of the State of New York (United States of America), with its corporate domicile located at One Wall Street, New York, N.Y. 10286, United States of America, and furthermore, acting on behalf of and for the benefit of the holders of the Senior Secured Notes in the amount of **800 million United States Dollars**, with a floating rate, due 2015 and redeemable between the last interest payment date and the final due date issued in accordance with an Indenture governed under the laws of the State of New York, issued as of April 5th, 2011 by and between among others, CEMEX S.A.B. de C.V., a company duly incorporated under the laws of Mexico, as issuer and The Bank of New York Mellon, as trustee (hereinafter referred, together with its amendments or novations the "**Indenture").** Exercising the current power of attorney, issued by a Notary Public of the State of New York Mr. Danny Lee, dated as of April 5, 2011, copy of which has been delivered to me, and whose original has been duly apostilled in accordance with The Hague Convention of October 5, 1961, and delivered to me, which document I will make part of this deed by means of a notarial procedure.

**The second one**, in the name and on behalf of the corporate entity **CEMEX ESPAÑA, S.A.**, entity governed in accordance with the laws of Spain (in the past known as *Compañía Valenciana de Cementos Pórtland, S.A.*), and its

[SEAL OF RAFAEL MONJO CARRIO.- NOTARY PUBLIC OF MADRID]

corporate domicile in Madrid is located at calle Hernández de Tejada, number 1, whose corporate purpose, among others, is the manufacture, commercialization and distribution of all kinds of sacks, bags and similar articles, made of paper or any other materials, suitable for cement packaging, etc.

It was incorporated with un-definitive term by means of a deed authorized by a Notary Public, in the city of Valencia, Mr. Juan Bautista Roch Contelles, dated as of April 30, 1917, duly adapted to the current legislation by means of a deed authorized by a Notary Public, in the city of Valencia, Mr. Antonio Soto Bisquert, dated as of July 13, 1990; the incorporation of the Company was RECORDED in the Commercial Registry of Valencia in Volume 122, Book 28 regarding corporations, third section, first inscription; and the adaptation was recorded in such Registry in Volume 2854, Book 10, general section, page V2533, inscription 165; furthermore, the bylaws of the Company were restated by means of another public deed number 6796 authorized by a Notary Public in Madrid, Mr. Antonio Francés y de Mateo, dated as of August 12, 1993, that caused the inscription number 200th.

[SEAL OF RAFAEL MONJO CARRIO.- NOTARY PUBLIC OF MADRID]

The Company changed its corporate domicile to the current domicile by means of public deed number 1,489 authorized by a Notary Public in Valencia, Mr. Antonio Soto Bisquert, dated as of June 29, 1995, and recorded in the Registry of Commerce of Madrid, Volume 9743 and 9744, section 8th, Book of Corporations, pages 1 and 166, sheet number M-156542 inscriptions first and second.

The corporate name of the Company was changed by resolutions adopted by the General Shareholders Meeting held as of June twenty-four, two thousand two, which were officially formalized before me, the same date, under public deed number 662, causing the inscription number 122º.

The Company is the current bearer of C.I.F. number: A46004214.

Exercising his corporate authority by means of a power of attorney issued by the Board of Directors of the Company during a meeting held as of March twenty-eighth, two thousand eleven, and officially formalized before me under public deed number 627 issued as of March twenty-eighth, two thousand eleven, as evidenced in the authorized copy of such deed that I attest to have in front of me.

In accordance with the provisions of article 98 of the Law 24/2001, and further to the Resolution issued by the Director General in charge of Public Registries and Notary Publics dated as of April 12, 2002, I hereby attest that to my knowledge, such individuals have sufficient corporate authority to execute this public deed in accordance with the terms set forth herein.

[SEAL OF RAFAEL MONJO CARRIO.- NOTARY PUBLIC OF MADRID]

Such individuals have, in accordance with my knowledge, sufficient legal capacity and legal standing to issue this Joinder Deed and, for such purposes, said individuals on behalf of the companies which they represent and for all legal purposes, make the following:

**STATEMENTS**

**I.** That, in accordance with a contract issued by means of a public deed number 4599 dated as of September 29, 2009 (hereinafter referred to as "**Pledge Deed"**), CEMEX, S.A.B. de C.V., New Sunward Holding B.V. and Sunward Acquisitions N.V. (the later one absorbed by New Sunward Holding B.V. as of October 23, 2009) constituted pledge rights (hereinafter referred to as the "**Pledges**") over their shares of stock of the company CEMEX España, S.A.

**II.** That, in accordance with a contract issued by means of a public deed number 5768 dated as of December 23, 2010 issued by Rafael Monjo Carrio (hereinafter referred to as "**Extension Pledge Deed"**), New Sunward Holding B.V. (i) constituted new pledge rights with respect to 905 (nine hundred five) shares of stock of CEMEX España, S.A. , which were acquired from a minority shareholder; and (ii) extended the Pledges to 426.585.515 newly issued shares of CEMEX España, S.A., which were issued by means of a capital

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stock increase approved during a General Meeting, and such resolutions were formalized under public number 2.419 issued by Rafael Monjo Carrio as of November 19, 2010. Hereinafter, any references to the Pledges will include the Pledges, as such term was modified upon the extension of the new shares of stock of Cemex España, S.A. issued during such capital stock increase, and the shares acquired from the minority shareholder acquired from a minority shareholder, and the new Pledges with the same priority rank as a result of the referred Extension Pledge Deed.

**III.** That, given the improvement in the conditions of the financial markets, it allows Cemex to issue notes to be issued among other things to reduce its debt with financial creditors that are part of the Creditors Agreement (as such term is defined in the Pledge Deed), CEMEX, S.A.B. de C.V. has requested such financial creditors to make some amendments to the Creditors Agreement for the purpose of increasing the flexibility of the CEMEX Group to issue notes and to apply the proceeds obtained by such issuances. Such amendments were approved by said financial creditors, and as of December 1, 2009 it was executed an amendment novation agreement that does not extinguish the Creditors Agreement. As a result of such amendments, it is stated that the creditors of the CEMEX Group, by virtue of the

[SEAL OF RAFAEL MONJO CARRIO.- NOTARY PUBLIC OF MADRID]

issuance of the notes such as the Indenture, shall be considered as Additional Notes Creditors *)* and, as a consequence, shall be considered as Secured Parties further to the terms of the Creditors Agreement, the Pledge Deed and the Extension Pledge Deed, and shall be entitled to obtain the benefits of the Pledges, by means of a joinder of the Pledge Deed and the Extension Pledge Deed in accordance with Clause 16 of the Pledge Deed and Clause 10 of the Extension Pledge Deed.

**IV.** That, in accordance with Clause 16 of the Pledge Deed and Clause 10 of the Extension Pledge Deed, the Secured Parties in which benefit the Guaranty Agent acted, among them the Bank, in its capacity of trustee for the holders of notes issued under the Indenture, may join the Pledge Deed and the Extension Pledge Deed, and ratify the contents of such deeds, accepting the constituted Pledges in their favor as a guaranty of the corresponding Secured Obligations, my means of appearing before a Notary Public in Madrid, Mr. Rafael Monjo Carrio.

Such joinder agreements shall be formalized by means of a joinder deed, all of which without need of a new consent by the pledgor or the pledgees, since their consent were granted in accordance with the Creditors Agreement (as such agreement was novated dated as of December 1, 2009 and as of October 25, 2010) and the terms of the Pledge Deed and the Extension Pledge Deed.

[SEAL OF RAFAEL MONJO CARRIO.- NOTARY PUBLIC OF MADRID]

**V.** That the Bank hereby expressly state that the joinder agreement referred to in the foregoing statements is formalized as an execution instrument of the rights granted to the Bank in accordance with the Pledge Deed and the Extension Pledge Deed, in order for the payment obligations related to the Indenture be guaranteed by a first priority pledge interest over the Shares (as such term is defined in the Pledge Deed), the New Shares and the Acquired Shares (as such terms are defined in the Extension Pledge Deed), concurrently with the remaining Pledges.

**VI.** That in accordance with the foregoing, the Bank intends to issue this Joinder Deed (hereinafter referred to as the " **Deed**") in accordance with the following

## CLAUSES

### FIRST.- JOINDER AGREEMENT TO THE PLEDGE DEED AND THE EXTENSION PLEDGE DEED.

By means of this Deed, the Bank hereby joins, ratify and approve the terms and conditions of the Pledge Deed and the Extension Pledge Deed, whose entire content the Bank hereby states to know, and such joinder agreement has full value and legal effects, accepting that the payment obligations related to the Indenture be guaranteed by the first priority pledge over the Shares (as such term is defined in the Pledge Deed), the New Shares and the Acquired Shares (as such terms are defined in the Extension Pledge Deed), concurrently with the remaining Pledges concurrently with the remaining Pledges.

[SEAL OF RAFAEL MONJO CARRIO.- NOTARY PUBLIC OF MADRID]

The Bank hereby REQUEST the undersigned Notary Public, to **NOTIFY** this Joinder Agreement to **WILMINGTON TRUST (LONDON) LIMITED**, with domicile located at 6 Broad Street Place, London EC2M 7JH (attention Elaine K. Lockhart), in its capacity of Guaranty Agent, and the undersigned Notary hereby accept such request.

CEMEX España, S.A. hereby appears to this act for the purpose of notifying itself of the contents of such joinder agreement.

**SECOND. - GOVERNING LAW AND JURISDICTION.**

2.1 This Deed is governed by the laws of Spain.

2.2 The parties hereto expressly submit themselves to the jurisdiction of the Courts and Tribunals sitting in the capital city of Madrid, to resolve any and all claims related to the enforceability, interpretation, compliance and execution of this Deed.

TREATMENT OF INFORMATION.- The parties hereto accept the incorporation of information and the copy of the identification documents to the files of this Notary with the purposes of rendering the notarial activity and to effect notification of information in accordance with the Law of Public Administrations *(Ley de las Administraciones Públicas)* and, as the case may be, to the Notary Public that succeeds the undersigned Notary in this city. The parties may exercise their rights of access, rectification, cancelation and opposition before the undersigned Notary.

[SEAL OF RAFAEL MONJO CARRIO.- NOTARY PUBLIC OF MADRID]

I hereby attest and issue this deed.

And I, the Notary, HEREBY ATTEST:

a. - That I identify the individuals appearing before me by the identification documents described above, which were shown to me.

b. - That on my own judgment, the individuals appearing before me have the capacity and have legal standing to issue this deed.

c. - That the execution of this deed is lawful, and its execution derives to the free will of the individuals appearing before me, which were informed of its contents.

d. - That I read this deed to the individuals appearing before me, and were previously notified of their right to read the deed by themselves, and such individuals stated to be aware of its contents, and hereby give their consent, all of the foregoing in accordance with article 193 of the Notary Regulations.

e. - That this public instrument is being issued in seven pages of stamp paper for exclusive use of notarial documents, Series 9L, numbers 1690562, 1690563, 1690564, 1690565, 1690566, 1690567, all of them, I the undersigned Notary hereby attest.

[SEAL OF RAFAEL MONJO CARRIO.- NOTARY PUBLIC OF MADRID]

Signatures of the appearing individuals follow: Signed: RAFAEL MONJO CARRIÓ. Seal of approval.

**IT IS A COPY** taken from its original, which is issued for purposes of giving NOTICE to **WILMINGTON TRUST (LONDON) LIMITED**, and such party has the right to answer such notice within the two Business Days following the date in which the notarial procedure takes place, in my office located at Calle Esquinza, number 6, and I hereby issued this deed in seven pages in paper approved by the Notary College of Spain. MADRID, as of April 5th, two thousand eleven. I ATTEST.

[SEAL OF RAFAEL MONJO CARRIO.- NOTARY PUBLIC OF MADRID]

**CERTIFICATION**

The undersigned, DAVID A. GONZALEZ VESSI, Official Translator authorized by the Superior Court of the State of Nuevo Leon, further to Approval number 983/2011 issued as of January 31, 2011, HEREBY CERTIFIES THAT:

The preceding document is a true and accurate translation from the Spanish language to the English language of a copy of Public Deed Number 714 issued as of April 5, 2011 by RAFAEL MONJO CARRIÓ, Notary Public residing in the city of Madrid, Spain. This certification is issued for any and all legal purposes.

Monterrey, N.L., as of May 13th, 2011

DAVID A GONZALEZ VESSI

**Exhibit 4.59**

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

**U.S.$1,000,000,000**
**9.000% SENIOR SECURED NOTES DUE 2018**

**PURCHASE AGREEMENT**

January 4, 2011

Merrill Lynch, Pierce, Fenner & Smith Incorporated
J.P. Morgan Securities LLC
BBVA Securities Inc.
BNP Paribas Securities Corp.
Citigroup Global Markets, Inc.
HSBC Securities (USA) Inc.
RBS Securities Inc.
Santander Investment Securities Inc.
As Representatives of the Initial Purchasers
c/o Merrill Lynch, Pierce, Fenner & Smith Incorporated
One Bryant Park
New York, New York 10036

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.$1,000,000,000 principal amount of its 9.000% Senior Secured Notes due 2018 (the "Securities"). The Securities will be unconditionally guaranteed (the "Guarantees") by each of (i) CEMEX México, S.A. de C.V. ("CEMEX México"), (ii) New Sunward Holding B.V. ("New Sunward"), and (iii) CEMEX España, S.A. ("CEMEX España" and together with CEMEX México and New Sunward, the "Note Guarantors"), and are to be issued under an indenture (the "Indenture"), to be dated as of the Closing Date, 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 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 25 hereof.

The Securities will be secured in accordance with the terms of the 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 January 4, 2011 (as amended or supplemented at the date thereof, including any and all exhibits thereto and any information incorporated by reference therein, the "Preliminary Memorandum"), and a final offering memorandum, dated January 4, 2011 (as amended or supplemented at the Execution Time, including any and all exhibits thereto and any information incorporated by reference therein, the "Final Memorandum"). Each of 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 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.

On November 19, 2010, CEMEX España approved a share capital increase of 426,585,515 shares (the "New España Shares"), which were registered with the Madrid Mercantile Registry on December 9, 2010, and were fully subscribed by CEMEX España's majority shareholder, New Sunward. The New España Shares represent approximately 32.15% of the outstanding shares of CEMEX España and will 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 (in the case of the New España Shares, subject to the qualification set forth in Section 1(p)(i) below).

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 the date of the Final Memorandum and on the Closing Date, the Final Memorandum did not and will not (and 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 in 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 subsidiaries of the Company are owned directly or indirectly by the Company either directly or through wholly-owned and majority-owned subsidiaries, except as set forth in the Disclosure Package and the Final Memorandum, 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 "Recent Developments—Recent Developments Relating to Regulatory Matters and Legal Proceedings," taken together with the statements in the Company's annual report on Form 20-F for the year ended December 31, 2009 under the heading "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 of the Note Guarantors, 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, 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 (in the case of the New España Shares, subject to the qualification set forth in Section 1(p)(i) below); 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 under the Transaction Security Documents. 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 España:

(A) 0.2444% of the issued share capital, comprised of shares owned by subsidiaries of CEMEX España;

(B) 0.1164% of the issued share capital, comprised of shares owned by persons that are not subsidiaries or affiliates of the Company; and

(C) in the case of the New España Shares, subject to the accession to the extension deed by certain of the pledgees other than the holders of the Securities;

(ii) in the case of CEMEX Trademarks Holding Ltd., 0.4326% of the issued share capital, comprised of shares owned by CEMEX, Inc.;

(iii) 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;

(iv) 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; (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 organizational 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 Financing Agreement, the Transaction Security Documents and the 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's or any of its subsidiaries' 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 Mexican FRS applied on a consistent basis throughout the periods involved (except as otherwise noted therein); the selected financial data set forth under the caption "Selected 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).

(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).

(v) Neither the Company nor any of its subsidiaries is in violation or default of (i) any provision of its organizational 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 Financing Agreement, the Transaction Security Documents and the 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).

(w) KPMG Cárdenas Dosal, S.C., which has certified 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)) 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).

(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).

(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 as described in or contemplated in the Disclosure Package or the Final Memorandum (in each case, exclusive of any amendment or supplement thereto).

(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).

(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), 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).

(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 Mexican FRS 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's 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). 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).

(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 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 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. 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 any of its subsidiaries 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 98.689% of the principal amount thereof, plus accrued interest, if any, from January 11, 2011 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 January 11, 2011, 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 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 complied and will comply with the offering restrictions requirement of Regulation S;

(vii) 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.";

(viii) 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;

(ix) 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

(x) 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 will promptly advise the Representatives of the receipt by the Company 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 for Securities resold after the "40-day distribution compliance period" within the meaning of Rule 903 of Regulation S, (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 The Depositary Trust Company ("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 90 days following the Execution Time, without the prior written consent of BAML and J.P. Morgan Securities LLC, 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 in the international capital markets of debt securities convertible into shares, or Ordinary Participation Certificates ( *Certificados de Participación Ordinaria*) or American Depositary Shares of the Company, an offering of securities, the proceeds of which are used to fund the repurchase or retirement of the Company's perpetual debentures, an offer to exchange new securities for the Company's perpetual debentures, 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 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; (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 of its 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 in respect of the legal advisors as to U.S. and Mexican law for the Initial Purchasers pursuant to this

Section 5(t) and Section 7 hereof will be limited to U.S.$325,000.00 (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 or any of its subsidiaries 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 Clifford Chance SL, special Spanish counsel to 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 Schedule V attached hereto.

(d) The Company shall have requested and caused Warendorf, special Dutch counsel to 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 Schedule VI attached hereto.

(e) The Company shall have requested and caused GHR Rechtsanwälte AG, special Swiss counsel to 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 Schedule VII attached hereto.

(f) 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, BAML and J.P. Morgan Securities LLC agree to furnish a representation letter to Arthur Cox to the effect that the initial purchasers have offered the Securities to at least five persons within the Republic of Ireland.

(g) 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 at 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 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 VIII attached hereto.

(i) 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, in form and substance satisfactory to the Representatives and confirming that they are independent auditors within the meaning of the Exchange Act and the applicable published rules and regulations thereunder substantially in the form of Schedule IX attached hereto.

(j) Any and all applicable amendments, supplements or modifications to the Financing Agreement, any of the Transaction Security Documents, the 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.

(k) The Trustee shall be entitled to all rights and benefits provided in the Intercreditor Agreement as an Additional Notes Trustee (as such term is defined in the 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 Intercreditor Agreement).

(l) 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) and the Final Memorandum (exclusive of any amendment or supplement thereto), there shall not have been (i) any change, increase or decrease specified in the letter or letters referred to in paragraph (i) 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), 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).

(m) The Securities shall be eligible for clearance and settlement through DTC, Euroclear and Clearstream, as applicable, and any other relevant clearing system.

(n) 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.

(o) Prior to the Closing Date, the Company 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 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 BAML and J.P. Morgan Securities LLC 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 electronic road show, 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 written information 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 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 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 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 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 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), 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 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).

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 will be in writing and effective only on receipt, and, if sent to the Representatives, will be mailed, delivered or telefaxed to BAML's Legal Department (fax no.: 917-267-2085) and confirmed to BAML at One Bryant Park, New York, New York 10036, Attention: Legal Department; or, if sent to the Company, will be mailed, delivered or telefaxed to +5281-8888-4399 and confirmed to it at CEMEX, S.A.B. de C.V., Av. Ricardo Margáin, Zozaya #325, Colonia Valle del Campestre, Garza García, Nuevo León, México 66265. 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(l) 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 may be instituted in any State or U.S. federal court in The City of New York and County of New York and 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. The Company and each of the Note Guarantors hereby appoints Corporate Creations Network Inc., 1040 Avenue of the Americas #2400, New York, NY 10018, U.S.A.; fax: (561) 694-1639; telephone: (212) 382-4699, 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 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 the Note Guarantors.

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 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.

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 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.

"BAML" shall mean Merrill Lynch, Pierce, Fenner & Smith Incorporated.

"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.

"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 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 8:15 a.m. (New York time) on January 5, 2011.

"Financing Agreement" shall mean the Financing Agreement dated August 14, 2009, as amended, between the Company, the Financial Institutions and Noteholders named therein, as participating creditors, Citibank International PLC, as administrative agent and Wilmington Trust (London) Limited, as security agent.

"Intercreditor Agreement" shall mean the Intercreditor Agreement dated August 14, 2009, as amended, between Citibank International PLC, as administrative agent, the participating creditors named therein, the Company and certain of its subsidiaries named therein, as original borrowers, original guarantors and original security providers, Wilmington Trust (London) Limited, as security agent, and others.

"Investment Company Act" shall mean the 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 X hereto.

"Mexican FRS" shall mean the Mexican financial reporting standards ( *Normas de Información Financiera aplicables en Mexico* ) as in effect from time to time issued by the Mexican Financial Reporting Standards Board ( *Consejo Mexicano para la Investigación y Desarrollo de Normas de Información Financiera* ).

"Regulation D" shall mean Regulation D under the Act.

"Regulation S" shall mean Regulation S under the Act.

"Security Agent" shall mean Wilmington Trust (London) Limited, as security agent under the Financing Agreement.

"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 Financing 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 and the several Initial Purchasers.

Very truly yours,

**CEMEX, S.A.B. DE C.V.**

By: /s/ Humberto Lozano
Name: Humberto Lozano
Title: Attorney-in-fact

**EACH OF THE NOTE GUARANTORS LISTED BELOW**

**CEMEX MÉXICO, S.A. DE C.V.**

By: /s/ Rodrigo Treviño
Name: Rodrigo Treviño
Title: Attorney-in-fact

**NEW SUNWARD HOLDING B.V.**

By: /s/ Agustín Blanco
Name: Agustín Blanco
Title: Attorney-in-fact

**CEMEX ESPAÑA, S.A.**

By: /s/ Humberto Lozano
Name: Humberto Lozano
Title: Attorney-in-fact

The foregoing Agreement is hereby confirmed and accepted as of the date first above written.

**MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED**

By: /s/ Augusto Urmeneta
Name: Augusto Urmeneta
Title: Managing Director

**J.P. MORGAN SECURITIES LLC**

By: /s/ Raimundo Langlois
Name: Raymundo Langlois
Title: Executive Director

**BBVA SECURITIES INC.**

By: /s/ Howard Freeman
Name: Howard Freeman
Title: Chief Executive Officer

**BNP PARIBAS SECURITIES CORP.**

By: /s/ Marcelo Deimar
Name: Marcelo Deimar
Title: Managing Director

**CITIGROUP GLOBAL MARKETS, INC.**

By: /s/ D. Blake Haider
Name: D. Blake Haider
Title: Director-Latin American Credit Markets

**HSBC SECURITIES (USA) INC.**

By: /s/ Diane M. Kenna
Name: Diane M. Kenna
Title: Senior Vice President

**RBS SECURITIES INC.**

By: /s/ Michael F. Newcomb II
Name: Michael F. Newcomb II
Title: Managing Director

**SANTANDER INVESTMENT SECURITIES INC.**

By: /s/ Illegible
Name: Illegible
Title: Managing Director

By: /s/ Javier Warra
Name: Javier Warra
Title: Senior Vice President

For themselves 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 |
|---|---|
| Merrill Lynch, Pierce, Fenner & Smith Incorporated | U.S.$ 113,750,000 |
| J.P. Morgan Securities LLC | U.S.$ 113,750,000 |
| BBVA Securities Inc. | U.S.$ 113,750,000 |
| BNP Paribas Securities Corp. | U.S.$ 113,750,000 |
| Citigroup Global Markets, Inc. | U.S.$ 113,750,000 |
| HSBC Securities (USA) Inc. | U.S.$ 113,750,000 |
| RBS Securities Inc. | U.S.$ 113,750,000 |
| Santander Investment Securities Inc. | U.S.$ 113,750,000 |
| Barclays Capital Inc. | U.S.$ 30,000,000 |
| ING Financial Markets LLC | U.S.$ 30,000,000 |
| Lazard Capital Markets LLC | U.S.$ 30,000,000 |
| Total | U.S.$1,000,000,000 |

**SCHEDULE II**

**Pricing Term Sheet**
**January 4, 2011**

**CEMEX, S.A.B. de C.V.**
**9.000% Senior Secured Notes due 2018 (the "Notes")**

| | |
|---|---|
| **Issuer** | CEMEX, S.A.B. de C.V. |
| **Security description** | Senior Secured Notes |
| **Note Guarantors** | CEMEX Mexico, S.A. de C.V., CEMEX España, S.A. and New Sunward Holding B.V. |
| **Security** | First-priority security interest over (i) substantially all the shares of CEMEX Mexico, S.A. de C.V., Centro Distribuidor de Cemento, S.A. de C.V., Mexcement Holdings, S.A. de C.V., Corporacion 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 Intercreditor Agreement. |
| **Format** | 144A Global Notes / Regulation S Global Notes |
| **Global Coordinators** | Merrill Lynch, Pierce, Fenner & Smith Incorporated<br>J.P. Morgan Securities LLC |
| **Joint Bookrunners** | Merrill Lynch, Pierce, Fenner & Smith Incorporated<br>J.P. Morgan Securities LLC<br>BBVA Securities Inc.<br>BNP Paribas Securities Corp.<br>Citigroup Global Markets, Inc.<br>HSBC Securities (USA) Inc.<br>RBS Securities Inc.<br>Santander Investment Securities Inc. |
| **Co-Managers** | Barclays Capital Inc.<br>ING Financial Markets LLC<br>Lazard Capital Markets LLC |
| **Identifiers (144 A Notes)** | CUSIP: 151290AW3<br>ISIN: USI5I290AW36 |
| **Identifiers (Reg S Notes)** | CUSIP: P2253THR3<br>ISIN: USP2253THR34 |
| **Issue amount** | U.S.$1,000,000,000 |
| **Settlement date** | January 11, 2011 |
| **Final maturity** | January 11, 2018 |

| | |
|---|---|
| **Interest payment** | January 11 and July 11, beginning on July 11, 2011 |
| **Day count convention** | 360-day year consisting of twelve 30-day months |
| **Coupon** | 9.000% |
| **Issue price** | 99.364% of principal amount, *plus* accrued interest from January 11, 2011. |
| **Issue yield to maturity** | 9.125% |
| **Optional Redemption** | • Make-whole call prior to January 11, 2015, 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 50 basis points, plus, in each case, any accrued and unpaid interest to the date of redemption.<br>• On or after January 11, 2015, 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 January 11 of any year set forth below, plus any accrued and unpaid interest to the date of redemption.<br>2015 104.50%<br>2016 102.25%<br>2017 and thereafter 100.00%<br>• On or prior to January 11, 2014, redemption of up to 35% of the aggregate principal amount of the Notes at 109.000% 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.<br>The Issuer shall not have the right to exercise any optional redemption at any time when the Issuer is prohibited from exercising such an option under the Financing 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.$981 million. The Issuer intends to use the proceeds from the offering for general corporate purposes, which may include the repayment |

| | |
|---|---|
| | of indebtedness, including indebtedness under the Financing Agreement, all in accordance with the Financing Agreement. The Issuer's total secured indebtedness will increase by approximately U.S.$1,000 million as a result of cash proceeds from the offering being retained for general corporate purposes, without giving effect to any pending repayment of secured indebtedness. |
| **Denominations** | U.S.$100,000 and integral multiples of U.S.$1,000 |
| **Governing law** | New York |
| **Listing** | Global Exchange Market of the Irish Stock Exchange |
| **Clearing** | The Depositary Trust Company, Euroclear and Clearstream |

**Additional Information**

**Financial Information**

As of September 30, 2010, after giving *pro forma* effect to the issuance of the Notes in the offering, but without giving effect to the application of proceeds from the offering, the Issuer had consolidated total debt of Ps224.0 billion (U.S.$17.8 billion) (not including approximately Ps 16.7 billion (U.S.$1.3 billion) of perpetual debentures). As of September 30, 2010, after giving *pro forma* effect to the issuance of the Notes in the offering, but without giving effect to the application of proceeds from the offering, the Issuer had consolidated total obligations of Ps210.2 billion (U.S.$16.7 billion) outstanding secured by a first-priority security interest over the Collateral, consisting of obligations of approximately Psl22.4 billion (U.S.$9.7 billion) outstanding under the Financing Agreement, approximately Psl6.7 billion (U.S.$1.3 billion) outstanding under the SPV Perpetuals, approximately Ps56.1 billion (U.S.$4.5 billion) outstanding under the December 2009 Notes, the May 2010 Notes and the Notes, and approximately Ps15.0 billion (U.S.$1.2 billion) outstanding under the Issuer's long-term *Certificados Bursatiles*.

## Capitalization

The following table sets forth our consolidated indebtedness and capitalization as of September 30, 2010 (1) on an actual basis and (2) as adjusted to give effect to the issuance and sale in the offering of U.S.$1,000 million aggregate principal amount of the Notes, less the Initial Purchasers' fees and commissions and the estimated expenses in connection with this offering, without giving effect to the application of the estimated net proceeds as described under "Use of Proceeds." No effect is given to our voluntary prepayment on December 15, 2010 of U.S.$100 million to reduce the principal amount due under the Financing Agreement. See "Recent Developments—Recent Developments Relating to Our Indebtedness—Voluntary Prepayment to the Financing Agreement."

The financial information set forth below is based on information derived from our financial statements, which have been prepared in accordance with MFRS, which differ in significant respects from U.S. GAAP. For further information about our financial presentation, see "Selected Consolidated Financial Information."

| (in millions of Pesos and Dollars) | As of September 30, 2010 | | |
|---|---|---|---|
| | Actual | As adjusted | |
| Short-term debt(1) | | | |
| Secured | | | |
| Banobras(2) | Ps 165 | Ps 165 | U.S.$ 13 |
| Bancomext(2) | 7 | 7 | 1 |
| Other secured(3) | 6,216 | 6,216 | 493 |
| Unsecured | | | |
| Other unsecured | 1,682 | 1,682 | 134 |
| Total short-term debt | 8,070 | 8,070 | 640 |
| Long-term debt | | | |
| Secured by the Collateral | | | |
| Financing Agreement | 122,360 | 122,360 | 9,711 |
| CBs | 8,857 | 8,857 | 703 |
| December 2009 Notes and May 2010 Notes(4)(5) | 43,769 | 43,769 | 3,474 |
| The Notes | — | 12,600 | 1,000 |
| Other secured | | | |
| Banobras | 205 | 205 | 16 |
| Bancomext | 2,039 | 2,039 | 162 |
| Unsecured | | | |
| CEMEX España Euro Notes(6) | 15,475 | 15,475 | 1,228 |
| Other unsecured | 2,747 | 2,747 | 218 |
| Optional Convertible Subordinated Notes(7) | 7,842 | 7,842 | 622 |
| Total long-term debt | 203,294 | 215,894 | 17,134 |
| Total debt | 211,364 | 223,964 | 17,775 |
| Liability component of Mandatory Convertible Notes(8) | 2,019 | 2,019 | 160 |
| Stockholders' equity | | | |
| Non-controlling interest | | | |
| Perpetual Debentures(5)(9) | 16,730 | 16,730 | 1,328 |
| Other | 3,490 | 3,490 | 277 |
| Controlling interest(8) | 202,959 | 202,959 | 16,108 |
| Total stockholders' equity | 223,179 | 223,179 | 17,713 |
| Total capitalization(10) | Ps 436,562 | Ps 449,162 | U.S.$ 35,648 |

(1) Includes current portion of long-term debt.
(2) Obligations with Mexican development banks which were secured by fixed assets and shares of affiliates not pledged as Collateral.
(3) Represent long-term CBs with maturities during 2011.

(4) Represents (i) U.S.$1,250,000,000 aggregate principal amount of 9.50% Senior Secured Notes due 2016 and €350,000,000 aggregate principal amount of 9.625% Senior Secured Notes due 2017 issued by CEMEX Finance LLC on December 14, 2009, including the U.S.$500,000,000 additional aggregate principal amount of 9.50% Senior Secured Notes due 2016 issued by CEMEX Finance LLC on January 19, 2010 and (ii) U.S.$1,067,665,000 aggregate principal amount of 9.25% Senior Secured Notes due 2020 and €115,346,000 aggregate principal amount of 8.875% Senior Secured Notes due 2017 issued by CEMEX España, acting through its Luxembourg branch.

(5) Amounts in Dollars have been converted from Euros at an exchange rate of U.S.$1.3646 to €1.00, the CEMEX foreign exchange rate as of September 30, 2010.

(6) Issued by CEMEX Finance Europe B.V., a special purpose vehicle and wholly-owned subsidiary of CEMEX España, and solely guaranteed by CEMEX España.

(7) Under MFRS C-12, the Optional Convertible Subordinated Notes represent a compound instrument, which has a liability component and an equity component. The liability component amounted to U.S.$622 million as of September 30, 2010 and U.S.$614 million at issuance. The equity component, which represents a premium over the option of the bond holders to convert into equity, was recognized within "Other equity reserves" and amounted to U.S.$101 million (see note 20 and 12A to the Issuer's unaudited condensed consolidated financial statements as of September 30, 2010 included in the Offering Memorandum). If the conversion option is exercised, this amount will be reclassified as additional paid-in capital, and if the option expires with no exercise, the equity component will be reclassified as retained earnings.

(8) Under MFRS, the Mandatory Convertible Securities issued in Mexico on December 10, 2009 in exchange for CBs represent a combined instrument with liability and equity components. The liability component, which was approximately Ps2.1 billion and Ps2.1 billion as of December 31, 2009 and September 30, 2010, respectively, corresponds to the net present value of interest payments due under the Mandatory Convertible Securities, assuming no early conversion, and was recognized under "Other Financial Obligations" in the Issuer's balance sheet. The equity component, which was approximately Ps2.0 billion and Ps2.0 billion as of December 31, 2009 and September 30, 2010, respectively, represents the difference between principal amount and the liability component, and was recognized within "Other equity reserves" net of commissions in the Issuer's balance sheet. See note 12A to the Issuer's unaudited condensed consolidated financial statements as of September 30, 2010 included in the Offering Memorandum and notes 13A and 17B to the Issuer's consolidated financial statements included in the Issuer's annual report for the year ended December 31, 2009. In 2009, the Mandatory Convertible Securities were accounted for as debt for U.S. GAAP purposes. See note 25 to the Issuer's consolidated financial statements included in the Issuer's annual report for the year ended December 31, 2009.

(9) Issued by special purpose vehicles. In accordance with MFRS, these securities are accounted for as equity due to the fact that they do not have a specified maturity date and the Issuer's option to defer payment of interest. However, for purposes of the Issuer's U.S. GAAP reconciliation, we record these Debentures as debt and interest payments thereon as part of financial expenses in the Issuer's consolidated income statement.

(10) As used in this table, total capitalization equals Short and Long-term debt plus the Mandatory Convertible Notes plus Total stockholders' equity.

**Notice to Prospective Investors in the European Economic Area**

In relation to each member state of the European Economic Area that has implemented the Prospectus Directive (each, a "relevant member state"), each initial purchaser has represented and agreed that 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 of Notes which are subject of the offering contemplated by the offering memorandum to the public in that relevant member state other than:

- to any legal entity which is a qualified investor as defined in the Prospectus Directive;
- 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

- in any other circumstances falling within Article 3(2) of the Prospectus Directive,

provided that no such offer of Notes shall require the Issuer or any initial purchaser to publish a prospectus pursuant to Article 3 of the Prospectus Directive.

Each purchaser of Notes described in the offering memorandum located within a relevant member state will be deemed to have represented, acknowledged and agreed that it is a "qualified investor" as defined in the Prospectus Directive.

For the purposes of this provision, the expression "an offer of Notes to the public" in relation to any Notes 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 Notes to be offered so as to enable an investor to decide to purchase or subscribe for the Notes, 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 the relevant member state; and the expression "2010 PD Amending Directive" means Directive 2010/73/EU.

The sellers of the Notes have not authorized and do not authorize the making of any offer of Notes through any financial intermediary on their behalf, other than offers made by the initial purchasers with a view to the final placement of the Notes as contemplated in the offering memorandum. Accordingly, no purchaser of the Notes, other than the initial purchasers, is authorized to make any further offer of the Notes on behalf of the sellers or the initial purchasers.

* * *

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 Company's preliminary offering memorandum, dated January 4, 2011 (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. Terms used herein but not defined herein shall have the respective meanings as set forth in the Preliminary Memorandum.

ANY DISCLAIMERS OR OTHER NOTICES THAT MAY APPEAR BELOW ARE NOT APPLICABLE TO THIS COMMUNICATION AND SHOULD BE DISREGARDED. SUCH DISCLAIMERS OR OTHER NOTICES WERE AUTOMATICALLY GENERATED AS A RESULT OF THIS COMMUNICATION BEING SENT VIA BLOOMBERG OR ANOTHER EMAIL SYSTEM.

**SCHEDULE III**

**Forms of Opinion of Skadden, Arps, Slate, Meagher & Flom LLP,**
**special U.S. counsel for the Company**

**SCHEDULE IV**

**Form of Opinion of Ramiro G. Villarreal, General Counsel of the Company**

[INTRODUCTORY PARAGRAPH AND RELIANCE SECTIONS]

In rendering this opinion, I have assumed the legal capacity of all natural persons, the genuineness of all signatures, the authenticity of all documents submitted to me as originals, the conformity to original documents of all documents submitted to me as facsimile, electronic, certified or photostatic copies, and the authenticity of the originals of such copies. In making my examination of executed documents, I have assumed that the parties thereto (other than the Company and CEMEX México) had the power, corporate or other, to enter into and perform all obligations thereunder and have also assumed the due authorization by all requisite action, corporate or other, and the execution and delivery by such parties (other than the Company and CEMEX México) of such documents and the validity and binding effect thereof on such parties. I have also assumed that each of the parties (other than the Company and CEMEX México) to the Transaction Documents (as defined herein) has been duly organized and is validly existing in good standing, if applicable, and has requisite legal status and legal capacity, under the laws of its jurisdiction of organization and that each of such parties has complied and will comply with all aspects of the laws of all relevant jurisdictions (including the laws of its jurisdiction of organization) in connection with the transactions contemplated by, and the performance of its obligations under, the Transaction Documents, other than the laws of Mexico insofar as I express my opinions herein.

In rendering this opinion I have reviewed originals or copies of the following documents (referred to herein collectively as the " Transaction Documents"):

(a) an executed copy of the Purchase Agreement;

(b) the Preliminary Memorandum, the documents incorporated by reference therein and the final term sheet, dated January 4, 2011 (the " Final Term Sheet");

(c) the Final Memorandum and the documents incorporated by reference therein;

(d) an executed copy of the Indenture;

(e) the Securities in global form as executed by the Company and authenticated by the Trustee;

(f) an executed copy of the Financing Agreement dated August 14, 2009 (the " Financing Agreement") between the Company, the financial institutions and noteholders named therein, as participating creditors, Citibank International PLC, as administrative agent, and Wilmington Trust (London) Limited, as security agent (the "Security Agent");

(g) an executed copy of the security trust agreement ( *contrato de fideicomiso de garantía* ) entered into among (i) the Company, CEMEX México, Empresas Tolteca de México, S.A. de C.V., Impra Café, S.A. de C.V., Interamerican Investments, Inc. 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) Banco Nacional de México, S.A., Integrante del Grupo Financiero Banamex, División Fiduciaria, as trustee; and (iv) the Security Agent (the "Mexican Security Trust"); and

(h) the documents executed and delivered by each of the Company and the Note Guarantors at the closing pursuant to the Purchase Agreement.

Based upon the foregoing, and subject to the further qualifications set forth below, I am of the opinion that:

1. Each of the Company and CEMEX México has been duly incorporated and is validly existing as a corporation under the laws of Mexico, with full corporate 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 to execute and deliver, and to perform its obligations under, the Transaction Documents and any transaction contemplated thereunder.

2. All the outstanding shares of capital stock of each of the Company and CEMEX México has 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 the Subsidiaries are owned by the Company either directly or through wholly owned subsidiaries free and clear of any perfected security interest and, to the knowledge of such counsel, after due inquiry, any other security interest, claim, lien or encumbrance.

3. Each of the Transaction Documents to which each of the Company and CEMEX México is a party, has been duly authorized, executed and delivered by the Company and CEMEX México, respectively, and constitutes a legal, valid and binding agreement, enforceable against the Company and CEMEX México, respectively, in accordance with its terms.

4. The Mexican Security Trust creates in favor of the Security Agent, for the benefit of holders of the Securities, valid security interests in the Collateral for the payment of the Securities.

5. Neither the execution and delivery of the Transaction Documents, nor the consummation of any other of the transactions therein contemplated, nor the fulfillment of the terms thereof will conflict with, result in a breach or violation of, or imposition of any lien, charge or encumbrance upon any property or asset of any of the Company or CEMEX México pursuant to, (i) the charter or by laws ( *estatutos sociales*) of any of the Company or CEMEX México; (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 each of the Company and CEMEX México is a party or bound or to which their property is subject; or (iii) any statute, law, rule, regulation, judgment, order or decree applicable to the Company or CEMEX México of any court, regulatory body, administrative agency, governmental body,

arbitrator or other authority having jurisdiction over the Company or CEMEX México or any of their respective properties.

6. No consent, approval, authorization, filing with, order of, notice to, or qualification with any Mexican governmental or regulatory authority or court is required for the execution, delivery and performance by each of the Company and CEMEX México of the Purchase Agreement, the Indenture, the issuance and sale of the Securities, and the consummation of the transactions contemplated therein, except for the notice to be given to the Mexican National Banking and Securities Commission ( *Comisión Nacional Bancaria y de Valores*), on or before the Closing Date, under Article 7 of the Securities Market Law, in respect of the issuance of the Securities.

7. The choice of New York state law as the governing law of the Purchase Agreement, the Indenture, and the Securities, is legal, valid and binding to each of the Company and CEMEX México under the laws of Mexico and there is no reason why the courts of Mexico would not give effect to the choice of New York law as the proper law of the Purchase Agreement, the Indenture, and the Securities; each of the Company and CEMEX México has the legal capacity to sue and be sued in its own name under the laws of Mexico; each of the Company and CEMEX México has the power to submit, and has irrevocably submitted, to the jurisdiction of the New York courts and each of the Company and CEMEX México has validly and irrevocably appointed Corporate Creations Network Inc. as its authorized agent under the laws of Mexico for service of process under the Purchase Agreement, the Indenture and the Securities; the irrevocable submission of each of the Company and CEMEX México to the jurisdiction of the New York courts and the waivers by each of the Company and CEMEX México of any immunity and any objection to the venue of the proceeding in a New York court in the Purchase Agreement, in the Indenture, and in the Securities, are legal, valid and binding under the laws of Mexico and there is no reason why the courts of Mexico would not give effect to such submission and waivers; and the courts in Mexico will recognize as valid and final, and will enforce, any final and conclusive judgment against each of the Company and CEMEX México obtained in a New York court arising out of or in relation to the obligations of each of the Company and CEMEX México under the Purchase Agreement, the Indenture, or the Securities, without re-examination of the issues pursuant to Articles 569 and 571 of the Mexican Federal Code of Civil Procedure and Article 1347A of the Mexican Commerce Code, which provide, *inter alia*, that any judgment rendered outside of Mexico may be enforced by Mexican Courts, provided that:

(i) such judgment is obtained in compliance with (a) all legal requirements of the jurisdiction of the court rendering such judgment, and (b) all legal requirements of the relevant Transaction Documents;

(ii) such judgment is not rendered in a real action ( *acción real*);

(iii) such judgment is final, non-appealable and authenticated by the appropriate governmental authorities, and is strictly for the payment of a certain sum of money, provided that, under Mexican Monetary Law, payments that should be made in Mexico in foreign currency, whether by agreement or upon a

judgment of a Mexican Court, may be discharged in Mexican currency at a rate of exchange for such currency prevailing at the time of payment;

(iv) the court rendering such judgment is competent to render such judgment in accordance with applicable rules under international law and such rules are compatible with the rules adopted under the Mexican Code of Commerce;

(v) service of process was made personally on the Company and CEMEX México, as applicable, or on an appropriate Process Agent of the Company and CEMEX México, as applicable;

(vi) such judgment does not contravene Mexican public policy or laws (and we have no reason to believe that a judgment based upon the Transaction Documents would contravene Mexican public policy);

(vii) the applicable procedure under the laws of Mexico with respect to the enforcement for foreign judgments (including the issuance of a letter rogatory by the competent authority of such jurisdiction requesting enforcement of such judgment and the certification of such judgment as authentic by the corresponding authorities of such jurisdiction in accordance with the laws thereof) is complied with;

(viii) the courts of such jurisdiction recognize the principles of reciprocity in connection with the enforcement of Mexican judgments in such jurisdiction; and

(ix) the cause of action in connection with which such judgment is rendered is not the same cause of action between the same parties that is pending before a Mexican court.

8. Except as described in the Disclosure Package and the Final Memorandum, with respect to non-residents of Mexico, no stamp or other issuance or transfer taxes or duties and no capital gains, income, withholding or other taxes are payable by or on behalf of the Initial Purchasers to Mexico or to any political subdivision or taxing authority thereof or therein in connection with the sale and delivery by the Company of the Securities as contemplated in the Purchase Agreement to the Initial Purchasers, the sale and delivery by the Initial Purchasers of the Securities as contemplated in the Purchase Agreement or the entering into or performance of the terms of the Purchase Agreement.

9. Other than as described in the Disclosure Package and the Final Memorandum, under the current laws and regulations of Mexico, all payments of principal, premium (if any) and interest on the Securities may be paid, if applicable, by each of the Company and CEMEX México to the registered holder thereof in U.S. dollars (that may be obtained through conversion of Mexican Pesos) that may be freely transferred out of Mexico, and all such payments and other distributions made to holders of the Securities who are non-residents of Mexico, will not be subject to Mexican income, withholding or other taxes under the laws and regulations of Mexico and are otherwise free and clear of any other tax, duty

withholding or deduction in Mexico and without the necessity of obtaining any governmental authorization in Mexico.

10. It is not necessary in order to enable the Initial Purchasers, the Trustee or the holders of the Securities to exercise or enforce its rights under the Purchase Agreement, the Indenture or the Securities in Mexico or by reason of the entry into and/or the performance of the Purchase Agreement and the Indenture, that the Initial Purchasers should be licensed or qualified to do business in Mexico. The Initial Purchasers and the non-Mexican holders of the Securities will not be deemed resident, domiciled, carrying on business or subject to taxation in Mexico solely by reason of the execution, delivery, performance or enforcement of the Purchase Agreement.

11. Except as disclosed in the Disclosure Package and the Final Memorandum, there is no pending or, to the best of my knowledge, threatened 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 that is not adequately disclosed in the Disclosure Package and the Final Memorandum, except in each case (A) for such proceedings that, if the subject of an unfavorable decision, ruling or finding would not singly or in the aggregate, have a Material Adverse Effect; and (B) (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 "Recent Developments—Recent Developments Relating to Regulatory Matters and Legal Proceedings," taken together with the statements in the Company's annual report on Form 20-F for the year ended December 31, 2009 under the heading "Regulatory Matters and Legal Proceedings," incorporated by reference therein; fairly summarize the matters therein described.

12. There is no reason to believe that the Disclosure Package, as amended or supplemented at the Execution Time, contained any untrue statement of a material fact or omitted 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 (in each case, other than the financial statements and other financial information contained therein, as to which I express no opinion).

13. There is no reason to believe that the Final Memorandum, as of its date or on the Closing Date, contained or contains any untrue statement of a material fact or omitted or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading (in each case, other than the financial statements and other financial information contained therein, as to which I express no opinion).

I express no opinion as to any laws other than the laws of Mexico. In rendering my opinion, I have relied, (i) as to matters governed by United States Federal and New York law, upon the opinion of Skadden, Arps, Slate, Meagher & Flom LLP delivered pursuant to the Purchase Agreement and (ii) as to matters of fact, on certificates of responsible officers of each of the Company and CEMEX México and public officials that are furnished to the Initial Purchasers.

This opinion is subject to the following qualifications:

a. Enforcement of the Transaction Documents may be limited by *concurso mercantil,* bankruptcy, insolvency, liquidation, reorganization, moratorium and other similar laws affecting the rights of creditors generally;

b. Labor claims, claims of tax authorities for unpaid taxes, social security quotas, worker's housing fund quotas, retirement fund quotas, as well as claims from secured or privileged creditors, will have priority over claims of the parties to, or in connection with, the Purchase Agreement, the Indenture and the Securities;

c. In the event that proceedings are brought in Mexico seeking performance of the obligations of the Company or CEMEX México in Mexico, pursuant to the Mexican Monetary Law, such entity may discharge its obligations by paying any sums due in a currency other than Mexican currency, in Mexican currency at the rate of exchange prevailing in Mexico on the date when payment is made;

d. In the event that any legal proceedings are brought in the courts of Mexico, a Spanish translation of the documents required in such proceedings prepared by a court-approved translator would have to be approved by the court after the defendant has 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;

e. In the event of foreclosure of the Mexican Security Trust, the purchaser or purchasers of any transferred shares of a Mexican entity 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* );

f. Claims may become barred under the statutes of limitation, which are not waivable under Mexican law, or may become subject to defenses or set-off or counterclaim;

g. A Mexican court may stay proceedings held in such court if concurrent proceedings are being held elsewhere;

h. Under the laws of Mexico, the obligations of a guarantor are not independent from, and may not exceed, the obligations of the main obligor;

i. With respect to the provisions contained in each of the Transaction Documents in connection with service of process, it should be noted that service of process by mail does not constitute personal service of process under Mexican law and, since such service is considered to be a basic procedural requirement, if for purposes of proceedings outside Mexico service of process is made by mail, a final judgment based on such process would not be enforced by the courts of Mexico; and

j. An obligation to pay interest on interest may not be enforceable in Mexico.

This opinion is furnished only to you as representative of the Initial Purchasers and is solely for the Initial Purchasers' benefit in connection with the closing occurring today

and the offering of the Securities, in each case pursuant to the Purchase Agreement. Without my prior written consent, this opinion may not be used, circulated, quoted or otherwise referred to for any other purpose or relied upon by, or assigned to, any other person for any purpose, including any other person that acquires any Securities or that seeks to assert your rights in respect of this opinion (other than an Initial Purchaser's successor in interest by means of merger, consolidation, transfer of a business or other similar transaction), except that The Bank of New York Mellon may rely upon this opinion in its capacity as trustee under the Indenture and that Skadden, Arps, Slate, Meagher & Flom LLP may rely upon this opinion as to matters of the laws of the Mexico in rendering their opinion pursuant to Section 6(a) of the Purchase Agreement.

**SCHEDULE V**

**Form of Opinion of Clifford Chance SL**

**SCHEDULE VI**

**Form of Opinion of Warendorf**

**SCHEDULE VII**

**Form of Opinion of GHR Rechtsanwälte AG**

**SCHEDULE VIII**

**Officer's Certificate**

**[__], 2011**

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(h) of the Purchase Agreement, dated as of [ __], 2011, executed in connection with the offering by [the Company][CEMEX, S.A.B. de C.V.] 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 IX**

**Form of Comfort Letter by KPMG Cárdenas Dosal, S.C.**

**SCHEDULE X**

1. Issuer Written Information (included in the Disclosure Package)

    (a) Final Term Sheet, dated January 4, 2011.

2. Other Information Included in the Disclosure Package

    (a) The following information is also included in the General Disclosure Package:

    None.

**Exhibit 4.60**

EXECUTION VERSION

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

THE NOTE GUARANTORS PARTY HERETO

AND

THE BANK OF NEW YORK MELLON,

AS TRUSTEE

9.000% SENIOR SECURED NOTES DUE 2018

INDENTURE

Dated as of January 11, 2011

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INDENTURE, dated as of January 11, 2011, 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"), CEMEX México, S.A. de C.V. ("CEMEX México"), CEMEX España, S.A. ("CEMEX España") and New Sunward Holding B.V. ("New Sunward Holding"), as Note Guarantors of the Issuer's obligations under this Indenture and the Notes (the " Note Guarantors"), and The Bank of New York Mellon (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 9.000% 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 the 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 Guarantor" means New Sunward Holding.

"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" means the Notes originally issued after the Issue Date pursuant to Section 2.14, as specified in the relevant Additional Note Certificate or Additional Note Supplemental Indenture issued therefor in accordance with this Indenture.

"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 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 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) 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(e) and Section 3.12(f), 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.$100,000 or an integral multiple 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.$100,000 or an integral multiple 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).

"Asset Sale Offer Period" has the meaning assigned to it in Section 3.12(e).

"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, 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 March13, 2009, as replaced by a long form confirmation dated September 22, 2009, 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-MX479311); 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, (B) approving as properly filed a petition seeking reorganization, 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, (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 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*).

"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, Sociedad Nacional de Crédito, Institución de Banca de Desarrollo, 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 or Amsterdam are authorized or required by law 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 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 the corporation named as such in the introductory paragraph to this Indenture and its successors and assigns.

"CEMEX México" means the party named as such in the introductory paragraph to this Indenture 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., 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.

"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, with appropriate legends as specified in Section 2.7 and Exhibit A.

"Change of Control" means the beneficial ownership (within the meaning of Rule 13d-3 promulgated by the Commission under the Securities Exchange Act of 1934, as amended) 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.$100,000 or an integral multiple 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.$100,000 or an integral multiple 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 (i) substantially all the shares of CEMEX España, 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 Holding, and CEMEX Trademarks Holding Ltd.; and (ii) all proceeds of such Collateral.

"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; and

(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.

*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 non-cash charges that were added back in determining Consolidated EBITDA in any prior period.

Notwithstanding the foregoing, the items specified in clauses (1) and (3) above for any Subsidiary (Restricted Subsidiary in the case of the Issuer) will be added to Consolidated Net Income in calculating Consolidated EBITDA for any period:

(a) in proportion to the percentage of the total Capital Stock of such Subsidiary (Restricted Subsidiary in the case of the Issuer) held directly or indirectly by such Person at the date of determination, and

(b) to the extent that a corresponding amount would be permitted at the date of determination to be distributed to such Person by such Restricted Subsidiary pursuant to its charter and bylaws and each law, regulation, agreement or judgment applicable to such distribution.

"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 (Restricted 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 (Restricted 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) any increase or decrease in net income attributable to minority interests in any Subsidiary (Restricted Subsidiaries in the case of the Issuer);

(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(a).

"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, 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 1, paragraph 2 of the Form of Reverse Side of Note contained in Exhibit A.

"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 Exhibit A, Section 5.

"Euroclear" means Euroclear Bank S.A./N.V., as operator of the Euroclear System, 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.

"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.

"GAAP" means Mexican Financial Reporting Standards as in effect on September 30, 2009. At any time after the Issue Date, the Issuer may elect to apply IFRS 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 2.7 and Exhibit A.

"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 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 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 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.

"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 S&P, BBB- (or the equivalent) by Fitch and Baa3 (or the equivalent) by Moody's.

"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; and

(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, 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.$1.0 billion 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 January 11, 2018.

"Mexican Financial Reporting Standards" means Mexican financial reporting standards ( *Normas de Información Financiera Aplicables en México*) as issued by the Mexican Financial Reporting Standards Board ( *Consejo Mexicano para la Investigación y Desarrollo de Normas de Información Financiera, A.C.*).

"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 Sunward Holding" means the party named as such in the introductory paragraph to this Indenture and its successors and assigns.

"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, collectively, CEMEX México, CEMEX España and the Additional Note Guarantor.

"Note Register" has the meaning assigned to it in Section 2.3(a).

"Notes" means the Issuer's 9.000% 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 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 theretofor authenticated and delivered under this Indenture, *except:*

(1) Notes theretofor 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 theretofor deposited with the Trustee or any Paying Agent (other than the Issuer, a Note Guarantor or an Affiliate of the Issuer) in trust or set aside and segregated in trust by the Issuer, a Note Guarantor or an Affiliate of the Issuer (if the Issuer, such Note Guarantor 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 the U.S. Dollar-denominated 9.50% Senior Secured Notes due 2016, the Euro-denominated 9.625% Senior Secured Notes due 2017, the 8.875% Senior Secured Notes due 2017, the 9.25% Senior Secured

Notes due 2020 (collectively, the "December 2009 and May 2010 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 Financing Agreement;

(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, capitalization 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 of the Notes;

(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 by one or more creditors under the Financing Agreement Indebtedness (or their respective Affiliates); *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 Financing Agreement Indebtedness and any refinancing thereof made in accordance with the Financing Agreement that is secured by the Collateral, (ii) notes (or similar instruments, including *Certificados Bursátiles*) outstanding on the date of the Financing Agreement required to be secured by the Collateral pursuant to their terms, or any refinancing thereof permitted by the Financing Agreement, (iii) future Indebtedness secured by the Collateral to the extent permitted by the Financing Agreement and (iv) the December 2009 and May 2010 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" or "Ps" means the lawful money of Mexico.

"Private Placement Legend" has the meaning assigned to it in Section 2.8(b).

"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.

"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.

"Redemption Date" means, with respect to any redemption of 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 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" means the period of time between the Suspension Date and the Reversion Date.

"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.

"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.

"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 January 4, 2011, among the Issuer, the Note Guarantors party hereto, Merrill Lynch, Pierce, Fenner & Smith Incorporated, J.P. Morgan Securities LLC, BBVA Securities Inc., BNP Paribas Securities Corp., Citigroup Global Markets, Inc., HSBC Securities (USA) Inc., RBS Securities Inc. and Santander Investment Securities Inc., as representatives of the 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.$100,000 and 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.$100,000 and any integral multiple 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, 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 2.7 or as otherwise required by law, stock exchange rule or DTC, Euroclear or Clearstream rule or usage. The Issuer and the Trustee shall approve the form of the Notes and any notation, legend or endorsement 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").

(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 a supplemental indenture 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, 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 shall maintain an office or agency (the "Registrar") that shall keep a register of the Notes and of their transfer and exchange (the "Note Register"). 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.

(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 one 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. 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 on behalf 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, on the face thereof.

(b) Each Restricted Note shall bear the private placement legend specified therefor in Exhibit A, on the face thereof (the "Private Placement Legend").

(c) Each Note shall bear the Mexican law legend specified therefor in Exhibit A, 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, as applicable, duly executed by the Rule 144A 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 Note Custodian and 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 an amount equal to the beneficial interest being 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, 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 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 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 numbers 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 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, and upon 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 Regulation S Global Note to the unrestricted CUSIP number for the Regulation S Global Note.

(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 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.

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 any office or agency maintained by the Issuer 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 Defaulted Interest on Notes, 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 any or all such purposes 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.$100,000 or an integral multiple 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.$1.0 billion 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) Indebtedness of the Issuer and/or any of the Note Guarantors Incurred to fund amounts payable upon the exercise of the put option (calculated according to the terms in effect on the Issue Date of the agreements giving rise to such obligations) requiring CEMEX, Inc. to purchase 50.01% of the Capital Stock of Ready Mix USA, LLC and/or 49.99% of the Capital Stock of CEMEX Southeast, LLC, the combined amount of which was estimated to be U.S.$360 million (excluding debt of such entities) as of September 30, 2010, subject to subsequent adjustments;

(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 Indebtedness pursuant to this Section 3.9 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 US$1.00 of additional Debt pursuant to Section 3.11(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 " Asset Sale Offer Period"). 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 denominations of U.S.$100,000 and integral multiples of U.S.$1,000 in excess thereof (provided that the unredeemed portion will be in a denomination of at least U.S.$100,000) 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. 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 Financing 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

(D) in case the Issuer continues to apply Mexican Financial Reporting Standards as in effect on September 30, 2009 for purposes of calculations under this Indenture (and not for purposes of the financial statements provided pursuant to (A) and (B) above), no later than when due under (A) and (B), respectively, (1) a description of the differences between accounting principles in the financial statements provided pursuant to (A) or (B) above and used for calculations under this Indenture and (2) a quantitative reconciliation *provided, however*, that such description and reconciliation shall only be provided to the extent material to the calculation of any amounts under this Indenture; 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, 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 we have 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, 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 it 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 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 Ministry of Finance and Public Credit ( *Secretaría de Hacienda y Crédito Público* ) or the Mexican Tax Revenue Service (*Servicio de Administración Tributaria)* to establish 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 we 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 Guarantor shall be released from its obligation to guarantee the Notes on the date of a Partial Covenant Suspension Event of a Covenant Suspension Event, as the case may be.

(d) The Additional Note Guarantor 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 Guarantor 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 Guarantor (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 guarantee 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.

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 and the Restricted Subsidiaries substantially as an entirety (the "Successor Issuer"):

(1) shall be a corporation 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 all of the Obligations of the Issuer under this Indenture and the Notes 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 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 corporation, 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 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 another Note Guarantor or a Wholly Owned Subsidiary of the Issuer.

The Successor Issuer shall succeed to, and be substituted for such Issuer under this Indenture, the Notes and/or the Note Guarantee, as 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, as a whole or from time to time in part, subject to the conditions and at the redemption prices specified in the Form of Note in Exhibit A.

Section 5.2 [Reserved].

Section 5.3 Notices to Trustee. If the Issuer elects to redeem 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 a 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 such Notes and (d) the redemption price.

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 a 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.$100,000 principal amount or less shall be redeemed in part. The Trustee may select for redemption portions with minimum denominations of U.S.$100,000 or any integral multiple 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 relevant 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.$100,000 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 Issuer or any Restricted Subsidiary to comply with, or in the case of non-Note 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 (and 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 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 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 an Officer of the Trustee has actual knowledge thereof or unless written notice of any event which is in fact such a default is received by the Trustee at the Corporate Trust Office of the Trustee, 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 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 payment 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 corporation or banking association, the resulting, surviving or transferee corporation 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 corporation 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 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 satisfactory 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 satisfactory 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 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 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 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;

(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 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 Dollar Equivalent of 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) 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) with respect to any Note Guarantee there is a Legal Defeasance of the Notes pursuant to Section 8.1 or 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 the Additional Note Guarantor, either (A) the Financing Agreement Indebtedness has been repaid in full and the Additional Note Guarantor is not a guarantor of the Indebtedness Incurred to refinance such Financing 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 the 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.

## 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 Financing Agreement Indebtedness in full as a result of which the Collateral does not secure Indebtedness Incurred to refinance such Financing 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 4415

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 and Amsterdam. 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 Corporate Creations Network Inc., 1040 Avenue of the Americas #2400, New York, NY 10018 (U.S.A.) 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.

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. 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 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).

(a) 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/ Humberto Lozano
Name: Humberto Lozano
Title: Attorney-in-fact

CEMEX España, S.A., as Note Guarantor

By: /s/ Humberto Lozano
Name: Humberto Lozano
Title: Attorney-in-fact

CEMEX México, S.A. de C.V., as Note Guarantor

By: /s/ Rodrigo Treviño
Name: Rodrigo Treviño
Title: Attorney-in-fact

NEW SUNWARD HOLDING B.V., as Note Guarantor

By: /s/ Agustín Blanco
Name: Agustín Blanco
Title: Attorney-in-fact

THE BANK OF NEW YORK MELLON, as Trustee

By: /s/ Joanne Adamis
Name: Joanne Adamis
Title: Vice President

**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 legend on all Notes as Mexican law legend:*

"THE NOTES 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 THE SUBJECT OF BROKERAGE ACTIVITIES, IN MEXICO, EXCEPT THAT THE NOTES MAY BE OFFERED IN MEXICO PURSUANT TO A PRIVATE PLACEMENT EXEMPTION SET FORTH UNDER ARTICLE 8 OF THE MEXICAN SECURITIES MARKET LAW (*LEY DEL MERCADO DE VALORES*), TO MEXICAN INSTITUTIONAL AND QUALIFIED INVESTORS. UPON THE ISSUANCE OF THE NOTES, THE ISSUER WILL NOTIFY THE CNBV OF THE ISSUANCE OF THE NOTES, INCLUDING THE PRINCIPAL CHARACTERISTICS OF THE NOTES AND THE OFFERING OF THE NOTES OUTSIDE MEXICO. SUCH NOTICE WILL BE DELIVERED TO THE CNBV TO COMPLY WITH A LEGAL REQUIREMENT AND FOR INFORMATION PURPOSES ONLY, AND THE DELIVERY TO AND THE RECEIPT BY THE CNBV OF SUCH NOTICE DOES NOT CONSTITUTE OR IMPLY ANY CERTIFICATION AS TO THE INVESTMENT QUALITY OF THE NOTES OR OF THE ISSUER'S OR THE NOTE GUARANTORS' SOLVENCY, LIQUIDITY OR CREDIT QUALITY OR THE ACCURACY OR COMPLETENESS OF THE INFORMATION SET FORTH IN THE OFFERING MEMORANDUM OR HEREIN. THE INFORMATION CONTAINED IN THE OFFERING MEMORANDUM OR HEREIN HAS NOT BEEN REVIEWED OR AUTHORIZED BY THE CNBV."]

**FORM OF FACE OF NOTE**

**9.000% 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 [_____] 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 January 11, 2018.

Interest Payment Dates: January 11 and July 11, commencing on July 11, 2011
Record Dates: December 28 and June 27

[1] CUSIP No. for Rule 144A Note : 151290AW3
CUSIP No. for Regulation S Note : P2253THR3

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**

**9.000% 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 July 11; *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 January 11, 2011; *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 January 11, 2011), 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 January 11, 2011. 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.

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 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, 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 January 11, 2011 (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.$1.0 billion 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, CEMEX España, S.A., CEMEX México, S.A. de C.V. and New Sunward Holding B.V. 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 January 11, 2015, at the following redemption prices, expressed as percentages of the principal amount thereof, if redeemed during the twelve-month period commencing on January 11 of any year set forth below, plus any accrued and unpaid interest on the principal amount of the Notes to the date of redemption:

| | USD |
|---|---|
| 2015 | 104.50% |
| 2016 | 102.25% |
| 2017 and therafter | 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 Financing Agreement.

Prior to January 11, 2015, 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 Financing 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 Trustee 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, 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, 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 by such Reference Treasury Dealer at 3:30 pm 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 January 11, 2014, 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 109.000% 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 Financing 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 Mexico or any political subdivision or taxing authority thereof or therein 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 Mexican withholding tax rate of 10% with respect to payments under 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 Financing Agreement.

Prior to the publication of any notice of redemption in accordance with the above, we will deliver to the Trustee:

- an Officer's Certificate stating that we are entitled to effect the redemption and setting forth a statement of facts showing that the conditions precedent to our right to redeem have occurred, and
- an opinion of outside Mexican legal counsel of recognized standing to the effect that we have or will become obligated to pay such Additional Amounts as a result of such change or amendment.

This notice, once delivered by us 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.$100,000 and 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 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 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 Corporate Creations Network Inc., 1040 Avenue of the Americas #2400, New York, NY 10018 (U.S.A.) 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 Section 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 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 CERTIFICATE 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: 9.000% Senior Secured Notes due 2018 (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 January 11, 2011 (as amended and supplemented from time to time, the " Indenture"), among the Issuer, the Note Guarantors party thereto 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: 9.000% Senior Secured Notes due 2018 (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 January 11, 2011 (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 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 CERTIFICATE 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: 9.000% Senior Secured Notes due 2018 (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 January 11, 2011 (as amended and supplemented from time to time, the " Indenture"), among the Issuer, the Note Guarantors party thereto 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 (the "Securities Act") 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 of the date hereof 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.

"**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 Note Guarantor**" means a company that becomes an Additional Note 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. New York City time 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. New York City time 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 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 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 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

(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,

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:

(a) 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;

(b) 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

(c) 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

(d) 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 Party**" means the Administrative Agent, the Security Agent, each Creditor's Representative or a Participating Creditor.

"**Finance Document**" means each New Finance Document and each Existing Finance Document.

"**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.

"**Note Guarantors**" means the Original Note Guarantors and any Additional Note Guarantor other than any Original Note Guarantor or Additional Note Guarantor which has ceased to be a Note Guarantor pursuant to Clause 28.4 ( *Resignation of Note Guarantor)* of the Financing Agreement and has not subsequently become an Additional Note Guarantor pursuant to Clause 28.3 ( *Additional Note Guarantors and Additional Security Providers* ) of the Financing Agreement and "**Note 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.

"**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.

"**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 Note 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 Note 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.

"**Party**" means a party to 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.

"**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.

"**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 Issuer, 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 Note Guarantor, the Acquiring Company must be a Note 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 Espana 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 Espana 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 Espana 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 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 date falling 364 days thereafter.

"**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).

"**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 Note 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.

"**Syndicated Bank Facilities**" means the facilities described in Part IA of Part II of Schedule 1 ( *The Original Participating Creditors*) of the Financing Agreement.

"**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.

"**S&P**" means Standard & Poor's Rating Services, a division of The McGraw-Hill Companies, Inc., or any successor thereto from time to time.

"**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.

"**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 4.61**

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

**U.S.$800,000,000**
**3.25% CONVERTIBLE SUBORDINATED NOTES DUE 2016**

**PURCHASE AGREEMENT**

March 9, 2011

Citigroup Global Markets, Inc.
J.P. Morgan Securities LLC
Banco Bilbao Vizcaya Argentaria S.A.
Merrill Lynch, Pierce, Fenner & Smith Incorporated
BNP Paribas Securities Corp.
Barclays Capital Inc.
HSBC Securities (USA) Inc.
ING Financial Markets LLC
RBS Securities Inc.
Santander Investment Securities Inc.
As Representatives of the Initial Purchasers
c/o Citigroup Global Markets, Inc.
388 Greenwich Street
New York, New York 10013

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.$800,000,000 principal amount of its 3.25% Convertible Subordinated Notes due 2016 (the "Firm Securities"). The Company also proposes to grant to the Initial Purchasers an option to purchase up to U.S.$177,500,000 additional principal amount of such securities to cover over-allotments, if any (collectively, the "Option Securities" and, together with the Firm Securities, the "Securities"). The Securities are to be issued under an indenture (the "Indenture"), to be dated as of the Closing Date (as defined below), among the Company, The Bank of New York Mellon, a New York banking corporation, as trustee (the "Trustee"), and, for certain limited purposes to comply with Mexican applicable law, The Bank of New York Mellon, S.A., Institución de Banca Múltiple, as co-trustee. The Securities are convertible into ADSs of the Company at the conversion rates set forth in the Indenture. 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 26 hereof.

The sale of the Securities to the Initial Purchasers will be made without registration of the Securities or the ADSs issuable upon conversion thereof 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 8, 2011 (as amended or supplemented at the date thereof, including any and all exhibits thereto and any information incorporated by reference therein, the " Preliminary Memorandum"), and a final offering memorandum, dated March 9, 2011 (as amended or supplemented at the Execution Time, including any and all exhibits thereto and any information incorporated by reference therein, the " Final Memorandum"). Each of the Preliminary Memorandum and the Final Memorandum sets forth certain information concerning the Company, the Securities and the ADSs issuable upon conversion thereof. 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.

It is understood that the Company is concurrently entering into a purchase agreement (the " 2018 Securities Purchase Agreement") with the several initial purchasers thereunder providing for the sale by the Company of U.S.$600,000,000 principal amount of its 3.75% Convertible Subordinated Notes due 2018 (the "2018 Firm Securities"). The Company is also granting the initial purchasers under the 2018 Securities Purchase Agreement an option to purchase up to U.S.$90,000,000 additional principal amount of such securities to cover over-allotments (the " 2018 Option Securities" and, together with the 2018 Firm Securities, the "2018 Securities"). Each of the Preliminary Memorandum and the Final Memorandum sets forth certain information concerning the Company and the 2018 Securities.

1. Representations and Warranties. The Company represents and warrants 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 (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 nor any person acting on its 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 or the ADSs issuable upon conversion thereof 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 nor any person acting on its 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 or the ADSs issuable upon conversion thereof; and each of the Company, its Affiliates 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) The Company is a "foreign issuer" (as defined in Regulation S).

(g) No registration of the Securities or the ADSs issuable upon conversion thereof 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.

(h) The Company is not, 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.

(i) 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).

(j) 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 or otherwise, in stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Securities.

(k) The Company has been duly incorporated and is validly existing as a publicly traded stock corporation with variable capital ( *sociedad anónima bursátil de capital variable*) under the laws of Mexico with full corporate power and authority 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 or such person is subject to no material liability or disability by reason of the failure to be so qualified.

(l) (i) The Company's authorized equity capitalization is as set forth, and conforms to the description thereof contained, in the Disclosure Package and the Final Memorandum; (ii) the outstanding ordinary shares of the Company have been duly authorized and validly issued and are fully paid and nonassessable; (iii) the outstanding CPOs of the Company have been duly authorized and validly issued in accordance with the CPO Trust and the relevant CPO Deeds; (iv) the outstanding ADSs of the Company have been, and the ADSs issuable upon conversion of the Securities will be, duly authorized and validly issued pursuant to the ADS Deposit Agreement; (v) based on the initial conversion rate and considering any fundamental change, but without considering any antidilution adjustment that may occur subsequent to the Closing Date as provided in the Indenture, (1) the Company has duly and validly issued a sufficient number of ordinary shares, free of preemptive or similar rights, and (2) no later than June 30, 2011, will have a sufficient number of CPOs available, free of preemptive or similar rights, to be released and delivered by the CPO Trustee, in each case, for issuance of ADSs upon conversion of the Securities, (vi) following the occurrence of a fundamental change or antidilution adjustment after the Closing Date as provided in the Indenture, any ordinary shares issued, and any CPOs released and delivered by the CPO Trustee, for the issuance of ADSs upon conversion of the Securities against payment of the conversion price, will be duly and validly issued pursuant to the Company's bylaws, the CPO Trust and the relevant CPO Deed, free of preemptive or similar rights; (vii) 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, ownership interests, ordinary shares, CPOs or ADSs in the Company are outstanding, and (viii) 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.

(m) (i) The statements in the Disclosure Package and the Final Memorandum under the headings "Important Federal Tax Considerations," "Description of Common Stock," "Description of CPOs" and "Description of ADSs" 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.

(n) This Agreement has been duly authorized, executed and delivered by the Company; the Indenture and the Capped Call Transaction Documents have been duly authorized and, assuming due authorization, execution and delivery thereof by the counterparties thereto,

when executed and delivered by the Company, will constitute legal, valid, binding instruments enforceable against the Company in accordance with their 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, 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) and will be convertible into ADSs in accordance with their terms.

(o) 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, in the Indenture and in the Capped Call Transaction Documents, 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, including without limitation, the notice to, and filing with, the Luxembourg authorities of the terms of the offering and sale of the Securities; (ii) 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 (*Ley del Mercado de Valores*), in respect of the issuance of the Securities; and (iii) for the notarization of a Spanish version of the Indenture, to be effected on or prior to the Closing Date, and its subsequent filing and registration with the Public Registry of Property and Commerce (*Registro Público de la Propiedad y del Comercio*) of Monterrey, Nuevo León, Mexico.

(p) None of the execution and delivery of the Indenture, the Capped Call Transaction Documents or this Agreement, the issuance and sale of the Securities or the issuance of the shares of common stock, the CPOs representing such shares of common stock or the ADSs representing such CPOs, upon conversion of the Securities, 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 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 Financing Agreement, the Transaction Security Documents, the CPO Trust and the ADS Deposit 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 (p) (if any), have (x) a Material Adverse Effect (as defined below) or (y) a material adverse effect upon the transactions contemplated herein.

(q) 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 Mexican FRS 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.

(r) 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, the Capped Call Transaction Documents, the Financing Agreement, the Transaction Security Documents, the CPO Trust, the CPO Deeds, the ADS Deposit Agreement, 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).

(s) 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).

(t) Neither the Company nor any of its subsidiaries is in violation or default of (i) any provision of its charter or bylaws 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 Financing Agreement, the Transaction Security Documents, the CPO Trust, the CPO Deeds and the ADS Deposit 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).

(u) KPMG Cárdenas Dosal, S.C., who have 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.

(v) 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 or upon the issuance of ADSs upon the conversion thereof, except as disclosed in the Disclosure Package and the Final Memorandum.

(w) 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)) 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).

(x) 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).

(y) 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).

(z) 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).

(aa) 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), 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).

(bb) 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 Mexican FRS 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's 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.

(cc) 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). 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.

(dd) 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).

(ee) 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.

(ff) 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 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. 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.

(gg) 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.

(hh) On the Closing Date, after giving effect to the offering of the Securities and the 2018 Securities, the Company and its subsidiaries, on a consolidated basis, will be Solvent.

(ii) 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, 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, (i) 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 100% of the principal amount thereof, *plus* accrued interest, if any, from March 15, 2011 to the Closing Date, the principal amount of Firm Securities set forth opposite such Initial Purchaser's name in Schedule I hereto; and (ii) in connection therewith, the Company agrees to pay to each Initial Purchaser fees and commissions in the amount of 1.5% of the principal amount of Firm Securities set forth opposite such Initial Purchaser's name in Schedule I (in addition to any other amounts otherwise payable under this Agreement).

(b) Subject to the terms and conditions and in reliance upon the representations and warranties herein set forth, (i) the Company hereby grants an option to the several Initial Purchasers to purchase, severally and not jointly, the Option Securities at the same purchase price as the Initial Purchasers shall pay for the Firm Securities, *plus* accrued interest, if any, from March 15, 2011 to the settlement date for the Option Securities; and (ii) in connection therewith, the Company agrees to pay to each Initial Purchaser fees and commissions in the amount of 1.5% of the principal amount of Option Securities being purchased by each Initial Purchaser. The option may be exercised only to cover over-allotments in the sale of the Firm Securities by the Initial Purchasers. The option may be exercised in whole or in part at any time or from time to time on or before the 30th day after the date of the Final Memorandum upon written or telegraphic notice by the Representatives to the Company setting forth the principal amount of Option Securities as to which the several Initial Purchasers are exercising the option and the settlement date. Delivery of the Option Securities, and payment therefor, shall be made as provided in Section 3 hereof. The principal amount of Option Securities to be purchased by each Initial Purchaser shall be the same percentage of the total principal amount of Option Securities to be purchased by the several Initial Purchasers as such Initial Purchaser is purchasing the Firm Securities, subject to such adjustments as you in your absolute discretion shall make to eliminate any fractional securities.

3. Delivery and Payment. (a) Delivery of and payment for the Firm Securities and the Option Securities (if the option provided for in Section 2(b) hereof shall have been exercised on or before the first Business Day immediately preceding the Closing Date) shall be made at 10:00 A.M., New York City time, on March 15, 2011, 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.

(b) If the option provided for in Section 2(b) hereof is exercised after the first Business Day immediately preceding the Closing Date, the Company will deliver the Option Securities (at the expense of the Company) to the Representatives on the date specified by the Representatives (which shall be within three Business Days after exercise of said option) 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. If settlement for the Option Securities occurs after the Closing Date, the Company will deliver to the Representatives on the settlement date for the Option Securities, and the obligation of the Initial Purchasers to purchase the Option Securities shall be conditioned upon receipt of, supplemental opinions, certificates and letters confirming as of such date the opinions, certificates and letters delivered on the Closing Date pursuant to Section 6 hereof.

4. Offering by Initial Purchasers. (a) Each Initial Purchaser acknowledges that the Securities and the ADSs issuable upon conversion thereof 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;

(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 agrees 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 has not given and 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. For the avoidance of doubt, the foregoing shall not apply to any written information or other offering materials in connection with the offering of the 2018 Securities.

(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 will promptly advise the Representatives of the receipt by the Company 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 shall cause to have ADSs to be delivered upon conversion of the Securities to be approved for listing on the New York Stock Exchange.

(i) The Company will not, and will not permit any of its Affiliates to, resell any Securities or ADSs issued upon conversion thereof that have been acquired by any of them except for, (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.

(j) 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 or ADSs issuable upon conversion thereof under the Act.

(k) Any information provided by the Company, its Affiliates or any person acting on its or their behalf to publishers of publicly available databases about the terms of the Securities shall include a statement that the Securities have not been registered under the Act and are subject to restrictions under Rule 144A under the Act and Regulation S.

(l) 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.

(m) 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.

(n) 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.

(o) 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.

(p) Each of the Securities and the ADSs issuable upon conversion thereof 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.

(q) The Company will not, for a period of 90 days following the Execution Time, without the prior written consent of Citigroup Global Markets, Inc. and J.P. Morgan Securities LLC, directly or indirectly, (i) offer, pledge, announce the intention to sell, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, or otherwise transfer or dispose of, or file with the Commission a registration under the Act or with the Mexican National Banking and Securities Commission ( *Comisión Nacional Bancaria y de Valores*) a prospectus under Mexican securities laws relating to, any of the Company's ADSs, CPOs or ordinary shares or any securities convertible into or exercisable or exchangeable for the Company's ADSs, CPOs or ordinary shares (other than the Securities and the 2018 Securities), or publicly disclose the intention to make any of the foregoing, or (ii) enter into any swap or other agreement that transfers, in whole or in part, any of the economic consequences of ownership of the Company's ADSs, CPOs or ordinary shares, or such other securities, whether any such transaction described in clause (i) or (ii) above is to be settled by delivery of the Company's ADSs, CPOs or ordinary shares or such other securities, in cash or otherwise, other than (i) securities convertible into or exchangeable for the Company's ADSs, CPOs or ordinary shares pursuant to any 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 Execution Time; and (ii) any of the Company's ADSs, CPOs or ordinary shares issued upon the exercise of options outstanding as of the Execution Time, including upon conversion of mandatory convertible securities of the Company outstanding as of the Execution Time, in both cases described in the Disclosure Package and the Final Memorandum.

(r) 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.

(s) Between the date hereof and the Closing Date, the Company will not do or authorize any act or thing that would result in an adjustment of the conversion price of the Securities.

(t) 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).

(u) 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.

(v) The Company agrees to pay the costs and expenses relating to the following matters: (i) the preparation of the Indenture, the Capped Call Transaction Documents, the issuance of the Securities, the fees of the Trustee and the issuance of the ADSs (including fees of the depositary under the ADSs Deposit Agreement for the creation and delivery of such ADSs) upon conversion of the Securities; (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; (x) the fees and expenses incurred in connection with any notice to be provided to the Luxembourg regulatory authorities, including the Luxembourg Stock Exchange; and (xi) all other costs and expenses incident to the performance by the Company of its obligations hereunder.

(w) The Company agrees 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 in respect of the legal advisors for the Initial Purchasers pursuant to this Section 5(w) and Section 7 hereof and pursuant to Section 5(w) and Section 7 of the 2018 Securities Purchase Agreement will be limited to U.S.$375,000 (excluding reimbursements in respect of disbursements and expenses of such legal advisors).

(x) 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."

(y) The Company will not authorize its officers that have executed and delivered lock-up letter agreements in the form of Exhibit A, to pledge, in the aggregate, more than

3,000,000 ADSs (or the equivalent amount of equity of the Company in the form of CPOs or ordinary shares), as collateral in connection with bank debt.

6. Conditions to the Obligations of the Initial Purchasers. The obligations of the Initial Purchasers to purchase the Firm Securities and the Option Securities, as the case may be, shall be subject to the accuracy of the representations and warranties of the Company contained herein at the Execution Time, the Closing Date and any settlement date pursuant to Section 3 hereof, 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, 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 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 at 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.

(d) The Company shall have requested and caused Elvinger, Hoss & Prussen, special Luxembourg 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 Luxembourg, 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, Citigroup Global Markets, Inc. agrees to furnish a representation letter to Elvinger, Hoss & Prussen to the effect that Citigroup Global Markets, Inc. offered the Securities to at least five persons within the territory of the Grand Duchy of Luxembourg.

(e) The Company shall have furnished to the Representatives a certificate, signed by an executive officer of the Company, dated as of the Closing Date, substantially in the form of Schedule V attached hereto.

(f) 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, in form and substance satisfactory to the Representatives and confirming that they are independent auditors within the meaning of the Exchange Act and the applicable published rules and regulations thereunder substantially in the form of Schedule VI attached hereto.

(g) 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) and the Final Memorandum (exclusive of any amendment or supplement thereto), there shall not have been (i) any change, increase or decrease specified in the letter or letters referred to in paragraph (f) 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), 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).

(h) The Securities shall be eligible for clearance and settlement through DTC, Euroclear and Clearstream, as applicable, and any other relevant clearing system.

(i) 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.

(j) Prior to the Closing Date, the Company shall have filed a supplemental listing application to have the ADSs issuable upon conversion of the Securities to be approved for listing, subject to issuance, on the New York Stock Exchange.

(k) Prior to the Closing Date, the Company shall have furnished to the Representatives a letter substantially in the form of Exhibit A hereto, duly executed by each of the officers of the Company named on Exhibit B hereto, and addressed to the Representatives.

(l) Prior to the Closing Date, the Company 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 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 Citigroup Global Markets, Inc. and J.P. Morgan Securities LLC on demand for all expenses (including reasonable fees and disbursements of counsel subject to the limit set forth in Section 5(w) above) 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 agrees 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 electronic road show, 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 the Company will not 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 written information 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 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 tables of Initial Purchasers, and (B) the tenth and eleventh 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 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 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 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 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 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), 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 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 the Company's CPOs in the Mexican Stock Exchange (*Bolsa Mexicana de Valores, S.A.B. de C.V.*) shall have been suspended; (ii) trading in the Company's ADSs in the New York Stock Exchange shall have been suspended; (iii) 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 exchanges; (iv) a banking moratorium shall have been declared either by Mexican, U.S. federal or New York State authorities; or (v) 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).

11. Representations and Indemnities to Survive. The respective agreements, representations, warranties, indemnities and other statements of the Company or its 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 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 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; or, if sent to the Company, will be mailed, delivered or telefaxed to +5281-8888-4399 and confirmed to it at

CEMEX, S.A.B. de C.V., Av. Ricardo Margáin, Zozaya #325, Colonia Valle del Campestre, Garza García, Nuevo León, México 66265. 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(n) 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 may be instituted in any State or U.S. federal court in The City of New York and County of New York and 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. The Company hereby appoints Corporate Creations Network Inc., 1040 Avenue of the Americas # 2400, New York, NY 10018, U.S.A.; fax: (561) 694-1639; telephone: (212) 382-4699, 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 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 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 the Company.

15. Internet Document Services. The Company hereby agrees that the Representatives may provide copies of the Preliminary Memorandum and Final Memorandum and any other agreement or document relating to the offer and sale of the Securities, including, without limitation, the Indenture, to Xtract Research LLC ("Xtract") following the Closing Date for inclusion in an online research service sponsored by Xtract, access to which is restricted to "qualified institutional buyers" (as defined in Rule 144A under the Act); it being understood and agreed that the Company shall have no obligation to update or supplement any documents provided to Xtract.

16. 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.

17. Applicable Law. 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.

18. 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.

19. No Fiduciary Duty. The Company 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, on the one hand, and the Initial Purchasers and any Affiliate through which it may be acting, on the other, (b) the Initial Purchasers are acting as principal and not as an agent or fiduciary of the Company 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 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 on related or other matters). The Company 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 in connection with such transaction or the process leading thereto.

20. 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.

21. 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.

22. 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.

23. 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 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.

24. 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.

25. Headings. The section headings used herein are for convenience only and shall not affect the construction hereof.

26. 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.

"ADS" shall mean the American Depositary Shares which represent ten (10) CPOs. ADSs are evidenced by American Depositary Receipts or ADRs.

"ADS Deposit Agreement" shall mean the Second Amended and Restated Deposit Agreement, dated as of August 10, 1999, as amended by Amendment No. 1 thereto, dated as of July 1, 2005, by and among Citibank, N.A., as depositary, the Company and the holders and beneficial owners from time to time of ADSs.

"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 or Mexico City.

"Capped Call Transaction Documents" shall mean (i) the Master Terms and Conditions for Capped Call Transactions dated March 9, 2011 between the Company and JPMorgan Chase Bank, National Association, (ii) the Master Terms and Conditions for Capped Call Transactions dated March 9, 2011 between the Company and Citibank, N.A., (iii) the Master Terms and Conditions for Capped Call Transactions dated March 9, 2011 between the Company and Banco Santander, S.A., (iv) the Master Terms and Conditions for Capped Call Transactions dated March 9, 2011 between the Company and BNP Paribas, (v) the Master Terms and Conditions for Capped Call Transactions dated March 9, 2011 between the Company and The Royal Bank of Scotland PLC, (vi) the Master Terms and Conditions for Capped Call Transactions dated March 9, 2011 between the Company and Bank of America, N.A., (vii) the Master Terms and Conditions for Capped Call Transactions dated March 9, 2011 between the Company and HSBC Bank USA, National Association and (viii) any Transaction Confirmation under any of the foregoing.

"Citigroup" shall mean Citigroup Global Markets, Inc.

"Commission" shall mean the Securities and Exchange Commission.

"CPO" shall mean the Ordinary Participation Certificates ( *Certificados de Participación Ordinaria* ), which have as underlying securities two (2) Series A shares and one (1) Series B share of the Company.

"CPO Deed" shall mean any CPO deed ( *Acta de Emisión* ) executed from time to time by the Company and the CPO Trustee for the issuance of CPOs pursuant to the terms of the CPO Trust.

"CPO Trust" shall mean the Trust Agreement number 111033-9 dated September 6, 1999, entered into by and among the Company, in its capacity as settlor, and the CPO Trustee.

"CPO Trustee" shall mean Grupo Financiero Banamex, División Fiduciaria, in its capacity as trustee under the CPO Trust.

"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 the date and time that this Agreement is executed and delivered by the parties hereto.

"Financing Agreement" shall mean the Financing Agreement dated August 14, 2009, as amended, between the Company, the Financial Institutions and Noteholders named therein, as participating creditors, Citibank International PLC, as administrative agent and Wilmington Trust (London) Limited, as security agent.

"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 VII hereto.

"Mexican FRS" shall mean the Mexican financial reporting standards ( *Normas de Información Financiera aplicables en Mexico* ) as in effect from time to time issued by the Mexican Financial Reporting Standards Board ( *Consejo Mexicano para la Investigación y Desarrollo de Normas de Información Financiera* ).

"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 Financing 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 and the several Initial Purchasers.

Very truly yours,

**CEMEX, S.A.B. DE C.V.**

By: /s/ Rodrigo Treviño
Name: Rodrigo Treviño
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/ J. Richard Blackett
Name: J. Richard Blackett
Title: Managing Director

**J.P. MORGAN SECURITIES LLC**

By: /s/ Uziel Fradkin
Name: Uziel Fradkin
Title: Managing Director

**BANCO BILBAO VIZCAYA ARGENTARIA, S.A.**

By: /s/ Miguel Angel Prieto
Name: Miguel Angel Prieto
Title: Executive Director

By: /s/ Elena Rua Morte
Name: Elena Rua Morte
Title: Vice President

**MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED**

By: /s/ Laurent Massart
Name: Laurent Massart
Title: Managing Director

**BNP PARIBAS SECURITIES CORP.**

By: /s/ Michael Murphy
Name: Michael Murphy
Title: Managing Director

**BARCLAYS CAPITAL INC.**

By: /s/ Brian Reilly
Name: Brian Reilly
Title: Managing Director

**HSBC SECURITIES (USA) INC.**

By: /s/ David Noble
Name: David Noble
Title: Managing Director

**ING FINANCIAL MARKETS LLC**

By: /s/ Audun Huslid
Name: Audun Huslid
Title: Director

**RBS SECURITIES INC.**

By: /s/ Krystian Mialkowski
Name: Krystian Mialkowski
Title: Head of Convertible & Equity-linked Origination, Americas

**SANTANDER INVESTMENT SECURITIES INC.**

By: /s/ Illegible
Name: Illegible
Title: Managing Director-Equities

By: /s/ Nell G. Korlo
Name: Nell G. Korlo
Title: Managing Director/Operations

For themselves and the other several Initial Purchasers named in Schedule I to the foregoing Agreement.

**SCHEDULE I**

| Initial Purchasers | Principal Amount of Firm Securities to be Purchased |
|---|---|
| Citigroup Global Markets, Inc. | U.S.$280,000,000 |
| J.P. Morgan Securities LLC | U.S.$280,000,000 |
| Banco Bilbao Vizcaya Argentaria, S.A. | U.S.$ 24,000,000 |
| Merrill Lynch, Pierce, Fenner & Smith Incorporated | U.S.$ 24,000,000 |
| BNP Paribas Securities Corp. | U.S.$ 24,000,000 |
| Barclays Capital Inc. | U.S.$ 24,000,000 |
| HSBC Securities (USA) Inc. | U.S.$ 24,000,000 |
| ING Financial Markets LLC | U.S.$ 24,000,000 |
| RBS Securities Inc. | U.S.$ 24,000,000 |
| Santander Investment Securities Inc. | U.S.$ 24,000,000 |
| Banca IMI S.p.A. | U.S.$ 8,000,000 |
| Credit Agricole Securities (USA) Inc. | U.S.$ 8,000,000 |
| Lazard Capital Markets LLC | U.S.$ 8,000,000 |
| Mizuho Securities USA Inc. | U.S.$ 8,000,000 |
| Scotia Capital (USA) Inc. | U.S.$ 8,000,000 |
| The Williams Capital Group, L.P. | U.S.$ 8,000,000 |
| Total | U.S.$800,000,000 |

**SCHEDULE II**

**Final Term Sheet**

**CEMEX, S.A.B. de C.V.**
**3.25% Convertible Subordinated Notes Due 2016 (the "2016 Notes")**
**3.75% Convertible Subordinated Notes Due 2018 (the "2018 Notes")**
**(collectively, the "Notes")**

*The information in this pricing term sheet supplements CEMEX, S.A.B. de C.V.'s preliminary offering memorandum, dated March 8, 2011 (the "Preliminary Offering Memorandum"), and supersedes the information in the Preliminary Offering Memorandum to the extent inconsistent with the information in the Preliminary Offering Memorandum. In all other respects, this term sheet is qualified in its entirety by reference to the Preliminary Offering Memorandum. Terms used herein but not defined herein shall have the respective meanings as set forth in the Preliminary Offering Memorandum. All references to dollar amounts are references to U.S. dollars. References to American Depositary Shares ("ADSs") are to ADSs of the Issuer. Unless specifically stated otherwise, the information in this pricing term sheet assumes the initial purchasers do not exercise their over-allotment options.*

| | |
|---|---|
| **Issuer** | CEMEX, S.A.B. de C.V. (the "Issuer") |
| **Security Description** | 3.25% Convertible Subordinated Notes due 2016<br>3.75% Convertible Subordinated Notes due 2018 |
| **Format** | 144A Global Notes / Regulation S Global Notes |
| **Global Coordinators and Active Bookrunners** | Citigroup Global Markets, Inc.<br>J.P. Morgan Securities LLC |
| **Joint Passive Bookrunners** | Banco Bilbao Vizcaya Argentaria S.A.<br>Merrill Lynch, Pierce, Fenner & Smith Incorporated<br>BNP Paribas Securities Corp.<br>Barclays Capital Inc.<br>HSBC Securities (USA) Inc.<br>ING Financial Markets LLC<br>RBS Securities Inc.<br>Santander Investment Securities Inc. |
| **Co-Managers** | Banca IMI S.p.A.<br>Credit Agricole Securities (USA) Inc.<br>Lazard Capital Markets LLC<br>Mizuho Securities USA Inc.<br>Scotia Capital (USA) Inc.<br>The Williams Capitol Group, L.P. |
| **Identifiers (144A Notes)** | 2016 Notes:<br>CUSIP: 151290 AZ6<br>ISIN: US151290AZ66<br>CUSIP: 151290 BB8 (unrestricted)<br>ISIN: US151290BB89 (unrestricted)<br>2018 Notes:<br>CUSIP: 151290 BA0 |

| | |
|---|---|
| | ISIN: US151290BA07<br>CUSIP: 151290 BC6 (unrestricted)<br>ISIN: US151290BC62 (unrestricted) |
| **Identifiers (Regulation S Notes)** | 2016 Notes:<br>CUSIP: P2253T HV4<br>ISIN: USP2253THV46<br>2018 Notes:<br>CUSIP: P2253T HW2<br>ISIN: USP2253THW29 |
| **Principal amount offered** | U.S.$800,000,000 aggregate principal amount of 2016 Notes<br>U.S.$600,000,000 aggregate principal amount of 2018 Notes |
| **Over-allotment option** | U.S.$177,500,000 aggregate principal amount of 2016 Notes<br>U.S.$90,000,000 aggregate principal amount of 2018 Notes |
| **Settlement date** | March 15, 2011 |
| **Final maturity** | The 2016 Notes will mature on March 15, 2016<br>The 2018 Notes will mature on March 15, 2018 |
| **Interest payment** | March 15 and September 15, beginning on September 15, 2011 |
| **Day count convention** | 360-day year consisting of twelve 30-day months |
| **Annual interest rate** | The 2016 Notes will bear interest at a rate equal to 3.25% per annum from March 15, 2011.<br>The 2018 Notes will bear interest at a rate equal to 3.75% per annum from March 15, 2011. |
| **Offering price** | The Notes will be issued at a price of 100% of their principal amount, *plus* accrued interest, if any, from March 15, 2011 |
| **Initial conversion price** | Approximately U.S.$11.28 per ADS for the 2016 Notes<br>Approximately U.S.$11.28 per ADS for the 2018 Notes |
| **Initial conversion rate** | 88.6211 ADSs per U.S.$1,000 principal amount of 2016 Notes<br>88.6211 ADSs per U.S.$1,000 principal amount of 2018 Notes |
| **NYSE last reported sale price on March 9, 2011** | U.S.$8.68 per ADS |
| **Conversion premium** | Approximately 30% above the last NYSE last reported sale price on March 9, 2011 for the 2016 Notes.<br>Approximately 30% above the last NYSE last reported sale price on March 9, 2011 for the 2018 Notes. |
| **Denomination** | U.S.$100,000 and integral multiples of U.S.$1,000 in excess thereof |
| **Conversion Rights** | Holders may convert their 2016 Notes into the Issuer's ADSs (which represent CPOs, which in turn have ordinary shares as underlying |

| | |
|---|---|
| | securities) at an initial conversion rate of 88.6211 ADSs per U.S.$1,000 principal amount of 2016 Notes after June 30, 2011 and prior to the close of business on the fourth Business Day (as defined in the Preliminary Offering Memorandum) immediately preceding the maturity date for the 2016 Notes. The conversion rate is equivalent to an initial conversion price of approximately U.S.$11.28 per ADS.<br><br>Holders may convert their 2018 Notes into the Issuer's ADSs (which represent CPOs, which in turn have ordinary shares as underlying securities) at an initial conversion rate of 88.6211 ADSs per U.S.$1,000 principal amount of 2018 Notes after June 30, 2011 and prior to the close of business on the fourth Business Day (as defined in the Preliminary Offering Memorandum) immediately preceding the maturity date for the 2018 Notes. The conversion rate is equivalent to an initial conversion price of approximately U.S.$11.28 per ADS.<br><br>The indentures governing the Notes contain a covenant requiring the Issuer to cause a sufficient number of Available Treasury Shares (as defined in the Preliminary Offering Memorandum) or CPOs to be authorized in order to satisfy its conversion obligations, within the time limits set forth in the indentures. |
| **Anti-Dilution Adjustments** | The conversion rate may be adjusted if certain events occur. |
| **Make Whole Conversion upon Fundamental Change** | If a fundamental change (as defined in the Preliminary Offering Memorandum) occurs and a holder elects to convert its Notes in connection with such fundamental change, the Issuer will, under certain circumstances, increase the conversion rate for the<br>Notes so surrendered for conversion. The following tables below set forth the number of additional ADSs to be received per U.S.$1,000 principal amount of the Notes of each series in connection with a fundamental change as described in the Preliminary Offering Memorandum, based on hypothetical ADS prices and effective dates of the fundamental change. |

| | ADS Price for the 2016 Notes | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Effective Date | $8.68 | $10.00 | $12.50 | $15.00 | $17.50 | $20.00 | $25.00 | $30.00 | $35.00 | $40.00 | $50.00 |
| March 15, 2011 | 26.5863 | 21.3492 | 13.8100 | 9.6178 | 7.0672 | 5.4033 | 3.4274 | 2.3291 | 1.6453 | 1.1860 | 0.6241 |
| March 15, 2012 | 26.5863 | 21.1705 | 13.1132 | 8.8004 | 6.2785 | 4.6942 | 2.8961 | 1.9418 | 1.3631 | 0.9789 | 0.5104 |
| March 15, 2013 | 26.5863 | 20.5085 | 11.9045 | 7.5390 | 5.1335 | 3.7084 | 2.2015 | 1.4568 | 1.0202 | 0.7330 | 0.3800 |
| March 15, 2014 | 26.5863 | 19.1511 | 9.9350 | 5.6498 | 3.5243 | 2.3947 | 1.3475 | 0.8894 | 0.6305 | 0.4581 | 0.2375 |
| March 15, 2015 | 26.5863 | 16.3850 | 6.4923 | 2.7265 | 1.3119 | 0.7638 | 0.4115 | 0.2872 | 0.2117 | 0.1567 | 0.0799 |
| March 15, 2016 | 26.5863 | 11.3789 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 |

The exact ADS prices and effective dates may not be set forth in the table above, in which case if the ADS price is:

- between two adjacent ADS price amounts in the table or the effective date is between two adjacent effective dates in the table, the number of additional ADSs will be determined by a straight-line interpolation between the number of additional ADSs set forth for the higher and lower ADS price amounts and the two dates based on a 365-day year, as applicable.
- greater than U.S.$50 per ADS (subject to adjustment in the same manner as the ADS prices set forth in the column headings of the tables above), no additional ADSs will be issued upon conversion of the 2016 Notes.
- less than U.S.$8.68 per ADS (subject to adjustment in the same manner as the ADS prices set forth in the column headings of the tables above), no additional ADSs will be issued upon conversion of the 2016 Notes.

Notwithstanding the foregoing, in no event will the total number of ADSs issuable upon conversion exceed 115.2074 per U.S.$1,000 principal amount of 2016 Notes, although that maximum is subject to adjustment in the same manner as the conversion rate as set forth under “Description of Notes —Conversion Rights—Conversion Rate Adjustments” in the Preliminary Offering Memorandum.

| | | ADS Price for the 2018 Notes | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| **Effective Date** | **$8.68** | **$10.00** | **$12.50** | **$15.00** | **$17.50** | **$20.00** | **$25.00** | **$30.00** | **$35.00** | **$40.00** | **$50.00** |
| March 15, 2011 | 26.5863 | 22.2972 | 15.5061 | 11.4846 | 8.8818 | 7.0843 | 4.7979 | 3.4276 | 2.5283 | 1.9012 | 1.1034 |
| March 15, 2012 | 26.5863 | 22.2425 | 15.1238 | 11.0096 | 8.4052 | 6.6408 | 4.4439 | 3.1544 | 2.3186 | 1.7396 | 1.0059 |
| March 15, 2013 | 26.5863 | 21.9970 | 14.5099 | 10.3128 | 7.7326 | 6.0294 | 3.9707 | 2.7968 | 2.0483 | 1.5340 | 0.8843 |
| March 15, 2014 | 26.5863 | 21.6170 | 13.6547 | 9.3653 | 6.8333 | 5.2239 | 3.3622 | 2.3459 | 1.7127 | 1.2818 | 0.7379 |
| March 15, 2015 | 26.5863 | 20.7665 | 12.2837 | 7.9616 | 5.5607 | 4.1217 | 2.5687 | 1.7759 | 1.2969 | 0.9734 | 0.5617 |
| March 15, 2016 | 26.5863 | 19.2156 | 10.1309 | 5.9021 | 3.7925 | 5.6589 | 1.5833 | 1.0938 | 0.8078 | 0.6129 | 0.3565 |
| March 15, 2017 | 26.5863 | 16.3088 | 6.5195 | 2.8036 | 1.4054 | 0.8579 | 0.4936 | 0.3566 | 0.2713 | 0.2088 | 0.1217 |
| March 15, 2018 | 26.5863 | 11.3789 | 0.0000 | 0.0000 | 0.0000 | 0.0000 | 0.0000 | 0.0000 | 0.0000 | 0.0000 | 0.0000 |

The exact ADS prices and effective dates may not be set forth in the table above, in which case if the ADS price is:

- between two adjacent ADS price amounts in the table or the effective date is between two adjacent effective dates in the table, the number of additional ADSs will be determined by a straight-line interpolation between the number of additional ADSs set forth for the higher and lower ADS price amounts and the two dates based on a 365-day year, as applicable.
- greater than U.S.$50 per ADS (subject to adjustment in the same manner as the ADS prices set forth in the column headings of the tables above), no additional ADSs will be issued upon conversion of 2018 Notes.
- less than U.S.$8.68 per ADS (subject to adjustment in the same manner as the ADS prices set forth in the column headings of the tables above), no additional ADSs will be issued upon conversion of 2018 Notes.

Schedule II

Notwithstanding the foregoing, in no event will the total number of ADSs issuable upon conversion exceed 115.2074 per U.S.$1,000 principal amount of 2018 Notes, although that maximum is subject to adjustment in the same manner as the conversion rate as set forth under "Description of Notes —Conversion Rights—Conversion Rate Adjustments" in the Preliminary Offering Memorandum.

| | |
|---|---|
| **Repurchase at Option of Holder** | • Other than in the event of a change of control, Holders may not require the Issuer to repurchase any Notes prior to their stated maturity date.<br>• If a change of control (as defined in the Preliminary Offering Memorandum) occurs at any time, each Holder will have the right, at that holder's option, to require the Issuer to purchase all or part of its Notes for cash at a repurchase price equal to 100% of their principal amount, plus accrued and unpaid interest (including additional interest, if any) and additional amounts, if any, up to, but excluding, the repurchase date. |
| **Redemptions** | • Other than in the event of a tax redemption, the Issuer may not redeem any Notes prior to their stated maturity date.<br>• In the event of certain changes in the withholding tax treatment relating to payments on the Notes of a series, the Issuer will have the option to redeem the Notes of a series, in whole but not in part, at a redemption price equal to 100% of the outstanding principal amount of the Notes of such series plus any accrued and unpaid interest to the date fixed for redemption and any additional amounts that may be payable, so long as the Issuer is not prohibited from having such an option under the Financing Agreement.<br>• Upon the Issuer giving notice that it will redeem the Notes of a series because of such a change in the withholding tax treatment, holders will have the option to convert their notes of such series as if a fundamental change had occurred. |
| **Use of Proceeds** | The estimated net proceeds from this offering, after deducting the initial purchasers' discounts and commissions and estimated offering expenses, will be approximately U.S.$1,347 million, assuming the initial purchasers do not exercise their over-allotment options, and approximately U.S.$1,637 million if they exercise their over-allotment options in full. The Issuer intends to use approximately U.S.$187,000,000 of the net proceeds from this offering to pay the cost of the capped call transactions described in the Preliminary Offering Memorandum and expect to use a portion of the net proceeds from the sale of additional Notes in the event the initial purchasers exercise their over-allotment options to increase the number of ADSs underlying the capped call transactions on a proportionate basis, and the Issuer intends to use the remaining net proceeds to repay indebtedness, including indebtedness under the Financing Agreement and CBs. |

| | |
|---|---|
| **Capped Call Option** | In connection with this offering, the Issuer expects to enter into capped call transactions with one or more financial institutions, covering, subject to customary anti-dilution adjustments, approximately 124.1 million of the Issuer's ADSs, assuming the initial purchasers do not exercise their over-allotment options. If the initial purchasers exercise their options to purchase additional Notes to cover over-allotments, the Issuer expects to increase the number of ADSs underlying the capped call transactions on a proportionate basis. Because the capped call transactions are cash settled, they will not provide an offset to any ADSs the Issuer may deliver to holders upon conversion of the Notes. The capped call transactions have a cap price 90% higher for the 2016 Notes and 110% higher for the 2018 Notes than the closing price of the Issuer's ADSs on March 9, 2011.<br><br>For purposes of hedging these capped call transactions, the Issuer expects that the counterparties to the capped call transactions (or affiliates thereof) (i) may enter into various over-the-counter cash-settled derivative transactions with respect to the Issuer's CPOs or ADSs and/or purchase the Issuer's CPOs or ADSs in secondary market transactions concurrently with and shortly after the pricing of the Notes; (ii) and may enter into or unwind various over-the-counter derivatives and/or purchase or sell the Issuer's CPOs or ADSs in secondary market transactions following the pricing of the Notes and prior to the maturity of the Notes. |
| **New York Stock Exchange Symbol for the Issuer's ADSs** | CX |
| **Governing law** | New York |
| **Clearing** | The Depositary Trust Company |
| **Additional Information** | |

1. **Capitalization of CEMEX**

The following table sets forth our consolidated cash and temporary investments, indebtedness and capitalization as of December 31, 2010 (1) on an actual basis; (2) as adjusted to give effect to (i) the issuance of the January 2011 Notes, (ii) the 2011 Prepayments, and (iii) the 2011 Private Exchange; and (3) as further adjusted to give effect to the issuance and sale in this offering of U.S.$ 1,400 million aggregate principal amount of the Notes, the payment of the initial purchasers' discounts and commissions and the estimated expenses in connection with this offering, and the application of the estimated net proceeds as described under "Use of Proceeds." The offering of the 2016 Notes is independent of, and not conditioned upon, the offering of the 2018 Notes. The offering of the 2018 Notes is independent of, and not conditioned upon, the offering of the 2016 Notes.

The financial information set forth below is based on information derived from our financial statements, which have been prepared in accordance with MFRS, which differ in significant respects from U.S. GAAP. For further information about our financial presentation, see "Selected Consolidated Financial Information."

Schedule II

| | As of December 31, 2010 | | | | | |
|---|---|---|---|---|---|---|
| | Actual | | As adjusted(1) | | As further adjusted(2) | |
| | (in millions of Pesos and Dollars) | | | | | |
| Cash and investments(3) | Ps 8,354 | Ps 13,280 | U.S.$ 1,074 | Ps 13,280 | U.S.$ 1,074 | |
| Short-term debt(4) | | | | | | |
| Secured | | | | | | |
| Banobras(5) | Ps 36 | Ps 36 | U.S.$ 3 | Ps 36 | U.S.$ 3 | |
| Bancomext(5) | | | | | | |
| Other secured(6) | 4,358 | 1,197 | 97 | 1,197 | 97 | |
| Unsecured | | | | | | |
| Other unsecured | 1,243 | 517 | 42 | 517 | 42 | |
| Total short-term debt | 5,637 | 1,750 | 142 | 1,750 | 142 | |
| Long-term debt | | | | | | |
| Secured by the Collateral | | | | | | |
| Financing Agreement | 118,241 | 117,626 | 9,517 | 104,500 | 8,455 | |
| CBs(7) | 8,867 | 6,169 | 499 | 4,628 | 374 | |
| Senior Secured Notes(8)(9) | 42,496 | 56,405 | 4,564 | 56,405 | 4,564 | |
| Other secured | | | | | | |
| Banobras | 169 | 169 | 14 | 169 | 14 | |
| Bancomext | 2,007 | 2,007 | 162 | 2,007 | 162 | |
| Unsecured | | | | | | |
| CEMEX España Euro Notes(10) | 14,834 | 14,834 | 1,200 | 14,834 | 1,200 | |
| Other unsecured | 2,874 | 2,874 | 233 | 2,874 | 233 | |
| Optional Convertible Subordinated Notes(11) | 7,693 | 7,693 | 622 | 7,693 | 622 | |
| The Notes(12) | — | — | — | 13,797 | 1,116 | |
| Total long-term debt | 197,181 | 207,777 | 16,811 | 206,907 | 16,740 | |
| Total debt | 202,818 | 209,527 | 16,953 | 208,657 | 16,882 | |
| Liability component of Mandatory Convertible Notes(13) | 1,994 | 1,994 | 161 | 1,994 | 161 | |
| Stockholders' equity | | | | | | |
| Non-controlling interest | | | | | | |
| Perpetual debentures(14) | 16,310 | 14,342 | 1,160 | 14,342 | 1,160 | |
| Other | 3,214 | 3,214 | 260 | 3,214 | 260 | |
| Controlling interest(11)(12)(13) | 194,176 | 194,176 | 15,710 | 197,623 | 15,989 | |
| Total stockholders' equity | 213,700 | 211,732 | 17,130 | 215,179 | 17,409 | |
| Total capitalization(15) | 418,512 | 423,253 | 34,244 | 425,830 | 34,452 | |

(1) Reflects the issuance of U.S.$1.0 billion aggregate principal amount of the January 2011 Notes, the 2011 Prepayments and the 2011 Private Exchange. Amounts in Dollars have been converted from Pesos at an exchange rate of Ps12.36 to U.S.$1.00, the CEMEX accounting rate as of December 31, 2010.

(2) Reflects additional application of the net proceeds from this offering. Assumes the initial purchasers do not exercise their over-allotment options. Amounts in Dollars have been converted from Pesos at an exchange rate of Ps12.36 to U.S.$1.00, the CEMEX accounting rate as of December 31, 2010.

(3) In the "as adjusted" and "as further adjusted" columns, includes cash used to create a reserve for CBs maturing in September 2011 of approximately U.S.$81 million.

(4) Includes current portion of long-term debt.

(5) Represent obligations with Mexican development banks, which are secured by fixed assets.

(6) Represent long-term CBs with maturities during 2011, for which U.S.$81 million of cash has been reserved.

(7) Represent CBs maturing in 2012 and thereafter.

(8) Includes (i) U.S.$1,250,000,000 aggregate principal amount of 9.50% Senior Secured Notes due 2016 and €350,000,000 aggregate principal amount of 9.625% Senior Secured Notes due 2017 issued by CEMEX Finance LLC on December 14, 2009; (ii) U.S.$500,000,000 additional aggregate principal amount of 9.50% Senior Secured Notes due 2016 issued by CEMEX Finance LLC on January 19, 2010, (iii) U.S.$1,067,665,000 aggregate principal amount of 9.25% Senior Secured Notes due 2020 and €115,346,000 aggregate principal amount of 8.875% Senior Secured Notes due 2017 issued by CEMEX España, acting through its Luxembourg branch, on May 12, 2010 (iv) U.S.$1,000,000,000 aggregate principal amount of 9.000% Senior Secured Notes due 2018 issued by CEMEX on January 11, 2011, and (v) U.S.$125,331,000 additional aggregate principal amount of 9.25% Senior Secured Notes due 2020 issued by CEMEX España, acting through its Luxembourg branch, on March 4, 2011.

(9) Amounts in Dollars have been converted from Euros at an exchange rate of U.S.$1.3335 to €1.00, the CEMEX foreign exchange rate as of December 31, 2010.

(10) Issued by CEMEX Finance Europe B.V., a special purpose vehicle and wholly-owned subsidiary of CEMEX España, and solely guaranteed by CEMEX España.

(11) Under MFRS C-12, the Optional Convertible Subordinated Notes represent a compound instrument, which has a liability component and an equity component. The liability component amounted to U.S.$622 million as of December 31, 2010 and U.S.$614 million at issuance. The equity component, which represents a premium over the option of the noteholders to convert into equity, was recognized net of commissions, within "Other equity reserves" and amounted to U.S.$93 million at issuance (see note 12A and 16B to our consolidated financial statements included elsewhere in this offering memorandum). If the conversion option is exercised, this amount will be reclassified as additional paid-in capital. Although we have not completed our U.S. GAAP reconciliation of our 2010 financial statements, we currently anticipate that there will be a new reconciliation item in our U.S. GAAP reconciliation of our 2010 financial statements in respect of the Optional Convertible Subordinated Notes, the entire principal amount of which we expect will be recorded as debt until conversion under U.S. GAAP. We cannot assure you that we will not identify additional reconciliation items or that this reconciliation item will be reflected therein in accordance with our current expectations.

(12) Under MFRS C-12, the Notes, like the Optional Convertible Subordinated Notes referred to in note (11) above, represent a compound instrument, which has a liability component and an equity component, and we expect to have a similar U.S. GAAP reconciliation item in respect of the Notes in our future financial statements. However, the Notes will not be considered as debt for purposes of the leverage ratio calculations under the Financing Agreement. The "as further adjusted" column reflects (i) the expected liability component of the Notes of U.S.$1,116 million, calculated as of the date of this offering memorandum and (ii) the expected equity component of the Notes of U.S.$279 million, calculated net of commissions as of the date of this offering memorandum. The equity component, which represents a premium over the option of the noteholders to convert into equity, is expected to be recognized net of commissions, within "Other equity reserves," and if the conversion option is exercised, will be reclassified as additional paid-in capital.

(13) Under MFRS, the Mandatory Convertible Securities issued in Mexico on December 10, 2009 in exchange for CBs represent a combined instrument with liability and equity components. The liability component, approximately Ps1,994 million (U.S.$161 million) as of December 31, 2010, corresponds to the net present value of interest payments due under the Mandatory Convertible Securities, assuming no early conversion, and was recognized under "Other Financial Obligations" in our balance sheet. The equity component, approximately Ps1,971 million (U.S.$159 million) as of December 31, 2010, represents the difference between principal amount and the liability component, and was recognized within "Other equity reserves" net of commissions in our balance sheet. See notes 12A and 16B to our consolidated financial statements included elsewhere in this offering memorandum.

(14) Issued by special purpose vehicles. In accordance with MFRS, these securities are accounted for as equity due to the fact that they do not have a specified maturity date and our option to defer payment of interest. However, for purposes of our U.S. GAAP reconciliation, we record these debentures as debt and interest payments thereon as part of financial expenses in our consolidated income statement.

(15) As used in this table, total capitalization equals short- and long-term debt plus the Mandatory Convertible Notes plus the Notes and plus total stockholders' equity.

* * *

**SCHEDULE III**

**Forms of Opinion of Skadden, Arps, Slate, Meagher & Flom LLP,
special U.S. counsel for the Company**

**SCHEDULE IV**

**Form of Opinion of Ramiro G. Villarreal, General Counsel of the Company**

[INTRODUCTORY PARAGRAPH AND RELIANCE SECTIONS]

In rendering this opinion, I have assumed the legal capacity of all natural persons, the genuineness of all signatures, the authenticity of all documents submitted to me as originals, the conformity to original documents of all documents submitted to me as facsimile, electronic, certified or photostatic copies, and the authenticity of the originals of such copies. In making my examination of executed documents, I have assumed that the parties thereto (other than the Company) had the power, corporate or other, to enter into and perform all obligations thereunder and have also assumed the due authorization by all requisite action, corporate or other, and the execution and delivery by such parties (other than the Company) of such documents and the validity and binding effect thereof on such parties. I have also assumed that each of the parties (other than the Company) to the Transaction Documents (as defined herein) has been duly organized and is validly existing in good standing, if applicable, and has requisite legal status and legal capacity, under the laws of its jurisdiction of organization and that each of such parties has complied and will comply with all aspects of the laws of all relevant jurisdictions (including the laws of its jurisdiction of organization) in connection with the transactions contemplated by, and the performance of its obligations under, the Transaction Documents, other than the laws of Mexico insofar as I express my opinions herein.

In rendering this opinion I have reviewed originals or copies of the following documents (referred to herein collectively as the " Transaction Documents"):

(a) an executed copy of the Purchase Agreement;

(b) the Preliminary Memorandum, the documents incorporated by reference therein and the final term sheet, dated March 9, 2011 (the " Final Term Sheet");

(c) the Final Memorandum and the documents incorporated by reference therein;

(d) an executed copy of the Indenture;

(e) a copy of the Spanish version of the Indenture, notarized before a Mexican Notary Public;

(f) the Securities in global form as executed by the Company and authenticated by the Trustee;

(g) an executed copy of the Capped Call Transaction Documents; and

(h) the documents executed and delivered by the Company at the closing pursuant to the Purchase Agreement.

Based upon the foregoing, and subject to the further qualifications set forth below, I am of the opinion that:

1. The Company has been duly incorporated and is validly existing as a corporation under the laws of Mexico, with full corporate 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 to execute and deliver, and to perform its obligations under, the Transaction Documents and any transaction contemplated thereunder.

2. (i) The Company's authorized equity capitalization is as set forth, and conforms to the description thereof contained, in the Disclosure Package and the Final Memorandum; (ii) the outstanding ordinary shares of the Company have been duly authorized and validly issued and are fully paid and nonassessable; (iii) the outstanding CPOs of the Company have been duly authorized and validly issued in accordance with the CPO Trust and the relevant CPO Deeds; (iv) the outstanding ADSs of the Company have been, and the ADSs issuable upon conversion of the Securities will be, duly authorized and validly issued pursuant to the ADS Deposit Agreement; (v) based on the initial conversion rate and considering any fundamental change, but without considering any antidilution adjustment that may occur subsequent to the Closing Date as provided in the Indenture, (1) the Company has duly and validly issued a sufficient number of ordinary shares, free of preemptive or similar rights, and (2) no later than June 30, 2011, will have a sufficient number of CPOs available, free of preemptive or similar rights to be released and delivered by the CPO Trustee, in each case, for issuance of ADSs upon conversion of the Securities, (vi) following the occurrence of a fundamental change or antidilution adjustment after the Closing Date as provided in the Indenture, any ordinary shares issued, and any CPOs released and delivered by the CPO Trustee, in each case, for the issuance of ADSs upon conversion of the Securities against payment of the conversion price, will be duly and validly issued pursuant to the Company's bylaws, the CPO Trust and the relevant CPO Deed, free of preemptive or similar rights; (vii) 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, ownership interests, ordinary shares, CPOs or ADSs in the Company are outstanding, and (viii) 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 perfected security interest and, to the knowledge of such counsel, after due inquiry, any other security interest, claim, lien or encumbrance, except for the security interest created under the Transaction Security Documents.

3. Each of the Transaction Documents to which the Company is a party, has been duly authorized, executed and delivered by the Company and constitutes a legal, valid and binding agreement, enforceable against the Company in accordance with its terms; and, in the case of the notarized Spanish version of the Indenture, it has also been duly filed for registration with the Public Registry of Commerce of Monterrey, Nuevo León.

4. Neither the execution and delivery of the Transaction Documents, nor the consummation of any other of the transactions therein contemplated, nor the fulfillment of the terms thereof will conflict with, result in a breach or violation of, or imposition of any lien,

charge or encumbrance upon any property or asset of the Company pursuant to, (i) the charter or by laws ( *estatutos sociales*) of the Company; (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 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 of any court, regulatory body, administrative agency, governmental body, arbitrator or other authority having jurisdiction over the Company or any of its respective properties.

5. No consent, approval, authorization, filing with, order of, notice to, or qualification with any Mexican governmental or regulatory authority or court is required for the execution, delivery and performance by the Company of the Purchase Agreement, the Indenture, the Capped Call Transaction Documents, the issuance and sale of the Securities, and the consummation of the transactions contemplated therein, except for (i) the notice to be given to the Mexican National Banking and Securities Commission ( *Comisión Nacional Bancaria y de Valores*), on or before the Closing Date, under Article 7 of the Securities Market Law (*Ley del Mercado de Valores*), in respect of the issuance of the Securities and (ii) the notarization of a Spanish version of the Indenture, to be effected on or prior to the Closing Date, and its subsequent filing and registration with the Public Registry of Property and Commerce (*Registro Público de la Propiedad y del Comercio*) of Monterrey, Nuevo León, México, which does not affect its validity or enforceability.

6. The choice of New York state law as the governing law of the Purchase Agreement, the Indenture, the Capped Call Transaction Documents and the issuance and sale of the Securities, is legal, valid and binding to the Company under the laws of Mexico and there is no reason why the courts of Mexico would not give effect to the choice of New York law as the proper law of the Purchase Agreement, the Indenture, the Capped Call Transaction Documents, and the Securities; the Company has the legal capacity to sue and be sued in its own name under the laws of Mexico; the Company has the power to submit, and has irrevocably submitted, to the jurisdiction of the New York courts and the Company has validly and irrevocably appointed Corporate Creations Network Inc. as its authorized agent under the laws of Mexico for service of process under the Purchase Agreement, the Indenture, the Capped Call Transaction Documents, and the Securities; the irrevocable submission of the Company to the jurisdiction of the New York courts and the waiver by the Company of any immunity and any objection to the venue of the proceeding in a New York court in the Purchase Agreement, in the Indenture, the Capped Call Transaction Documents, and in the Securities, are legal, valid and binding under the laws of Mexico and there is no reason why the courts of Mexico would not give effect to such submission and waiver; and the courts in Mexico will recognize as valid and final, and will enforce, any final and conclusive judgment against the Company obtained in a New York court arising out of or in relation to the obligations of the Company under the Purchase Agreement, the Indenture, the Capped Call Transaction Documents, or the Securities, without re-examination of the issues pursuant to Articles 569 and 571 of the Mexican Federal Code of Civil Procedure and Article 1347A of the Mexican Commerce Code, which provide, *inter alia*, that any judgment rendered outside of Mexico may be enforced by Mexican Courts, provided that:

(i) such judgment is obtained in compliance with (a) all legal requirements of the jurisdiction of the court rendering such judgment, and (b) all legal requirements of the relevant Transaction Documents;

(ii) such judgment is not rendered in a real action (*acción real*);

(iii) such judgment is final, non-appealable and authenticated by the appropriate governmental authorities, and is strictly for the payment of a certain sum of money, provided that, under Mexican Monetary Law, payments that should be made in Mexico in foreign currency, whether by agreement or upon a judgment of a Mexican Court, may be discharged in Mexican currency at a rate of exchange for such currency prevailing at the time of payment;

(iv) the court rendering such judgment is competent to render such judgment in accordance with applicable rules under international law and such rules are compatible with the rules adopted under the Mexican Code of Commerce;

(v) service of process was made personally on the Company or on an appropriate Process Agent of the Company;

(vi) such judgment does not contravene Mexican public policy or laws (and we have no reason to believe that a judgment based upon the Transaction Documents would contravene Mexican public policy);

(vii) the applicable procedure under the laws of Mexico with respect to the enforcement for foreign judgments (including the issuance of a letter rogatory by the competent authority of such jurisdiction requesting enforcement of such judgment and the certification of such judgment as authentic by the corresponding authorities of such jurisdiction in accordance with the laws thereof) is complied with;

(viii) the courts of such jurisdiction recognize the principles of reciprocity in connection with the enforcement of Mexican judgments in such jurisdiction; and

(ix) the cause of action in connection with which such judgment is rendered is not the same cause of action between the same parties that is pending before a Mexican court.

7. Except as described in the Disclosure Package and the Final Memorandum, with respect to non-residents of Mexico, no stamp or other issuance or transfer taxes or duties and no capital gains, income, withholding or other taxes are payable by or on behalf of the Initial Purchasers to Mexico or to any political subdivision or taxing authority thereof or therein in connection with the sale and delivery by the Company of the Securities as contemplated in the Purchase Agreement to the Initial Purchasers, the sale and delivery by the Initial Purchasers of the Securities as contemplated in the Purchase Agreement or the entering into or performance of the terms of the Purchase Agreement.

Schedule IV

8. Other than as described in the Disclosure Package and the Final Memorandum, under the current laws and regulations of Mexico, all payments of principal, premium (if any) and interest on the Securities may be paid, if applicable, by the Company to the registered holder thereof in U.S. dollars (that may be obtained through conversion of Mexican Pesos) that may be freely transferred out of Mexico, and all such payments and other distributions made to holders of the Securities who are non-residents of Mexico, will not be subject to Mexican income, withholding or other taxes under the laws and regulations of Mexico and are otherwise free and clear of any other tax, duty withholding or deduction in Mexico and without the necessity of obtaining any governmental authorization in Mexico.

9. It is not necessary in order to enable the Initial Purchasers, the Trustee, the counterparties to the Capped Call Transaction Documents or the holders of the Securities to exercise or enforce any of their rights under the Purchase Agreement, the Indenture, the Capped Call Transaction Documents, or the Securities in Mexico or by reason of the entry into and/or the performance of the Purchase Agreement, the Indenture, and the Capped Call Transaction Documents, that the Initial Purchasers or the counterparties to the Capped Call Transaction Documents should be licensed or qualified to do business in Mexico. The Initial Purchasers, the counterparties to the Capped Call Transaction Documents and the non-Mexican holders of the Securities will not be deemed resident, domiciled, carrying on business or subject to taxation in Mexico solely by reason of the execution, delivery, performance or enforcement of the Purchase Agreement or the Capped Call Transaction Documents.

10. Except as disclosed in the Disclosure Package and the Final Memorandum, there is no pending or, to the best of my knowledge, threatened 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 that is not adequately disclosed in the Disclosure Package and the Final Memorandum, except in each case (A) for such proceedings that, if the subject of an unfavorable decision, ruling or finding would not singly or in the aggregate, have a Material Adverse Effect; and (B) (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 headings “Regulatory Matters and Legal Proceedings,” “Description of Common Stock,” “Description of CPOs” and “Description of ADSs”; fairly summarize the matters therein described.

11. There is no reason to believe that the Disclosure Package, as amended or supplemented at the Execution Time, contained any untrue statement of a material fact or omitted 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 (in each case, other than the financial statements and other financial information contained therein, as to which I express no opinion).

12. There is no reason to believe that the Final Memorandum, as of its date or on the Closing Date, contained or contains any untrue statement of a material fact or omitted or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading (in each case, other than the

financial statements and other financial information contained therein, as to which I express no opinion).

I express no opinion as to any laws other than the laws of Mexico. In rendering my opinion, I have relied, (i) as to matters governed by United States Federal and New York law, upon the opinion of Skadden, Arps, Slate, Meagher & Flom LLP delivered pursuant to the Purchase Agreement and (ii) as to matters of fact, on certificates of responsible officers of the Company and public officials that are furnished to the Initial Purchasers.

This opinion is subject to the following qualifications:

a. Enforcement of the Transaction Documents may be limited by *concurso mercantil,* bankruptcy, insolvency, liquidation, reorganization, moratorium and other similar laws affecting the rights of creditors generally;

b. Labor claims, claims of tax authorities for unpaid taxes, social security quotas, worker's housing fund quotas, retirement fund quotas, as well as claims from secured or privileged creditors, will have priority over claims of the parties to, or in connection with, the Purchase Agreement, the Indenture, the Capped Call Transaction Documents, and the Securities;

c. In the event that proceedings are brought in Mexico seeking performance of the obligations of the Company in Mexico, pursuant to the Mexican Monetary Law, such entity may discharge its obligations by paying any sums due in a currency other than Mexican currency, in Mexican currency at the rate of exchange prevailing in Mexico on the date when payment is made;

d. In the event that any legal proceedings are brought in the courts of Mexico, a Spanish translation of the documents required in such proceedings prepared by a court-approved translator would have to be approved by the court after the defendant has 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;

e. Claims may become barred under the statutes of limitation, which are not waivable under Mexican law, or may become subject to defenses or set-off or counterclaim;

f. A Mexican court may stay proceedings held in such court if concurrent proceedings are being held elsewhere;

g. With respect to the provisions contained in each of the Transaction Documents in connection with service of process, it should be noted that service of process by mail does not constitute personal service of process under Mexican law and, since such service is considered to be a basic procedural requirement, if for purposes of proceedings outside Mexico service of process is made by mail, a final judgment based on such process would not be enforced by the courts of Mexico; and

h. An obligation to pay interest on interest may not be enforceable in Mexico.

Schedule IV

This opinion is furnished only to you as representative of the Initial Purchasers and is solely for the Initial Purchasers' benefit in connection with the closing occurring today and the offering of the Securities, in each case pursuant to the Purchase Agreement and for [ •] as counterparties under the Capped Call Transaction Documents. Without my prior written consent, this opinion may not be used, circulated, quoted or otherwise referred to for any other purpose or relied upon by, or assigned to, any other person for any purpose, including any other person that acquires any Securities or that seeks to assert your rights in respect of this opinion (other than an Initial Purchaser's successor in interest by means of merger, consolidation, transfer of a business or other similar transaction), except that The Bank of New York Mellon may rely upon this opinion in its capacity as trustee under the Indenture and that Skadden, Arps, Slate, Meagher & Flom LLP may rely upon this opinion as to matters of the laws of the Mexico in rendering their opinion pursuant to Section 6(a) of the Purchase Agreement.

Schedule IV

**SCHEDULE V**

**Form of Officer's Certificate**

[__], 2011

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 México (the "Company"), and not in an individual capacity, hereby certify as follows on behalf of the Company pursuant to Section 6(e) of the Purchase Agreement, dated as of [__], 2011, executed in connection with the offering by the Company of U.S.$[__] aggregate principal amount of its [__]% Convertible Subordinated 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 and 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 VI**

**Form of Comfort Letter by KPMG Cárdenas Dosal, S.C.**

**SCHEDULE VII**

1. Issuer Written Information (included in the Disclosure Package)

   (a) Final Term Sheet, dated March 9, 2011.

2. Other Information Included in the Disclosure Package

   (a) The following information is also included in the Disclosure Package:

   None

**Exhibit 4.62**

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

**U.S.$600,000,000**
**3.75% CONVERTIBLE SUBORDINATED NOTES DUE 2018**

**PURCHASE AGREEMENT**

March 9, 2011

Citigroup Global Markets, Inc.
J.P. Morgan Securities LLC
Banco Bilbao Vizcaya Argentaria S.A.
Merrill Lynch, Pierce, Fenner & Smith Incorporated
BNP Paribas Securities Corp.
Barclays Capital Inc.
HSBC Securities (USA) Inc.
ING Financial Markets LLC
RBS Securities Inc.
Santander Investment Securities Inc.
As Representatives of the Initial Purchasers
c/o Citigroup Global Markets, Inc.
388 Greenwich Street
New York, New York 10013

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 3.75% Convertible Subordinated Notes due 2018 (the "Firm Securities"). The Company also proposes to grant to the Initial Purchasers an option to purchase up to U.S.$90,000,000 additional principal amount of such securities to cover over-allotments, if any (collectively, the "Option Securities" and, together with the Firm Securities, the "Securities"). The Securities are to be issued under an indenture (the "Indenture"), to be dated as of the Closing Date (as defined below), among the Company, The Bank of New York Mellon, a New York banking corporation, as trustee (the "Trustee"), and, for certain limited purposes to comply with Mexican applicable law, The Bank of New York Mellon, S.A., Institución de Banca Múltiple, as co-trustee. The Securities are convertible into ADSs of the Company at the conversion rates set forth in the Indenture. 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 26 hereof.

The sale of the Securities to the Initial Purchasers will be made without registration of the Securities or the ADSs issuable upon conversion thereof 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 8, 2011 (as amended or supplemented at the date thereof, including any and all exhibits thereto and any information incorporated by reference therein, the "Preliminary Memorandum"), and a final offering memorandum, dated March 9, 2011 (as amended or supplemented at the Execution Time, including any and all exhibits thereto and any information incorporated by reference therein, the "Final Memorandum"). Each of the Preliminary Memorandum and the Final Memorandum sets forth certain information concerning the Company, the Securities and the ADSs issuable upon conversion thereof. 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.

It is understood that the Company is concurrently entering into a purchase agreement (the "2016 Securities Purchase Agreement") with the several initial purchasers thereunder providing for the sale by the Company of U.S.$800,000,000 principal amount of its 3.25% Convertible Subordinated Notes due 2016 (the "2016 Firm Securities"). The Company is also granting the initial purchasers under the 2016 Securities Purchase Agreement an option to purchase up to U.S.$177,500,000 additional principal amount of such securities to cover over-allotments (the "2016 Option Securities" and, together with the 2016 Firm Securities, the "2016 Securities"). Each of the Preliminary Memorandum and the Final Memorandum sets forth certain information concerning the Company and the 2016 Securities.

1. Representations and Warranties. The Company represents and warrants 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 (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 nor any person acting on its 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 or the ADSs issuable upon conversion thereof 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 nor any person acting on its 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 or the ADSs issuable upon conversion thereof; and each of the Company, its Affiliates 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) The Company is a "foreign issuer" (as defined in Regulation S).

(g) No registration of the Securities or the ADSs issuable upon conversion thereof 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.

(h) The Company is not, 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.

(i) 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).

(j) 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 or otherwise, in stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Securities.

(k) The Company has been duly incorporated and is validly existing as a publicly traded stock corporation with variable capital ( *sociedad anónima bursátil de capital variable*) under the laws of Mexico with full corporate power and authority 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 or such person is subject to no material liability or disability by reason of the failure to be so qualified.

(l) (i) The Company's authorized equity capitalization is as set forth, and conforms to the description thereof contained, in the Disclosure Package and the Final Memorandum; (ii) the outstanding ordinary shares of the Company have been duly authorized and validly issued and are fully paid and nonassessable; (iii) the outstanding CPOs of the Company have been duly authorized and validly issued in accordance with the CPO Trust and the relevant CPO Deeds; (iv) the outstanding ADSs of the Company have been, and the ADSs issuable upon conversion of the Securities will be, duly authorized and validly issued pursuant to the ADS Deposit Agreement; (v) based on the initial conversion rate and considering any fundamental change, but without considering any antidilution adjustment that may occur subsequent to the Closing Date as provided in the Indenture, (1) the Company has duly and validly issued a sufficient number of ordinary shares, free of preemptive or similar rights, and (2) no later than June 30, 2011, will have a sufficient number of CPOs available, free of preemptive or similar rights, to be released and delivered by the CPO Trustee, in each case, for issuance of ADSs upon conversion of the Securities, (vi) following the occurrence of a fundamental change or antidilution adjustment after the Closing Date as provided in the Indenture, any ordinary shares issued, and any CPOs released and delivered by the CPO Trustee, for the issuance of ADSs upon conversion of the Securities against payment of the conversion price, will be duly and validly issued pursuant to the Company's bylaws, the CPO Trust and the relevant CPO Deed, free of preemptive or similar rights; (vii) 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, ownership interests, ordinary shares, CPOs or ADSs in the Company are outstanding, and (viii) 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.

(m) (i) The statements in the Disclosure Package and the Final Memorandum under the headings "Important Federal Tax Considerations," "Description of Common Stock," "Description of CPOs" and "Description of ADSs" 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.

(n) This Agreement has been duly authorized, executed and delivered by the Company; the Indenture and the Capped Call Transaction Documents have been duly authorized and, assuming due authorization, execution and delivery thereof by the counterparties thereto,

when executed and delivered by the Company, will constitute legal, valid, binding instruments enforceable against the Company in accordance with their 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, 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) and will be convertible into ADSs in accordance with their terms.

(o) 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, in the Indenture and in the Capped Call Transaction Documents, 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, including without limitation, the notice to, and filing with, the Luxembourg authorities of the terms of the offering and sale of the Securities; (ii) 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 (*Ley del Mercado de Valores*), in respect of the issuance of the Securities; and (iii) for the notarization of a Spanish version of the Indenture, to be effected on or prior to the Closing Date, and its subsequent filing and registration with the Public Registry of Property and Commerce (*Registro Público de la Propiedad y del Comercio*) of Monterrey, Nuevo León, Mexico.

(p) None of the execution and delivery of the Indenture, the Capped Call Transaction Documents or this Agreement, the issuance and sale of the Securities or the issuance of the shares of common stock, the CPOs representing such shares of common stock or the ADSs representing such CPOs, upon conversion of the Securities, 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 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 Financing Agreement, the Transaction Security Documents, the CPO Trust and the ADS Deposit 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 (p) (if any), have (x) a Material Adverse Effect (as defined below) or (y) a material adverse effect upon the transactions contemplated herein.

(q) 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 Mexican FRS 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.

(r) 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, the Capped Call Transaction Documents, the Financing Agreement, the Transaction Security Documents, the CPO Trust, the CPO Deeds, the ADS Deposit Agreement, 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).

(s) 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).

(t) Neither the Company nor any of its subsidiaries is in violation or default of (i) any provision of its charter or bylaws 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 Financing Agreement, the Transaction Security Documents, the CPO Trust, the CPO Deeds and the ADS Deposit 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).

(u) KPMG Cárdenas Dosal, S.C., who have 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.

(v) 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 or upon the issuance of ADSs upon the conversion thereof, except as disclosed in the Disclosure Package and the Final Memorandum.

(w) 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)) 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).

(x) 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).

(y) 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).

(z) 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).

(aa) 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), 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).

(bb) 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 Mexican FRS 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's 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.

(cc) 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). 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.

(dd) 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).

(ee) 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.

(ff) 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 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. 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.

(gg) 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.

(hh) On the Closing Date, after giving effect to the offering of the Securities and the 2016 Securities, the Company and its subsidiaries, on a consolidated basis, will be Solvent.

(ii) 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, 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, (i) 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 100% of the principal amount thereof, *plus* accrued interest, if any, from March 15, 2011 to the Closing Date, the principal amount of Firm Securities set forth opposite such Initial Purchaser's name in Schedule I hereto; and (ii) in connection therewith, the Company agrees to pay to each Initial Purchaser fees and commissions in the amount of 1.5% of the principal amount of Firm Securities set forth opposite such Initial Purchaser's name in Schedule I (in addition to any other amounts otherwise payable under this Agreement).

(b) Subject to the terms and conditions and in reliance upon the representations and warranties herein set forth, (i) the Company hereby grants an option to the several Initial Purchasers to purchase, severally and not jointly, the Option Securities at the same purchase price as the Initial Purchasers shall pay for the Firm Securities, *plus* accrued interest, if any, from March 15, 2011 to the settlement date for the Option Securities; and (ii) in connection therewith, the Company agrees to pay to each Initial Purchaser fees and commissions in the amount of 1.5% of the principal amount of Option Securities being purchased by each Initial Purchaser. The option may be exercised only to cover over-allotments in the sale of the Firm Securities by the Initial Purchasers. The option may be exercised in whole or in part at any time or from time to time on or before the 30th day after the date of the Final Memorandum upon written or telegraphic notice by the Representatives to the Company setting forth the principal amount of Option Securities as to which the several Initial Purchasers are exercising the option and the settlement date. Delivery of the Option Securities, and payment therefor, shall be made as provided in Section 3 hereof. The principal amount of Option Securities to be purchased by each Initial Purchaser shall be the same percentage of the total principal amount of Option Securities to be purchased by the several Initial Purchasers as such Initial Purchaser is purchasing the Firm Securities, subject to such adjustments as you in your absolute discretion shall make to eliminate any fractional securities.

3. Delivery and Payment. (a) Delivery of and payment for the Firm Securities and the Option Securities (if the option provided for in Section 2(b) hereof shall have been exercised on or before the first Business Day immediately preceding the Closing Date) shall be made at 10:00 A.M., New York City time, on March 15, 2011, 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.

(b) If the option provided for in Section 2(b) hereof is exercised after the first Business Day immediately preceding the Closing Date, the Company will deliver the Option Securities (at the expense of the Company) to the Representatives on the date specified by the Representatives (which shall be within three Business Days after exercise of said option) 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. If settlement for the Option Securities occurs after the Closing Date, the Company will deliver to the Representatives on the settlement date for the Option Securities, and the obligation of the Initial Purchasers to purchase the Option Securities shall be conditioned upon receipt of, supplemental opinions, certificates and letters confirming as of such date the opinions, certificates and letters delivered on the Closing Date pursuant to Section 6 hereof.

4. Offering by Initial Purchasers. (a) Each Initial Purchaser acknowledges that the Securities and the ADSs issuable upon conversion thereof 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;

(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 agrees 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 has not given and 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. For the avoidance of doubt, the foregoing shall not apply to any written information or other offering materials in connection with the offering of the 2016 Securities.

(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 will promptly advise the Representatives of the receipt by the Company 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 shall cause to have ADSs to be delivered upon conversion of the Securities to be approved for listing on the New York Stock Exchange.

(i) The Company will not, and will not permit any of its Affiliates to, resell any Securities or ADSs issued upon conversion thereof that have been acquired by any of them except for, (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.

(j) 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 or ADSs issuable upon conversion thereof under the Act.

(k) Any information provided by the Company, its Affiliates or any person acting on its or their behalf to publishers of publicly available databases about the terms of the Securities shall include a statement that the Securities have not been registered under the Act and are subject to restrictions under Rule 144A under the Act and Regulation S.

(l) 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.

(m) 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.

(n) 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.

(o) 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.

(p) Each of the Securities and the ADSs issuable upon conversion thereof 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.

(q) The Company will not, for a period of 90 days following the Execution Time, without the prior written consent of Citigroup Global Markets, Inc. and J.P. Morgan Securities LLC, directly or indirectly, (i) offer, pledge, announce the intention to sell, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, or otherwise transfer or dispose of, or file with the Commission a registration under the Act or with the Mexican National Banking and Securities Commission ( *Comisión Nacional Bancaria y de Valores*) a prospectus under Mexican securities laws relating to, any of the Company's ADSs, CPOs or ordinary shares or any securities convertible into or exercisable or exchangeable for the Company's ADSs, CPOs or ordinary shares (other than the Securities and the 2016 Securities), or publicly disclose the intention to make any of the foregoing, or (ii) enter into any swap or other agreement that transfers, in whole or in part, any of the economic consequences of ownership of the Company's ADSs, CPOs or ordinary shares, or such other securities, whether any such transaction described in clause (i) or (ii) above is to be settled by delivery of the Company's ADSs, CPOs or ordinary shares or such other securities, in cash or otherwise, other than (i) securities convertible into or exchangeable for the Company's ADSs, CPOs or ordinary shares pursuant to any 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 Execution Time; and (ii) any of the Company's ADSs, CPOs or ordinary shares issued upon the exercise of options outstanding as of the Execution Time, including upon conversion of mandatory convertible securities of the Company outstanding as of the Execution Time, in both cases described in the Disclosure Package and the Final Memorandum.

(r) 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.

(s) Between the date hereof and the Closing Date, the Company will not do or authorize any act or thing that would result in an adjustment of the conversion price of the Securities.

(t) 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).

(u) 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.

(v) The Company agrees to pay the costs and expenses relating to the following matters: (i) the preparation of the Indenture, the Capped Call Transaction Documents, the issuance of the Securities, the fees of the Trustee and the issuance of the ADSs (including fees of the depositary under the ADSs Deposit Agreement for the creation and delivery of such ADSs) upon conversion of the Securities; (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; (x) the fees and expenses incurred in connection with any notice to be provided to the Luxembourg regulatory authorities, including the Luxembourg Stock Exchange; and (xi) all other costs and expenses incident to the performance by the Company of its obligations hereunder.

(w) The Company agrees 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 in respect of the legal advisors for the Initial Purchasers pursuant to this Section 5(w) and Section 7 hereof and pursuant to Section 5(w) and Section 7 of the 2016 Securities Purchase Agreement will be limited to U.S.$375,000 (excluding reimbursements in respect of disbursements and expenses of such legal advisors).

(x) 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."

(y) The Company will not authorize its officers that have executed and delivered lock-up letter agreements in the form of Exhibit A, to pledge, in the aggregate, more than

3,000,000 ADSs (or the equivalent amount of equity of the Company in the form of CPOs or ordinary shares), as collateral in connection with bank debt.

6. Conditions to the Obligations of the Initial Purchasers. The obligations of the Initial Purchasers to purchase the Firm Securities and the Option Securities, as the case may be, shall be subject to the accuracy of the representations and warranties of the Company contained herein at the Execution Time, the Closing Date and any settlement date pursuant to Section 3 hereof, 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, 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 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 at 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.

(d) The Company shall have requested and caused Elvinger, Hoss & Prussen, special Luxembourg 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 Luxembourg, 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, Citigroup Global Markets, Inc. agrees to furnish a representation letter to Elvinger, Hoss & Prussen to the effect that Citigroup Global Markets, Inc. offered the Securities to at least five persons within the territory of the Grand Duchy of Luxembourg.

(e) The Company shall have furnished to the Representatives a certificate, signed by an executive officer of the Company, dated as of the Closing Date, substantially in the form of Schedule V attached hereto.

(f) 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, in form and substance satisfactory to the Representatives and confirming that they are independent auditors within the meaning of the Exchange Act and the applicable published rules and regulations thereunder substantially in the form of Schedule VI attached hereto.

(g) 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) and the Final Memorandum (exclusive of any amendment or supplement thereto), there shall not have been (i) any change, increase or decrease specified in the letter or letters referred to in paragraph (f) 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), 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).

(h) The Securities shall be eligible for clearance and settlement through DTC, Euroclear and Clearstream, as applicable, and any other relevant clearing system.

(i) 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.

(j) Prior to the Closing Date, the Company shall have filed a supplemental listing application to have the ADSs issuable upon conversion of the Securities to be approved for listing, subject to issuance, on the New York Stock Exchange.

(k) Prior to the Closing Date, the Company shall have furnished to the Representatives a letter substantially in the form of Exhibit A hereto, duly executed by each of the officers of the Company named on Exhibit B hereto, and addressed to the Representatives.

(l) Prior to the Closing Date, the Company 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 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 Citigroup Global Markets, Inc. and J.P. Morgan Securities LLC on demand for all expenses (including reasonable fees and disbursements of counsel subject to the limit set forth in Section 5(w) above) 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 agrees 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 electronic road show, 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 the Company will not 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 written information 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 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 tables of Initial Purchasers, and (B) the tenth and eleventh 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 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 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 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 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 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), 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 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 the Company's CPOs in the Mexican Stock Exchange (*Bolsa Mexicana de Valores, S.A.B. de C.V.*) shall have been suspended; (ii) trading in the Company's ADSs in the New York Stock Exchange shall have been suspended; (iii) 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 exchanges; (iv) a banking moratorium shall have been declared either by Mexican, U.S. federal or New York State authorities; or (v) 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).

11. Representations and Indemnities to Survive. The respective agreements, representations, warranties, indemnities and other statements of the Company or its 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 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 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; or, if sent to the Company, will be mailed, delivered or telefaxed to +5281-8888-4399 and confirmed to it at

CEMEX, S.A.B. de C.V., Av. Ricardo Margáin, Zozaya #325, Colonia Valle del Campestre, Garza García, Nuevo León, México 66265. 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(n) 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 may be instituted in any State or U.S. federal court in The City of New York and County of New York and 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. The Company hereby appoints Corporate Creations Network Inc., 1040 Avenue of the Americas # 2400, New York, NY 10018, U.S.A.; fax: (561) 694-1639; telephone: (212) 382-4699, 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 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 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 the Company.

15. Internet Document Services. The Company hereby agrees that the Representatives may provide copies of the Preliminary Memorandum and Final Memorandum and any other agreement or document relating to the offer and sale of the Securities, including, without limitation, the Indenture, to Xtract Research LLC ("Xtract") following the Closing Date for inclusion in an online research service sponsored by Xtract, access to which is restricted to "qualified institutional buyers" (as defined in Rule 144A under the Act); it being understood and agreed that the Company shall have no obligation to update or supplement any documents provided to Xtract.

16. 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.

17. Applicable Law. 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.

18. 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.

19. No Fiduciary Duty. The Company 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, on the one hand, and the Initial Purchasers and any Affiliate through which it may be acting, on the other, (b) the Initial Purchasers are acting as principal and not as an agent or fiduciary of the Company 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 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 on related or other matters). The Company 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 in connection with such transaction or the process leading thereto.

20. 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.

21. 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.

22. 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.

23. 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 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.

24. 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.

25. Headings. The section headings used herein are for convenience only and shall not affect the construction hereof.

26. 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.

"ADS" shall mean the American Depositary Shares which represent ten (10) CPOs. ADSs are evidenced by American Depositary Receipts or ADRs.

"ADS Deposit Agreement" shall mean the Second Amended and Restated Deposit Agreement, dated as of August 10, 1999, as amended by Amendment No. 1 thereto, dated as of July 1, 2005, by and among Citibank, N.A., as depositary, the Company and the holders and beneficial owners from time to time of ADSs.

"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 or Mexico City.

"Capped Call Transaction Documents" shall mean (i) the Master Terms and Conditions for Capped Call Transactions dated March 9, 2011 between the Company and JPMorgan Chase Bank, National Association, (ii) the Master Terms and Conditions for Capped Call Transactions dated March 9, 2011 between the Company and Citibank, N.A., (iii) the Master Terms and Conditions for Capped Call Transactions dated March 9, 2011 between the Company and Banco Santander, S.A., (iv) the Master Terms and Conditions for Capped Call Transactions dated March 9, 2011 between the Company and BNP Paribas, (v) the Master Terms and Conditions for Capped Call Transactions dated March 9, 2011 between the Company and The Royal Bank of Scotland PLC, (vi) the Master Terms and Conditions for Capped Call Transactions dated March 9, 2011 between the Company and Bank of America, N.A., (vii) the Master Terms and Conditions for Capped Call Transactions dated March 9, 2011 between the Company and HSBC Bank USA, National Association and (viii) any Transaction Confirmation under any of the foregoing.

"Citigroup" shall mean Citigroup Global Markets, Inc.

"Commission" shall mean the Securities and Exchange Commission.

"CPO" shall mean the Ordinary Participation Certificates ( *Certificados de Participación Ordinaria* ), which have as underlying securities two (2) Series A shares and one (1) Series B share of the Company.

"CPO Deed" shall mean any CPO deed ( *Acta de Emisión* ) executed from time to time by the Company and the CPO Trustee for the issuance of CPOs pursuant to the terms of the CPO Trust.

"CPO Trust" shall mean the Trust Agreement number 111033-9 dated September 6, 1999, entered into by and among the Company, in its capacity as settlor, and the CPO Trustee.

"CPO Trustee" shall mean Grupo Financiero Banamex, División Fiduciaria, in its capacity as trustee under the CPO Trust.

"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 the date and time that this Agreement is executed and delivered by the parties hereto.

"Financing Agreement" shall mean the Financing Agreement dated August 14, 2009, as amended, between the Company, the Financial Institutions and Noteholders named therein, as participating creditors, Citibank International PLC, as administrative agent and Wilmington Trust (London) Limited, as security agent.

"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 VII hereto.

"Mexican FRS" shall mean the Mexican financial reporting standards ( *Normas de Información Financiera aplicables en Mexico* ) as in effect from time to time issued by the Mexican Financial Reporting Standards Board ( *Consejo Mexicano para la Investigación y Desarrollo de Normas de Información Financiera* ).

"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 Financing 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 and the several Initial Purchasers.

Very truly yours,

**CEMEX, S.A.B. DE C.V.**

By: /s/ Rodrigo Treviño
Name: Rodrigo Treviño
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/ J. Richard Blackett
Name: J. Richard Blackett
Title: Managing Director

**J.P. MORGAN SECURITIES LLC**

By: /s/ Uziel Fradkin
Name: Uziel Fradkin
Title: Managing Director

**BANCO BILBAO VIZCAYA ARGENTARIA, S.A.**

By: /s/ Miguel Angel Prieto
Name: Miguel Angel Prieto
Title: Executive Director

By: /s/ Elena Rua Morte
Name: Elena Rua Morte
Title: Vice President

**MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED**

By: /s/ Laurent Massart
Name: Laurent Massart
Title: Managing Director

**BNP PARIBAS SECURITIES CORP.**

By: /s/ Michael Murphy
Name: Michael Murphy
Title: Managing Director

**BARCLAYS CAPITAL INC.**

By: /s/ Brian Reilly
Name: Brian Reilly
Title: Managing Director

**HSBC SECURITIES (USA) INC.**

By: /s/ David Noble
Name: David Noble
Title: Managing Director

**ING FINANCIAL MARKETS LLC**

By: /s/ Audun Huslid
Name: Audun Huslid
Title: Director

**RBS SECURITIES INC.**

By: /s/ Krystian Mialkowski
Name: Krystian Mialkowski
Title: Head of Convertible & Equity-linked Origination, Americas

**SANTANDER INVESTMENT SECURITIES INC.**

By: /s/ Alexander Roberts
Name: Alexander Roberts
Title: Managing Director

By: /s/ Ignacio Mendive
Name: Ignacio Mendive
Title: CEO

For themselves and the other several Initial Purchasers named in Schedule I to the foregoing Agreement.

**SCHEDULE I**

| Initial Purchasers | Principal Amount of Firm Securities to be Purchased |
|---|---|
| Citigroup Global Markets, Inc. | U.S.$210,000,000 |
| J.P. Morgan Securities LLC | U.S.$210,000,000 |
| Banco Bilbao Vizcaya Argentaria, S.A. | U.S.$ 18,000,000 |
| Merrill Lynch, Pierce, Fenner & Smith Incorporated | U.S.$ 18,000,000 |
| BNP Paribas Securities Corp. | U.S.$ 18,000,000 |
| Barclays Capital Inc. | U.S.$ 18,000,000 |
| HSBC Securities (USA) Inc. | U.S.$ 18,000,000 |
| ING Financial Markets LLC | U.S.$ 18,000,000 |
| RBS Securities Inc. | U.S.$ 18,000,000 |
| Santander Investment Securities Inc. | U.S.$ 18,000,000 |
| Banca IMI S.p.A. | U.S.$ 6,000,000 |
| Credit Agricole Securities (USA) Inc. | U.S.$ 6,000,000 |
| Lazard Capital Markets LLC | U.S.$ 6,000,000 |
| Mizuho Securities USA Inc. | U.S.$ 6,000,000 |
| Scotia Capital (USA) Inc. | U.S.$ 6,000,000 |
| The Williams Capital Group, L.P. | U.S.$ 6,000,000 |
| Total | U.S.$600,000,000 |

**SCHEDULE II**

**Final Term Sheet**

**CEMEX, S.A.B. de C.V.**
**3.25% Convertible Subordinated Notes Due 2016 (the "2016 Notes")**
**3.75% Convertible Subordinated Notes Due 2018 (the "2018 Notes")**
**(collectively, the "Notes")**

*The information in this pricing term sheet supplements CEMEX, S.A.B. de C.V.'s preliminary offering memorandum, dated March 8, 2011 (the "Preliminary Offering Memorandum"), and supersedes the information in the Preliminary Offering Memorandum to the extent inconsistent with the information in the Preliminary Offering Memorandum. In all other respects, this term sheet is qualified in its entirety by reference to the Preliminary Offering Memorandum. Terms used herein but not defined herein shall have the respective meanings as set forth in the Preliminary Offering Memorandum. All references to dollar amounts are references to U.S. dollars. References to American Depositary Shares ("ADSs") are to ADSs of the Issuer. Unless specifically stated otherwise, the information in this pricing term sheet assumes the initial purchasers do not exercise their over-allotment options.*

| | |
|---|---|
| **Issuer** | CEMEX, S.A.B. de C.V. (the "Issuer") |
| **Security Description** | 3.25% Convertible Subordinated Notes due 2016<br>3.75% Convertible Subordinated Notes due 2018 |
| **Format** | 144A Global Notes / Regulation S Global Notes |
| **Global Coordinators and Active Bookrunners** | Citigroup Global Markets, Inc.<br>J.P. Morgan Securities LLC |
| **Joint Passive Bookrunners** | Banco Bilbao Vizcaya Argentaria S.A.<br>Merrill Lynch, Pierce, Fenner & Smith Incorporated<br>BNP Paribas Securities Corp.<br>Barclays Capital Inc.<br>HSBC Securities (USA) Inc.<br>ING Financial Markets LLC<br>RBS Securities Inc.<br>Santander Investment Securities Inc. |
| **Co-Managers** | Banca IMI S.p.A.<br>Credit Agricole Securities (USA) Inc.<br>Lazard Capital Markets LLC<br>Mizuho Securities USA Inc.<br>Scotia Capital (USA) Inc.<br>The Williams Capitol Group, L.P. |
| **Identifiers (144A Notes)** | 2016 Notes:<br>CUSIP: 151290 AZ6<br>ISIN: US151290AZ66<br>CUSIP: 151290 BB8 (unrestricted)<br>ISIN: US151290BB89 (unrestricted)<br>2018 Notes:<br>CUSIP: 151290 BA0 |

| | |
|---|---|
| | ISIN: US151290BA07<br>CUSIP: 151290 BC6 (unrestricted)<br>ISIN: US151290BC62 (unrestricted) |
| **Identifiers (Regulation S Notes)** | 2016 Notes:<br>CUSIP: P2253T HV4<br>ISIN: USP2253THV46<br>2018 Notes:<br>CUSIP: P2253T HW2<br>ISIN: USP2253THW29 |
| **Principal amount offered** | U.S.$800,000,000 aggregate principal amount of 2016 Notes<br>U.S.$600,000,000 aggregate principal amount of 2018 Notes |
| **Over-allotment option** | U.S.$177,500,000 aggregate principal amount of 2016 Notes<br>U.S.$90,000,000 aggregate principal amount of 2018 Notes |
| **Settlement date** | March 15, 2011 |
| **Final maturity** | The 2016 Notes will mature on March 15, 2016<br>The 2018 Notes will mature on March 15, 2018 |
| **Interest payment** | March 15 and September 15, beginning on September 15, 2011 |
| **Day count convention** | 360-day year consisting of twelve 30-day months |
| **Annual interest rate** | The 2016 Notes will bear interest at a rate equal to 3.25% per annum from March 15, 2011.<br>The 2018 Notes will bear interest at a rate equal to 3.75% per annum from March 15, 2011. |
| **Offering price** | The Notes will be issued at a price of 100% of their principal amount, *plus* accrued interest, if any, from March 15, 2011 |
| **Initial conversion price** | Approximately U.S.$11.28 per ADS for the 2016 Notes<br>Approximately U.S.$11.28 per ADS for the 2018 Notes |
| **Initial conversion rate** | 88.6211 ADSs per U.S.$1,000 principal amount of 2016 Notes<br>88.6211 ADSs per U.S.$1,000 principal amount of 2018 Notes |
| **NYSE last reported sale price on March 9, 2011** | U.S.$8.68 per ADS |
| **Conversion premium** | Approximately 30% above the last NYSE last reported sale price on March 9, 2011 for the 2016 Notes.<br>Approximately 30% above the last NYSE last reported sale price on March 9, 2011 for the 2018 Notes. |
| **Denomination** | U.S.$100,000 and integral multiples of U.S.$1,000 in excess thereof |
| **Conversion Rights** | Holders may convert their 2016 Notes into the Issuer's ADSs (which represent CPOs, which in turn have ordinary shares as underlying |

securities) at an initial conversion rate of 88.6211 ADSs per U.S.$1,000 principal amount of 2016 Notes after June 30, 2011 and prior to the close of business on the fourth Business Day (as defined in the Preliminary Offering Memorandum) immediately preceding the maturity date for the 2016 Notes. The conversion rate is equivalent to an initial conversion price of approximately U.S.$11.28 per ADS.

Holders may convert their 2018 Notes into the Issuer's ADSs (which represent CPOs, which in turn have ordinary shares as underlying securities) at an initial conversion rate of 88.6211 ADSs per U.S.$1,000 principal amount of 2018 Notes after June 30, 2011 and prior to the close of business on the fourth Business Day (as defined in the Preliminary Offering Memorandum) immediately preceding the maturity date for the 2018 Notes. The conversion rate is equivalent to an initial conversion price of approximately U.S.$11.28 per ADS.

The indentures governing the Notes contain a covenant requiring the Issuer to cause a sufficient number of Available Treasury Shares (as defined in the Preliminary Offering Memorandum) or CPOs to be authorized in order to satisfy its conversion obligations, within the time limits set forth in the indentures.

**Anti-Dilution Adjustments**

The conversion rate may be adjusted if certain events occur.

**Make Whole Conversion upon Fundamental Change**

If a fundamental change (as defined in the Preliminary Offering Memorandum) occurs and a holder elects to convert its Notes in connection with such fundamental change, the Issuer will, under certain circumstances, increase the conversion rate for the Notes so surrendered for conversion. The following tables below set forth the number of additional ADSs to be received per U.S.$1,000 principal amount of the Notes of each series in connection with a fundamental change as described in the Preliminary Offering Memorandum, based on hypothetical ADS prices and effective dates of the fundamental change.

| | ADS Price for the 2016 Notes | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Effective Date | $8.68 | $10.00 | $12.50 | $15.00 | $17.50 | $20.00 | $25.00 | $30.00 | $35.00 | $40.00 | $50.00 |
| March 15, 2011 | 26.5863 | 21.3492 | 13.8100 | 9.6178 | 7.0672 | 5.4033 | 3.4274 | 2.3291 | 1.6453 | 1.1860 | 0.6241 |
| March 15, 2012 | 26.5863 | 21.1705 | 13.1132 | 8.8004 | 6.2785 | 4.6942 | 2.8961 | 1.9418 | 1.3631 | 0.9789 | 0.5104 |
| March 15, 2013 | 26.5863 | 20.5085 | 11.9045 | 7.5390 | 5.1335 | 3.7084 | 2.2015 | 1.4568 | 1.0202 | 0.7330 | 0.3800 |
| March 15, 2014 | 26.5863 | 19.1511 | 9.9350 | 5.6498 | 3.5243 | 2.3947 | 1.3475 | 0.8894 | 0.6305 | 0.4581 | 0.2375 |
| March 15, 2015 | 26.5863 | 16.3850 | 6.4923 | 2.7265 | 1.3119 | 0.7638 | 0.4115 | 0.2872 | 0.2117 | 0.1567 | 0.0799 |
| March 15, 2016 | 26.5863 | 11.3789 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 |

Schedule II

The exact ADS prices and effective dates may not be set forth in the table above, in which case if the ADS price is:

- between two adjacent ADS price amounts in the table or the effective date is between two adjacent effective dates in the table, the number of additional ADSs will be determined by a straight-line interpolation between the number of additional ADSs set forth for the higher and lower ADS price amounts and the two dates based on a 365-day year, as applicable.
- greater than U.S.$50 per ADS (subject to adjustment in the same manner as the ADS prices set forth in the column headings of the tables above), no additional ADSs will be issued upon conversion of the 2016 Notes.
- less than U.S.$8.68 per ADS (subject to adjustment in the same manner as the ADS prices set forth in the column headings of the tables above), no additional ADSs will be issued upon conversion of the 2016 Notes.

Notwithstanding the foregoing, in no event will the total number of ADSs issuable upon conversion exceed 115.2074 per U.S.$1,000 principal amount of 2016 Notes, although that maximum is subject to adjustment in the same manner as the conversion rate as set forth under “Description of Notes —Conversion Rights—Conversion Rate Adjustments” in the Preliminary Offering Memorandum.

| | | ADS Price for the 2018 Notes | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| **Effective Date** | **$8.68** | **$10.00** | **$12.50** | **$15.00** | **$.17.50** | **$20.00** | **$25.00** | **$30.00** | **$35.00** | **$40.00** | **$50.00** |
| March 15, 2011 | 26.5863 | 22.2972 | 15.5061 | 11.4846 | 8.8818 | 7.0843 | 4.7979 | 3.4276 | 2.5283 | 1.9012 | 1.1034 |
| March 15, 2012 | 26.5863 | 22.2425 | 15.1238 | 11.0096 | 8.4052 | 6.6408 | 4.4439 | 3.1544 | 2.3186 | 1.7396 | 1.0059 |
| March 15, 2013 | 26.5863 | 21.9970 | 14.5099 | 10.3128 | 7.7326 | 6.0294 | 3.9707 | 2.7968 | 2.0483 | 1.5340 | 0.8843 |
| March 15, 2014 | 26.5863 | 21.6170 | 13.6547 | 9.3653 | 6.8333 | 5.2239 | 3.3622 | 2.3459 | 1.7127 | 1.2818 | 0.7379 |
| March 15, 2015 | 26.5863 | 20.7665 | 12.2837 | 7.9616 | 5.5607 | 4.1217 | 2.5687 | 1.7759 | 1.2969 | 0.9734 | 0.5617 |
| March 15, 2016 | 26.5863 | 19.2156 | 10.1309 | 5.9021 | 3.7925 | 5.6589 | 1.5833 | 1.0938 | 0.8078 | 0.6129 | 0.3565 |
| March 15, 2017 | 26.5863 | 16.3088 | 6.5195 | 2.8036 | 1.4054 | 0.8579 | 0.4936 | 0.3566 | 0.2713 | 0.2088 | 0.1217 |
| March 15, 2018 | 26.5863 | 11.3789 | 0.0000 | 0.0000 | 0.0000 | 0.0000 | 0.0000 | 0.0000 | 0.0000 | 0.0000 | 0.0000 |

The exact ADS prices and effective dates may not be set forth in the table above, in which case if the ADS price is:

- between two adjacent ADS price amounts in the table or the effective date is between two adjacent effective dates in the table, the number of additional ADSs will be determined by a straight-line interpolation between the number of additional ADSs set forth for the higher and lower ADS price amounts and the two dates based on a 365-day year, as applicable.
- greater than U.S.$50 per ADS (subject to adjustment in the same manner as the ADS prices set forth in the column headings of the tables above), no additional ADSs will be issued upon conversion of 2018 Notes.
- less than U.S.$8.68 per ADS (subject to adjustment in the same manner as the ADS prices set forth in the column headings of the tables above), no additional ADSs will be issued upon conversion of 2018 Notes.

Schedule II

Notwithstanding the foregoing, in no event will the total number of ADSs issuable upon conversion exceed 115.2074 per U.S.$1,000 principal amount of 2018 Notes, although that maximum is subject to adjustment in the same manner as the conversion rate as set forth under "Description of Notes —Conversion Rights—Conversion Rate Adjustments" in the Preliminary Offering Memorandum.

| | |
|---|---|
| **Repurchase at Option of Holder** | • Other than in the event of a change of control, Holders may not require the Issuer to repurchase any Notes prior to their stated maturity date.<br>• If a change of control (as defined in the Preliminary Offering Memorandum) occurs at any time, each Holder will have the right, at that holder's option, to require the Issuer to purchase all or part of its Notes for cash at a repurchase price equal to 100% of their principal amount, plus accrued and unpaid interest (including additional interest, if any) and additional amounts, if any, up to, but excluding, the repurchase date. |
| **Redemptions** | • Other than in the event of a tax redemption, the Issuer may not redeem any Notes prior to their stated maturity date.<br>• In the event of certain changes in the withholding tax treatment relating to payments on the Notes of a series, the Issuer will have the option to redeem the Notes of a series, in whole but not in part, at a redemption price equal to 100% of the outstanding principal amount of the Notes of such series plus any accrued and unpaid interest to the date fixed for redemption and any additional amounts that may be payable, so long as the Issuer is not prohibited from having such an option under the Financing Agreement.<br>• Upon the Issuer giving notice that it will redeem the Notes of a series because of such a change in the withholding tax treatment, holders will have the option to convert their notes of such series as if a fundamental change had occurred. |
| **Use of Proceeds** | The estimated net proceeds from this offering, after deducting the initial purchasers' discounts and commissions and estimated offering expenses, will be approximately U.S.$1,347 million, assuming the initial purchasers do not exercise their over-allotment options, and approximately U.S.$1,637 million if they exercise their over-allotment options in full. The Issuer intends to use approximately U.S.$187,000,000 of the net proceeds from this offering to pay the cost of the capped call transactions described in the Preliminary Offering Memorandum and expect to use a portion of the net proceeds from the sale of additional Notes in the event the initial purchasers exercise their over-allotment options to increase the number of ADSs underlying the capped call transactions on a proportionate basis, and the Issuer intends to use the remaining net proceeds to repay indebtedness, including indebtedness under the Financing Agreement and CBs. |

| | |
|---|---|
| **Capped Call Option** | In connection with this offering, the Issuer expects to enter into capped call transactions with one or more financial institutions, covering, subject to customary anti-dilution adjustments, approximately 124.1 million of the Issuer's ADSs, assuming the initial purchasers do not exercise their over-allotment options. If the initial purchasers exercise their options to purchase additional Notes to cover over-allotments, the Issuer expects to increase the number of ADSs underlying the capped call transactions on a proportionate basis. Because the capped call transactions are cash settled, they will not provide an offset to any ADSs the Issuer may deliver to holders upon conversion of the Notes. The capped call transactions have a cap price 90% higher for the 2016 Notes and 110% higher for the 2018 Notes than the closing price of the Issuer's ADSs on March 9, 2011.<br><br>For purposes of hedging these capped call transactions, the Issuer expects that the counterparties to the capped call transactions (or affiliates thereof) (i) may enter into various over-the-counter cash-settled derivative transactions with respect to the Issuer's CPOs or ADSs and/or purchase the Issuer's CPOs or ADSs in secondary market transactions concurrently with and shortly after the pricing of the Notes; (ii) and may enter into or unwind various over-the-counter derivatives and/or purchase or sell the Issuer's CPOs or ADSs in secondary market transactions following the pricing of the Notes and prior to the maturity of the Notes. |
| **New York Stock Exchange Symbol for the Issuer's ADSs** | CX |
| **Governing law** | New York |
| **Clearing** | The Depositary Trust Company |
| **Additional Information** | |

1. **Capitalization of CEMEX**

The following table sets forth our consolidated cash and temporary investments, indebtedness and capitalization as of December 31, 2010 (1) on an actual basis; (2) as adjusted to give effect to (i) the issuance of the January 2011 Notes, (ii) the 2011 Prepayments, and (iii) the 2011 Private Exchange; and (3) as further adjusted to give effect to the issuance and sale in this offering of U.S.$ 1,400 million aggregate principal amount of the Notes, the payment of the initial purchasers' discounts and commissions and the estimated expenses in connection with this offering, and the application of the estimated net proceeds as described under "Use of Proceeds." The offering of the 2016 Notes is independent of, and not conditioned upon, the offering of the 2018 Notes. The offering of the 2018 Notes is independent of, and not conditioned upon, the offering of the 2016 Notes.

The financial information set forth below is based on information derived from our financial statements, which have been prepared in accordance with MFRS, which differ in significant respects from U.S. GAAP. For further information about our financial presentation, see "Selected Consolidated Financial Information."

Schedule II

| | As of December 31, 2010 | | | | | |
|---|---|---|---|---|---|---|
| | Actual | | As adjusted(1) | | As further adjusted(2) | |
| | (in millions of Pesos and Dollars) | | | | | |
| Cash and investments(3) | Ps 8,354 | Ps 13,280 | U.S.$ 1,074 | Ps 13,280 | U.S.$ 1,074 | |
| Short-term debt(4) | | | | | | |
| Secured | | | | | | |
| Banobras(5) | Ps 36 | Ps 36 | U.S.$ 3 | Ps 36 | U.S.$ 3 | |
| Bancomext(5) | | | | | | |
| Other secured(6) | 4,358 | 1,197 | 97 | 1,197 | 97 | |
| Unsecured | | | | | | |
| Other unsecured | 1,243 | 517 | 42 | 517 | 42 | |
| Total short-term debt | 5,637 | 1,750 | 142 | 1,750 | 142 | |
| Long-term debt | | | | | | |
| Secured by the Collateral | | | | | | |
| Financing Agreement | 118,241 | 117,626 | 9,517 | 104,500 | 8,455 | |
| CBs(7) | 8,867 | 6,169 | 499 | 4,628 | 374 | |
| Senior Secured Notes(8)(9) | 42,496 | 56,405 | 4,564 | 56,405 | 4,564 | |
| Other secured | | | | | | |
| Banobras | 169 | 169 | 14 | 169 | 14 | |
| Bancomext | 2,007 | 2,007 | 162 | 2,007 | 162 | |
| Unsecured | | | | | | |
| CEMEX España Euro Notes(10) | 14,834 | 14,834 | 1,200 | 14,834 | 1,200 | |
| Other unsecured | 2,874 | 2,874 | 233 | 2,874 | 233 | |
| Optional Convertible Subordinated Notes(11) | 7,693 | 7,693 | 622 | 7,693 | 622 | |
| The Notes(12) | — | — | — | 13,797 | 1,116 | |
| Total long-term debt | 197,181 | 207,777 | 16,811 | 206,907 | 16,740 | |
| Total debt | 202,818 | 209,527 | 16,953 | 208,657 | 16,882 | |
| Liability component of Mandatory Convertible Notes(13) | 1,994 | 1,994 | 161 | 1,994 | 161 | |
| Stockholders' equity | | | | | | |
| Non-controlling interest | | | | | | |
| Perpetual debentures(14) | 16,310 | 14,342 | 1,160 | 14,342 | 1,160 | |
| Other | 3,214 | 3,214 | 260 | 3,214 | 260 | |
| Controlling interest(11)(12)(13) | 194,176 | 194,176 | 15,710 | 197,623 | 15,989 | |
| Total stockholders' equity | 213,700 | 211,732 | 17,130 | 215,179 | 17,409 | |
| Total capitalization(15) | 418,512 | 423,253 | 34,244 | 425,830 | 34,452 | |

(1) Reflects the issuance of U.S.$1.0 billion aggregate principal amount of the January 2011 Notes, the 2011 Prepayments and the 2011 Private Exchange. Amounts in Dollars have been converted from Pesos at an exchange rate of Ps12.36 to U.S.$1.00, the CEMEX accounting rate as of December 31, 2010.

(2) Reflects additional application of the net proceeds from this offering. Assumes the initial purchasers do not exercise their over-allotment options. Amounts in Dollars have been converted from Pesos at an exchange rate of Ps12.36 to U.S.$1.00, the CEMEX accounting rate as of December 31, 2010.

(3) In the "as adjusted" and "as further adjusted" columns, includes cash used to create a reserve for CBs maturing in September 2011 of approximately U.S.$81 million.

(4) Includes current portion of long-term debt.

(5) Represent obligations with Mexican development banks, which are secured by fixed assets.

(6) Represent long-term CBs with maturities during 2011, for which U.S.$81 million of cash has been reserved.

(7) Represent CBs maturing in 2012 and thereafter.

(8) Includes (i) U.S.$1,250,000,000 aggregate principal amount of 9.50% Senior Secured Notes due 2016 and €350,000,000 aggregate principal amount of 9.625% Senior Secured Notes due 2017 issued by CEMEX Finance LLC on December 14, 2009; (ii) U.S.$500,000,000 additional aggregate principal amount of 9.50% Senior Secured Notes due 2016 issued by CEMEX Finance LLC on January 19, 2010, (iii) U.S.$1,067,665,000 aggregate principal amount of 9.25% Senior Secured Notes due 2020 and €115,346,000 aggregate principal amount of 8.875% Senior Secured Notes due 2017 issued by CEMEX España, acting through its Luxembourg branch, on May 12, 2010 (iv) U.S.$1,000,000,000 aggregate principal amount of 9.000% Senior Secured Notes due 2018 issued by CEMEX on January 11, 2011, and (v) U.S.$125,331,000 additional aggregate principal amount of 9.25% Senior Secured Notes due 2020 issued by CEMEX España, acting through its Luxembourg branch, on March 4, 2011.

(9) Amounts in Dollars have been converted from Euros at an exchange rate of U.S.$1.3335 to €1.00, the CEMEX foreign exchange rate as of December 31, 2010.

(10) Issued by CEMEX Finance Europe B.V., a special purpose vehicle and wholly-owned subsidiary of CEMEX España, and solely guaranteed by CEMEX España.

(11) Under MFRS C-12, the Optional Convertible Subordinated Notes represent a compound instrument, which has a liability component and an equity component. The liability component amounted to U.S.$622 million as of December 31, 2010 and U.S.$614 million at issuance. The equity component, which represents a premium over the option of the noteholders to convert into equity, was recognized net of commissions, within "Other equity reserves" and amounted to U.S.$93 million at issuance (see note 12A and 16B to our consolidated financial statements included elsewhere in this offering memorandum). If the conversion option is exercised, this amount will be reclassified as additional paid-in capital. Although we have not completed our U.S. GAAP reconciliation of our 2010 financial statements, we currently anticipate that there will be a new reconciliation item in our U.S. GAAP reconciliation of our 2010 financial statements in respect of the Optional Convertible Subordinated Notes, the entire principal amount of which we expect will be recorded as debt until conversion under U.S. GAAP. We cannot assure you that we will not identify additional reconciliation items or that this reconciliation item will be reflected therein in accordance with our current expectations.

(12) Under MFRS C-12, the Notes, like the Optional Convertible Subordinated Notes referred to in note (11) above, represent a compound instrument, which has a liability component and an equity component, and we expect to have a similar U.S. GAAP reconciliation item in respect of the Notes in our future financial statements. However, the Notes will not be considered as debt for purposes of the leverage ratio calculations under the Financing Agreement. The "as further adjusted" column reflects (i) the expected liability component of the Notes of U.S.$1,116 million, calculated as of the date of this offering memorandum and (ii) the expected equity component of the Notes of U.S.$279 million, calculated net of commissions as of the date of this offering memorandum. The equity component, which represents a premium over the option of the noteholders to convert into equity, is expected to be recognized net of commissions, within "Other equity reserves," and if the conversion option is exercised, will be reclassified as additional paid-in capital.

(13) Under MFRS, the Mandatory Convertible Securities issued in Mexico on December 10, 2009 in exchange for CBs represent a combined instrument with liability and equity components. The liability component, approximately Ps1,994 million (U.S.$161 million) as of December 31, 2010, corresponds to the net present value of interest payments due under the Mandatory Convertible Securities, assuming no early conversion, and was recognized under "Other Financial Obligations" in our balance sheet. The equity component, approximately Ps1,971 million (U.S.$159 million) as of December 31, 2010, represents the difference between principal amount and the liability component, and was recognized within "Other equity reserves" net of commissions in our balance sheet. See notes 12A and 16B to our consolidated financial statements included elsewhere in this offering memorandum.

(14) Issued by special purpose vehicles. In accordance with MFRS, these securities are accounted for as equity due to the fact that they do not have a specified maturity date and our option to defer payment of interest. However, for purposes of our U.S. GAAP reconciliation, we record these debentures as debt and interest payments thereon as part of financial expenses in our consolidated income statement.

(15) As used in this table, total capitalization equals short- and long-term debt plus the Mandatory Convertible Notes plus the Notes and plus total stockholders' equity.

* * *



Schedule II

**SCHEDULE III**

**Forms of Opinion of Skadden, Arps, Slate, Meagher & Flom LLP,
special U.S. counsel for the Company**

**SCHEDULE IV**

**Form of Opinion of Ramiro G. Villarreal, General Counsel of the Company**

[INTRODUCTORY PARAGRAPH AND RELIANCE SECTIONS]

In rendering this opinion, I have assumed the legal capacity of all natural persons, the genuineness of all signatures, the authenticity of all documents submitted to me as originals, the conformity to original documents of all documents submitted to me as facsimile, electronic, certified or photostatic copies, and the authenticity of the originals of such copies. In making my examination of executed documents, I have assumed that the parties thereto (other than the Company) had the power, corporate or other, to enter into and perform all obligations thereunder and have also assumed the due authorization by all requisite action, corporate or other, and the execution and delivery by such parties (other than the Company) of such documents and the validity and binding effect thereof on such parties. I have also assumed that each of the parties (other than the Company) to the Transaction Documents (as defined herein) has been duly organized and is validly existing in good standing, if applicable, and has requisite legal status and legal capacity, under the laws of its jurisdiction of organization and that each of such parties has complied and will comply with all aspects of the laws of all relevant jurisdictions (including the laws of its jurisdiction of organization) in connection with the transactions contemplated by, and the performance of its obligations under, the Transaction Documents, other than the laws of Mexico insofar as I express my opinions herein.

In rendering this opinion I have reviewed originals or copies of the following documents (referred to herein collectively as the " Transaction Documents"):

(a) an executed copy of the Purchase Agreement;

(b) the Preliminary Memorandum, the documents incorporated by reference therein and the final term sheet, dated March 9, 2011 (the " Final Term Sheet");

(c) the Final Memorandum and the documents incorporated by reference therein;

(d) an executed copy of the Indenture;

(e) a copy of the Spanish version of the Indenture, notarized before a Mexican Notary Public;

(f) the Securities in global form as executed by the Company and authenticated by the Trustee;

(g) an executed copy of the Capped Call Transaction Documents; and

(h) the documents executed and delivered by the Company at the closing pursuant to the Purchase Agreement.

Based upon the foregoing, and subject to the further qualifications set forth below, I am of the opinion that:

1. The Company has been duly incorporated and is validly existing as a corporation under the laws of Mexico, with full corporate 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 to execute and deliver, and to perform its obligations under, the Transaction Documents and any transaction contemplated thereunder.

2. (i) The Company's authorized equity capitalization is as set forth, and conforms to the description thereof contained, in the Disclosure Package and the Final Memorandum; (ii) the outstanding ordinary shares of the Company have been duly authorized and validly issued and are fully paid and nonassessable; (iii) the outstanding CPOs of the Company have been duly authorized and validly issued in accordance with the CPO Trust and the relevant CPO Deeds; (iv) the outstanding ADSs of the Company have been, and the ADSs issuable upon conversion of the Securities will be, duly authorized and validly issued pursuant to the ADS Deposit Agreement; (v) based on the initial conversion rate and considering any fundamental change, but without considering any antidilution adjustment that may occur subsequent to the Closing Date as provided in the Indenture, (1) the Company has duly and validly issued a sufficient number of ordinary shares, free of preemptive or similar rights, and (2) no later than June 30, 2011, will have a sufficient number of CPOs available, free of preemptive or similar rights to be released and delivered by the CPO Trustee, in each case, for issuance of ADSs upon conversion of the Securities, (vi) following the occurrence of a fundamental change or antidilution adjustment after the Closing Date as provided in the Indenture, any ordinary shares issued, and any CPOs released and delivered by the CPO Trustee, in each case, for the issuance of ADSs upon conversion of the Securities against payment of the conversion price, will be duly and validly issued pursuant to the Company's bylaws, the CPO Trust and the relevant CPO Deed, free of preemptive or similar rights; (vii) 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, ownership interests, ordinary shares, CPOs or ADSs in the Company are outstanding, and (viii) 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 perfected security interest and, to the knowledge of such counsel, after due inquiry, any other security interest, claim, lien or encumbrance, except for the security interest created under the Transaction Security Documents.

3. Each of the Transaction Documents to which the Company is a party, has been duly authorized, executed and delivered by the Company and constitutes a legal, valid and binding agreement, enforceable against the Company in accordance with its terms; and, in the case of the notarized Spanish version of the Indenture, it has also been duly filed for registration with the Public Registry of Commerce of Monterrey, Nuevo León.

4. Neither the execution and delivery of the Transaction Documents, nor the consummation of any other of the transactions therein contemplated, nor the fulfillment of the terms thereof will conflict with, result in a breach or violation of, or imposition of any lien,

charge or encumbrance upon any property or asset of the Company pursuant to, (i) the charter or by laws ( *estatutos sociales*) of the Company; (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 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 of any court, regulatory body, administrative agency, governmental body, arbitrator or other authority having jurisdiction over the Company or any of its respective properties.

5. No consent, approval, authorization, filing with, order of, notice to, or qualification with any Mexican governmental or regulatory authority or court is required for the execution, delivery and performance by the Company of the Purchase Agreement, the Indenture, the Capped Call Transaction Documents, the issuance and sale of the Securities, and the consummation of the transactions contemplated therein, except for (i) the notice to be given to the Mexican National Banking and Securities Commission ( *Comisión Nacional Bancaria y de Valores*), on or before the Closing Date, under Article 7 of the Securities Market Law (*Ley del Mercado de Valores*), in respect of the issuance of the Securities and (ii) the notarization of a Spanish version of the Indenture, to be effected on or prior to the Closing Date, and its subsequent filing and registration with the Public Registry of Property and Commerce (*Registro Público de la Propiedad y del Comercio*) of Monterrey, Nuevo León, México, which does not affect its validity or enforceability.

6. The choice of New York state law as the governing law of the Purchase Agreement, the Indenture, the Capped Call Transaction Documents and the issuance and sale of the Securities, is legal, valid and binding to the Company under the laws of Mexico and there is no reason why the courts of Mexico would not give effect to the choice of New York law as the proper law of the Purchase Agreement, the Indenture, the Capped Call Transaction Documents, and the Securities; the Company has the legal capacity to sue and be sued in its own name under the laws of Mexico; the Company has the power to submit, and has irrevocably submitted, to the jurisdiction of the New York courts and the Company has validly and irrevocably appointed Corporate Creations Network Inc. as its authorized agent under the laws of Mexico for service of process under the Purchase Agreement, the Indenture, the Capped Call Transaction Documents, and the Securities; the irrevocable submission of the Company to the jurisdiction of the New York courts and the waiver by the Company of any immunity and any objection to the venue of the proceeding in a New York court in the Purchase Agreement, in the Indenture, the Capped Call Transaction Documents, and in the Securities, are legal, valid and binding under the laws of Mexico and there is no reason why the courts of Mexico would not give effect to such submission and waiver; and the courts in Mexico will recognize as valid and final, and will enforce, any final and conclusive judgment against the Company obtained in a New York court arising out of or in relation to the obligations of the Company under the Purchase Agreement, the Indenture, the Capped Call Transaction Documents, or the Securities, without re-examination of the issues pursuant to Articles 569 and 571 of the Mexican Federal Code of Civil Procedure and Article 1347A of the Mexican Commerce Code, which provide, *inter alia*, that any judgment rendered outside of Mexico may be enforced by Mexican Courts, provided that:

(i) such judgment is obtained in compliance with (a) all legal requirements of the jurisdiction of the court rendering such judgment, and (b) all legal requirements of the relevant Transaction Documents;

(ii) such judgment is not rendered in a real action (*acción real*);

(iii) such judgment is final, non-appealable and authenticated by the appropriate governmental authorities, and is strictly for the payment of a certain sum of money, provided that, under Mexican Monetary Law, payments that should be made in Mexico in foreign currency, whether by agreement or upon a judgment of a Mexican Court, may be discharged in Mexican currency at a rate of exchange for such currency prevailing at the time of payment;

(iv) the court rendering such judgment is competent to render such judgment in accordance with applicable rules under international law and such rules are compatible with the rules adopted under the Mexican Code of Commerce;

(v) service of process was made personally on the Company or on an appropriate Process Agent of the Company;

(vi) such judgment does not contravene Mexican public policy or laws (and we have no reason to believe that a judgment based upon the Transaction Documents would contravene Mexican public policy);

(vii) the applicable procedure under the laws of Mexico with respect to the enforcement for foreign judgments (including the issuance of a letter rogatory by the competent authority of such jurisdiction requesting enforcement of such judgment and the certification of such judgment as authentic by the corresponding authorities of such jurisdiction in accordance with the laws thereof) is complied with;

(viii) the courts of such jurisdiction recognize the principles of reciprocity in connection with the enforcement of Mexican judgments in such jurisdiction; and

(ix) the cause of action in connection with which such judgment is rendered is not the same cause of action between the same parties that is pending before a Mexican court.

7. Except as described in the Disclosure Package and the Final Memorandum, with respect to non-residents of Mexico, no stamp or other issuance or transfer taxes or duties and no capital gains, income, withholding or other taxes are payable by or on behalf of the Initial Purchasers to Mexico or to any political subdivision or taxing authority thereof or therein in connection with the sale and delivery by the Company of the Securities as contemplated in the Purchase Agreement to the Initial Purchasers, the sale and delivery by the Initial Purchasers of the Securities as contemplated in the Purchase Agreement or the entering into or performance of the terms of the Purchase Agreement.

Schedule IV

8. Other than as described in the Disclosure Package and the Final Memorandum, under the current laws and regulations of Mexico, all payments of principal, premium (if any) and interest on the Securities may be paid, if applicable, by the Company to the registered holder thereof in U.S. dollars (that may be obtained through conversion of Mexican Pesos) that may be freely transferred out of Mexico, and all such payments and other distributions made to holders of the Securities who are non-residents of Mexico, will not be subject to Mexican income, withholding or other taxes under the laws and regulations of Mexico and are otherwise free and clear of any other tax, duty withholding or deduction in Mexico and without the necessity of obtaining any governmental authorization in Mexico.

9. It is not necessary in order to enable the Initial Purchasers, the Trustee, the counterparties to the Capped Call Transaction Documents or the holders of the Securities to exercise or enforce any of their rights under the Purchase Agreement, the Indenture, the Capped Call Transaction Documents, or the Securities in Mexico or by reason of the entry into and/or the performance of the Purchase Agreement, the Indenture, and the Capped Call Transaction Documents, that the Initial Purchasers or the counterparties to the Capped Call Transaction Documents should be licensed or qualified to do business in Mexico. The Initial Purchasers, the counterparties to the Capped Call Transaction Documents and the non-Mexican holders of the Securities will not be deemed resident, domiciled, carrying on business or subject to taxation in Mexico solely by reason of the execution, delivery, performance or enforcement of the Purchase Agreement or the Capped Call Transaction Documents.

10. Except as disclosed in the Disclosure Package and the Final Memorandum, there is no pending or, to the best of my knowledge, threatened 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 that is not adequately disclosed in the Disclosure Package and the Final Memorandum, except in each case (A) for such proceedings that, if the subject of an unfavorable decision, ruling or finding would not singly or in the aggregate, have a Material Adverse Effect; and (B) (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 headings “Regulatory Matters and Legal Proceedings,” “Description of Common Stock,” “Description of CPOs” and “Description of ADSs”; fairly summarize the matters therein described.

11. There is no reason to believe that the Disclosure Package, as amended or supplemented at the Execution Time, contained any untrue statement of a material fact or omitted 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 (in each case, other than the financial statements and other financial information contained therein, as to which I express no opinion).

12. There is no reason to believe that the Final Memorandum, as of its date or on the Closing Date, contained or contains any untrue statement of a material fact or omitted or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading (in each case, other than the

financial statements and other financial information contained therein, as to which I express no opinion).

I express no opinion as to any laws other than the laws of Mexico. In rendering my opinion, I have relied, (i) as to matters governed by United States Federal and New York law, upon the opinion of Skadden, Arps, Slate, Meagher & Flom LLP delivered pursuant to the Purchase Agreement and (ii) as to matters of fact, on certificates of responsible officers of the Company and public officials that are furnished to the Initial Purchasers.

This opinion is subject to the following qualifications:

a. Enforcement of the Transaction Documents may be limited by *concurso mercantil,* bankruptcy, insolvency, liquidation, reorganization, moratorium and other similar laws affecting the rights of creditors generally;

b. Labor claims, claims of tax authorities for unpaid taxes, social security quotas, worker's housing fund quotas, retirement fund quotas, as well as claims from secured or privileged creditors, will have priority over claims of the parties to, or in connection with, the Purchase Agreement, the Indenture, the Capped Call Transaction Documents, and the Securities;

c. In the event that proceedings are brought in Mexico seeking performance of the obligations of the Company in Mexico, pursuant to the Mexican Monetary Law, such entity may discharge its obligations by paying any sums due in a currency other than Mexican currency, in Mexican currency at the rate of exchange prevailing in Mexico on the date when payment is made;

d. In the event that any legal proceedings are brought in the courts of Mexico, a Spanish translation of the documents required in such proceedings prepared by a court-approved translator would have to be approved by the court after the defendant has 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;

e. Claims may become barred under the statutes of limitation, which are not waivable under Mexican law, or may become subject to defenses or set-off or counterclaim;

f. A Mexican court may stay proceedings held in such court if concurrent proceedings are being held elsewhere;

g. With respect to the provisions contained in each of the Transaction Documents in connection with service of process, it should be noted that service of process by mail does not constitute personal service of process under Mexican law and, since such service is considered to be a basic procedural requirement, if for purposes of proceedings outside Mexico service of process is made by mail, a final judgment based on such process would not be enforced by the courts of Mexico; and

h. An obligation to pay interest on interest may not be enforceable in Mexico.

Schedule IV

This opinion is furnished only to you as representative of the Initial Purchasers and is solely for the Initial Purchasers' benefit in connection with the closing occurring today and the offering of the Securities, in each case pursuant to the Purchase Agreement and for [ •] as counterparties under the Capped Call Transaction Documents. Without my prior written consent, this opinion may not be used, circulated, quoted or otherwise referred to for any other purpose or relied upon by, or assigned to, any other person for any purpose, including any other person that acquires any Securities or that seeks to assert your rights in respect of this opinion (other than an Initial Purchaser's successor in interest by means of merger, consolidation, transfer of a business or other similar transaction), except that The Bank of New York Mellon may rely upon this opinion in its capacity as trustee under the Indenture and that Skadden, Arps, Slate, Meagher & Flom LLP may rely upon this opinion as to matters of the laws of the Mexico in rendering their opinion pursuant to Section 6(a) of the Purchase Agreement.

Schedule IV

**SCHEDULE V**

Form of Officer's Certificate

[_____], 2011

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 México (the "Company"), and not in an individual capacity, hereby certify as follows on behalf of the Company pursuant to Section 6(e) of the Purchase Agreement, dated as of [ _____], 2011, executed in connection with the offering by the Company of U.S.$[_____] aggregate principal amount of its [__]% Convertible Subordinated 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 and 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 VI**

**Form of Comfort Letter by KPMG Cárdenas Dosal, S.C.**

**SCHEDULE VII**

1. Issuer Written Information (included in the Disclosure Package)

   (a) Final Term Sheet, dated March 9, 2011.

2. Other Information Included in the Disclosure Package

   (a) The following information is also included in the Disclosure Package:

   None

**Exhibit 4.63**

***EXECUTION VERSION***

MASTER TERMS AND CONDITIONS FOR CAPPED CALL TRANSACTIONS
BETWEEN CITIBANK, N.A. AND CEMEX, S.A.B. de C.V.

The purpose of this Master Terms and Conditions for Capped Call Transactions (this "Master Confirmation"), dated as of March 9, 2011, is to set forth certain terms and conditions for capped call option transactions that CEMEX, S.A.B. de C.V. (" Counterparty") will enter into with Citibank, N.A. ( "Dealer"). Each such transaction (a "Transaction") entered into between Dealer and Counterparty that is to be subject to this Master Confirmation shall be evidenced by a written confirmation substantially in the form of Exhibit A hereto, with such modifications thereto as to which Counterparty and Dealer mutually agree (a "Confirmation"). This Master Confirmation and each Confirmation together constitute a "Confirmation" as referred to in the Agreement specified below.

This Master Confirmation and a Confirmation evidence a complete binding agreement between you and us as to the terms of the Transaction to which this Master Confirmation and such Confirmation relates. This Master Confirmation and each Confirmation hereunder shall supplement, form a part of, and be subject to an agreement in the form of the 1992 ISDA Master Agreement (Multicurrency – Cross Border) as if we had executed an agreement in such form (with a Schedule that had the provisions in Section 15 of this Master Confirmation and the other elections set forth in this Master Confirmation) on the Trade Date and such agreement shall be considered the "Agreement" hereunder.

The Transactions governed by this Master Confirmation shall be the sole Transactions under the Agreement. If there exists any ISDA Master Agreement between Dealer and Counterparty or any confirmation or other agreement between Dealer and Counterparty pursuant to which an ISDA Master Agreement is deemed to exist between Dealer and Counterparty, then notwithstanding anything to the contrary in such ISDA Master Agreement, such confirmation or agreement or any other agreement to which Dealer and Counterparty are parties, the Transactions governed by this Master Confirmation shall not be considered Transactions under, or otherwise governed by, such existing or deemed ISDA Master Agreement.

The definitions and provisions contained in the 2002 ISDA Equity Derivatives Definitions as supplemented by the 2007 Partial Lookthrough Depository Receipt Supplement to the 2002 ISDA Equity Derivatives Definitions (as amended in this Master Confirmation, the " DR Supplement" and the 2002 ISDA Equity Derivatives Definitions as so supplemented, the "Definitions"), each as published by ISDA are incorporated into this Master Confirmation.

THIS MASTER CONFIRMATION WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REFERENCE TO CHOICE OF LAW DOCTRINE. THE PARTIES HERETO IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND THE UNITED STATES COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, AND TO THE JURISDICTION OF THEIR OWN CORPORATE DOMICILE, IN RESPECT OF ACTIONS BROUGHT AGAINST SUCH PARTY AS A DEFENDANT, IN CONNECTION WITH ALL MATTERS RELATING HERETO AND WAIVE ANY OBJECTION TO THE LAYING OF VENUE IN, AND ANY CLAIM OF INCONVENIENT FORUM WITH RESPECT TO, THESE COURTS, AND ANY RIGHT TO WHICH ANY OF THEM MAY BE ENTITLED ON ACCOUNT OF PLACE OF RESIDENCE OR DOMICILE.

1. In the event of any inconsistency between this Master Confirmation, on the one hand, and the Definitions or the Agreement, on the other hand, this Master Confirmation will control for the purpose of the Transaction to which a Confirmation relates. In the event of any inconsistency between the Definitions, the Agreement and this Master Confirmation, on the one hand, and a Confirmation, on the other hand, the Confirmation will govern. With respect to a Transaction, capitalized terms used herein that are not otherwise defined shall have the meaning assigned to them in the Confirmation relating to such Transaction.

2. Each party will make each payment specified in this Master Confirmation or a Confirmation as being payable by such party, not later than the due date for value on that date in the place of the account specified

below or otherwise specified in writing, in freely transferable funds and in a manner customary for payments in the required currency.

3. **Confirmations and General Terms:**

This Master Confirmation and the Agreement, together with the Confirmation relating to a Transaction, shall constitute the written agreement between Counterparty and Dealer with respect to such Transaction.

Each Transaction to which a Confirmation relates is a Capped Call Option Transaction, which shall be considered a Share Option Transaction for purposes of the Definitions (with references to "Strike Price" therein deemed to include "Lower Strike Price" and/or "Upper Strike Price", as applicable), and shall have the following terms:

| | |
|---|---|
| Option Style: | European |
| Option Type: | Call |
| Seller: | Dealer |
| Buyer: | Counterparty |
| Shares: | American depository shares (Symbol: CX), each representing ten Ordinary Participation Certificates (*Certificados de Participación Ordinarios*) of Counterparty. |
| Trade Date: | As set forth in the Confirmation for such Transaction |
| Tranches: | Each Transaction will be divided into individual Tranches, each with the terms set forth in this Master Confirmation and the Confirmation for such Transaction, and in particular with the Number of Options and Expiration Date set forth in the Confirmation for such Transaction. The payments and deliveries to be made upon settlement of each Transaction will be determined separately for each Tranche as if each Tranche were a separate Transaction under the Agreement. |
| Number of Options: | For each Tranche of such Transaction, as set forth in the Confirmation for such Transaction |
| Option Entitlement: | One Share per Option |
| Lower Strike Price: | As set forth in the Confirmation for such Transaction |
| Upper Strike Price: | As set forth in the Confirmation for such Transaction |
| Premium: | As set forth in the Confirmation for such Transaction |
| Premium Payment Date: | As set forth in the Confirmation for such Transaction |
| Exchange: | New York Stock Exchange |
| Related Exchanges: | All Exchanges |

| | |
|---|---|
| Calculation Agent: | Dealer, which shall make all calculations, adjustments and determinations required pursuant to a Transaction in a good faith and commercially reasonable manner, and upon request of Counterparty shall provide to Counterparty written support (without disclosing any of Dealer's proprietary models) as to any such calculations, adjustments and determinations required pursuant to a Transaction. |

**4. Procedure for Exercise and Valuation:**

In respect of any Tranche:

| | |
|---|---|
| Expiration Time: | The Valuation Time |
| Expiration Date: | As provided in the relevant Confirmation (or, if such date is not a Scheduled Trading Day, the next following Scheduled Trading Day that is not already an Expiration Date for another Tranche); provided that if that date is a Disrupted Day, the Expiration Date for such Tranche shall be the first succeeding Scheduled Trading Day that is not a Disrupted Day and is not or is not deemed to be an Expiration Date in respect of any other Tranche of any Transaction hereunder; and provided further that if the Expiration Date has not occurred pursuant to the preceding proviso as of the Final Disruption Date, the Final Disruption Date shall be the Expiration Date (irrespective of whether such date is an Expiration Date in respect of any other Tranche for the Transaction). Notwithstanding the foregoing and anything to the contrary in the Definitions, if a Market Disruption Event occurs on any Expiration Date, the Calculation Agent may determine that such Expiration Date is a Disrupted Day only in part, in which case the Calculation Agent shall determine that such day shall be the Expiration Date for a portion of the Number of Options for the relevant Tranche and shall designate the Scheduled Trading Day determined in the manner described in the immediately preceding sentence as the Expiration Date for the remaining Options for such Tranche. Section 6.6 of the Definitions shall not apply to any Valuation Date and the final sentence of Section 3.1(f) of the Definitions shall not apply to any Expiration Date. |
| Automatic Exercise: | Applicable |
| Seller's Telephone Number, Facsimile Number and Contact Details for Purpose of Giving Notice: | Citibank, N.A.<br>390 Greenwich Street<br>New York, NY 10013<br>Attention: Equity Derivatives<br>Facsimile: (212) 723-8328<br>Telephone: (212) 723-7357 |
| VWAP Price: | The volume-weighted average price per Share on the Valuation Date as displayed under the heading "Bloomberg |

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| | VWAP" on Bloomberg page "CX US <equity> VAP" (or any successor thereto), or if such price is not so reported on such Valuation Date for any reason or is, in the Calculation Agent's reasonable discretion following notice in reasonable detail to, and consultation with, Counterparty, erroneous, or such Valuation Date is a Disrupted Day in whole or in part, the VWAP Price shall be as reasonably determined by the Calculation Agent using, except in the case of the Final Disruption Date, a substantially similar volume-weighted method. |
| Valuation Time: | As defined in Section 6.1 of the Definitions. |
| Valuation Date: | The Expiration Date |
| Final Disruption Date: | As set forth in the Confirmation for such Transaction |
| Market Disruption Event: | The third and fourth lines of Section 6.3(a) of the Definitions are hereby amended by deleting the words "during the one hour period that ends at the relevant Valuation Time" and replacing them with "prior to the relevant Valuation Time".<br><br>Section 6.3(d) of the Definitions is hereby amended by deleting the remainder of the provision following the term "Scheduled Closing Time" in the fourth line thereof. |

**5. Settlement Terms:**

In respect of any Tranche:

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| Settlement Method: | Cash Settlement |
| Settlement Currency: | USD |
| Cash Settlement: | Settlement shall occur in accordance with Section 8.1 of the Definitions. |
| Cash Settlement Payment Date: | For each Tranche, the third Currency Business Day after the Valuation Date for such Tranche. |
| Strike Price Differential: | An amount equal to the lesser of:<br><br>(i) the greater of (a) the VWAP Price minus the Lower Strike Price and (b) zero; and<br><br>(ii) the Upper Strike Price minus the Lower Strike Price. |

**6. Dividends:**

In respect of any Tranche:

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| Dividend Adjustments: | If at any time during the period from and including the date that is one Settlement Cycle following the Trade Date to but excluding the date that is one Settlement Cycle following the |

Expiration Date a record date for a distribution, dividend or recapitalization of retained earnings by an Underlying Issuer occurs, then, and upon consultation with Buyer which shall be taken into account in good faith by the Calculation Agent, (i) if such event (including, for the avoidance of doubt, a recapitalization of retained earnings by an Underlying Issuer) results in a corresponding record date (whether or not falling on the same date) for a Share dividend (excluding a Share dividend in connection with a circumstance described in clause (ii) below), the Calculation Agent (x) shall make an adjustment to the Lower Strike Price and the Option Entitlement that corresponds to the adjustment methodology for such type of dividend set forth in the Indenture (as set forth in the Confirmation for such Transaction) and (y) shall make a proportionate adjustment to the Upper Strike Price on the same basis as the adjustment to the Lower Strike Price described above, and (ii) if (1) such event results in a corresponding record date for a cash dividend on the Shares or both a Share dividend and a cash dividend on the Shares, (2) the holders of the Shares would be entitled to elect the form of consideration they receive, including the right to acquire Shares with a cash dividend, or would not be entitled to receive the entire distribution of Underlying Shares in Shares with respect to a corresponding record date for such event, (3) such event results in both (x) a change to the number of Underlying Shares represented, directly or indirectly, by a Share and (y) an adjustment to the "Conversion Rate" (as defined in the Indenture) for the Convertible Notes (as set forth in the Confirmation for such Transaction) and/or (4) with respect to such event, Counterparty makes a discretionary adjustment to the "Conversion Rate" (as defined in the Indenture) for the Convertible Notes or determines under the Indenture that the adjustments set forth in the Indenture do not provide a fair and equitable result, then the Calculation Agent (A) shall make an adjustment to the Lower Strike Price and the Option Entitlement that corresponds to the adjustment methodology for such type of dividend set forth in the Indenture and (B) shall make adjustments consistent with the Calculation Agent Adjustment provision in Section 11.2(c) of the Definitions (as modified herein) to the Upper Strike Price and/or any other term of the Transaction (except the Lower Strike Price and Option Entitlement) to preserve the fair value of the Transaction after taking into account the effect of such event (including whether such event, taken as a whole, effectively resulted in a Share dividend) and any adjustment made pursuant to clause (ii)(A) above; *provided* that, notwithstanding the foregoing, if Counterparty does not initially make an adjustment to the "Conversion Rate" with respect to such event due to the prescribed adjustment not reaching the one percent threshold for such adjustments described in the Indenture, no adjustment will be made pursuant to clauses (i) or (ii) with respect to such event until any such time as such adjustments occur pursuant to the Indenture. Counterparty shall provide to Dealer written notice (such notice, a "Conversion Rate Adjustment Notice") as soon

as reasonably practicable but in any event prior to the corresponding record date for such an event that would lead to a change in the "Conversion Rate" (as defined in the Indenture) (a " Conversion Rate Adjustment Event"), which Conversion Rate Adjustment Notice shall set forth in reasonable detail the adjustment to the "Conversion Rate" resulting from such Conversion Rate Adjustment Event. In connection with the delivery of any Conversion Rate Adjustment Notice to Dealer, unless all information included in such Conversion Rate Adjustment Notice has previously been provided to holders of the Convertible Notes, Counterparty shall, concurrently with or prior to such delivery, (x) publicly announce and disclose the Conversion Rate Adjustment Event and the resulting adjustment to the "Conversion Rate" or (y) represent and warrant that the information set forth in such Conversion Rate Adjustment Notice does not constitute material non-public information with respect to Counterparty, the Shares or the Underlying Shares.

**7. Share Adjustments:**

Method of Adjustment: Calculation Agent Adjustment; provided, however, that the Definitions shall be amended by (i) replacing the words "diluting or concentrative" in Sections 11.2(a), 11.2(c) (in two instances) and 11.2(e)(vii), and Section 2(a) of the DR Supplement, with the word "material", (ii) by adding the words "or the Transaction" after the words "theoretical value of the relevant Shares" in Sections 11.2(a), 11.2(c) and 11.2(e)(vii), and Section 2(a) of the DR Supplement, and (iii) replacing the words "the Strike Price," in Section 11.2(c)(A) with the words "the Lower Strike Price, the Upper Strike Price,"; provided, further, that adjustments may be made to account for changes in volatility, expected dividends, stock loan rate and liquidity relative to the relevant Share or the Transaction.

**8. Extraordinary Events:**

New Shares: For purposes of Merger Events and Tender Offers affecting the Issuer or Shares only (as such terms would be defined absent any modification in the DR Supplement), in the definition of New Shares in Section 12.1(i) of the Definitions, (a) the text in clause (i) thereof shall be deleted in its entirety (including the word "and" following clause (i)) and replaced with "publicly quoted, traded or listed on any of the New York Stock Exchange, the American Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or their respective successors)," and (b) the phrase "and (iii) of an entity or person organized under the laws of the United States, any State thereof or the District of Columbia" shall be inserted immediately prior to the period.

Consequences of Merger Events:

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| (a) Share-for-Share: | Modified Calculation Agent Adjustment |
| (b) Share-for-Other: | Cancellation and Payment (Calculation Agent Determination) |
| (c) Share-for- Combined: | Component Adjustment |
| Tender Offer: | Applicable; provided that Sections 12.1(d), 12.1(e) and 12.1(l)(ii) of the Definitions are hereby amended by replacing "voting shares" with "Shares" prior to the application of the DR Amendment. |
| Consequences of Tender Offers: | |
| (a) Share-for-Share: | Modified Calculation Agent Adjustment |
| (b) Share-for-Other: | Cancellation and Payment (Calculation Agent Determination) |
| (c) Share-for-Combined: | Component Adjustment |
| Composition of Combined Consideration: | Not Applicable |
| Nationalization, Insolvency or Delisting: | Cancellation and Payment (Calculation Agent Determination); provided that Insolvency shall not be applicable if Counterparty is a debtor (or similar participant) with respect to such Insolvency.<br><br>In addition to the provisions of Section 12.6(a)(iii) of the Definitions, it will also constitute a Delisting if the Exchange is located in the United States and the Shares are not immediately re-listed, re-traded or re-quoted on any of the New York Stock Exchange, the American Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or their respective successors); if the Shares are immediately re-listed, re-traded or re-quoted on any such exchange or quotation system, such exchange or quotation system shall thereafter be deemed to be the Exchange. |

**9. Additional Disruption Events:**

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| Change in Law: | Applicable; provided that Section 12.9(a)(ii) of the Definitions is hereby amended by (i) replacing the phrase "the interpretation" in the third line thereof with the phrase "or announcement of the formal or informal interpretation" and (ii) immediately following the word "Transaction" in clause (X) thereof, adding the phrase "in the manner contemplated by the Hedging Party on the Trade Date". |
| Insolvency Filing: | Applicable, except if Counterparty is a debtor (or similar participant) with respect to such Insolvency Filing |
| Hedging Disruption: | Applicable |
| Increased Cost of Hedging: | Applicable |

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| Hedging Party: | For all applicable Additional Disruption Events, Dealer |
| Determining Party: | For all applicable Additional Disruption Events, Dealer |

**10. Acknowledgments:**

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| Non-Reliance: | Applicable |
| Agreements and Acknowledgments Regarding Hedging Activities: | Applicable |
| Additional Acknowledgments: | Applicable |

**11. Representations, Warranties and Agreements:**

(a) In connection with this Master Confirmation, each Confirmation, each Transaction to which a Confirmation relates and any other documentation relating to the Agreement, each party to this Master Confirmation represents and warrants to, and agrees with, the other party that:

(i) it is an "accredited investor" as defined in Section 2(a)(15)(ii) of the Securities Act of 1933, as amended (the " Securities Act"); and

(ii) it is an "eligible contract participant" as defined in the Commodity Exchange Act, as amended (the " CEA"), and this Master Confirmation and each Transaction hereunder are subject to individual negotiation by the parties and have not been executed or traded on a "trading facility" as defined in the CEA.

(b) Counterparty represents and warrants to, and agrees with, Dealer on the Trade Date of each Transaction that:

(i) its financial condition is such that it has no need for liquidity with respect to its investment in such Transaction and no need to dispose of any portion thereof to satisfy any existing or contemplated undertaking or indebtedness, its investments in and liabilities in respect of such Transaction, which it understands are not readily marketable, are not disproportionate to its net worth, and it is able to bear any loss in connection with such Transaction, including the loss of its entire investment in such Transaction;

(ii) it understands that Dealer has no obligation or intention to register such Transaction under the Securities Act or any state securities law or other applicable federal or non-U.S. securities laws;

(iii) it understands that no obligations of Dealer to it hereunder will be entitled to the benefit of deposit insurance and that such obligations will not be guaranteed by any Affiliate of Dealer or any governmental agency;

(iv) IT UNDERSTANDS THAT SUCH TRANSACTION IS SUBJECT TO COMPLEX RISKS THAT MAY ARISE WITHOUT WARNING AND MAY AT TIMES BE VOLATILE AND THAT LOSSES MAY OCCUR QUICKLY AND IN UNANTICIPATED MAGNITUDE AND IS WILLING TO ACCEPT SUCH TERMS AND CONDITIONS AND ASSUME (FINANCIALLY AND OTHERWISE) SUCH RISKS;

(v) (A) Counterparty is not aware of any material non-public information regarding Counterparty, the Shares or the Underlying Shares and (B) each of its filings under the Securities Exchange Act of 1934, as amended (the " Exchange Act"), or other applicable securities laws that were required to be filed since January 1, 2010 have been filed and as of the date of this representation, when considered as a whole (with the more recent such reports and documents deemed to amend inconsistent statements contained in any

earlier such report or document), there is no misstatement of material fact contained therein or omission of a material fact required to be stated therein or necessary to make the statements made therein, in the light of the circumstances under which they were made, not misleading;

(vi) on the Trade Date, transactions in the Shares or the Underlying Shares are not prohibited by Regulation M under the Exchange Act ( "Regulation M") as a result of such transactions meeting the requirements of the exceptions set forth in Rules 101(b)(10) and 102(b)(7) of Regulation M;

(vii) it is not entering into, or exercising any right under, any Transaction to create, and will not engage in any other securities or derivatives transactions to create, actual or apparent trading activity in the Shares or the Underlying Shares (or any security convertible into or exchangeable for Shares or Underlying Shares) or to raise or depress or to manipulate the price of the Shares or the Underlying Shares (or any security convertible into or exchangeable for Shares or Underlying Shares) or to otherwise violate any applicable laws or other restrictions applicable to Counterparty;

(viii) it shall deliver to Dealer opinions of counsel, dated as of the Effective Date, with respect to the matters set forth in Section 3(a) of the Agreement;

(ix) on the Trade Date, other than purchases from, by or on behalf of directors, officers and employees of Counterparty and its affiliates that are not "Rule 10b-18 purchases" as such term is defined in Rule 10b-18 under the Exchange Act (" Rule 10b-18"), neither Counterparty nor any "affiliated purchaser" (as defined in Rule 10b-18) shall directly or indirectly purchase, offer to purchase, place any bid or limit order that would effect a purchase of, or commence any tender offer relating to, any Shares or Underlying Shares;

(x) on the Trade Date and the Premium Payment Date for such Transaction (A) the assets of Counterparty at their fair valuation exceed the liabilities of Counterparty, including contingent liabilities, (B) the capital of Counterparty is adequate to conduct the business of Counterparty, and (C) Counterparty has the ability to pay its debts and obligations as such debts mature and does not intend to, or does not believe that it will, incur debt beyond its ability to pay as such debts mature;

(xi) it is not, and after giving effect to the transactions contemplated hereby will not be, and "investment company" as such term is defined in the Investment Company Act of 1940, as amended; and

(xii) it is not on the Trade Date for such Transaction engaged in a distribution, as such term is used in Regulation M, of any securities of Counterparty (other than a distribution meeting the requirements of the exception set forth in Rules 101(b)(10) and 102(b)(7) of Regulation M) and shall not, until the second Scheduled Trading Day immediately following the Effective Date (as set forth in the Confirmation for a Transaction), engage in any such distribution.

**12. Miscellaneous:**

(a) Early Termination. The parties agree that Second Method and Loss will apply to each Transaction under this Master Confirmation as such terms are defined under the 1992 ISDA Master Agreement (Multicurrency-Cross Border).

(b) Repurchase Notices. Counterparty shall, on any day on which Counterparty effects any repurchase of Shares or Underlying Shares, promptly give Dealer a written notice of such repurchase (a " Repurchase Notice") on such day if, following such repurchase, the Ratio Equity Percentage as determined on such day is (i) equal to or greater than 8.0% and (ii) greater by 0.5% than the Ratio Equity Percentage included in the immediately preceding Repurchase Notice (or, in the case of the first such Repurchase Notice, greater by 0.5% than the Ratio Equity Percentage as of the date hereof). The " Ratio Equity Percentage" as of any day is the fraction the numerator of which is the aggregate of the Base Amounts for (1) all Tranches for all Transactions hereunder, (2) all transactions of the type described in the definition of "Specified Transactions" relating to Shares or Underlying

Shares between Dealer and Counterparty or their respective Affiliates and (3) all transactions of the type described in the definition of "Specified Transactions" relating to Shares or Underlying Shares between Dealer or its Affiliates and trusts or other entities with respect to which the beneficiaries or grantors (however described) are Counterparty, its Affiliates and/or employees of Counterparty or its Affiliates (the transactions described in clauses (1), (2) and (3) collectively, the "Specified Portfolio") and the denominator of which is the number of Underlying Shares outstanding on such day and the " Base Amount" for a Tranche or a transaction is an amount equal to the product of the Number of Shares (or similar term in the relevant transaction) for such Tranche or transaction, as applicable and, if such Tranche or transaction is denominated in Shares, the number of Underlying Shares represented by a Share.

(c) Section 16 Indemnity. If Counterparty ceases to be a "foreign private issuer" (as defined in Rule 3b-4 under the Exchange Act) at any time during the term of this Transaction, Counterparty agrees to indemnify and hold harmless Dealer and its Affiliates and their respective officers, directors and controlling persons (each, a "Section 16 Indemnified Person") from and against any and all losses (including losses relating to Dealer's hedging activities as a consequence of becoming, or of the risk of becoming, subject to the reporting and profit disgorgement provisions of Section 16 of the Exchange Act, including without limitation, any forbearance from hedging activities or cessation of hedging activities and any losses in connection therewith with respect to any Transaction), claims, damages, judgments, liabilities and expenses (including reasonable attorney's fees), joint or several, to which a Section 16 Indemnified Person may become subject, as a result of Counterparty's failure to provide Dealer with a Repurchase Notice on the day and in the manner specified in this paragraph (b), and to reimburse, upon written request, each such Section 16 Indemnified Person for any reasonable legal or other expenses incurred in connection with investigating, preparing for, providing testimony or other evidence in connection with or defending any of the foregoing. If any suit, action, proceeding (including any governmental or regulatory investigation), claim or demand shall be brought or asserted against any Section 16 Indemnified Person, such Section 16 Indemnified Person shall promptly notify Counterparty in writing, and Counterparty, upon request of such Section 16 Indemnified Person, shall retain counsel reasonably satisfactory to such Section 16 Indemnified Person to represent such Section 16 Indemnified Person and any others Counterparty may designate in such proceeding and shall pay the fees and expenses of such counsel related to such proceeding. Counterparty shall be relieved from liability to the extent that such Section 16 Indemnified Person fails to promptly notify Counterparty of any action commenced against it in respect of which indemnity may be sought hereunder; provided that failure to notify Counterparty (i) shall not relieve Counterparty from any liability hereunder to the extent it is not materially prejudiced as a result thereof and (ii) shall not, in any event, relieve Counterparty from any liability that it may have otherwise than on account of this paragraph (c). Counterparty shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, Counterparty agrees to indemnify any Section 16 Indemnified Person from and against any loss or liability by reason of such settlement or judgment. Counterparty shall not, without the prior written consent of each Section 16 Indemnified Person, effect any settlement of any pending or threatened proceeding in respect of which any Section 16 Indemnified Person is or could have been a party and indemnity could have been sought hereunder by any such Section 16 Indemnified Person, unless such settlement includes an unconditional release of each such Section 16 Indemnified Person from all liability on claims that are the subject matter of such proceeding on terms reasonably satisfactory to each such Section 16 Indemnified Person. If the indemnification provided for in this paragraph (c) is unavailable to a Section 16 Indemnified Person or insufficient in respect of any losses, claims, damages or liabilities referred to therein, then Counterparty, in lieu of indemnifying such Section 16 Indemnified Person thereunder, shall contribute to the amount paid or payable by such Section 16 Indemnified Person as a result of such losses, claims, damages or liabilities. The remedies provided for in this paragraph (c) are not exclusive and shall not limit any rights or remedies that may otherwise be available to any Section 16 Indemnified Person at law or in equity. The indemnity and contribution agreements contained in this paragraph (c) shall remain operative and in full force and effect regardless of the termination of any Transaction.

(d) Transfer or Assignment. Dealer may, with Counterparty's prior written consent (not to be unreasonably withheld or delayed), transfer or assign all (but not less than all) of its rights and obligations under any Transaction to any of its Affiliates with a rating (or whose guarantor has a rating) for its long term, unsecured and unsubordinated indebtedness equal to or better than A- by Standard & Poor's Ratings Services or its successor (" S&P"), or A3 by Moody's Investors Service, Inc. or its successor ("Moody's") or, if either S&P or Moody's ceases to rate such debt, at least an equivalent rating or better by a substitute rating agency mutually agreed by Counterparty and Dealer; *provided* that Counterparty shall not withhold or delay its consent if Dealer certifies to

Counterparty that the requested transfer is made in connection with the transfer of all or substantially all similar transactions that Dealer and its affiliates are parties thereto resulting from the enactment of the Dodd Frank Wall Street Reform and Consumer Protection Act of 2010 and rules and regulation thereunder, and such transfer will not result in an increased cost to Counterparty. Counterparty may, with Dealer's prior written consent (not to be unreasonably withheld or delayed) sell or pledge to any third party all (but not less than all) of its rights and obligations under any Transaction at a time when such Transaction is not subject to a security interest in favor of Dealer or any of its Affiliates. If, as determined in Dealer's sole discretion, (a) at any time (1) the Equity Percentage exceeds 8.5%, (2) Dealer, Dealer Group (as defined below) or any person whose ownership position would be aggregated with that of Dealer or Dealer Group (Dealer, Dealer Group or any such person, a "Dealer Person") under U.S. federal, non-U.S., state or local laws, regulations or regulatory orders applicable to ownership of Shares or Underlying Shares ("Applicable Laws"), owns, beneficially owns, constructively owns, controls, holds the power to vote or otherwise meets a relevant definition of ownership, or could be reasonably viewed as meeting any of the foregoing, in excess of a number of Shares or Underlying Shares, as applicable, equal to (x) the number of Shares or Underlying Shares, as applicable, that would give rise to reporting, registration, filing or notification obligations or other requirements (including obtaining prior approval by a state, U.S. federal or non-U.S. regulator) of a Dealer Person under Applicable Laws and with respect to which such requirements have not been met or the relevant approval has not been received *minus* (y) 1% of the number of Shares or Underlying Shares, as applicable, outstanding on the date of determination or (3) the Ratio Equity Percentage exceeds 9.9% (any such condition described in clause (1), (2) or (3), an "Excess Ownership Position") and (b) Dealer is unable, after commercially reasonable efforts, to effect a transfer or assignment on pricing and terms and within a time period reasonably acceptable to it of all or a portion of one or more Transactions pursuant to the preceding paragraph such that an Excess Ownership Position no longer exists, Dealer may designate any Scheduled Trading Day as an Early Termination Date with respect to a portion (the "Terminated Portion") of any Transaction(s), such that an Excess Ownership Position no longer exists following such partial termination. In the event that Dealer so designates an Early Termination Date with respect to a portion of any Transaction(s), a payment shall be made pursuant to Section 6 of the Agreement as if (i) an Early Termination Date had been designated in respect of a Transaction having terms identical to the Terminated Portion of the Transaction(s), (ii) Counterparty shall be the sole Affected Party with respect to such partial termination and (iii) such portion of the Transaction(s) shall be the only Terminated Transaction. The "Equity Percentage" as of any day is the fraction, expressed as a percentage, (A) the numerator of which is the number of Underlying Shares that Dealer and any of its affiliates subject to aggregation with Dealer for purposes of the "beneficial ownership" test under Section 13 of the Exchange Act and all persons who may form a "group" (within the meaning of Rule 13d-5(b)(1) under the Exchange Act) with Dealer (collectively, "Dealer Group") "beneficially own" (within the meaning of Section 13 of the Exchange Act) in connection with transactions in the Specified Portfolio without duplication on such day (or, if Counterparty ceases to be a "foreign private issuer" (as defined in Rule 3b-4 under the Exchange Act) and the equivalent calculation under Section 16 of the Exchange Act and the rules and regulations thereunder results in a higher number, such number) and (B) the denominator of which is the number of Underlying Shares outstanding on such day.

(e) Severability; Illegality. If compliance by either party with any provision of a Transaction would be unenforceable or illegal, (i) the parties shall negotiate in good faith to resolve such unenforceability or illegality in a manner that preserves the economic benefits of the transactions contemplated hereby and (ii) the other provisions of the Transaction shall not be invalidated, but shall remain in full force and effect.

(f) Waiver of Trial by Jury. EACH OF COUNTERPARTY AND DEALER HEREBY IRREVOCABLY WAIVES (ON ITS OWN BEHALF AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ON BEHALF OF ITS STOCKHOLDERS) ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO ANY TRANSACTION OR THIS MASTER CONFIRMATION OR THE ACTIONS OF DEALER OR ITS AFFILIATES IN THE NEGOTIATION, PERFORMANCE OR ENFORCEMENT THEREOF.

(g) Confidentiality. Notwithstanding any provision in this Master Confirmation, any Confirmation or the Agreement, in connection with Section 1.6011-4 of the Treasury Regulations, the parties hereby agree that each party (and each employee, representative, or other agent of such party) may disclose to any and all persons, without limitation of any kind, the U.S. tax treatment and U.S. tax structure of the Transaction and all

materials of any kind (including opinions or other tax analyses) that are provided to such party 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.

(h) Securities Contract; Swap Agreement. The parties hereto intend for: (i) each Transaction hereunder to be a "securities contract" and a "swap agreement" as defined in the Bankruptcy Code (Title 11 of the United States Code) (the "Bankruptcy Code"), a derivatives transaction under the Mexican *Ley de Concursos Mercantiles*, the Agreement to be a "master netting agreement" and the parties hereto to be entitled to the protections afforded by, among other Sections, Sections 362(b)(6), 362(b)(17), 362(o), 546(e), 546(g), 546(j), 548(d), 555, 560 and 561 of the Bankruptcy Code and the applicable provisions of the *Ley de Concursos Mercantiles*; (ii) a party's right to liquidate a Transaction and to exercise any other remedies upon the occurrence of any Event of Default under the Agreement with respect to the other party to constitute a "contractual right … to cause the liquidation, termination or acceleration" and any payments owed under this Transaction or the Agreement with respect thereto to be a "termination value", "payment amount" or "other transfer obligation", in each case as described in the Bankruptcy Code; (iii) all payments for, under or in connection with a Transaction to constitute "margin payments", "settlement payments" and/or "transfers" under a "securities contract" and/or "swap agreement" as defined in the Bankruptcy Code; and (iv) each party hereto to be a "master netting agreement participant", "financial institution", "swap participant" and/or a "financial participant" as defined in the Bankruptcy Code.

(i) Extension of Settlement. Dealer may postpone any Expiration Date, postpone the Final Disruption Date and/or add additional Expiration Dates with respect to some or all of the Options under any Tranche hereunder (provided that none of such postponed or added Expiration Dates shall occur later than the 20th Scheduled Trading Day immediately succeeding the last Expiration Date (determined without regard to this provision) for the relevant Transaction) if Dealer determines, in its reasonable discretion, that such extension is necessary or advisable to preserve Dealer's hedging activity hereunder in light of existing liquidity conditions or to enable Dealer to effect purchases or sales of Shares or Underlying Shares in connection with its hedging activity hereunder in a manner that would, if Dealer were Counterparty or an affiliated purchaser of Counterparty, be in compliance with applicable legal and regulatory requirements or self-regulatory requirements, or with related reasonable policies and procedures applicable to Dealer.

(j) Registration. Counterparty hereby agrees that if the Shares or Underlying Shares (the "Hedge Shares") acquired by Dealer for the purpose of hedging its obligations pursuant to the Transaction, in Dealer's sole judgment, cannot be sold in the U.S. public market (including by depositing such Underlying Shares with the Depository in exchange for Shares) by Dealer without registration under the Securities Act, Counterparty shall, at its election: (i) in order to allow Dealer to sell the Hedge Shares in a registered offering, make available to Dealer an effective registration statement under the Securities Act to cover the resale of such Hedge Shares and (A) enter into an agreement, in form and substance satisfactory to Dealer and Counterparty, substantially in the form of an underwriting agreement for a registered secondary offering, (B) provide accountant's "comfort" letters in customary form for registered offerings of equity securities, (C) provide disclosure opinions of nationally recognized outside counsel to Counterparty reasonably acceptable to Dealer, (D) provide other customary opinions, certificates and closing documents customary in form for registered offerings of equity securities and (E) afford Dealer a reasonable opportunity to conduct a "due diligence" investigation with respect to Counterparty customary in scope for underwritten offerings of equity securities; provided that if Dealer, in its sole reasonable discretion, is not satisfied with access to due diligence materials, the results of its due diligence investigation, or the procedures and documentation for the registered offering referred to above, then, subject to the conditions set forth therein, clause (ii) or (iii) of this section shall apply at the election of Counterparty; (ii) in order to allow Dealer to sell the Hedge Shares in a private placement, enter into a private placement agreement substantially similar to private placement Underwriting Agreements customary for private placements of equity securities, in form and substance satisfactory to Dealer and Counterparty, including customary representations, covenants, blue sky and other governmental filings and/or registrations, indemnities to Dealer, due diligence rights (for Dealer or any designated buyer of the Hedge Shares from Dealer), opinions and certificates and such other documentation as is customary for private placements agreements, all reasonably acceptable to Dealer (in which case, the Calculation Agent shall make any adjustments to the terms of the Transaction that are necessary, in its reasonable judgment, to compensate Dealer for any discount from the public market price of the Shares incurred on the sale of Hedge Shares in a private placement); or (iii) to the extent that such purchases would not violate any applicable law or other restriction

applicable to Counterparty, purchase the Hedge Shares from Dealer at the VWAP Price on such Exchange Business Days (with references to "Valuation Date" in the definition of "VWAP Price" deemed to be references to such Exchange Business Days for this purpose), and in such amounts, requested by Dealer. This paragraph (j) shall survive the termination, expiration or early unwind of the Transaction.

(k) Early Unwind. In the event the sale of Convertible Notes for the Transaction (as set forth in the Confirmation for such Transaction) is not consummated with the initial purchasers for any reason by the close of business in New York City on the Early Unwind Date set forth in the Confirmation for such Transaction, such Transaction shall automatically terminate on such Early Unwind Date and (i) such Transaction and all of the respective rights and obligations of Dealer and Counterparty under such Transaction shall be cancelled and terminated and (ii) each party shall be released and discharged by the other party from and agrees not to make any claim against the other party with respect to any obligations or liabilities of the other party arising out of and to be performed in connection with such Transaction either prior to or after such Early Unwind Date; provided that, if such failure is due to a breach or default on the part of Counterparty under the Purchase Agreement dated as of March 9, 2011 among CEMEX, S.A.B. de C.V. and Citigroup Global Markets, Inc. and J.P. Morgan Securities LLC, among others, as representatives of the "Initial Purchasers" (as defined therein), Counterparty shall assume, or reimburse the cost of, derivatives or other transactions entered into by Dealer or one or more of its Affiliates in connection with hedging such Transaction. The amount paid by Counterparty shall be Dealer's actual cost of such derivatives or other transactions as Dealer informs Counterparty and shall be paid in immediately available funds on such Early Unwind Date.

(l) Acknowledgment of Pledge. Counterparty's rights under the Agreement may, from time to time, be pledged to Dealer to secure Counterparty's obligations to Dealer arising under other agreements in accordance with such terms as the parties may separately agree.

(m) Optional Early Termination. (i) At any time during the term of this Transaction, Counterparty may, by written notice to Dealer, designate, with respect to one or more specified Tranches, an Early Termination Date to occur on the third Scheduled Trading Day following the date such notice is effective, in which case an Additional Termination Event shall be deemed to have occurred in respect of which (1) Counterparty shall be the sole Affected Party and (2) the portion of the relevant Transaction represented by such Tranche(s) shall be the sole Affected Transaction.

(ii) Counterparty may, prior to electing to terminate any Tranche pursuant to subparagraph (i) above, request a quotation (which may be in the form of a grid of percentages that depends on the price of the Shares or Underlying Shares over a specified period) from Dealer as to the applicable terms of such termination, and Dealer shall be bound by the terms of such quotation if Counterparty then makes such election within one full Scheduled Trading Day.

(iii) By providing the notice referred to in this paragraph, Counterparty shall be deemed to repeat, on the date such notice is effective, the representations in clauses (v), (vi), (vii) and (ix) of Section 11(b).

(n) Counterparty's Obligation to Pay Cancellation Amounts and Early Termination Amounts. Seller and Counterparty hereby agree that, notwithstanding anything to the contrary herein or in the Agreement, following Seller's receipt from Counterparty of the Premium on the Premium Payment Date, in the event that (a) an Early Termination Date (whether as a result of an Event of Default or a Termination Event) occurs or is designated with respect to a Transaction and, as a result, Counterparty owes to Seller an amount under Section 6(e) of the Agreement or (b) Counterparty owes to Seller, pursuant to Section 12.7 or Section 12.9 of the Definitions, a Cancellation Amount, such amount shall be deemed to be zero. If Counterparty pays the Premium on the Premium Payment Date, then under no circumstances shall Counterparty be required to pay any amount in addition to the Premium under the Transaction. For the avoidance of doubt, the preceding sentence shall not be construed as limiting any damages that may be payable by Counterparty as a result of a breach of, or an indemnity under, this Master Confirmation or the Agreement.

(o) Modifications to DR Supplement. The DR Supplement is hereby amended as follows:

(i) The definitions of the following terms in Section 1 thereof are hereby deleted and replaced as follows:

"Depository" means, in relation to the Shares or the Underlying Shares, the Issuer of the Shares or the Underlying Shares, as applicable.

"Deposit Agreement" means, in relation to the Shares or the Underlying Shares, the agreements, deeds or other instruments constituting the Shares or Underlying Shares, as applicable, as from time to time amended or supplemented in accordance with their terms.

"Underlying Shares" means, in relation to the applicable Deposit Agreement, the shares or other securities which are the subject of such Deposit Agreement.

"Underlying Shares Issuer" means, in relation to the applicable Underlying Shares, the issuer of such Underlying Shares.

(ii) Section 2(c) thereof is hereby deleted in its entirety.

(iii) Section 3(a) thereof is hereby amended by adding in the second line therein after the term "'Share-for-Combined'" the following parenthetical: "(including defined terms used in such definitions)".

(p) Settlement Amendment. Dealer acknowledges that Counterparty may, to the extent permitted by law and any agreements Counterparty may be subject to, prior to the settlement of any Transaction hereunder, request that the provisions of this Master Confirmation be modified to enable Counterparty to effect share settlement in lieu of the settlement provisions under Section 5 of this Master Confirmation. In the event of such a request, Dealer agrees to negotiate with Counterparty, in good faith, such amendments to this Master Confirmation as may be required to effect such changes, it being understood and agreed that as of the date hereof, Counterparty has no right or option to require share settlement of any Transaction hereunder; *provided* that Dealer may in good faith refuse to enter into any such amendments so as to comply with applicable legal and regulatory requirements or self-regulatory requirements, or with related policies and procedures applicable to Dealer.

**13. Addresses for Notice:**

| | |
|---|---|
| If to Dealer: | Citibank, N.A.<br>390 Greenwich Street<br>New York, NY 10013<br>Attention: Equity Derivatives<br>Facsimile: (212) 723-8328<br>Telephone: (212) 723-7357 |
| with a copy to: | Citibank, N.A.<br>388 Greenwich Street, 17th Floor<br>New York, NY 10013<br>Attention: ICG Legal - Derivatives<br>Facsimile: (212) 816-7772<br>Telephone: (212) 816-2211 |
| If to Counterparty: | CEMEX, S.A.B. de C.V.<br>Avenida Ricardo Margain Zozaya 325<br>Colonia Valle del Campestre |

San Pedro Garza Garcia, Nuevo Leon 66265
Attention: Francisco Javier Contreras Navarro
Financial Operations Manager - Corporate Treasury - Mexico
Office : +52(81)88884093
Fax: +52(81)88884519
e-Mail: franciscojavier.contreras@cemex.com

**14. Accounts for Payment:**

| | | |
|---|---|---|
| To Dealer: | Bank: Citibank NA New York<br>BIC: CITIUS33 (or ABA: 021000089)<br>F/O: Citibank New York<br>A/C: 00167679<br>Ref: NY Swap Operations | |
| To Counterparty: | Beneficiary: | CEMEX, S.A.B. de C.V. |
| | Bank: | Citibank, NY |
| | Account: | 36964215 |
| | ABA: | 021000089 |
| | SWIFT: | CITIUS33 |

**15. Schedule Provisions:**

(a) Process Agent. For the purpose of Section 13(c) of the Agreement:

Counterparty appoints as its Process Agent:

Corporate Creations Network Inc.
1040 Avenue of the Americas #2400
New York, NY 10018
Fax: (561) 694-1639
Tel: (212) 382-4699

(b) Delivery of Tax Forms. For the purposes of Section 4(a)(i) of the Agreement, Counterparty agrees to deliver such documents as Dealer may request in order to allow Dealer to make a payment under this Transaction without any deduction or withholding for or on account of any Tax or with such deduction or withholding at a reduced rate including, without limitation, an executed United States Internal Revenue Service Form W-8BEN (or any successor thereto), (i) upon execution of this Transaction; (ii) promptly upon reasonable demand by Dealer; and (iii) promptly upon learning that any such document, including Form W-8BEN (or any successor thereto), previously provided by Counterparty has become obsolete or incorrect.

**16. Valuation Notice:**

Dealer agrees to provide to Counterparty, as soon as practicable following the end of each calendar month, a statement showing the Exposure (within the meaning of the 1994 ISDA Credit Support Annex), calculated with respect to the Transaction and determined as if such last day (or the immediately preceding Exchange Business Day) was the Valuation Date.

[Signature page follows]

Yours sincerely,

CITIBANK, N.A.

By: /s/ Herman Hirsch
Name: Herman Hirsch
Title: Authorized Representative

Confirmed as of the
date first above written:

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

By: /s/ Rodrigo Treviño
Name: Rodrigo Treviño
Title: Attorney-in-Fact

**EXHIBIT A**
**FORM OF CAPPED CALL OPTION**
**TRANSACTION CONFIRMATION**

CONFIRMATION

| | |
|---|---|
| Date: | March [ ], 2011 |
| To: | CEMEX, S.A.B. de C.V. ("Counterparty") |
| Telefax No.: | +52(81)88884519 |
| Attention: | Francisco Javier Contreras Navarro - Financial Operations Manager - Corporate Treasury - Mexico |
| From: | Citibank, N.A. ("Dealer") |
| Telefax No.: | 212-615-8985 |

Transaction Reference Number: _____

The purpose of this communication (this "Confirmation") is to set forth the terms and conditions of the above-referenced Transaction (the "Transaction") entered into on the Trade Date specified below between you and us. This Confirmation supplements, forms a part of, and is subject to the Master Terms and Conditions for Capped Call Transactions dated as of March 9, 2011 and as amended from time to time (the " Master Confirmation") between you and us.

1. The definitions and provisions contained in the Definitions (as such term is defined in the Master Confirmation) and in the Master Confirmation are incorporated into this Confirmation. In the event of any inconsistency between those definitions and provisions and this Confirmation, this Confirmation will govern.

2. The particular Transaction to which this Confirmation relates shall have the following terms:

| | |
|---|---|
| Trade Date: | March [ ], 2011 |
| Effective Date: | The closing date of the initial issuance of the Convertible Notes. |
| Lower Strike Price: | USD [ ]. |
| Upper Strike Price: | USD [ ]. |
| Initial Reference Price: | USD [*Insert Exchange closing price per share for the Shares on the Trade Date*] |
| Premium: | USD [ ]. |
| Premium Payment Date: | The Effective Date |
| Convertible Notes: | [ ]% Convertible Subordinated Notes of Counterparty due [ ], offered pursuant to an Offering Memorandum to be dated [ ]. |
| Indenture: | The indenture governing the issuance of the Convertible Notes to be dated as of the closing date of the initial issuance of the Convertible Notes, by and between Counterparty and The Bank of New York |

| | |
|---|---|
| | Mellon, as trustee (as may be amended, modified or supplemented from time to time, but only if such amendment, modification or supplement is consented to by Dealer in writing, which consent shall not be unreasonably withheld or delayed). |
| Early Unwind Date: | [ ], 2011, or such later date as agreed by the parties hereto. |
| Final Disruption Date: | [ ] |

[Remainder of page intentionally left blank]

The Number of Options and Expiration Date for each Tranche of the Transaction are set forth below.

| Tranche Number | Number of Options | Expiration Date |
|---|---|---|
| 1. | [ ] | [ ] |
| 2. | [ ] | [ ] |
| 3. | [ ] | [ ] |
| 4. | [ ] | [ ] |
| 5. | [ ] | [ ] |
| 6. | [ ] | [ ] |
| 7. | [ ] | [ ] |
| 8. | [ ] | [ ] |
| 9. | [ ] | [ ] |
| 10. | [ ] | [ ] |
| 11. | [ ] | [ ] |
| 12. | [ ] | [ ] |
| 13. | [ ] | [ ] |
| 14. | [ ] | [ ] |
| 15. | [ ] | [ ] |
| 16. | [ ] | [ ] |
| 17. | [ ] | [ ] |
| 18. | [ ] | [ ] |
| 19. | [ ] | [ ] |
| 20. | [ ] | [ ] |
| 21. | [ ] | [ ] |
| 22. | [ ] | [ ] |
| 23. | [ ] | [ ] |
| 24. | [ ] | [ ] |
| 25. | [ ] | [ ] |
| 26. | [ ] | [ ] |
| 27. | [ ] | [ ] |
| 28. | [ ] | [ ] |
| 29. | [ ] | [ ] |
| 30. | [ ] | [ ] |
| 31. | [ ] | [ ] |
| 32. | [ ] | [ ] |
| 33. | [ ] | [ ] |
| 34. | [ ] | [ ] |
| 35. | [ ] | [ ] |
| 36. | [ ] | [ ] |
| 37. | [ ] | [ ] |
| 38. | [ ] | [ ] |
| 39. | [ ] | [ ] |
| 40. | [ ] | [ ] |
| 41. | [ ] | [ ] |
| 42. | [ ] | [ ] |
| 43. | [ ] | [ ] |
| 44. | [ ] | [ ] |
| 45. | [ ] | [ ] |
| 46. | [ ] | [ ] |
| 47. | [ ] | [ ] |
| 48. | [ ] | [ ] |
| 49. | [ ] | [ ] |
| 50. | [ ] | [ ] |
| 51. | [ ] | [ ] |

| | | |
|---|---|---|
| 52. | [ ] | [ ] |
| 53. | [ ] | [ ] |
| 54. | [ ] | [ ] |
| 55. | [ ] | [ ] |
| 56. | [ ] | [ ] |
| 57. | [ ] | [ ] |
| 58. | [ ] | [ ] |
| 59. | [ ] | [ ] |
| 60. | [ ] | [ ] |

3. Counterparty hereby agrees (a) to check this Confirmation promptly upon receipt so that errors or discrepancies can be promptly identified and rectified and (b) to confirm that the foregoing correctly sets forth the terms of the agreement between us with respect to the particular Transaction to which this Confirmation relates, by manually signing this Confirmation and providing any other information requested herein or in the Master Confirmation and immediately returning an executed copy to us.

Yours sincerely,

CITIBANK, N.A.

By: _____
Name:
Title:

Confirmed as of the
date first above written:

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

By: _____
Name:
Title:

**Exhibit 4.64**

***EXECUTION COPY***

J.P.Morgan

MASTER TERMS AND CONDITIONS FOR CAPPED CALL TRANSACTIONS

BETWEEN

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, LONDON BRANCH

AND

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

The purpose of this Master Terms and Conditions for Capped Call Transactions (this "Master Confirmation"), dated as of March 9, 2011, is to set forth certain terms and conditions for capped call option transactions that CEMEX, S.A.B. de C.V. ("Counterparty") will enter into with JPMorgan Chase Bank, National Association, London Branch ("Dealer"). Each such transaction (a "Transaction") entered into between Dealer and Counterparty that is to be subject to this Master Confirmation shall be evidenced by a written confirmation substantially in the form of Exhibit A hereto, with such modifications thereto as to which Counterparty and Dealer mutually agree (a "Confirmation"). This Master Confirmation and each Confirmation together constitute a "Confirmation" as referred to in the Agreement specified below.

This Master Confirmation and a Confirmation evidence a complete binding agreement between you and us as to the terms of the Transaction to which this Master Confirmation and such Confirmation relates. This Master Confirmation and each Confirmation hereunder shall supplement, form a part of, and be subject to an agreement in the form of the 1992 ISDA Master Agreement (Multicurrency – Cross Border) as if we had executed an agreement in such form (with a Schedule that had the provisions in Section 15 of this Master Confirmation and the other elections set forth in this Master Confirmation) on the Trade Date and such agreement shall be considered the "Agreement" hereunder.

The Transactions governed by this Master Confirmation shall be the sole Transactions under the Agreement. If there exists any ISDA Master Agreement between Dealer and Counterparty or any confirmation or other agreement between Dealer and Counterparty pursuant to which an ISDA Master Agreement is deemed to exist between Dealer and Counterparty, then notwithstanding anything to the contrary in such ISDA Master Agreement, such confirmation or agreement or any other agreement to which Dealer and Counterparty are parties, the Transactions governed by this Master Confirmation shall not be considered Transactions under, or otherwise governed by, such existing or deemed ISDA Master Agreement.

The definitions and provisions contained in the 2002 ISDA Equity Derivatives Definitions as supplemented by the 2007 Partial Lookthrough Depository Receipt Supplement to the 2002 ISDA Equity Derivatives Definitions (as amended in this Master Confirmation, the " DR Supplement" and the 2002 ISDA Equity Derivatives Definitions as so supplemented, the "Definitions"), each as published by ISDA are incorporated into this Master Confirmation.

THIS MASTER CONFIRMATION WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REFERENCE TO CHOICE OF LAW DOCTRINE. THE PARTIES HERETO IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND THE UNITED STATES COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, AND TO THE JURISDICTION OF THEIR OWN CORPORATE DOMICILE, IN RESPECT OF ACTIONS BROUGHT AGAINST SUCH PARTY AS A DEFENDANT, IN CONNECTION WITH ALL MATTERS RELATING HERETO AND WAIVE ANY OBJECTION TO THE LAYING OF VENUE IN, AND ANY CLAIM OF INCONVENIENT FORUM WITH RESPECT TO, THESE COURTS, AND ANY RIGHT TO WHICH ANY OF THEM MAY BE ENTITLED ON ACCOUNT OF PLACE OF RESIDENCE OR DOMICILE.

1. In the event of any inconsistency between this Master Confirmation, on the one hand, and the Definitions or the Agreement, on the other hand, this Master Confirmation will control for the purpose of the

Transaction to which a Confirmation relates. In the event of any inconsistency between the Definitions, the Agreement and this Master Confirmation, on the one hand, and a Confirmation, on the other hand, the Confirmation will govern. With respect to a Transaction, capitalized terms used herein that are not otherwise defined shall have the meaning assigned to them in the Confirmation relating to such Transaction.

2. Each party will make each payment specified in this Master Confirmation or a Confirmation as being payable by such party, not later than the due date for value on that date in the place of the account specified below or otherwise specified in writing, in freely transferable funds and in a manner customary for payments in the required currency.

3. **Confirmations and General Terms:**

This Master Confirmation and the Agreement, together with the Confirmation relating to a Transaction, shall constitute the written agreement between Counterparty and Dealer with respect to such Transaction.

Each Transaction to which a Confirmation relates is a Capped Call Option Transaction, which shall be considered a Share Option Transaction for purposes of the Definitions (with references to "Strike Price" therein deemed to include "Lower Strike Price" and/or "Upper Strike Price", as applicable), and shall have the following terms:

| | |
|---|---|
| Option Style: | European |
| Option Type: | Call |
| Seller: | Dealer |
| Buyer: | Counterparty |
| Shares: | American depository shares (Symbol: CX), each representing ten Ordinary Participation Certificates (*Certificados de Participación Ordinarios*) of Counterparty. |
| Trade Date: | As set forth in the Confirmation for such Transaction |
| Tranches: | Each Transaction will be divided into individual Tranches, each with the terms set forth in this Master Confirmation and the Confirmation for such Transaction, and in particular with the Number of Options and Expiration Date set forth in the Confirmation for such Transaction. The payments and deliveries to be made upon settlement of each Transaction will be determined separately for each Tranche as if each Tranche were a separate Transaction under the Agreement. |
| Number of Options: | For each Tranche of such Transaction, as set forth in the Confirmation for such Transaction |
| Option Entitlement: | One Share per Option |
| Lower Strike Price: | As set forth in the Confirmation for such Transaction |
| Upper Strike Price: | As set forth in the Confirmation for such Transaction |
| Premium: | As set forth in the Confirmation for such Transaction |

| | |
|---|---|
| Premium Payment Date: | As set forth in the Confirmation for such Transaction |
| Exchange: | New York Stock Exchange |
| Related Exchanges: | All Exchanges |
| Calculation Agent: | Dealer, which shall make all calculations, adjustments and determinations required pursuant to a Transaction in a good faith and commercially reasonable manner, and upon request of Counterparty shall provide to Counterparty written support (without disclosing any of Dealer's proprietary models) as to any such calculations, adjustments and determinations required pursuant to a Transaction. |

**4. Procedure for Exercise and Valuation:**

In respect of any Tranche:

| | |
|---|---|
| Expiration Time: | The Valuation Time |
| Expiration Date: | As provided in the relevant Confirmation (or, if such date is not a Scheduled Trading Day, the next following Scheduled Trading Day that is not already an Expiration Date for another Tranche); provided that if that date is a Disrupted Day, the Expiration Date for such Tranche shall be the first succeeding Scheduled Trading Day that is not a Disrupted Day and is not or is not deemed to be an Expiration Date in respect of any other Tranche of any Transaction hereunder; and provided further that if the Expiration Date has not occurred pursuant to the preceding proviso as of the Final Disruption Date, the Final Disruption Date shall be the Expiration Date (irrespective of whether such date is an Expiration Date in respect of any other Tranche for the Transaction). Notwithstanding the foregoing and anything to the contrary in the Definitions, if a Market Disruption Event occurs on any Expiration Date, the Calculation Agent may determine that such Expiration Date is a Disrupted Day only in part, in which case the Calculation Agent shall determine that such day shall be the Expiration Date for a portion of the Number of Options for the relevant Tranche and shall designate the Scheduled Trading Day determined in the manner described in the immediately preceding sentence as the Expiration Date for the remaining Options for such Tranche. Section 6.6 of the Definitions shall not apply to any Valuation Date and the final sentence of Section 3.1(f) of the Definitions shall not apply to any Expiration Date. |
| Automatic Exercise: | Applicable |
| Seller's Facsimile Number and Contact Details for Purpose of Giving Notice: | As provided in Section 13 below. |

| | |
|---|---|
| VWAP Price: | The volume-weighted average price per Share on the Valuation Date 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 Valuation Date for any reason or is, in the Calculation Agent's reasonable discretion following notice in reasonable detail to, and consultation with, Counterparty, erroneous, or such Valuation Date is a Disrupted Day in whole or in part, the VWAP Price shall be as reasonably determined by the Calculation Agent using, except in the case of the Final Disruption Date, a substantially similar volume-weighted method. |
| Valuation Time: | As defined in Section 6.1 of the Definitions. |
| Valuation Date: | The Expiration Date |
| Final Disruption Date: | As set forth in the Confirmation for such Transaction |
| Market Disruption Event: | The third and fourth lines of Section 6.3(a) of the Definitions are hereby amended by deleting the words "during the one hour period that ends at the relevant Valuation Time" and replacing them with "prior to the relevant Valuation Time".<br><br>Section 6.3(d) of the Definitions is hereby amended by deleting the remainder of the provision following the term "Scheduled Closing Time" in the fourth line thereof. |

**5. Settlement Terms:**

In respect of any Tranche:

| | |
|---|---|
| Settlement Method: | Cash Settlement |
| Settlement Currency: | USD |
| Cash Settlement: | Settlement shall occur in accordance with Section 8.1 of the Definitions. |
| Cash Settlement Payment Date: | For each Tranche, the third Currency Business Day after the Valuation Date for such Tranche. |
| Strike Price Differential: | An amount equal to the lesser of:<br><br>(i) the greater of (a) the VWAP Price minus the Lower Strike Price and (b) zero; and<br><br>(ii) the Upper Strike Price minus the Lower Strike Price. |

**6. Dividends:**

In respect of any Tranche:

| | |
|---|---|
| Dividend Adjustments: | If at any time during the period from and including the date that is one Settlement Cycle following the Trade Date to but excluding the date that is one Settlement Cycle following the Expiration Date a record date for a distribution, dividend or recapitalization of retained earnings by an Underlying Issuer occurs, then, and upon consultation with Buyer which shall be taken into account in good faith by the Calculation Agent, (i) if such event (including, for the avoidance of doubt, a recapitalization of retained earnings by an Underlying Issuer) results in a corresponding record date (whether or not falling on the same date) for a Share dividend (excluding a Share dividend in connection with a circumstance described in clause (ii) below), the Calculation Agent (x) shall make an adjustment to the Lower Strike Price and the Option Entitlement that corresponds to the adjustment methodology for such type of dividend set forth in the Indenture (as set forth in the Confirmation for such Transaction) and (y) shall make a proportionate adjustment to the Upper Strike Price on the same basis as the adjustment to the Lower Strike Price described above, and (ii) if (1) such event results in a corresponding record date for a cash dividend on the Shares or both a Share dividend and a cash dividend on the Shares, (2) the holders of the Shares would be entitled to elect the form of consideration they receive, including the right to acquire Shares with a cash dividend, or would not be entitled to receive the entire distribution of Underlying Shares in Shares with respect to a corresponding record date for such event, (3) such event results in both (x) a change to the number of Underlying Shares represented, directly or indirectly, by a Share and (y) an adjustment to the "Conversion Rate" (as defined in the Indenture) for the Convertible Notes (as set forth in the Confirmation for such Transaction) and/or (4) with respect to such event, Counterparty makes a discretionary adjustment to the "Conversion Rate" (as defined in the Indenture) for the Convertible Notes or determines under the Indenture that the adjustments set forth in the Indenture do not provide a fair and equitable result, then the Calculation Agent (A) shall make an adjustment to the Lower Strike Price and the Option Entitlement that corresponds to the adjustment methodology for such type of dividend set forth in the Indenture and (B) shall make adjustments consistent with the Calculation Agent Adjustment provision in Section 11.2(c) of the Definitions (as modified herein) to the Upper Strike Price and/or any other term of the Transaction (except the Lower Strike Price and Option Entitlement) to preserve the fair value of the Transaction after taking into account the effect of such event (including whether such event, taken as a whole, effectively resulted in a Share dividend) and any adjustment made pursuant to clause (ii)(A) above; *provided* that, notwithstanding the foregoing, if Counterparty does not initially make an adjustment to the "Conversion Rate" with respect to such event due to the prescribed adjustment not reaching the one percent threshold for such adjustments described in the Indenture, no adjustment will be made pursuant to clauses (i) or (ii) with respect to such event until |

any such time as such adjustments occur pursuant to the Indenture. Counterparty shall provide to Dealer written notice (such notice, a "Conversion Rate Adjustment Notice") as soon as reasonably practicable but in any event prior to the corresponding record date for such an event that would lead to a change in the "Conversion Rate" (as defined in the Indenture) (a "Conversion Rate Adjustment Event"), which Conversion Rate Adjustment Notice shall set forth in reasonable detail the adjustment to the "Conversion Rate" resulting from such Conversion Rate Adjustment Event. In connection with the delivery of any Conversion Rate Adjustment Notice to Dealer, unless all information included in such Conversion Rate Adjustment Notice has previously been provided to holders of the Convertible Notes, Counterparty shall, concurrently with or prior to such delivery, (x) publicly announce and disclose the Conversion Rate Adjustment Event and the resulting adjustment to the "Conversion Rate" or (y) represent and warrant that the information set forth in such Conversion Rate Adjustment Notice does not constitute material non-public information with respect to Counterparty, the Shares or the Underlying Shares.

**7. Share Adjustments:**

Method of Adjustment: Calculation Agent Adjustment; provided, however, that the Definitions shall be amended by (i) replacing the words "diluting or concentrative" in Sections 11.2(a), 11.2(c) (in two instances) and 11.2(e)(vii), and Section 2(a) of the DR Supplement, with the word "material", (ii) by adding the words "or the Transaction" after the words "theoretical value of the relevant Shares" in Sections 11.2(a), 11.2(c) and 11.2(e)(vii), and Section 2(a) of the DR Supplement, and (iii) replacing the words "the Strike Price," in Section 11.2(c)(A) with the words "the Lower Strike Price, the Upper Strike Price,"; provided, further, that adjustments may be made to account for changes in volatility, expected dividends, stock loan rate and liquidity relative to the relevant Share or the Transaction.

**8. Extraordinary Events:**

New Shares: For purposes of Merger Events and Tender Offers affecting the Issuer or Shares only (as such terms would be defined absent any modification in the DR Supplement), in the definition of New Shares in Section 12.1(i) of the Definitions, (a) the text in clause (i) thereof shall be deleted in its entirety (including the word "and" following clause (i)) and replaced with "publicly quoted, traded or listed on any of the New York Stock Exchange, the American Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or their respective successors)," and (b) the phrase "and (iii) of an entity or person organized under the laws of the United States, any State thereof or the District of Columbia" shall be inserted immediately prior to the period.

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| Consequences of Merger Events: | |
| (a) Share-for-Share: | Modified Calculation Agent Adjustment |
| (b) Share-for-Other: | Cancellation and Payment (Calculation Agent Determination) |
| (c) Share-for- Combined: | Component Adjustment |
| Tender Offer: | Applicable; provided that Sections 12.1(d), 12.1(e) and 12.1(l)(ii) of the Definitions are hereby amended by replacing "voting shares" with "Shares" prior to the application of the DR Amendment. |
| Consequences of Tender Offers: | |
| (a) Share-for-Share: | Modified Calculation Agent Adjustment |
| (b) Share-for-Other: | Cancellation and Payment (Calculation Agent Determination) |
| (c) Share-for-Combined: | Component Adjustment |
| Composition of Combined Consideration: | Not Applicable |
| Nationalization, Insolvency or Delisting: | Cancellation and Payment (Calculation Agent Determination); provided that Insolvency shall not be applicable if Counterparty is a debtor (or similar participant) with respect to such Insolvency.<br><br>In addition to the provisions of Section 12.6(a)(iii) of the Definitions, it will also constitute a Delisting if the Exchange is located in the United States and the Shares are not immediately re-listed, re-traded or re-quoted on any of the New York Stock Exchange, the American Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or their respective successors); if the Shares are immediately re-listed, re-traded or re-quoted on any such exchange or quotation system, such exchange or quotation system shall thereafter be deemed to be the Exchange. |

**9. Additional Disruption Events:**

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| Change in Law: | Applicable; provided that Section 12.9(a)(ii) of the Definitions is hereby amended by (i) replacing the phrase "the interpretation" in the third line thereof with the phrase "or announcement of the formal or informal interpretation" and (ii) immediately following the word "Transaction" in clause (X) thereof, adding the phrase "in the manner contemplated by the Hedging Party on the Trade Date". |
| Insolvency Filing: | Applicable, except if Counterparty is a debtor (or similar participant) with respect to such Insolvency Filing |
| Hedging Disruption: | Applicable |

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| Increased Cost of Hedging: | Applicable |
| Hedging Party: | For all applicable Additional Disruption Events, Dealer |
| Determining Party: | For all applicable Additional Disruption Events, Dealer |

**10. Acknowledgments:**

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| Non-Reliance: | Applicable |
| Agreements and Acknowledgments Regarding Hedging Activities: | Applicable |
| Additional Acknowledgments: | Applicable |

**11. Representations, Warranties and Agreements:**

(a) In connection with this Master Confirmation, each Confirmation, each Transaction to which a Confirmation relates and any other documentation relating to the Agreement, each party to this Master Confirmation represents and warrants to, and agrees with, the other party that:

(i) it is an "accredited investor" as defined in Section 2(a)(15)(ii) of the Securities Act of 1933, as amended (the " Securities Act"); and

(ii) it is an "eligible contract participant" as defined in the Commodity Exchange Act, as amended (the " CEA"), and this Master Confirmation and each Transaction hereunder are subject to individual negotiation by the parties and have not been executed or traded on a "trading facility" as defined in the CEA.

(b) Counterparty represents and warrants to, and agrees with, Dealer on the Trade Date of each Transaction that:

(i) its financial condition is such that it has no need for liquidity with respect to its investment in such Transaction and no need to dispose of any portion thereof to satisfy any existing or contemplated undertaking or indebtedness, its investments in and liabilities in respect of such Transaction, which it understands are not readily marketable, are not disproportionate to its net worth, and it is able to bear any loss in connection with such Transaction, including the loss of its entire investment in such Transaction;

(ii) it understands that Dealer has no obligation or intention to register such Transaction under the Securities Act or any state securities law or other applicable federal or non-U.S. securities laws;

(iii) it understands that no obligations of Dealer to it hereunder will be entitled to the benefit of deposit insurance and that such obligations will not be guaranteed by any Affiliate of Dealer or any governmental agency;

(iv) IT UNDERSTANDS THAT SUCH TRANSACTION IS SUBJECT TO COMPLEX RISKS THAT MAY ARISE WITHOUT WARNING AND MAY AT TIMES BE VOLATILE AND THAT LOSSES MAY OCCUR QUICKLY AND IN UNANTICIPATED MAGNITUDE AND IS WILLING TO ACCEPT SUCH TERMS AND CONDITIONS AND ASSUME (FINANCIALLY AND OTHERWISE) SUCH RISKS;

(v) (A) Counterparty is not aware of any material non-public information regarding Counterparty, the Shares or the Underlying Shares and (B) each of its filings under the Securities Exchange Act of 1934, as amended (the " Exchange Act"), or other applicable securities laws that were required to be filed

since January 1, 2010 have been filed and as of the date of this representation, when considered as a whole (with the more recent such reports and documents deemed to amend inconsistent statements contained in any earlier such report or document), there is no misstatement of material fact contained therein or omission of a material fact required to be stated therein or necessary to make the statements made therein, in the light of the circumstances under which they were made, not misleading;

(vi) on the Trade Date, transactions in the Shares or the Underlying Shares are not prohibited by Regulation M under the Exchange Act ( "Regulation M") as a result of such transactions meeting the requirements of the exceptions set forth in Rules 101(b)(10) and 102(b)(7) of Regulation M;

(vii) it is not entering into, or exercising any right under, any Transaction to create, and will not engage in any other securities or derivatives transactions to create, actual or apparent trading activity in the Shares or the Underlying Shares (or any security convertible into or exchangeable for Shares or Underlying Shares) or to raise or depress or to manipulate the price of the Shares or the Underlying Shares (or any security convertible into or exchangeable for Shares or Underlying Shares) or to otherwise violate any applicable laws or other restrictions applicable to Counterparty;

(viii) it shall deliver to Dealer opinions of counsel, dated as of the Effective Date, with respect to the matters set forth in Section 3(a) of the Agreement;

(ix) on the Trade Date, other than purchases from, by or on behalf of directors, officers and employees of Counterparty and its affiliates that are not "Rule 10b-18 purchases" as such term is defined in Rule 10b-18 under the Exchange Act (" Rule 10b-18"), neither Counterparty nor any "affiliated purchaser" (as defined in Rule 10b-18) shall directly or indirectly purchase, offer to purchase, place any bid or limit order that would effect a purchase of, or commence any tender offer relating to, any Shares or Underlying Shares;

(x) on the Trade Date and the Premium Payment Date for such Transaction (A) the assets of Counterparty at their fair valuation exceed the liabilities of Counterparty, including contingent liabilities, (B) the capital of Counterparty is adequate to conduct the business of Counterparty, and (C) Counterparty has the ability to pay its debts and obligations as such debts mature and does not intend to, or does not believe that it will, incur debt beyond its ability to pay as such debts mature;

(xi) it is not, and after giving effect to the transactions contemplated hereby will not be, and "investment company" as such term is defined in the Investment Company Act of 1940, as amended; and

(xii) it is not on the Trade Date for such Transaction engaged in a distribution, as such term is used in Regulation M, of any securities of Counterparty (other than a distribution meeting the requirements of the exception set forth in Rules 101(b)(10) and 102(b)(7) of Regulation M) and shall not, until the second Scheduled Trading Day immediately following the Effective Date (as set forth in the Confirmation for a Transaction), engage in any such distribution.

**12. Miscellaneous:**

(a) Early Termination. The parties agree that Second Method and Loss will apply to each Transaction under this Master Confirmation as such terms are defined under the 1992 ISDA Master Agreement (Multicurrency-Cross Border).

(b) Repurchase Notices. Counterparty shall, on any day on which Counterparty effects any repurchase of Shares or Underlying Shares, promptly give Dealer a written notice of such repurchase (a " Repurchase Notice") on such day if, following such repurchase, the Ratio Equity Percentage as determined on such day is (i) equal to or greater than 8.0% and (ii) greater by 0.5% than the Ratio Equity Percentage included in the immediately preceding Repurchase Notice (or, in the case of the first such Repurchase Notice, greater by 0.5% than the Ratio Equity Percentage as of the date hereof). The " Ratio Equity Percentage" as of any day is the fraction the numerator

of which is the aggregate of the Base Amounts for (1) all Tranches for all Transactions hereunder, (2) all transactions of the type described in the definition of "Specified Transactions" relating to Shares or Underlying Shares between Dealer and Counterparty or their respective Affiliates and (3) all transactions of the type described in the definition of "Specified Transactions" relating to Shares or Underlying Shares between Dealer or its Affiliates and trusts or other entities with respect to which the beneficiaries or grantors (however described) are Counterparty, its Affiliates and/or employees of Counterparty or its Affiliates (the transactions described in clauses (1), (2) and (3) collectively, the "Specified Portfolio") and the denominator of which is the number of Underlying Shares outstanding on such day and the "Base Amount" for a Tranche or a transaction is an amount equal to the product of the Number of Shares (or similar term in the relevant transaction) for such Tranche or transaction, as applicable and, if such Tranche or transaction is denominated in Shares, the number of Underlying Shares represented by a Share.

(c) Section 16 Indemnity. If Counterparty ceases to be a "foreign private issuer" (as defined in Rule 3b-4 under the Exchange Act) at any time during the term of this Transaction, Counterparty agrees to indemnify and hold harmless Dealer and its Affiliates and their respective officers, directors and controlling persons (each, a "Section 16 Indemnified Person") from and against any and all losses (including losses relating to Dealer's hedging activities as a consequence of becoming, or of the risk of becoming, subject to the reporting and profit disgorgement provisions of Section 16 of the Exchange Act, including without limitation, any forbearance from hedging activities or cessation of hedging activities and any losses in connection therewith with respect to any Transaction), claims, damages, judgments, liabilities and expenses (including reasonable attorney's fees), joint or several, to which a Section 16 Indemnified Person may become subject, as a result of Counterparty's failure to provide Dealer with a Repurchase Notice on the day and in the manner specified in this paragraph (b), and to reimburse, upon written request, each such Section 16 Indemnified Person for any reasonable legal or other expenses incurred in connection with investigating, preparing for, providing testimony or other evidence in connection with or defending any of the foregoing. If any suit, action, proceeding (including any governmental or regulatory investigation), claim or demand shall be brought or asserted against any Section 16 Indemnified Person, such Section 16 Indemnified Person shall promptly notify Counterparty in writing, and Counterparty, upon request of such Section 16 Indemnified Person, shall retain counsel reasonably satisfactory to such Section 16 Indemnified Person to represent such Section 16 Indemnified Person and any others Counterparty may designate in such proceeding and shall pay the fees and expenses of such counsel related to such proceeding. Counterparty shall be relieved from liability to the extent that such Section 16 Indemnified Person fails to promptly notify Counterparty of any action commenced against it in respect of which indemnity may be sought hereunder; provided that failure to notify Counterparty (i) shall not relieve Counterparty from any liability hereunder to the extent it is not materially prejudiced as a result thereof and (ii) shall not, in any event, relieve Counterparty from any liability that it may have otherwise than on account of this paragraph (c). Counterparty shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, Counterparty agrees to indemnify any Section 16 Indemnified Person from and against any loss or liability by reason of such settlement or judgment. Counterparty shall not, without the prior written consent of each Section 16 Indemnified Person, effect any settlement of any pending or threatened proceeding in respect of which any Section 16 Indemnified Person is or could have been a party and indemnity could have been sought hereunder by any such Section 16 Indemnified Person, unless such settlement includes an unconditional release of each such Section 16 Indemnified Person from all liability on claims that are the subject matter of such proceeding on terms reasonably satisfactory to each such Section 16 Indemnified Person. If the indemnification provided for in this paragraph (c) is unavailable to a Section 16 Indemnified Person or insufficient in respect of any losses, claims, damages or liabilities referred to therein, then Counterparty, in lieu of indemnifying such Section 16 Indemnified Person thereunder, shall contribute to the amount paid or payable by such Section 16 Indemnified Person as a result of such losses, claims, damages or liabilities. The remedies provided for in this paragraph (c) are not exclusive and shall not limit any rights or remedies that may otherwise be available to any Section 16 Indemnified Person at law or in equity. The indemnity and contribution agreements contained in this paragraph (c) shall remain operative and in full force and effect regardless of the termination of any Transaction.

(d) Transfer or Assignment. Dealer may, with Counterparty's prior written consent (not to be unreasonably withheld or delayed), transfer or assign all (but not less than all) of its rights and obligations under any Transaction to any of its Affiliates with a rating (or whose guarantor has a rating) for its long term, unsecured and unsubordinated indebtedness equal to or better than A- by Standard & Poor's Ratings Services or its successor (" S&P"), or A3 by Moody's Investors Service, Inc. or its successor ("Moody's") or, if either S&P or Moody's

ceases to rate such debt, at least an equivalent rating or better by a substitute rating agency mutually agreed by Counterparty and Dealer; *provided* that Counterparty shall not withhold or delay its consent if Dealer certifies to Counterparty that the requested transfer is made in connection with the transfer of all or substantially all similar transactions that Dealer and its affiliates are parties thereto resulting from the enactment of the Dodd Frank Wall Street Reform and Consumer Protection Act of 2010 and rules and regulation thereunder, and such transfer will not result in an increased cost to Counterparty. Counterparty may, with Dealer's prior written consent (not to be unreasonably withheld or delayed) sell or pledge to any third party all (but not less than all) of its rights and obligations under any Transaction at a time when such Transaction is not subject to a security interest in favor of Dealer or any of its Affiliates. If, as determined in Dealer's sole discretion, (a) at any time (1) the Equity Percentage exceeds 8.5%, (2) Dealer, Dealer Group (as defined below) or any person whose ownership position would be aggregated with that of Dealer or Dealer Group (Dealer, Dealer Group or any such person, a " Dealer Person") under U.S. federal, non-U.S., state or local laws, regulations or regulatory orders applicable to ownership of Shares or Underlying Shares (" Applicable Laws"), owns, beneficially owns, constructively owns, controls, holds the power to vote or otherwise meets a relevant definition of ownership, or could be reasonably viewed as meeting any of the foregoing, in excess of a number of Shares or Underlying Shares, as applicable, equal to (x) the number of Shares or Underlying Shares, as applicable, that would give rise to reporting, registration, filing or notification obligations or other requirements (including obtaining prior approval by a state, U.S. federal or non-U.S. regulator) of a Dealer Person under Applicable Laws and with respect to which such requirements have not been met or the relevant approval has not been received *minus* (y) 1% of the number of Shares or Underlying Shares, as applicable, outstanding on the date of determination or (3) the Ratio Equity Percentage exceeds 9.9% (any such condition described in clause (1), (2) or (3), an " Excess Ownership Position") and (b) Dealer is unable, after commercially reasonable efforts, to effect a transfer or assignment on pricing and terms and within a time period reasonably acceptable to it of all or a portion of one or more Transactions pursuant to the preceding paragraph such that an Excess Ownership Position no longer exists, Dealer may designate any Scheduled Trading Day as an Early Termination Date with respect to a portion (the "Terminated Portion") of any Transaction(s), such that an Excess Ownership Position no longer exists following such partial termination. In the event that Dealer so designates an Early Termination Date with respect to a portion of any Transaction(s), a payment shall be made pursuant to Section 6 of the Agreement as if (i) an Early Termination Date had been designated in respect of a Transaction having terms identical to the Terminated Portion of the Transaction(s), (ii) Counterparty shall be the sole Affected Party with respect to such partial termination and (iii) such portion of the Transaction(s) shall be the only Terminated Transaction. The "Equity Percentage" as of any day is the fraction, expressed as a percentage, (A) the numerator of which is the number of Underlying Shares that Dealer and any of its affiliates subject to aggregation with Dealer for purposes of the "beneficial ownership" test under Section 13 of the Exchange Act and all persons who may form a "group" (within the meaning of Rule 13d-5(b)(1) under the Exchange Act) with Dealer (collectively, "Dealer Group") "beneficially own" (within the meaning of Section 13 of the Exchange Act) in connection with transactions in the Specified Portfolio without duplication on such day (or, if Counterparty ceases to be a "foreign private issuer" (as defined in Rule 3b-4 under the Exchange Act) and the equivalent calculation under Section 16 of the Exchange Act and the rules and regulations thereunder results in a higher number, such number) and (B) the denominator of which is the number of Underlying Shares outstanding on such day.

(e) Severability; Illegality. If compliance by either party with any provision of a Transaction would be unenforceable or illegal, (i) the parties shall negotiate in good faith to resolve such unenforceability or illegality in a manner that preserves the economic benefits of the transactions contemplated hereby and (ii) the other provisions of the Transaction shall not be invalidated, but shall remain in full force and effect.

(f) Waiver of Trial by Jury. EACH OF COUNTERPARTY AND DEALER HEREBY IRREVOCABLY WAIVES (ON ITS OWN BEHALF AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ON BEHALF OF ITS STOCKHOLDERS) ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO ANY TRANSACTION OR THIS MASTER CONFIRMATION OR THE ACTIONS OF DEALER OR ITS AFFILIATES IN THE NEGOTIATION, PERFORMANCE OR ENFORCEMENT THEREOF.

(g) Confidentiality. Notwithstanding any provision in this Master Confirmation, any Confirmation or the Agreement, in connection with Section 1.6011-4 of the Treasury Regulations, the parties hereby

agree that each party (and each employee, representative, or other agent of such party) may disclose to any and all persons, without limitation of any kind, the U.S. tax treatment and U.S. tax structure of the Transaction and all materials of any kind (including opinions or other tax analyses) that are provided to such party 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.

(h) Securities Contract; Swap Agreement. The parties hereto intend for: (i) each Transaction hereunder to be a "securities contract" and a "swap agreement" as defined in the Bankruptcy Code (Title 11 of the United States Code) (the "Bankruptcy Code"), a derivatives transaction under the Mexican *Ley de Concursos Mercantiles*, the Agreement to be a "master netting agreement" and the parties hereto to be entitled to the protections afforded by, among other Sections, Sections 362(b)(6), 362(b)(17), 362(o), 546(e), 546(g), 546(j), 548(d), 555, 560 and 561 of the Bankruptcy Code and the applicable provisions of the *Ley de Concursos Mercantiles*; (ii) a party's right to liquidate a Transaction and to exercise any other remedies upon the occurrence of any Event of Default under the Agreement with respect to the other party to constitute a "contractual right … to cause the liquidation, termination or acceleration" and any payments owed under this Transaction or the Agreement with respect thereto to be a "termination value", "payment amount" or "other transfer obligation", in each case as described in the Bankruptcy Code; (iii) all payments for, under or in connection with a Transaction to constitute "margin payments", "settlement payments" and/or "transfers" under a "securities contract" and/or "swap agreement" as defined in the Bankruptcy Code; and (iv) each party hereto to be a "master netting agreement participant", "financial institution", "swap participant" and/or a "financial participant" as defined in the Bankruptcy Code.

(i) Extension of Settlement. Dealer may postpone any Expiration Date, postpone the Final Disruption Date and/or add additional Expiration Dates with respect to some or all of the Options under any Tranche hereunder (provided that none of such postponed or added Expiration Dates shall occur later than the 20th Scheduled Trading Day immediately succeeding the last Expiration Date (determined without regard to this provision) for the relevant Transaction) if Dealer determines, in its reasonable discretion, that such extension is necessary or advisable to preserve Dealer's hedging activity hereunder in light of existing liquidity conditions or to enable Dealer to effect purchases or sales of Shares or Underlying Shares in connection with its hedging activity hereunder in a manner that would, if Dealer were Counterparty or an affiliated purchaser of Counterparty, be in compliance with applicable legal and regulatory requirements or self-regulatory requirements, or with related reasonable policies and procedures applicable to Dealer.

(j) Registration. Counterparty hereby agrees that if the Shares or Underlying Shares (the "Hedge Shares") acquired by Dealer for the purpose of hedging its obligations pursuant to the Transaction, in Dealer's sole judgment, cannot be sold in the U.S. public market (including by depositing such Underlying Shares with the Depository in exchange for Shares) by Dealer without registration under the Securities Act, Counterparty shall, at its election: (i) in order to allow Dealer to sell the Hedge Shares in a registered offering, make available to Dealer an effective registration statement under the Securities Act to cover the resale of such Hedge Shares and (A) enter into an agreement, in form and substance satisfactory to Dealer and Counterparty, substantially in the form of an underwriting agreement for a registered secondary offering, (B) provide accountant's "comfort" letters in customary form for registered offerings of equity securities, (C) provide disclosure opinions of nationally recognized outside counsel to Counterparty reasonably acceptable to Dealer, (D) provide other customary opinions, certificates and closing documents customary in form for registered offerings of equity securities and (E) afford Dealer a reasonable opportunity to conduct a "due diligence" investigation with respect to Counterparty customary in scope for underwritten offerings of equity securities; provided that if Dealer, in its sole reasonable discretion, is not satisfied with access to due diligence materials, the results of its due diligence investigation, or the procedures and documentation for the registered offering referred to above, then, subject to the conditions set forth therein, clause (ii) or (iii) of this section shall apply at the election of Counterparty; (ii) in order to allow Dealer to sell the Hedge Shares in a private placement, enter into a private placement agreement substantially similar to private placement Underwriting Agreements customary for private placements of equity securities, in form and substance satisfactory to Dealer and Counterparty, including customary representations, covenants, blue sky and other governmental filings and/or registrations, indemnities to Dealer, due diligence rights (for Dealer or any designated buyer of the Hedge Shares from Dealer), opinions and certificates and such other documentation as is customary for private placements agreements, all reasonably acceptable to Dealer (in which case, the Calculation Agent shall make any adjustments to the terms of the Transaction that are necessary, in its reasonable judgment, to compensate Dealer for

any discount from the public market price of the Shares incurred on the sale of Hedge Shares in a private placement); or (iii) to the extent that such purchases would not violate any applicable law or other restriction applicable to Counterparty, purchase the Hedge Shares from Dealer at the VWAP Price on such Exchange Business Days (with references to "Valuation Date" in the definition of "VWAP Price" deemed to be references to such Exchange Business Days for this purpose), and in such amounts, requested by Dealer. This paragraph (j) shall survive the termination, expiration or early unwind of the Transaction.

(k) Early Unwind. In the event the sale of Convertible Notes for the Transaction (as set forth in the Confirmation for such Transaction) is not consummated with the initial purchasers for any reason by the close of business in New York City on the Early Unwind Date set forth in the Confirmation for such Transaction, such Transaction shall automatically terminate on such Early Unwind Date and (i) such Transaction and all of the respective rights and obligations of Dealer and Counterparty under such Transaction shall be cancelled and terminated and (ii) each party shall be released and discharged by the other party from and agrees not to make any claim against the other party with respect to any obligations or liabilities of the other party arising out of and to be performed in connection with such Transaction either prior to or after such Early Unwind Date; provided that, if such failure is due to a breach or default on the part of Counterparty under the Purchase Agreement dated as of March 9, 2011 among CEMEX, S.A.B. de C.V. and Citigroup Global Markets, Inc. and J.P. Morgan Securities LLC, among others, as representatives of the "Initial Purchasers" (as defined therein), Counterparty shall assume, or reimburse the cost of, derivatives or other transactions entered into by Dealer or one or more of its Affiliates in connection with hedging such Transaction. The amount paid by Counterparty shall be Dealer's actual cost of such derivatives or other transactions as Dealer informs Counterparty and shall be paid in immediately available funds on such Early Unwind Date.

(l) Acknowledgment of Pledge. Counterparty's rights under the Agreement may, from time to time, be pledged to Dealer to secure Counterparty's obligations to Dealer arising under other agreements in accordance with such terms as the parties may separately agree.

(m) Optional Early Termination. (i) At any time during the term of this Transaction, Counterparty may, by written notice to Dealer, designate, with respect to one or more specified Tranches, an Early Termination Date to occur on the third Scheduled Trading Day following the date such notice is effective, in which case an Additional Termination Event shall be deemed to have occurred in respect of which (1) Counterparty shall be the sole Affected Party and (2) the portion of the relevant Transaction represented by such Tranche(s) shall be the sole Affected Transaction.

(ii) Counterparty may, prior to electing to terminate any Tranche pursuant to subparagraph (i) above, request a quotation (which may be in the form of a grid of percentages that depends on the price of the Shares or Underlying Shares over a specified period) from Dealer as to the applicable terms of such termination, and Dealer shall be bound by the terms of such quotation if Counterparty then makes such election within one full Scheduled Trading Day.

(iii) By providing the notice referred to in this paragraph, Counterparty shall be deemed to repeat, on the date such notice is effective, the representations in clauses (v), (vi), (vii) and (ix) of Section 11(b).

(n) Counterparty's Obligation to Pay Cancellation Amounts and Early Termination Amounts. Seller and Counterparty hereby agree that, notwithstanding anything to the contrary herein or in the Agreement, following Seller's receipt from Counterparty of the Premium on the Premium Payment Date, in the event that (a) an Early Termination Date (whether as a result of an Event of Default or a Termination Event) occurs or is designated with respect to a Transaction and, as a result, Counterparty owes to Seller an amount under Section 6(e) of the Agreement or (b) Counterparty owes to Seller, pursuant to Section 12.7 or Section 12.9 of the Definitions, a Cancellation Amount, such amount shall be deemed to be zero. If Counterparty pays the Premium on the Premium Payment Date, then under no circumstances shall Counterparty be required to pay any amount in addition to the Premium under the Transaction. For the avoidance of doubt, the preceding sentence shall not be construed as

limiting any damages that may be payable by Counterparty as a result of a breach of, or an indemnity under, this Master Confirmation or the Agreement.

(o) Modifications to DR Supplement. The DR Supplement is hereby amended as follows:

(i) The definitions of the following terms in Section 1 thereof are hereby deleted and replaced as follows:

"Depository" means, in relation to the Shares or the Underlying Shares, the Issuer of the Shares or the Underlying Shares, as applicable.

"Deposit Agreement" means, in relation to the Shares or the Underlying Shares, the agreements, deeds or other instruments constituting the Shares or Underlying Shares, as applicable, as from time to time amended or supplemented in accordance with their terms.

"Underlying Shares" means, in relation to the applicable Deposit Agreement, the shares or other securities which are the subject of such Deposit Agreement.

"Underlying Shares Issuer" means, in relation to the applicable Underlying Shares, the issuer of such Underlying Shares.

(ii) Section 2(c) thereof is hereby deleted in its entirety.

(iii) Section 3(a) thereof is hereby amended by adding in the second line therein after the term "'Share-for-Combined'" the following parenthetical: "(including defined terms used in such definitions)".

(p) Settlement Amendment. Dealer acknowledges that Counterparty may, to the extent permitted by law and any agreements Counterparty may be subject to, prior to the settlement of any Transaction hereunder, request that the provisions of this Master Confirmation be modified to enable Counterparty to effect share settlement in lieu of the settlement provisions under Section 5 of this Master Confirmation. In the event of such a request, Dealer agrees to negotiate with Counterparty, in good faith, such amendments to this Master Confirmation as may be required to effect such changes, it being understood and agreed that as of the date hereof, Counterparty has no right or option to require share settlement of any Transaction hereunder; *provided* that Dealer may in good faith refuse to enter into any such amendments so as to comply with applicable legal and regulatory requirements or self-regulatory requirements, or with related policies and procedures applicable to Dealer.

(q) Role of Agent. Each party agrees and acknowledges that (i) J.P. Morgan Securities LLC, an affiliate of JPMorgan ("Dealer"), has acted solely as agent and not as principal with respect to the Transaction and (ii) JPMS has no obligation or liability, by way of guaranty, endorsement or otherwise, in any manner in respect of the Transaction (including, if applicable, in respect of the settlement thereof). Each party agrees it will look solely to the other party (or any guarantor in respect thereof) for performance of such other party's obligations under the Transaction.

(r) Designation by Dealer. Notwithstanding any other provision in this Confirmation to the contrary requiring or allowing Dealer to purchase, sell, receive or deliver any Shares or other securities, or make or receive any payment in cash, to or from Counterparty, Dealer may designate any of its affiliates to purchase, sell, receive or deliver such Shares or other securities, or to make or receive such payment in cash, and otherwise to perform Dealer's obligations in respect of this Transaction and any such designee may assume such obligations. Dealer shall be discharged of its obligations to Counterparty only to the extent of any such performance.

**13. Addresses for Notice:**

| | |
|---|---|
| If to Dealer: | EDG Marketing Support<br>Email: EDG_OTC_HEDGING_MS@jpmorgan.com<br>Facsimile: 1-866-886-4506 |
| with copies to: | J.P. Morgan Securities LLC<br>383 Madison Avenue, 28th Floor<br>New York, NY 10179<br>Attention: Jeffrey J. Zajkowski<br>Facsimile: (917) 464-2496<br>Telephone: (212) 622-5600<br>Email: jeff.j.zajkowski@jpmorgan.com<br><br>-and-<br><br>J.P. Morgan Securities LLC<br>383 Madison Avenue, 28th Floor<br>New York, NY 10179<br>Attention: Tim Oeljeschlager<br>Facsimile: (917) 464-3163<br>Telephone: (212) 622-5603<br>E-mail: tim.oeljeschlager@jpmorgan.com |
| If to Counterparty: | CEMEX, S.A.B. de C.V.<br>Avenida Ricardo Margain Zozaya 325<br>Colonia Valle del Campestre<br>San Pedro Garza Garcia, Nuevo Leon 66265<br>Attention: Francisco Javier Contreras Navarro<br>Financial Operations Manager - Corporate Treasury - Mexico<br>Office : +52(81)88884093<br>Fax: +52(81)88884519<br>e-Mail: franciscojavier.contreras@cemex.com |

**14. Accounts for Payment:**

| | | |
|---|---|---|
| To Dealer: | Bank: | JPMorgan Chase Bank, N.A. |
| | ABA#: | 021000021 |
| | Acct No.: | 099997979 |
| | Beneficiary: | JPMorgan Chase Bank, N.A. New York |
| | Ref: | Derivatives |
| To Counterparty: | Beneficiary: | CEMEX, S.A.B. de C.V. |
| | Bank: | Citibank, NY |
| | Account: | 36964215 |
| | ABA: | 021000089 |
| | SWIFT: | CITIUS33 |

**15. Schedule Provisions:**

(a) Process Agent. For the purpose of Section 13(c) of the Agreement:

Counterparty appoints as its Process Agent:

Corporate Creations Network Inc.
1040 Avenue of the Americas #2400
New York, NY 10018
Fax: (561) 694-1639
Tel: (212) 382-4699

(b) Delivery of Tax Forms. For the purposes of Section 4(a)(i) of the Agreement, Counterparty agrees to deliver such documents as Dealer may request in order to allow Dealer to make a payment under this Transaction without any deduction or withholding for or on account of any Tax or with such deduction or withholding at a reduced rate including, without limitation, an executed United States Internal Revenue Service Form W-8BEN (or any successor thereto), (i) upon execution of this Transaction; (ii) promptly upon reasonable demand by Dealer; and (iii) promptly upon learning that any such document, including Form W-8BEN (or any successor thereto), previously provided by Counterparty has become obsolete or incorrect.

**16. Valuation Notice:**

Dealer agrees to provide to Counterparty, as soon as practicable following the end of each calendar month, a statement showing the Exposure (within the meaning of the 1994 ISDA Credit Support Annex), calculated with respect to the Transaction and determined as if such last day (or the immediately preceding Exchange Business Day) was the Valuation Date.

[Signature page follows]

J.P.Morgan

Yours sincerely,

J.P. Morgan Securities LLC, as agent for JPMorgan Chase Bank, National Association

By: /s/ Tim Deljeschlager
Name: Tim Deljeschlager
Title: Vice President

Confirmed as of the
date first above written:

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

By: /s/ Rodrigo Treviño
Name: Rodrigo Treviño
Title: Attorney-in-Fact



JPMorgan Chase Bank, National Association
Organised under the laws of the United States as a National Banking Association
Main Office 1111 Polaris Parkway, Columbus, Ohio 43271
Registered as a branch in England & Wales branch No. BR000746
Registered Branch Office 125 London Wall, London EC2Y 5AJ
Authorised and regulated by the Financial Services Authority

**EXHIBIT A**
**FORM OF CAPPED CALL OPTION**
**TRANSACTION CONFIRMATION**

CONFIRMATION

Date: March [ ], 2011

To: CEMEX, S.A.B. de C.V. ("Counterparty")

Telefax No.: +52(81)88884519

Attention: Francisco Javier Contreras Navarro - Financial Operations Manager - Corporate Treasury - Mexico

From: JPMorgan Chase Bank, National Association, London Branch (" Dealer")

Telefax No.: 1-866-886-4506

Transaction Reference Number: _____

The purpose of this communication (this "Confirmation") is to set forth the terms and conditions of the above-referenced Transaction (the "Transaction") entered into on the Trade Date specified below between you and us. This Confirmation supplements, forms a part of, and is subject to the Master Terms and Conditions for Capped Call Transactions dated as of March 9, 2011 and as amended from time to time (the " Master Confirmation") between you and us.

1. The definitions and provisions contained in the Definitions (as such term is defined in the Master Confirmation) and in the Master Confirmation are incorporated into this Confirmation. In the event of any inconsistency between those definitions and provisions and this Confirmation, this Confirmation will govern.

2. The particular Transaction to which this Confirmation relates shall have the following terms:

| | |
|---|---|
| Trade Date: | March [ ], 2011 |
| Effective Date: | The closing date of the initial issuance of the Convertible Notes. |
| Lower Strike Price: | USD [ ]. |
| Upper Strike Price: | USD [ ]. |
| Initial Reference Price: | USD [*Insert Exchange closing price per share for the Shares on the Trade Date*] |
| Premium: | USD [ ]. |
| Premium Payment Date: | The Effective Date |
| Convertible Notes: | [ ]% Convertible Subordinated Notes of Counterparty due [ ], offered pursuant to an Offering Memorandum to be dated [ ]. |
| Indenture: | The indenture governing the issuance of the Convertible Notes to be dated as of the closing date of the initial issuance of the Convertible Notes, by and between Counterparty and The Bank of New York |

| | |
|---|---|
| | Mellon, as trustee (as may be amended, modified or supplemented from time to time, but only if such amendment, modification or supplement is consented to by Dealer in writing, which consent shall not be unreasonably withheld or delayed). |
| Early Unwind Date: | [ ], 2011, or such later date as agreed by the parties hereto. |
| Final Disruption Date: | [ ] |

[Remainder of page intentionally left blank]

The Number of Options and Expiration Date for each Tranche of the Transaction are set forth below.

| Tranche Number | Number of Options | Expiration Date |
|---|---|---|
| 1. | [ ] | [ ] |
| 2. | [ ] | [ ] |
| 3. | [ ] | [ ] |
| 4. | [ ] | [ ] |
| 5. | [ ] | [ ] |
| 6. | [ ] | [ ] |
| 7. | [ ] | [ ] |
| 8. | [ ] | [ ] |
| 9. | [ ] | [ ] |
| 10. | [ ] | [ ] |
| 11. | [ ] | [ ] |
| 12. | [ ] | [ ] |
| 13. | [ ] | [ ] |
| 14. | [ ] | [ ] |
| 15. | [ ] | [ ] |
| 16. | [ ] | [ ] |
| 17. | [ ] | [ ] |
| 18. | [ ] | [ ] |
| 19. | [ ] | [ ] |
| 20. | [ ] | [ ] |
| 21. | [ ] | [ ] |
| 22. | [ ] | [ ] |
| 23. | [ ] | [ ] |
| 24. | [ ] | [ ] |
| 25. | [ ] | [ ] |
| 26. | [ ] | [ ] |
| 27. | [ ] | [ ] |
| 28. | [ ] | [ ] |
| 29. | [ ] | [ ] |
| 30. | [ ] | [ ] |
| 31. | [ ] | [ ] |
| 32. | [ ] | [ ] |
| 33. | [ ] | [ ] |
| 34. | [ ] | [ ] |
| 35. | [ ] | [ ] |
| 36. | [ ] | [ ] |
| 37. | [ ] | [ ] |
| 38. | [ ] | [ ] |
| 39. | [ ] | [ ] |
| 40. | [ ] | [ ] |
| 41. | [ ] | [ ] |
| 42. | [ ] | [ ] |
| 43. | [ ] | [ ] |
| 44. | [ ] | [ ] |
| 45. | [ ] | [ ] |
| 46. | [ ] | [ ] |
| 47. | [ ] | [ ] |
| 48. | [ ] | [ ] |
| 49. | [ ] | [ ] |
| 50. | [ ] | [ ] |
| 51. | [ ] | [ ] |

| | | |
|---|---|---|
| 52. | [ ] | [ ] |
| 53. | [ ] | [ ] |
| 54. | [ ] | [ ] |
| 55. | [ ] | [ ] |
| 56. | [ ] | [ ] |
| 57. | [ ] | [ ] |
| 58. | [ ] | [ ] |
| 59. | [ ] | [ ] |
| 60. | [ ] | [ ] |

3. Counterparty hereby agrees (a) to check this Confirmation promptly upon receipt so that errors or discrepancies can be promptly identified and rectified and (b) to confirm that the foregoing correctly sets forth the terms of the agreement between us with respect to the particular Transaction to which this Confirmation relates, by manually signing this Confirmation and providing any other information requested herein or in the Master Confirmation and immediately returning an executed copy to us.

Yours sincerely,

J.P. Morgan Securities LLC, as agent for JPMorgan Chase Bank, National Association

By: _____
Name:
Title:

Confirmed as of the
date first above written:

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

By: _____
Name:
Title:

**Exhibit 4.65**

***EXECUTION VERSION***

MASTER TERMS AND CONDITIONS FOR CAPPED CALL TRANSACTIONS
BETWEEN BNP PARIBAS AND CEMEX, S.A.B. de C.V.

The purpose of this Master Terms and Conditions for Capped Call Transactions (this "Master Confirmation"), dated as of March 9, 2011, is to set forth certain terms and conditions for capped call option transactions that CEMEX, S.A.B. de C.V. ("Counterparty") will enter into with BNP Paribas ("Dealer"). Each such transaction (a "Transaction") entered into between Dealer and Counterparty that is to be subject to this Master Confirmation shall be evidenced by a written confirmation substantially in the form of Exhibit A hereto, with such modifications thereto as to which Counterparty and Dealer mutually agree (a "Confirmation"). This Master Confirmation and each Confirmation together constitute a "Confirmation" as referred to in the Agreement specified below.

This Master Confirmation and a Confirmation evidence a complete binding agreement between you and us as to the terms of the Transaction to which this Master Confirmation and such Confirmation relates. This Master Confirmation and each Confirmation hereunder shall supplement, form a part of, and be subject to an agreement in the form of the 1992 ISDA Master Agreement (Multicurrency – Cross Border) as if we had executed an agreement in such form (with a Schedule that had the provisions in Section 15 of this Master Confirmation and the other elections set forth in this Master Confirmation) on the Trade Date and such agreement shall be considered the "Agreement" hereunder.

The Transactions governed by this Master Confirmation shall be the sole Transactions under the Agreement. If there exists any ISDA Master Agreement between Dealer and Counterparty or any confirmation or other agreement between Dealer and Counterparty pursuant to which an ISDA Master Agreement is deemed to exist between Dealer and Counterparty, then notwithstanding anything to the contrary in such ISDA Master Agreement, such confirmation or agreement or any other agreement to which Dealer and Counterparty are parties, the Transactions governed by this Master Confirmation shall not be considered Transactions under, or otherwise governed by, such existing or deemed ISDA Master Agreement.

The definitions and provisions contained in the 2002 ISDA Equity Derivatives Definitions as supplemented by the 2007 Partial Lookthrough Depository Receipt Supplement to the 2002 ISDA Equity Derivatives Definitions (as amended in this Master Confirmation, the " DR Supplement" and the 2002 ISDA Equity Derivatives Definitions as so supplemented, the "Definitions"), each as published by ISDA are incorporated into this Master Confirmation.

THIS MASTER CONFIRMATION WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REFERENCE TO CHOICE OF LAW DOCTRINE. THE PARTIES HERETO IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND THE UNITED STATES COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, AND TO THE JURISDICTION OF THEIR OWN CORPORATE DOMICILE, IN RESPECT OF ACTIONS BROUGHT AGAINST SUCH PARTY AS A DEFENDANT, IN CONNECTION WITH ALL MATTERS RELATING HERETO AND WAIVE ANY OBJECTION TO THE LAYING OF VENUE IN, AND ANY CLAIM OF INCONVENIENT FORUM WITH RESPECT TO, THESE COURTS, AND ANY RIGHT TO WHICH ANY OF THEM MAY BE ENTITLED ON ACCOUNT OF PLACE OF RESIDENCE OR DOMICILE.

1. In the event of any inconsistency between this Master Confirmation, on the one hand, and the Definitions or the Agreement, on the other hand, this Master Confirmation will control for the purpose of the Transaction to which a Confirmation relates. In the event of any inconsistency between the Definitions, the Agreement and this Master Confirmation, on the one hand, and a Confirmation, on the other hand, the Confirmation will govern. With respect to a Transaction, capitalized terms used herein that are not otherwise defined shall have the meaning assigned to them in the Confirmation relating to such Transaction.

2. Each party will make each payment specified in this Master Confirmation or a Confirmation as being payable by such party, not later than the due date for value on that date in the place of the account specified

below or otherwise specified in writing, in freely transferable funds and in a manner customary for payments in the required currency.

3. **Confirmations and General Terms:**

This Master Confirmation and the Agreement, together with the Confirmation relating to a Transaction, shall constitute the written agreement between Counterparty and Dealer with respect to such Transaction.

Each Transaction to which a Confirmation relates is a Capped Call Option Transaction, which shall be considered a Share Option Transaction for purposes of the Definitions (with references to "Strike Price" therein deemed to include "Lower Strike Price" and/or "Upper Strike Price", as applicable), and shall have the following terms:

| | |
|---|---|
| Option Style: | European |
| Option Type: | Call |
| Seller: | Dealer |
| Buyer: | Counterparty |
| Shares: | American depository shares (Symbol: CX), each representing ten Ordinary Participation Certificates (*Certificados de Participación Ordinarios*) of Counterparty. |
| Trade Date: | As set forth in the Confirmation for such Transaction |
| Tranches: | Each Transaction will be divided into individual Tranches, each with the terms set forth in this Master Confirmation and the Confirmation for such Transaction, and in particular with the Number of Options and Expiration Date set forth in the Confirmation for such Transaction. The payments and deliveries to be made upon settlement of each Transaction will be determined separately for each Tranche as if each Tranche were a separate Transaction under the Agreement. |
| Number of Options: | For each Tranche of such Transaction, as set forth in the Confirmation for such Transaction |
| Option Entitlement: | One Share per Option |
| Lower Strike Price: | As set forth in the Confirmation for such Transaction |
| Upper Strike Price: | As set forth in the Confirmation for such Transaction |
| Premium: | As set forth in the Confirmation for such Transaction |
| Premium Payment Date: | As set forth in the Confirmation for such Transaction |
| Exchange: | New York Stock Exchange |
| Related Exchanges: | All Exchanges |

| | |
|---|---|
| Calculation Agent: | Dealer, which shall make all calculations, adjustments and determinations required pursuant to a Transaction in a good faith and commercially reasonable manner, and upon request of Counterparty shall provide to Counterparty written support (without disclosing any of Dealer's proprietary models) as to any such calculations, adjustments and determinations required pursuant to a Transaction. |

**4. Procedure for Exercise and Valuation:**

In respect of any Tranche:

| | |
|---|---|
| Expiration Time: | The Valuation Time |
| Expiration Date: | As provided in the relevant Confirmation (or, if such date is not a Scheduled Trading Day, the next following Scheduled Trading Day that is not already an Expiration Date for another Tranche); provided that if that date is a Disrupted Day, the Expiration Date for such Tranche shall be the first succeeding Scheduled Trading Day that is not a Disrupted Day and is not or is not deemed to be an Expiration Date in respect of any other Tranche of any Transaction hereunder; and provided further that if the Expiration Date has not occurred pursuant to the preceding proviso as of the Final Disruption Date, the Final Disruption Date shall be the Expiration Date (irrespective of whether such date is an Expiration Date in respect of any other Tranche for the Transaction). Notwithstanding the foregoing and anything to the contrary in the Definitions, if a Market Disruption Event occurs on any Expiration Date, the Calculation Agent may determine that such Expiration Date is a Disrupted Day only in part, in which case the Calculation Agent shall determine that such day shall be the Expiration Date for a portion of the Number of Options for the relevant Tranche and shall designate the Scheduled Trading Day determined in the manner described in the immediately preceding sentence as the Expiration Date for the remaining Options for such Tranche. Section 6.6 of the Definitions shall not apply to any Valuation Date and the final sentence of Section 3.1(f) of the Definitions shall not apply to any Expiration Date. |
| Automatic Exercise: | Applicable |
| Seller's Telephone Number, Facsimile Number and Contact Details for Purpose of Giving Notice: | BNP Paribas<br>787 7th Avenue, 8th Floor<br>New York, NY, 10019<br>Attn: Damir Tanovic<br>Facsimile: 212-471-6352<br>Telephone: 212-841-2504 |
| VWAP Price: | The volume-weighted average price per Share on the Valuation Date 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 Valuation Date for any reason or is, in the Calculation Agent's reasonable discretion following notice in reasonable detail to, and consultation with, Counterparty, erroneous, or such Valuation Date is a Disrupted Day in whole or in part, the VWAP Price shall be as reasonably determined by the Calculation Agent using, except in the case of the Final Disruption Date, a substantially similar volume-weighted method. |
| Valuation Time: | As defined in Section 6.1 of the Definitions. |
| Valuation Date: | The Expiration Date |
| Final Disruption Date: | As set forth in the Confirmation for such Transaction |
| Market Disruption Event: | The third and fourth lines of Section 6.3(a) of the Definitions are hereby amended by deleting the words "during the one hour period that ends at the relevant Valuation Time" and replacing them with "prior to the relevant Valuation Time".<br><br>Section 6.3(d) of the Definitions is hereby amended by deleting the remainder of the provision following the term "Scheduled Closing Time" in the fourth line thereof. |

**5. Settlement Terms:**

In respect of any Tranche:

| | |
|---|---|
| Settlement Method: | Cash Settlement |
| Settlement Currency: | USD |
| Cash Settlement: | Settlement shall occur in accordance with Section 8.1 of the Definitions. |
| Cash Settlement Payment Date: | For each Tranche, the third Currency Business Day after the Valuation Date for such Tranche. |
| Strike Price Differential: | An amount equal to the lesser of:<br><br>(i) the greater of (a) the VWAP Price minus the Lower Strike Price and (b) zero; and<br><br>(ii) the Upper Strike Price minus the Lower Strike Price. |

**6. Dividends:**

In respect of any Tranche:

| | |
|---|---|
| Dividend Adjustments: | If at any time during the period from and including the date that is one Settlement Cycle following the Trade Date to but excluding the date that is one Settlement Cycle following the |

Expiration Date a record date for a distribution, dividend or recapitalization of retained earnings by an Underlying Issuer occurs, then, and upon consultation with Buyer which shall be taken into account in good faith by the Calculation Agent, (i) if such event (including, for the avoidance of doubt, a recapitalization of retained earnings by an Underlying Issuer) results in a corresponding record date (whether or not falling on the same date) for a Share dividend (excluding a Share dividend in connection with a circumstance described in clause (ii) below), the Calculation Agent (x) shall make an adjustment to the Lower Strike Price and the Option Entitlement that corresponds to the adjustment methodology for such type of dividend set forth in the Indenture (as set forth in the Confirmation for such Transaction) and (y) shall make a proportionate adjustment to the Upper Strike Price on the same basis as the adjustment to the Lower Strike Price described above, and (ii) if (1) such event results in a corresponding record date for a cash dividend on the Shares or both a Share dividend and a cash dividend on the Shares, (2) the holders of the Shares would be entitled to elect the form of consideration they receive, including the right to acquire Shares with a cash dividend, or would not be entitled to receive the entire distribution of Underlying Shares in Shares with respect to a corresponding record date for such event, (3) such event results in both (x) a change to the number of Underlying Shares represented, directly or indirectly, by a Share and (y) an adjustment to the "Conversion Rate" (as defined in the Indenture) for the Convertible Notes (as set forth in the Confirmation for such Transaction) and/or (4) with respect to such event, Counterparty makes a discretionary adjustment to the "Conversion Rate" (as defined in the Indenture) for the Convertible Notes or determines under the Indenture that the adjustments set forth in the Indenture do not provide a fair and equitable result, then the Calculation Agent (A) shall make an adjustment to the Lower Strike Price and the Option Entitlement that corresponds to the adjustment methodology for such type of dividend set forth in the Indenture and (B) shall make adjustments consistent with the Calculation Agent Adjustment provision in Section 11.2(c) of the Definitions (as modified herein) to the Upper Strike Price and/or any other term of the Transaction (except the Lower Strike Price and Option Entitlement) to preserve the fair value of the Transaction after taking into account the effect of such event (including whether such event, taken as a whole, effectively resulted in a Share dividend) and any adjustment made pursuant to clause (ii)(A) above; *provided* that, notwithstanding the foregoing, if Counterparty does not initially make an adjustment to the "Conversion Rate" with respect to such event due to the prescribed adjustment not reaching the one percent threshold for such adjustments described in the Indenture, no adjustment will be made pursuant to clauses (i) or (ii) with respect to such event until any such time as such adjustments occur pursuant to the Indenture. Counterparty shall provide to Dealer written notice (such notice, a "Conversion Rate Adjustment Notice") as soon

as reasonably practicable but in any event prior to the corresponding record date for such an event that would lead to a change in the "Conversion Rate" (as defined in the Indenture) (a " Conversion Rate Adjustment Event"), which Conversion Rate Adjustment Notice shall set forth in reasonable detail the adjustment to the "Conversion Rate" resulting from such Conversion Rate Adjustment Event. In connection with the delivery of any Conversion Rate Adjustment Notice to Dealer, unless all information included in such Conversion Rate Adjustment Notice has previously been provided to holders of the Convertible Notes, Counterparty shall, concurrently with or prior to such delivery, (x) publicly announce and disclose the Conversion Rate Adjustment Event and the resulting adjustment to the "Conversion Rate" or (y) represent and warrant that the information set forth in such Conversion Rate Adjustment Notice does not constitute material non-public information with respect to Counterparty, the Shares or the Underlying Shares.

**7. Share Adjustments:**

Method of Adjustment: Calculation Agent Adjustment; provided, however, that the Definitions shall be amended by (i) replacing the words "diluting or concentrative" in Sections 11.2(a), 11.2(c) (in two instances) and 11.2(e)(vii), and Section 2(a) of the DR Supplement, with the word "material", (ii) by adding the words "or the Transaction" after the words "theoretical value of the relevant Shares" in Sections 11.2(a), 11.2(c) and 11.2(e)(vii), and Section 2(a) of the DR Supplement, and (iii) replacing the words "the Strike Price," in Section 11.2(c)(A) with the words "the Lower Strike Price, the Upper Strike Price,"; provided, further, that adjustments may be made to account for changes in volatility, expected dividends, stock loan rate and liquidity relative to the relevant Share or the Transaction.

**8. Extraordinary Events:**

New Shares: For purposes of Merger Events and Tender Offers affecting the Issuer or Shares only (as such terms would be defined absent any modification in the DR Supplement), in the definition of New Shares in Section 12.1(i) of the Definitions, (a) the text in clause (i) thereof shall be deleted in its entirety (including the word "and" following clause (i)) and replaced with "publicly quoted, traded or listed on any of the New York Stock Exchange, the American Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or their respective successors)," and (b) the phrase "and (iii) of an entity or person organized under the laws of the United States, any State thereof or the District of Columbia" shall be inserted immediately prior to the period.

Consequences of Merger Events:

| | |
|---|---|
| (a) Share-for-Share: | Modified Calculation Agent Adjustment |
| (b) Share-for-Other: | Cancellation and Payment (Calculation Agent Determination) |
| (c) Share-for- Combined: | Component Adjustment |
| Tender Offer: | Applicable; provided that Sections 12.1(d), 12.1(e) and 12.1(l)(ii) of the Definitions are hereby amended by replacing "voting shares" with "Shares" prior to the application of the DR Amendment. |
| Consequences of Tender Offers: | |
| (a) Share-for-Share: | Modified Calculation Agent Adjustment |
| (b) Share-for-Other: | Cancellation and Payment (Calculation Agent Determination) |
| (c) Share-for-Combined: | Component Adjustment |
| Composition of Combined Consideration: | Not Applicable |
| Nationalization, Insolvency or Delisting: | Cancellation and Payment (Calculation Agent Determination); provided that Insolvency shall not be applicable if Counterparty is a debtor (or similar participant) with respect to such Insolvency.<br><br>In addition to the provisions of Section 12.6(a)(iii) of the Definitions, it will also constitute a Delisting if the Exchange is located in the United States and the Shares are not immediately re-listed, re-traded or re-quoted on any of the New York Stock Exchange, the American Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or their respective successors); if the Shares are immediately re-listed, re-traded or re-quoted on any such exchange or quotation system, such exchange or quotation system shall thereafter be deemed to be the Exchange. |

**9. Additional Disruption Events:**

| | |
|---|---|
| Change in Law: | Applicable; provided that Section 12.9(a)(ii) of the Definitions is hereby amended by (i) replacing the phrase "the interpretation" in the third line thereof with the phrase "or announcement of the formal or informal interpretation" and (ii) immediately following the word "Transaction" in clause (X) thereof, adding the phrase "in the manner contemplated by the Hedging Party on the Trade Date". |
| Insolvency Filing: | Applicable, except if Counterparty is a debtor (or similar participant) with respect to such Insolvency Filing |
| Hedging Disruption: | Applicable |
| Increased Cost of Hedging: | Applicable |

| | |
|---|---|
| Hedging Party: | For all applicable Additional Disruption Events, Dealer |
| Determining Party: | For all applicable Additional Disruption Events, Dealer |

**10. Acknowledgments:**

| | |
|---|---|
| Non-Reliance: | Applicable |
| Agreements and Acknowledgments Regarding Hedging Activities: | Applicable |
| Additional Acknowledgments: | Applicable |

**11. Representations, Warranties and Agreements:**

(a) In connection with this Master Confirmation, each Confirmation, each Transaction to which a Confirmation relates and any other documentation relating to the Agreement, each party to this Master Confirmation represents and warrants to, and agrees with, the other party that:

(i) it is an "accredited investor" as defined in Section 2(a)(15)(ii) of the Securities Act of 1933, as amended (the " Securities Act"); and

(ii) it is an "eligible contract participant" as defined in the Commodity Exchange Act, as amended (the " CEA"), and this Master Confirmation and each Transaction hereunder are subject to individual negotiation by the parties and have not been executed or traded on a "trading facility" as defined in the CEA.

(b) Counterparty represents and warrants to, and agrees with, Dealer on the Trade Date of each Transaction that:

(i) its financial condition is such that it has no need for liquidity with respect to its investment in such Transaction and no need to dispose of any portion thereof to satisfy any existing or contemplated undertaking or indebtedness, its investments in and liabilities in respect of such Transaction, which it understands are not readily marketable, are not disproportionate to its net worth, and it is able to bear any loss in connection with such Transaction, including the loss of its entire investment in such Transaction;

(ii) it understands that Dealer has no obligation or intention to register such Transaction under the Securities Act or any state securities law or other applicable federal or non-U.S. securities laws;

(iii) it understands that no obligations of Dealer to it hereunder will be entitled to the benefit of deposit insurance and that such obligations will not be guaranteed by any Affiliate of Dealer or any governmental agency;

(iv) IT UNDERSTANDS THAT SUCH TRANSACTION IS SUBJECT TO COMPLEX RISKS THAT MAY ARISE WITHOUT WARNING AND MAY AT TIMES BE VOLATILE AND THAT LOSSES MAY OCCUR QUICKLY AND IN UNANTICIPATED MAGNITUDE AND IS WILLING TO ACCEPT SUCH TERMS AND CONDITIONS AND ASSUME (FINANCIALLY AND OTHERWISE) SUCH RISKS;

(v) (A) Counterparty is not aware of any material non-public information regarding Counterparty, the Shares or the Underlying Shares and (B) each of its filings under the Securities Exchange Act of 1934, as amended (the " Exchange Act"), or other applicable securities laws that were required to be filed since January 1, 2010 have been filed and as of the date of this representation, when considered as a whole (with the more recent such reports and documents deemed to amend inconsistent statements contained in any

earlier such report or document), there is no misstatement of material fact contained therein or omission of a material fact required to be stated therein or necessary to make the statements made therein, in the light of the circumstances under which they were made, not misleading;

(vi) on the Trade Date, transactions in the Shares or the Underlying Shares are not prohibited by Regulation M under the Exchange Act ( "Regulation M") as a result of such transactions meeting the requirements of the exceptions set forth in Rules 101(b)(10) and 102(b)(7) of Regulation M;

(vii) it is not entering into, or exercising any right under, any Transaction to create, and will not engage in any other securities or derivatives transactions to create, actual or apparent trading activity in the Shares or the Underlying Shares (or any security convertible into or exchangeable for Shares or Underlying Shares) or to raise or depress or to manipulate the price of the Shares or the Underlying Shares (or any security convertible into or exchangeable for Shares or Underlying Shares) or to otherwise violate any applicable laws or other restrictions applicable to Counterparty;

(viii) it shall deliver to Dealer opinions of counsel, dated as of the Effective Date, with respect to the matters set forth in Section 3(a) of the Agreement;

(ix) on the Trade Date, other than purchases from, by or on behalf of directors, officers and employees of Counterparty and its affiliates that are not "Rule 10b-18 purchases" as such term is defined in Rule 10b-18 under the Exchange Act (" Rule 10b-18"), neither Counterparty nor any "affiliated purchaser" (as defined in Rule 10b-18) shall directly or indirectly purchase, offer to purchase, place any bid or limit order that would effect a purchase of, or commence any tender offer relating to, any Shares or Underlying Shares;

(x) on the Trade Date and the Premium Payment Date for such Transaction (A) the assets of Counterparty at their fair valuation exceed the liabilities of Counterparty, including contingent liabilities, (B) the capital of Counterparty is adequate to conduct the business of Counterparty, and (C) Counterparty has the ability to pay its debts and obligations as such debts mature and does not intend to, or does not believe that it will, incur debt beyond its ability to pay as such debts mature;

(xi) it is not, and after giving effect to the transactions contemplated hereby will not be, and "investment company" as such term is defined in the Investment Company Act of 1940, as amended; and

(xii) it is not on the Trade Date for such Transaction engaged in a distribution, as such term is used in Regulation M, of any securities of Counterparty (other than a distribution meeting the requirements of the exception set forth in Rules 101(b)(10) and 102(b)(7) of Regulation M) and shall not, until the second Scheduled Trading Day immediately following the Effective Date (as set forth in the Confirmation for a Transaction), engage in any such distribution.

**12. Miscellaneous:**

(a) Early Termination. The parties agree that Second Method and Loss will apply to each Transaction under this Master Confirmation as such terms are defined under the 1992 ISDA Master Agreement (Multicurrency-Cross Border).

(b) Repurchase Notices. Counterparty shall, on any day on which Counterparty effects any repurchase of Shares or Underlying Shares, promptly give Dealer a written notice of such repurchase (a " Repurchase Notice") on such day if, following such repurchase, the Ratio Equity Percentage as determined on such day is (i) equal to or greater than 8.0% and (ii) greater by 0.5% than the Ratio Equity Percentage included in the immediately preceding Repurchase Notice (or, in the case of the first such Repurchase Notice, greater by 0.5% than the Ratio Equity Percentage as of the date hereof). The " Ratio Equity Percentage" as of any day is the fraction the numerator of which is the aggregate of the Base Amounts for (1) all Tranches for all Transactions hereunder, (2) all transactions of the type described in the definition of "Specified Transactions" relating to Shares or Underlying

Shares between Dealer and Counterparty or their respective Affiliates and (3) all transactions of the type described in the definition of "Specified Transactions" relating to Shares or Underlying Shares between Dealer or its Affiliates and trusts or other entities with respect to which the beneficiaries or grantors (however described) are Counterparty, its Affiliates and/or employees of Counterparty or its Affiliates (the transactions described in clauses (1), (2) and (3) collectively, the "Specified Portfolio") and the denominator of which is the number of Underlying Shares outstanding on such day and the " Base Amount" for a Tranche or a transaction is an amount equal to the product of the Number of Shares (or similar term in the relevant transaction) for such Tranche or transaction, as applicable and, if such Tranche or transaction is denominated in Shares, the number of Underlying Shares represented by a Share.

(c) Section 16 Indemnity. If Counterparty ceases to be a "foreign private issuer" (as defined in Rule 3b-4 under the Exchange Act) at any time during the term of this Transaction, Counterparty agrees to indemnify and hold harmless Dealer and its Affiliates and their respective officers, directors and controlling persons (each, a "Section 16 Indemnified Person") from and against any and all losses (including losses relating to Dealer's hedging activities as a consequence of becoming, or of the risk of becoming, subject to the reporting and profit disgorgement provisions of Section 16 of the Exchange Act, including without limitation, any forbearance from hedging activities or cessation of hedging activities and any losses in connection therewith with respect to any Transaction), claims, damages, judgments, liabilities and expenses (including reasonable attorney's fees), joint or several, to which a Section 16 Indemnified Person may become subject, as a result of Counterparty's failure to provide Dealer with a Repurchase Notice on the day and in the manner specified in this paragraph (b), and to reimburse, upon written request, each such Section 16 Indemnified Person for any reasonable legal or other expenses incurred in connection with investigating, preparing for, providing testimony or other evidence in connection with or defending any of the foregoing. If any suit, action, proceeding (including any governmental or regulatory investigation), claim or demand shall be brought or asserted against any Section 16 Indemnified Person, such Section 16 Indemnified Person shall promptly notify Counterparty in writing, and Counterparty, upon request of such Section 16 Indemnified Person, shall retain counsel reasonably satisfactory to such Section 16 Indemnified Person to represent such Section 16 Indemnified Person and any others Counterparty may designate in such proceeding and shall pay the fees and expenses of such counsel related to such proceeding. Counterparty shall be relieved from liability to the extent that such Section 16 Indemnified Person fails to promptly notify Counterparty of any action commenced against it in respect of which indemnity may be sought hereunder; provided that failure to notify Counterparty (i) shall not relieve Counterparty from any liability hereunder to the extent it is not materially prejudiced as a result thereof and (ii) shall not, in any event, relieve Counterparty from any liability that it may have otherwise than on account of this paragraph (c). Counterparty shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, Counterparty agrees to indemnify any Section 16 Indemnified Person from and against any loss or liability by reason of such settlement or judgment. Counterparty shall not, without the prior written consent of each Section 16 Indemnified Person, effect any settlement of any pending or threatened proceeding in respect of which any Section 16 Indemnified Person is or could have been a party and indemnity could have been sought hereunder by any such Section 16 Indemnified Person, unless such settlement includes an unconditional release of each such Section 16 Indemnified Person from all liability on claims that are the subject matter of such proceeding on terms reasonably satisfactory to each such Section 16 Indemnified Person. If the indemnification provided for in this paragraph (c) is unavailable to a Section 16 Indemnified Person or insufficient in respect of any losses, claims, damages or liabilities referred to therein, then Counterparty, in lieu of indemnifying such Section 16 Indemnified Person thereunder, shall contribute to the amount paid or payable by such Section 16 Indemnified Person as a result of such losses, claims, damages or liabilities. The remedies provided for in this paragraph (c) are not exclusive and shall not limit any rights or remedies that may otherwise be available to any Section 16 Indemnified Person at law or in equity. The indemnity and contribution agreements contained in this paragraph (c) shall remain operative and in full force and effect regardless of the termination of any Transaction.

(d) Transfer or Assignment. Dealer may, with Counterparty's prior written consent (not to be unreasonably withheld or delayed), transfer or assign all (but not less than all) of its rights and obligations under any Transaction to any of its Affiliates with a rating (or whose guarantor has a rating) for its long term, unsecured and unsubordinated indebtedness equal to or better than A- by Standard & Poor's Ratings Services or its successor (" S&P"), or A3 by Moody's Investors Service, Inc. or its successor ("Moody's") or, if either S&P or Moody's ceases to rate such debt, at least an equivalent rating or better by a substitute rating agency mutually agreed by Counterparty and Dealer; *provided* that Counterparty shall not withhold or delay its consent if Dealer certifies to

Counterparty that the requested transfer is made in connection with the transfer of all or substantially all similar transactions that Dealer and its affiliates are parties thereto resulting from the enactment of the Dodd Frank Wall Street Reform and Consumer Protection Act of 2010 and rules and regulation thereunder, and such transfer will not result in an increased cost to Counterparty. Counterparty may, with Dealer's prior written consent (not to be unreasonably withheld or delayed) sell or pledge to any third party all (but not less than all) of its rights and obligations under any Transaction at a time when such Transaction is not subject to a security interest in favor of Dealer or any of its Affiliates. If, as determined in Dealer's sole discretion, (a) at any time (1) the Equity Percentage exceeds 8.5%, (2) Dealer, Dealer Group (as defined below) or any person whose ownership position would be aggregated with that of Dealer or Dealer Group (Dealer, Dealer Group or any such person, a "Dealer Person") under U.S. federal, non-U.S., state or local laws, regulations or regulatory orders applicable to ownership of Shares or Underlying Shares ("Applicable Laws"), owns, beneficially owns, constructively owns, controls, holds the power to vote or otherwise meets a relevant definition of ownership, or could be reasonably viewed as meeting any of the foregoing, in excess of a number of Shares or Underlying Shares, as applicable, equal to (x) the number of Shares or Underlying Shares, as applicable, that would give rise to reporting, registration, filing or notification obligations or other requirements (including obtaining prior approval by a state, U.S. federal or non-U.S. regulator) of a Dealer Person under Applicable Laws and with respect to which such requirements have not been met or the relevant approval has not been received *minus* (y) 1% of the number of Shares or Underlying Shares, as applicable, outstanding on the date of determination or (3) the Ratio Equity Percentage exceeds 9.9% (any such condition described in clause (1), (2) or (3), an "Excess Ownership Position") and (b) Dealer is unable, after commercially reasonable efforts, to effect a transfer or assignment on pricing and terms and within a time period reasonably acceptable to it of all or a portion of one or more Transactions pursuant to the preceding paragraph such that an Excess Ownership Position no longer exists, Dealer may designate any Scheduled Trading Day as an Early Termination Date with respect to a portion (the "Terminated Portion") of any Transaction(s), such that an Excess Ownership Position no longer exists following such partial termination. In the event that Dealer so designates an Early Termination Date with respect to a portion of any Transaction(s), a payment shall be made pursuant to Section 6 of the Agreement as if (i) an Early Termination Date had been designated in respect of a Transaction having terms identical to the Terminated Portion of the Transaction(s), (ii) Counterparty shall be the sole Affected Party with respect to such partial termination and (iii) such portion of the Transaction(s) shall be the only Terminated Transaction. The "Equity Percentage" as of any day is the fraction, expressed as a percentage, (A) the numerator of which is the number of Underlying Shares that Dealer and any of its affiliates subject to aggregation with Dealer for purposes of the "beneficial ownership" test under Section 13 of the Exchange Act and all persons who may form a "group" (within the meaning of Rule 13d-5(b)(1) under the Exchange Act) with Dealer (collectively, "Dealer Group") "beneficially own" (within the meaning of Section 13 of the Exchange Act) in connection with transactions in the Specified Portfolio without duplication on such day (or, if Counterparty ceases to be a "foreign private issuer" (as defined in Rule 3b-4 under the Exchange Act) and the equivalent calculation under Section 16 of the Exchange Act and the rules and regulations thereunder results in a higher number, such number) and (B) the denominator of which is the number of Underlying Shares outstanding on such day.

(e) Severability; Illegality. If compliance by either party with any provision of a Transaction would be unenforceable or illegal, (i) the parties shall negotiate in good faith to resolve such unenforceability or illegality in a manner that preserves the economic benefits of the transactions contemplated hereby and (ii) the other provisions of the Transaction shall not be invalidated, but shall remain in full force and effect.

(f) Waiver of Trial by Jury. EACH OF COUNTERPARTY AND DEALER HEREBY IRREVOCABLY WAIVES (ON ITS OWN BEHALF AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ON BEHALF OF ITS STOCKHOLDERS) ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO ANY TRANSACTION OR THIS MASTER CONFIRMATION OR THE ACTIONS OF DEALER OR ITS AFFILIATES IN THE NEGOTIATION, PERFORMANCE OR ENFORCEMENT THEREOF.

(g) Confidentiality. Notwithstanding any provision in this Master Confirmation, any Confirmation or the Agreement, in connection with Section 1.6011-4 of the Treasury Regulations, the parties hereby agree that each party (and each employee, representative, or other agent of such party) may disclose to any and all persons, without limitation of any kind, the U.S. tax treatment and U.S. tax structure of the Transaction and all

materials of any kind (including opinions or other tax analyses) that are provided to such party 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.

(h) Securities Contract; Swap Agreement. The parties hereto intend for: (i) each Transaction hereunder to be a "securities contract" and a "swap agreement" as defined in the Bankruptcy Code (Title 11 of the United States Code) (the "Bankruptcy Code"), a derivatives transaction under the Mexican *Ley de Concursos Mercantiles*, the Agreement to be a "master netting agreement" and the parties hereto to be entitled to the protections afforded by, among other Sections, Sections 362(b)(6), 362(b)(17), 362(o), 546(e), 546(g), 546(j), 548(d), 555, 560 and 561 of the Bankruptcy Code and the applicable provisions of the *Ley de Concursos Mercantiles*; (ii) a party's right to liquidate a Transaction and to exercise any other remedies upon the occurrence of any Event of Default under the Agreement with respect to the other party to constitute a "contractual right … to cause the liquidation, termination or acceleration" and any payments owed under this Transaction or the Agreement with respect thereto to be a "termination value", "payment amount" or "other transfer obligation", in each case as described in the Bankruptcy Code; (iii) all payments for, under or in connection with a Transaction to constitute "margin payments", "settlement payments" and/or "transfers" under a "securities contract" and/or "swap agreement" as defined in the Bankruptcy Code; and (iv) each party hereto to be a "master netting agreement participant", "financial institution", "swap participant" and/or a "financial participant" as defined in the Bankruptcy Code.

(i) Extension of Settlement. Dealer may postpone any Expiration Date, postpone the Final Disruption Date and/or add additional Expiration Dates with respect to some or all of the Options under any Tranche hereunder (provided that none of such postponed or added Expiration Dates shall occur later than the 20th Scheduled Trading Day immediately succeeding the last Expiration Date (determined without regard to this provision) for the relevant Transaction) if Dealer determines, in its reasonable discretion, that such extension is necessary or advisable to preserve Dealer's hedging activity hereunder in light of existing liquidity conditions or to enable Dealer to effect purchases or sales of Shares or Underlying Shares in connection with its hedging activity hereunder in a manner that would, if Dealer were Counterparty or an affiliated purchaser of Counterparty, be in compliance with applicable legal and regulatory requirements or self-regulatory requirements, or with related reasonable policies and procedures applicable to Dealer.

(j) Registration. Counterparty hereby agrees that if the Shares or Underlying Shares (the "Hedge Shares") acquired by Dealer for the purpose of hedging its obligations pursuant to the Transaction, in Dealer's sole judgment, cannot be sold in the U.S. public market (including by depositing such Underlying Shares with the Depository in exchange for Shares) by Dealer without registration under the Securities Act, Counterparty shall, at its election: (i) in order to allow Dealer to sell the Hedge Shares in a registered offering, make available to Dealer an effective registration statement under the Securities Act to cover the resale of such Hedge Shares and (A) enter into an agreement, in form and substance satisfactory to Dealer and Counterparty, substantially in the form of an underwriting agreement for a registered secondary offering, (B) provide accountant's "comfort" letters in customary form for registered offerings of equity securities, (C) provide disclosure opinions of nationally recognized outside counsel to Counterparty reasonably acceptable to Dealer, (D) provide other customary opinions, certificates and closing documents customary in form for registered offerings of equity securities and (E) afford Dealer a reasonable opportunity to conduct a "due diligence" investigation with respect to Counterparty customary in scope for underwritten offerings of equity securities; provided that if Dealer, in its sole reasonable discretion, is not satisfied with access to due diligence materials, the results of its due diligence investigation, or the procedures and documentation for the registered offering referred to above, then, subject to the conditions set forth therein, clause (ii) or (iii) of this section shall apply at the election of Counterparty; (ii) in order to allow Dealer to sell the Hedge Shares in a private placement, enter into a private placement agreement substantially similar to private placement Underwriting Agreements customary for private placements of equity securities, in form and substance satisfactory to Dealer and Counterparty, including customary representations, covenants, blue sky and other governmental filings and/or registrations, indemnities to Dealer, due diligence rights (for Dealer or any designated buyer of the Hedge Shares from Dealer), opinions and certificates and such other documentation as is customary for private placements agreements, all reasonably acceptable to Dealer (in which case, the Calculation Agent shall make any adjustments to the terms of the Transaction that are necessary, in its reasonable judgment, to compensate Dealer for any discount from the public market price of the Shares incurred on the sale of Hedge Shares in a private placement); or (iii) to the extent that such purchases would not violate any applicable law or other restriction

applicable to Counterparty, purchase the Hedge Shares from Dealer at the VWAP Price on such Exchange Business Days (with references to "Valuation Date" in the definition of "VWAP Price" deemed to be references to such Exchange Business Days for this purpose), and in such amounts, requested by Dealer. This paragraph (j) shall survive the termination, expiration or early unwind of the Transaction.

(k) Early Unwind. In the event the sale of Convertible Notes for the Transaction (as set forth in the Confirmation for such Transaction) is not consummated with the initial purchasers for any reason by the close of business in New York City on the Early Unwind Date set forth in the Confirmation for such Transaction, such Transaction shall automatically terminate on such Early Unwind Date and (i) such Transaction and all of the respective rights and obligations of Dealer and Counterparty under such Transaction shall be cancelled and terminated and (ii) each party shall be released and discharged by the other party from and agrees not to make any claim against the other party with respect to any obligations or liabilities of the other party arising out of and to be performed in connection with such Transaction either prior to or after such Early Unwind Date; provided that, if such failure is due to a breach or default on the part of Counterparty under the Purchase Agreement dated as of March 9, 2011 among CEMEX, S.A.B. de C.V. and Citigroup Global Markets, Inc. and J.P. Morgan Securities LLC, among others, as representatives of the "Initial Purchasers" (as defined therein), Counterparty shall assume, or reimburse the cost of, derivatives or other transactions entered into by Dealer or one or more of its Affiliates in connection with hedging such Transaction. The amount paid by Counterparty shall be Dealer's actual cost of such derivatives or other transactions as Dealer informs Counterparty and shall be paid in immediately available funds on such Early Unwind Date.

(l) Acknowledgment of Pledge. Counterparty's rights under the Agreement may, from time to time, be pledged to Dealer to secure Counterparty's obligations to Dealer arising under other agreements in accordance with such terms as the parties may separately agree.

(m) Optional Early Termination. (i) At any time during the term of this Transaction, Counterparty may, by written notice to Dealer, designate, with respect to one or more specified Tranches, an Early Termination Date to occur on the third Scheduled Trading Day following the date such notice is effective, in which case an Additional Termination Event shall be deemed to have occurred in respect of which (1) Counterparty shall be the sole Affected Party and (2) the portion of the relevant Transaction represented by such Tranche(s) shall be the sole Affected Transaction.

(ii) Counterparty may, prior to electing to terminate any Tranche pursuant to subparagraph (i) above, request a quotation (which may be in the form of a grid of percentages that depends on the price of the Shares or Underlying Shares over a specified period) from Dealer as to the applicable terms of such termination, and Dealer shall be bound by the terms of such quotation if Counterparty then makes such election within one full Scheduled Trading Day.

(iii) By providing the notice referred to in this paragraph, Counterparty shall be deemed to repeat, on the date such notice is effective, the representations in clauses (v), (vi), (vii) and (ix) of Section 11(b).

(n) Counterparty's Obligation to Pay Cancellation Amounts and Early Termination Amounts. Seller and Counterparty hereby agree that, notwithstanding anything to the contrary herein or in the Agreement, following Seller's receipt from Counterparty of the Premium on the Premium Payment Date, in the event that (a) an Early Termination Date (whether as a result of an Event of Default or a Termination Event) occurs or is designated with respect to a Transaction and, as a result, Counterparty owes to Seller an amount under Section 6(e) of the Agreement or (b) Counterparty owes to Seller, pursuant to Section 12.7 or Section 12.9 of the Definitions, a Cancellation Amount, such amount shall be deemed to be zero. If Counterparty pays the Premium on the Premium Payment Date, then under no circumstances shall Counterparty be required to pay any amount in addition to the Premium under the Transaction. For the avoidance of doubt, the preceding sentence shall not be construed as limiting any damages that may be payable by Counterparty as a result of a breach of, or an indemnity under, this Master Confirmation or the Agreement.

(o) Modifications to DR Supplement. The DR Supplement is hereby amended as follows:

(i) The definitions of the following terms in Section 1 thereof are hereby deleted and replaced as follows:

"Depository" means, in relation to the Shares or the Underlying Shares, the Issuer of the Shares or the Underlying Shares, as applicable.

"Deposit Agreement" means, in relation to the Shares or the Underlying Shares, the agreements, deeds or other instruments constituting the Shares or Underlying Shares, as applicable, as from time to time amended or supplemented in accordance with their terms.

"Underlying Shares" means, in relation to the applicable Deposit Agreement, the shares or other securities which are the subject of such Deposit Agreement.

"Underlying Shares Issuer" means, in relation to the applicable Underlying Shares, the issuer of such Underlying Shares.

(ii) Section 2(c) thereof is hereby deleted in its entirety.

(iii) Section 3(a) thereof is hereby amended by adding in the second line therein after the term "'Share-for-Combined'" the following parenthetical: "(including defined terms used in such definitions)".

(p) Settlement Amendment. Dealer acknowledges that Counterparty may, to the extent permitted by law and any agreements Counterparty may be subject to, prior to the settlement of any Transaction hereunder, request that the provisions of this Master Confirmation be modified to enable Counterparty to effect share settlement in lieu of the settlement provisions under Section 5 of this Master Confirmation. In the event of such a request, Dealer agrees to negotiate with Counterparty, in good faith, such amendments to this Master Confirmation as may be required to effect such changes, it being understood and agreed that as of the date hereof, Counterparty has no right or option to require share settlement of any Transaction hereunder; *provided* that Dealer may in good faith refuse to enter into any such amendments so as to comply with applicable legal and regulatory requirements or self-regulatory requirements, or with related policies and procedures applicable to Dealer.

(q) BNP Paribas Securities Corp. as Agent. The parties agree and acknowledge that (i) BNP Paribas Securities Corp. ("BNPPSC"), an affiliate of Dealer, has acted solely as agent and not as principal with respect to this Transaction and (ii) BNPPSC has no obligation or liability, by way of guaranty, endorsement or otherwise, in any manner in respect of this Transaction (including, if applicable, in respect of the settlement thereof). Each party agrees it will look solely to the other party (or any guarantor in respect thereof) for performance of such other parties' obligations under this Transaction.

**13. Addresses for Notice:**

If to Dealer: BNP Paribas
787 7th Avenue, 8th Floor
New York, NY, 10019
Attn: Damir Tanovic
Facsimile: 212-471-6352
Telephone: 212-841-2504

with a copy to: BNP Paribas
787 7th Avenue, 8th Floor
New York, NY, 10019

Attn: Philippe Bernard
Telephone: 212-841-3407

If to Counterparty: CEMEX, S.A.B. de C.V.
Avenida Ricardo Margain Zozaya 325
Colonia Valle del Campestre
San Pedro Garza Garcia, Nuevo Leon 66265
Attention: Francisco Javier Contreras Navarro
Financial Operations Manager - Corporate Treasury - Mexico
Office : +52(81)88884093
Fax: +52(81)88884519
e-Mail: franciscojavier.contreras@cemex.com

**14. Accounts for Payment:**

To Dealer: Pay to: BNP Paribas, New York
ABA: 026007689
Swift Code: BNPAUS3N
Favor: BNP Paribas Paris (swift code: BNPAFRPP)
A/C: 020019409300136

To Counterparty:

| | |
|---|---|
| Beneficiary: | CEMEX, S.A.B. de C.V. |
| Bank: | Citibank, NY |
| Account: | 36964215 |
| ABA: | 021000089 |
| SWIFT: | CITIUS33 |

**15. Schedule Provisions:**

(a) Process Agent. For the purpose of Section 13(c) of the Agreement:

Counterparty appoints as its Process Agent:

Corporate Creations Network Inc.
1040 Avenue of the Americas #2400
New York, NY 10018
Fax: (561) 694-1639
Tel: (212) 382-4699

(b) Delivery of Tax Forms. For the purposes of Section 4(a)(i) of the Agreement, Counterparty agrees to deliver such documents as Dealer may request in order to allow Dealer to make a payment under this Transaction without any deduction or withholding for or on account of any Tax or with such deduction or withholding at a reduced rate including, without limitation, an executed United States Internal Revenue Service Form W-8BEN (or any successor thereto), (i) upon execution of this Transaction; (ii) promptly upon reasonable demand by Dealer; and (iii) promptly upon learning that any such document, including Form W-8BEN (or any successor thereto), previously provided by Counterparty has become obsolete or incorrect.

**16. Valuation Notice:**

Dealer agrees to provide to Counterparty, as soon as practicable following the end of each calendar month, a statement showing the Exposure (within the meaning of the 1994 ISDA Credit Support Annex), calculated with respect to the Transaction and determined as if such last day (or the immediately preceding Exchange Business Day) was the Valuation Date.

[Signature page follows]

Yours sincerely,

BNP PARIBAS

By: /s/ Lionel Crassier
Name: Lionel Crassier
Title: Managing Director

By: /s/ M. Andrews Yeo
Name: M. Andrews Yeo
Title: Managing Director

Confirmed as of the
date first above written:

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

By: /s/ Rodrigo Treviño
Name: Rodrigo Treviño
Title: Attorney-in-fact

**EXHIBIT A**
**FORM OF CAPPED CALL OPTION**
**TRANSACTION CONFIRMATION**

CONFIRMATION

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|---|---|
| Date: | March [ ], 2011 |
| To: | CEMEX, S.A.B. de C.V. ("Counterparty") |
| Telefax No.: | +52(81)88884519 |
| Attention: | Francisco Javier Contreras Navarro - Financial Operations Manager - Corporate Treasury - Mexico |
| From: | BNP Paribas ("Dealer") |

Transaction Reference Number: _____

The purpose of this communication (this "Confirmation") is to set forth the terms and conditions of the above-referenced Transaction (the "Transaction") entered into on the Trade Date specified below between you and us. This Confirmation supplements, forms a part of, and is subject to the Master Terms and Conditions for Capped Call Transactions dated as of March 9, 2011 and as amended from time to time (the " Master Confirmation") between you and us.

1. The definitions and provisions contained in the Definitions (as such term is defined in the Master Confirmation) and in the Master Confirmation are incorporated into this Confirmation. In the event of any inconsistency between those definitions and provisions and this Confirmation, this Confirmation will govern.

2. The particular Transaction to which this Confirmation relates shall have the following terms:

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| Trade Date: | March [ ], 2011 |
| Effective Date: | The closing date of the initial issuance of the Convertible Notes. |
| Lower Strike Price: | USD [ ]. |
| Upper Strike Price: | USD [ ]. |
| Initial Reference Price: | USD [*Insert Exchange closing price per share for the Shares on the Trade Date*] |
| Premium: | USD [ ]. |
| Premium Payment Date: | The Effective Date |
| Convertible Notes: | [ ]% Convertible Subordinated Notes of Counterparty due [ ], offered pursuant to an Offering Memorandum to be dated [ ]. |
| Indenture: | The indenture governing the issuance of the Convertible Notes to be dated as of the closing date of the initial issuance of the Convertible Notes, by and between Counterparty and The Bank of New York Mellon, as trustee (as may be amended, modified or supplemented from time to time, but only if such amendment, modification or supplement |

is consented to by Dealer in writing, which consent shall not be unreasonably withheld or delayed).

Early Unwind Date: [ ], 2011, or such later date as agreed by the parties hereto.

Final Disruption Date: [ ]

[Remainder of page intentionally left blank]

The Number of Options and Expiration Date for each Tranche of the Transaction are set forth below.

| Tranche Number | Number of Options | Expiration Date |
|---|---|---|
| 1. | [ ] | [ ] |
| 2. | [ ] | [ ] |
| 3. | [ ] | [ ] |
| 4. | [ ] | [ ] |
| 5. | [ ] | [ ] |
| 6. | [ ] | [ ] |
| 7. | [ ] | [ ] |
| 8. | [ ] | [ ] |
| 9. | [ ] | [ ] |
| 10. | [ ] | [ ] |
| 11. | [ ] | [ ] |
| 12. | [ ] | [ ] |
| 13. | [ ] | [ ] |
| 14. | [ ] | [ ] |
| 15. | [ ] | [ ] |
| 16. | [ ] | [ ] |
| 17. | [ ] | [ ] |
| 18. | [ ] | [ ] |
| 19. | [ ] | [ ] |
| 20. | [ ] | [ ] |
| 21. | [ ] | [ ] |
| 22. | [ ] | [ ] |
| 23. | [ ] | [ ] |
| 24. | [ ] | [ ] |
| 25. | [ ] | [ ] |
| 26. | [ ] | [ ] |
| 27. | [ ] | [ ] |
| 28. | [ ] | [ ] |
| 29. | [ ] | [ ] |
| 30. | [ ] | [ ] |
| 31. | [ ] | [ ] |
| 32. | [ ] | [ ] |
| 33. | [ ] | [ ] |
| 34. | [ ] | [ ] |
| 35. | [ ] | [ ] |
| 36. | [ ] | [ ] |
| 37. | [ ] | [ ] |
| 38. | [ ] | [ ] |
| 39. | [ ] | [ ] |
| 40. | [ ] | [ ] |
| 41. | [ ] | [ ] |
| 42. | [ ] | [ ] |
| 43. | [ ] | [ ] |
| 44. | [ ] | [ ] |
| 45. | [ ] | [ ] |
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| 47. | [ ] | [ ] |
| 48. | [ ] | [ ] |
| 49. | [ ] | [ ] |
| 50. | [ ] | [ ] |
| 51. | [ ] | [ ] |

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| 52. | [ ] | [ ] |
| 53. | [ ] | [ ] |
| 54. | [ ] | [ ] |
| 55. | [ ] | [ ] |
| 56. | [ ] | [ ] |
| 57. | [ ] | [ ] |
| 58. | [ ] | [ ] |
| 59. | [ ] | [ ] |
| 60. | [ ] | [ ] |

3. Counterparty hereby agrees (a) to check this Confirmation promptly upon receipt so that errors or discrepancies can be promptly identified and rectified and (b) to confirm that the foregoing correctly sets forth the terms of the agreement between us with respect to the particular Transaction to which this Confirmation relates, by manually signing this Confirmation and providing any other information requested herein or in the Master Confirmation and immediately returning an executed copy to us.

Yours sincerely,

BNP PARIBAS

By: _____
Name:
Title:

By: _____
Name:
Title:

Confirmed as of the
date first above written:

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

By:
Name:
Title:

**Exhibit 4.66**

***EXECUTION VERSION***


MASTER TERMS AND CONDITIONS FOR CAPPED CALL TRANSACTIONS
BETWEEN BANK OF AMERICA, N.A. AND CEMEX, S.A.B. de C.V.

The purpose of this Master Terms and Conditions for Capped Call Transactions (this "Master Confirmation"), dated as of March 9, 2011, is to set forth certain terms and conditions for capped call option transactions that CEMEX, S.A.B. de C.V. (" Counterparty") will enter into with Bank of America, N.A. ("Dealer"). Each such transaction (a "Transaction") entered into between Dealer and Counterparty that is to be subject to this Master Confirmation shall be evidenced by a written confirmation substantially in the form of Exhibit A hereto, with such modifications thereto as to which Counterparty and Dealer mutually agree (a "Confirmation"). This Master Confirmation and each Confirmation together constitute a "Confirmation" as referred to in the Agreement specified below.

This Master Confirmation and a Confirmation evidence a complete binding agreement between you and us as to the terms of the Transaction to which this Master Confirmation and such Confirmation relates. This Master Confirmation and each Confirmation hereunder shall supplement, form a part of, and be subject to an agreement in the form of the 1992 ISDA Master Agreement (Multicurrency – Cross Border) as if we had executed an agreement in such form (with a Schedule that had the provisions in Section 15 of this Master Confirmation and the other elections set forth in this Master Confirmation) on the Trade Date and such agreement shall be considered the "Agreement" hereunder.

The Transactions governed by this Master Confirmation shall be the sole Transactions under the Agreement. If there exists any ISDA Master Agreement between Dealer and Counterparty or any confirmation or other agreement between Dealer and Counterparty pursuant to which an ISDA Master Agreement is deemed to exist between Dealer and Counterparty, then notwithstanding anything to the contrary in such ISDA Master Agreement, such confirmation or agreement or any other agreement to which Dealer and Counterparty are parties, the Transactions governed by this Master Confirmation shall not be considered Transactions under, or otherwise governed by, such existing or deemed ISDA Master Agreement.

The definitions and provisions contained in the 2002 ISDA Equity Derivatives Definitions as supplemented by the 2007 Partial Lookthrough Depository Receipt Supplement to the 2002 ISDA Equity Derivatives Definitions (as amended in this Master Confirmation, the " DR Supplement" and the 2002 ISDA Equity Derivatives Definitions as so supplemented, the "Definitions"), each as published by ISDA are incorporated into this Master Confirmation.

THIS MASTER CONFIRMATION WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REFERENCE TO CHOICE OF LAW DOCTRINE. THE PARTIES HERETO IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND THE UNITED STATES COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, AND TO THE JURISDICTION OF THEIR OWN CORPORATE DOMICILE, IN RESPECT OF ACTIONS BROUGHT AGAINST SUCH PARTY AS A DEFENDANT, IN CONNECTION WITH ALL MATTERS RELATING HERETO AND WAIVE ANY OBJECTION TO THE LAYING OF VENUE IN, AND ANY CLAIM OF INCONVENIENT FORUM WITH RESPECT TO, THESE COURTS, AND ANY RIGHT TO WHICH ANY OF THEM MAY BE ENTITLED ON ACCOUNT OF PLACE OF RESIDENCE OR DOMICILE.

1. In the event of any inconsistency between this Master Confirmation, on the one hand, and the Definitions or the Agreement, on the other hand, this Master Confirmation will control for the purpose of the Transaction to which a Confirmation relates. In the event of any inconsistency between the Definitions, the Agreement and this Master Confirmation, on the one hand, and a Confirmation, on the other hand, the Confirmation will govern. With respect to a Transaction, capitalized terms used herein that are not otherwise defined shall have the meaning assigned to them in the Confirmation relating to such Transaction.

2. Each party will make each payment specified in this Master Confirmation or a Confirmation as being payable by such party, not later than the due date for value on that date in the place of the account specified below or otherwise specified in writing, in freely transferable funds and in a manner customary for payments in the required currency.

3. **Confirmations and General Terms:**

This Master Confirmation and the Agreement, together with the Confirmation relating to a Transaction, shall constitute the written agreement between Counterparty and Dealer with respect to such Transaction.

Each Transaction to which a Confirmation relates is a Capped Call Option Transaction, which shall be considered a Share Option Transaction for purposes of the Definitions (with references to "Strike Price" therein deemed to include "Lower Strike Price" and/or "Upper Strike Price", as applicable), and shall have the following terms:

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| Option Style: | European |
| Option Type: | Call |
| Seller: | Dealer |
| Buyer: | Counterparty |
| Shares: | American depository shares (Symbol: CX), each representing ten Ordinary Participation Certificates (*Certificados de Participación Ordinarios*) of Counterparty. |
| Trade Date: | As set forth in the Confirmation for such Transaction |
| Tranches: | Each Transaction will be divided into individual Tranches, each with the terms set forth in this Master Confirmation and the Confirmation for such Transaction, and in particular with the Number of Options and Expiration Date set forth in the Confirmation for such Transaction. The payments and deliveries to be made upon settlement of each Transaction will be determined separately for each Tranche as if each Tranche were a separate Transaction under the Agreement. |
| Number of Options: | For each Tranche of such Transaction, as set forth in the Confirmation for such Transaction |
| Option Entitlement: | One Share per Option |
| Lower Strike Price: | As set forth in the Confirmation for such Transaction |
| Upper Strike Price: | As set forth in the Confirmation for such Transaction |
| Premium: | As set forth in the Confirmation for such Transaction |
| Premium Payment Date: | As set forth in the Confirmation for such Transaction |
| Exchange: | New York Stock Exchange |

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| Related Exchanges: | All Exchanges |
| Calculation Agent: | Dealer, which shall make all calculations, adjustments and determinations required pursuant to a Transaction in a good faith and commercially reasonable manner, and upon request of Counterparty shall provide to Counterparty written support (without disclosing any of Dealer's proprietary models) as to any such calculations, adjustments and determinations required pursuant to a Transaction. |

**4. Procedure for Exercise and Valuation:**

In respect of any Tranche:

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| Expiration Time: | The Valuation Time |
| Expiration Date: | As provided in the relevant Confirmation (or, if such date is not a Scheduled Trading Day, the next following Scheduled Trading Day that is not already an Expiration Date for another Tranche); provided that if that date is a Disrupted Day, the Expiration Date for such Tranche shall be the first succeeding Scheduled Trading Day that is not a Disrupted Day and is not or is not deemed to be an Expiration Date in respect of any other Tranche of any Transaction hereunder; and provided further that if the Expiration Date has not occurred pursuant to the preceding proviso as of the Final Disruption Date, the Final Disruption Date shall be the Expiration Date (irrespective of whether such date is an Expiration Date in respect of any other Tranche for the Transaction). Notwithstanding the foregoing and anything to the contrary in the Definitions, if a Market Disruption Event occurs on any Expiration Date, the Calculation Agent may determine that such Expiration Date is a Disrupted Day only in part, in which case the Calculation Agent shall determine that such day shall be the Expiration Date for a portion of the Number of Options for the relevant Tranche and shall designate the Scheduled Trading Day determined in the manner described in the immediately preceding sentence as the Expiration Date for the remaining Options for such Tranche. Section 6.6 of the Definitions shall not apply to any Valuation Date and the final sentence of Section 3.1(f) of the Definitions shall not apply to any Expiration Date. |
| Automatic Exercise: | Applicable |
| Seller's Telephone Number, Facsimile Number and Contact Details for Purpose of Giving Notice: | Bank of America, N.A.<br>c/o Merrill Lynch, Pierce, Fenner & Smith Incorporated<br>One Bryant Park<br>New York, NY 10036<br>Attention: John Servidio<br>Telephone No.: 646-855-7127<br>Facsimile No.: 704-208-2869 |

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| VWAP Price: | The volume-weighted average price per Share on the Valuation Date 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 Valuation Date for any reason or is, in the Calculation Agent's reasonable discretion following notice in reasonable detail to, and consultation with, Counterparty, erroneous, or such Valuation Date is a Disrupted Day in whole or in part, the VWAP Price shall be as reasonably determined by the Calculation Agent using, except in the case of the Final Disruption Date, a substantially similar volume-weighted method. |
| Valuation Time: | As defined in Section 6.1 of the Definitions. |
| Valuation Date: | The Expiration Date |
| Final Disruption Date: | As set forth in the Confirmation for such Transaction |
| Market Disruption Event: | The third and fourth lines of Section 6.3(a) of the Definitions are hereby amended by deleting the words "during the one hour period that ends at the relevant Valuation Time" and replacing them with "prior to the relevant Valuation Time".<br><br>Section 6.3(d) of the Definitions is hereby amended by deleting the remainder of the provision following the term "Scheduled Closing Time" in the fourth line thereof. |

**5. Settlement Terms:**

In respect of any Tranche:

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| Settlement Method: | Cash Settlement |
| Settlement Currency: | USD |
| Cash Settlement: | Settlement shall occur in accordance with Section 8.1 of the Definitions. |
| Cash Settlement Payment Date: | For each Tranche, the third Currency Business Day after the Valuation Date for such Tranche. |
| Strike Price Differential: | An amount equal to the lesser of:<br><br>(i) the greater of (a) the VWAP Price minus the Lower Strike Price and (b) zero; and<br><br>(ii) the Upper Strike Price minus the Lower Strike Price. |

**6. Dividends:**

In respect of any Tranche:

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| Dividend Adjustments: | If at any time during the period from and including the date that is one Settlement Cycle following the Trade Date to but excluding the date that is one Settlement Cycle following the Expiration Date a record date for a distribution, dividend or recapitalization of retained earnings by an Underlying Issuer occurs, then, and upon consultation with Buyer which shall be taken into account in good faith by the Calculation Agent, (i) if such event (including, for the avoidance of doubt, a recapitalization of retained earnings by an Underlying Issuer) results in a corresponding record date (whether or not falling on the same date) for a Share dividend (excluding a Share dividend in connection with a circumstance described in clause (ii) below), the Calculation Agent (x) shall make an adjustment to the Lower Strike Price and the Option Entitlement that corresponds to the adjustment methodology for such type of dividend set forth in the Indenture (as set forth in the Confirmation for such Transaction) and (y) shall make a proportionate adjustment to the Upper Strike Price on the same basis as the adjustment to the Lower Strike Price described above, and (ii) if (1) such event results in a corresponding record date for a cash dividend on the Shares or both a Share dividend and a cash dividend on the Shares, (2) the holders of the Shares would be entitled to elect the form of consideration they receive, including the right to acquire Shares with a cash dividend, or would not be entitled to receive the entire distribution of Underlying Shares in Shares with respect to a corresponding record date for such event, (3) such event results in both (x) a change to the number of Underlying Shares represented, directly or indirectly, by a Share and (y) an adjustment to the "Conversion Rate" (as defined in the Indenture) for the Convertible Notes (as set forth in the Confirmation for such Transaction) and/or (4) with respect to such event, Counterparty makes a discretionary adjustment to the "Conversion Rate" (as defined in the Indenture) for the Convertible Notes or determines under the Indenture that the adjustments set forth in the Indenture do not provide a fair and equitable result, then the Calculation Agent (A) shall make an adjustment to the Lower Strike Price and the Option Entitlement that corresponds to the adjustment methodology for such type of dividend set forth in the Indenture and (B) shall make adjustments consistent with the Calculation Agent Adjustment provision in Section 11.2(c) of the Definitions (as modified herein) to the Upper Strike Price and/or any other term of the Transaction (except the Lower Strike Price and Option Entitlement) to preserve the fair value of the Transaction after taking into account the effect of such event (including whether such event, taken as a whole, effectively resulted in a Share dividend) and any adjustment made pursuant to clause (ii)(A) above; *provided* that, notwithstanding the foregoing, if Counterparty does not initially make an adjustment to the "Conversion Rate" with respect to such event due to the prescribed adjustment not reaching the one percent threshold for such adjustments described in the Indenture, no adjustment will be made pursuant to clauses (i) or (ii) with respect to such event until |

any such time as such adjustments occur pursuant to the Indenture. Counterparty shall provide to Dealer written notice (such notice, a "Conversion Rate Adjustment Notice") as soon as reasonably practicable but in any event prior to the corresponding record date for such an event that would lead to a change in the "Conversion Rate" (as defined in the Indenture) (a "Conversion Rate Adjustment Event"), which Conversion Rate Adjustment Notice shall set forth in reasonable detail the adjustment to the "Conversion Rate" resulting from such Conversion Rate Adjustment Event. In connection with the delivery of any Conversion Rate Adjustment Notice to Dealer, unless all information included in such Conversion Rate Adjustment Notice has previously been provided to holders of the Convertible Notes, Counterparty shall, concurrently with or prior to such delivery, (x) publicly announce and disclose the Conversion Rate Adjustment Event and the resulting adjustment to the "Conversion Rate" or (y) represent and warrant that the information set forth in such Conversion Rate Adjustment Notice does not constitute material non-public information with respect to Counterparty, the Shares or the Underlying Shares.

**7. Share Adjustments:**

Method of Adjustment: Calculation Agent Adjustment; provided, however, that the Definitions shall be amended by (i) replacing the words "diluting or concentrative" in Sections 11.2(a), 11.2(c) (in two instances) and 11.2(e)(vii), and Section 2(a) of the DR Supplement, with the word "material", (ii) by adding the words "or the Transaction" after the words "theoretical value of the relevant Shares" in Sections 11.2(a), 11.2(c) and 11.2(e)(vii), and Section 2(a) of the DR Supplement, and (iii) replacing the words "the Strike Price," in Section 11.2(c)(A) with the words "the Lower Strike Price, the Upper Strike Price,"; provided, further, that adjustments may be made to account for changes in volatility, expected dividends, stock loan rate and liquidity relative to the relevant Share or the Transaction.

**8. Extraordinary Events:**

New Shares: For purposes of Merger Events and Tender Offers affecting the Issuer or Shares only (as such terms would be defined absent any modification in the DR Supplement), in the definition of New Shares in Section 12.1(i) of the Definitions, (a) the text in clause (i) thereof shall be deleted in its entirety (including the word "and" following clause (i)) and replaced with "publicly quoted, traded or listed on any of the New York Stock Exchange, the American Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or their respective successors)," and (b) the phrase "and (iii) of an entity or person organized under the laws of the United States, any State thereof or the District of Columbia" shall be inserted immediately prior to the period.

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| Consequences of Merger Events: | |
| (a) Share-for-Share: | Modified Calculation Agent Adjustment |
| (b) Share-for-Other: | Cancellation and Payment (Calculation Agent Determination) |
| (c) Share-for- Combined: | Component Adjustment |
| Tender Offer: | Applicable; provided that Sections 12.1(d), 12.1(e) and 12.1(l)(ii) of the Definitions are hereby amended by replacing "voting shares" with "Shares" prior to the application of the DR Amendment. |
| Consequences of Tender Offers: | |
| (a) Share-for-Share: | Modified Calculation Agent Adjustment |
| (b) Share-for-Other: | Cancellation and Payment (Calculation Agent Determination) |
| (c) Share-for-Combined: | Component Adjustment |
| Composition of Combined Consideration: | Not Applicable |
| Nationalization, Insolvency or Delisting: | Cancellation and Payment (Calculation Agent Determination); provided that Insolvency shall not be applicable if Counterparty is a debtor (or similar participant) with respect to such Insolvency.<br><br>In addition to the provisions of Section 12.6(a)(iii) of the Definitions, it will also constitute a Delisting if the Exchange is located in the United States and the Shares are not immediately re-listed, re-traded or re-quoted on any of the New York Stock Exchange, the American Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or their respective successors); if the Shares are immediately re-listed, re-traded or re-quoted on any such exchange or quotation system, such exchange or quotation system shall thereafter be deemed to be the Exchange. |

**9. Additional Disruption Events:**

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| Change in Law: | Applicable; provided that Section 12.9(a)(ii) of the Definitions is hereby amended by (i) replacing the phrase "the interpretation" in the third line thereof with the phrase "or announcement of the formal or informal interpretation" and (ii) immediately following the word "Transaction" in clause (X) thereof, adding the phrase "in the manner contemplated by the Hedging Party on the Trade Date". |
| Insolvency Filing: | Applicable, except if Counterparty is a debtor (or similar participant) with respect to such Insolvency Filing |
| Hedging Disruption: | Applicable |

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| Increased Cost of Hedging: | Applicable |
| Hedging Party: | For all applicable Additional Disruption Events, Dealer |
| Determining Party: | For all applicable Additional Disruption Events, Dealer |

**10. Acknowledgments:**

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| Non-Reliance: | Applicable |
| Agreements and Acknowledgments Regarding Hedging Activities: | Applicable |
| Additional Acknowledgments: | Applicable |

**11. Representations, Warranties and Agreements:**

(a) In connection with this Master Confirmation, each Confirmation, each Transaction to which a Confirmation relates and any other documentation relating to the Agreement, each party to this Master Confirmation represents and warrants to, and agrees with, the other party that:

(i) it is an "accredited investor" as defined in Section 2(a)(15)(ii) of the Securities Act of 1933, as amended (the " Securities Act"); and

(ii) it is an "eligible contract participant" as defined in the Commodity Exchange Act, as amended (the " CEA"), and this Master Confirmation and each Transaction hereunder are subject to individual negotiation by the parties and have not been executed or traded on a "trading facility" as defined in the CEA.

(b) Counterparty represents and warrants to, and agrees with, Dealer on the Trade Date of each Transaction that:

(i) its financial condition is such that it has no need for liquidity with respect to its investment in such Transaction and no need to dispose of any portion thereof to satisfy any existing or contemplated undertaking or indebtedness, its investments in and liabilities in respect of such Transaction, which it understands are not readily marketable, are not disproportionate to its net worth, and it is able to bear any loss in connection with such Transaction, including the loss of its entire investment in such Transaction;

(ii) it understands that Dealer has no obligation or intention to register such Transaction under the Securities Act or any state securities law or other applicable federal or non-U.S. securities laws;

(iii) it understands that no obligations of Dealer to it hereunder will be entitled to the benefit of deposit insurance and that such obligations will not be guaranteed by any Affiliate of Dealer or any governmental agency;

(iv) IT UNDERSTANDS THAT SUCH TRANSACTION IS SUBJECT TO COMPLEX RISKS THAT MAY ARISE WITHOUT WARNING AND MAY AT TIMES BE VOLATILE AND THAT LOSSES MAY OCCUR QUICKLY AND IN UNANTICIPATED MAGNITUDE AND IS WILLING TO ACCEPT SUCH TERMS AND CONDITIONS AND ASSUME (FINANCIALLY AND OTHERWISE) SUCH RISKS;

(v) (A) Counterparty is not aware of any material non-public information regarding Counterparty, the Shares or the Underlying Shares and (B) each of its filings under the Securities Exchange Act of 1934, as amended (the " Exchange Act"), or other applicable securities laws that were required to be filed

since January 1, 2010 have been filed and as of the date of this representation, when considered as a whole (with the more recent such reports and documents deemed to amend inconsistent statements contained in any earlier such report or document), there is no misstatement of material fact contained therein or omission of a material fact required to be stated therein or necessary to make the statements made therein, in the light of the circumstances under which they were made, not misleading;

(vi) on the Trade Date, transactions in the Shares or the Underlying Shares are not prohibited by Regulation M under the Exchange Act ( "Regulation M") as a result of such transactions meeting the requirements of the exceptions set forth in Rules 101(b)(10) and 102(b)(7) of Regulation M;

(vii) it is not entering into, or exercising any right under, any Transaction to create, and will not engage in any other securities or derivatives transactions to create, actual or apparent trading activity in the Shares or the Underlying Shares (or any security convertible into or exchangeable for Shares or Underlying Shares) or to raise or depress or to manipulate the price of the Shares or the Underlying Shares (or any security convertible into or exchangeable for Shares or Underlying Shares) or to otherwise violate any applicable laws or other restrictions applicable to Counterparty;

(viii) it shall deliver to Dealer opinions of counsel, dated as of the Effective Date, with respect to the matters set forth in Section 3(a) of the Agreement;

(ix) on the Trade Date, other than purchases from, by or on behalf of directors, officers and employees of Counterparty and its affiliates that are not "Rule 10b-18 purchases" as such term is defined in Rule 10b-18 under the Exchange Act (" Rule 10b-18"), neither Counterparty nor any "affiliated purchaser" (as defined in Rule 10b-18) shall directly or indirectly purchase, offer to purchase, place any bid or limit order that would effect a purchase of, or commence any tender offer relating to, any Shares or Underlying Shares;

(x) on the Trade Date and the Premium Payment Date for such Transaction (A) the assets of Counterparty at their fair valuation exceed the liabilities of Counterparty, including contingent liabilities, (B) the capital of Counterparty is adequate to conduct the business of Counterparty, and (C) Counterparty has the ability to pay its debts and obligations as such debts mature and does not intend to, or does not believe that it will, incur debt beyond its ability to pay as such debts mature;

(xi) it is not, and after giving effect to the transactions contemplated hereby will not be, and "investment company" as such term is defined in the Investment Company Act of 1940, as amended; and

(xii) it is not on the Trade Date for such Transaction engaged in a distribution, as such term is used in Regulation M, of any securities of Counterparty (other than a distribution meeting the requirements of the exception set forth in Rules 101(b)(10) and 102(b)(7) of Regulation M) and shall not, until the second Scheduled Trading Day immediately following the Effective Date (as set forth in the Confirmation for a Transaction), engage in any such distribution.

**12. Miscellaneous:**

(a) Early Termination. The parties agree that Second Method and Loss will apply to each Transaction under this Master Confirmation as such terms are defined under the 1992 ISDA Master Agreement (Multicurrency-Cross Border).

(b) Repurchase Notices. Counterparty shall, on any day on which Counterparty effects any repurchase of Shares or Underlying Shares, promptly give Dealer a written notice of such repurchase (a " Repurchase Notice") on such day if, following such repurchase, the Ratio Equity Percentage as determined on such day is (i) equal to or greater than 8.0% and (ii) greater by 0.5% than the Ratio Equity Percentage included in the immediately preceding Repurchase Notice (or, in the case of the first such Repurchase Notice, greater by 0.5% than the Ratio Equity Percentage as of the date hereof). The " Ratio Equity Percentage" as of any day is the fraction the numerator

of which is the aggregate of the Base Amounts for (1) all Tranches for all Transactions hereunder, (2) all transactions of the type described in the definition of "Specified Transactions" relating to Shares or Underlying Shares between Dealer and Counterparty or their respective Affiliates and (3) all transactions of the type described in the definition of "Specified Transactions" relating to Shares or Underlying Shares between Dealer or its Affiliates and trusts or other entities with respect to which the beneficiaries or grantors (however described) are Counterparty, its Affiliates and/or employees of Counterparty or its Affiliates (the transactions described in clauses (1), (2) and (3) collectively, the "Specified Portfolio") and the denominator of which is the number of Underlying Shares outstanding on such day and the "Base Amount" for a Tranche or a transaction is an amount equal to the product of the Number of Shares (or similar term in the relevant transaction) for such Tranche or transaction, as applicable and, if such Tranche or transaction is denominated in Shares, the number of Underlying Shares represented by a Share.

(c) Section 16 Indemnity. If Counterparty ceases to be a "foreign private issuer" (as defined in Rule 3b-4 under the Exchange Act) at any time during the term of this Transaction, Counterparty agrees to indemnify and hold harmless Dealer and its Affiliates and their respective officers, directors and controlling persons (each, a "Section 16 Indemnified Person") from and against any and all losses (including losses relating to Dealer's hedging activities as a consequence of becoming, or of the risk of becoming, subject to the reporting and profit disgorgement provisions of Section 16 of the Exchange Act, including without limitation, any forbearance from hedging activities or cessation of hedging activities and any losses in connection therewith with respect to any Transaction), claims, damages, judgments, liabilities and expenses (including reasonable attorney's fees), joint or several, to which a Section 16 Indemnified Person may become subject, as a result of Counterparty's failure to provide Dealer with a Repurchase Notice on the day and in the manner specified in this paragraph (b), and to reimburse, upon written request, each such Section 16 Indemnified Person for any reasonable legal or other expenses incurred in connection with investigating, preparing for, providing testimony or other evidence in connection with or defending any of the foregoing. If any suit, action, proceeding (including any governmental or regulatory investigation), claim or demand shall be brought or asserted against any Section 16 Indemnified Person, such Section 16 Indemnified Person shall promptly notify Counterparty in writing, and Counterparty, upon request of such Section 16 Indemnified Person, shall retain counsel reasonably satisfactory to such Section 16 Indemnified Person to represent such Section 16 Indemnified Person and any others Counterparty may designate in such proceeding and shall pay the fees and expenses of such counsel related to such proceeding. Counterparty shall be relieved from liability to the extent that such Section 16 Indemnified Person fails to promptly notify Counterparty of any action commenced against it in respect of which indemnity may be sought hereunder; provided that failure to notify Counterparty (i) shall not relieve Counterparty from any liability hereunder to the extent it is not materially prejudiced as a result thereof and (ii) shall not, in any event, relieve Counterparty from any liability that it may have otherwise than on account of this paragraph (c). Counterparty shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, Counterparty agrees to indemnify any Section 16 Indemnified Person from and against any loss or liability by reason of such settlement or judgment. Counterparty shall not, without the prior written consent of each Section 16 Indemnified Person, effect any settlement of any pending or threatened proceeding in respect of which any Section 16 Indemnified Person is or could have been a party and indemnity could have been sought hereunder by any such Section 16 Indemnified Person, unless such settlement includes an unconditional release of each such Section 16 Indemnified Person from all liability on claims that are the subject matter of such proceeding on terms reasonably satisfactory to each such Section 16 Indemnified Person. If the indemnification provided for in this paragraph (c) is unavailable to a Section 16 Indemnified Person or insufficient in respect of any losses, claims, damages or liabilities referred to therein, then Counterparty, in lieu of indemnifying such Section 16 Indemnified Person thereunder, shall contribute to the amount paid or payable by such Section 16 Indemnified Person as a result of such losses, claims, damages or liabilities. The remedies provided for in this paragraph (c) are not exclusive and shall not limit any rights or remedies that may otherwise be available to any Section 16 Indemnified Person at law or in equity. The indemnity and contribution agreements contained in this paragraph (c) shall remain operative and in full force and effect regardless of the termination of any Transaction.

(d) Transfer or Assignment. Dealer may, with Counterparty's prior written consent (not to be unreasonably withheld or delayed), transfer or assign all (but not less than all) of its rights and obligations under any Transaction to any of its Affiliates with a rating (or whose guarantor has a rating) for its long term, unsecured and unsubordinated indebtedness equal to or better than A- by Standard & Poor's Ratings Services or its successor (" S&P"), or A3 by Moody's Investors Service, Inc. or its successor ("Moody's") or, if either S&P or Moody's

ceases to rate such debt, at least an equivalent rating or better by a substitute rating agency mutually agreed by Counterparty and Dealer; *provided* that Counterparty shall not withhold or delay its consent if Dealer certifies to Counterparty that the requested transfer is made in connection with the transfer of all or substantially all similar transactions that Dealer and its affiliates are parties thereto resulting from the enactment of the Dodd Frank Wall Street Reform and Consumer Protection Act of 2010 and rules and regulation thereunder, and such transfer will not result in an increased cost to Counterparty. Counterparty may, with Dealer's prior written consent (not to be unreasonably withheld or delayed) sell or pledge to any third party all (but not less than all) of its rights and obligations under any Transaction at a time when such Transaction is not subject to a security interest in favor of Dealer or any of its Affiliates. If, as determined in Dealer's sole discretion, (a) at any time (1) the Equity Percentage exceeds 8.5%, (2) Dealer, Dealer Group (as defined below) or any person whose ownership position would be aggregated with that of Dealer or Dealer Group (Dealer, Dealer Group or any such person, a " Dealer Person") under U.S. federal, non-U.S., state or local laws, regulations or regulatory orders applicable to ownership of Shares or Underlying Shares (" Applicable Laws"), owns, beneficially owns, constructively owns, controls, holds the power to vote or otherwise meets a relevant definition of ownership, or could be reasonably viewed as meeting any of the foregoing, in excess of a number of Shares or Underlying Shares, as applicable, equal to (x) the number of Shares or Underlying Shares, as applicable, that would give rise to reporting, registration, filing or notification obligations or other requirements (including obtaining prior approval by a state, U.S. federal or non-U.S. regulator) of a Dealer Person under Applicable Laws and with respect to which such requirements have not been met or the relevant approval has not been received *minus* (y) 1% of the number of Shares or Underlying Shares, as applicable, outstanding on the date of determination or (3) the Ratio Equity Percentage exceeds 9.9% (any such condition described in clause (1), (2) or (3), an " Excess Ownership Position") and (b) Dealer is unable, after commercially reasonable efforts, to effect a transfer or assignment on pricing and terms and within a time period reasonably acceptable to it of all or a portion of one or more Transactions pursuant to the preceding paragraph such that an Excess Ownership Position no longer exists, Dealer may designate any Scheduled Trading Day as an Early Termination Date with respect to a portion (the "Terminated Portion") of any Transaction(s), such that an Excess Ownership Position no longer exists following such partial termination. In the event that Dealer so designates an Early Termination Date with respect to a portion of any Transaction(s), a payment shall be made pursuant to Section 6 of the Agreement as if (i) an Early Termination Date had been designated in respect of a Transaction having terms identical to the Terminated Portion of the Transaction(s), (ii) Counterparty shall be the sole Affected Party with respect to such partial termination and (iii) such portion of the Transaction(s) shall be the only Terminated Transaction. The "Equity Percentage" as of any day is the fraction, expressed as a percentage, (A) the numerator of which is the number of Underlying Shares that Dealer and any of its affiliates subject to aggregation with Dealer for purposes of the "beneficial ownership" test under Section 13 of the Exchange Act and all persons who may form a "group" (within the meaning of Rule 13d-5(b)(1) under the Exchange Act) with Dealer (collectively, "Dealer Group") "beneficially own" (within the meaning of Section 13 of the Exchange Act) in connection with transactions in the Specified Portfolio without duplication on such day (or, if Counterparty ceases to be a "foreign private issuer" (as defined in Rule 3b-4 under the Exchange Act) and the equivalent calculation under Section 16 of the Exchange Act and the rules and regulations thereunder results in a higher number, such number) and (B) the denominator of which is the number of Underlying Shares outstanding on such day.

(e) Severability; Illegality. If compliance by either party with any provision of a Transaction would be unenforceable or illegal, (i) the parties shall negotiate in good faith to resolve such unenforceability or illegality in a manner that preserves the economic benefits of the transactions contemplated hereby and (ii) the other provisions of the Transaction shall not be invalidated, but shall remain in full force and effect.

(f) Waiver of Trial by Jury. EACH OF COUNTERPARTY AND DEALER HEREBY IRREVOCABLY WAIVES (ON ITS OWN BEHALF AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ON BEHALF OF ITS STOCKHOLDERS) ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO ANY TRANSACTION OR THIS MASTER CONFIRMATION OR THE ACTIONS OF DEALER OR ITS AFFILIATES IN THE NEGOTIATION, PERFORMANCE OR ENFORCEMENT THEREOF.

(g) Confidentiality. Notwithstanding any provision in this Master Confirmation, any Confirmation or the Agreement, in connection with Section 1.6011-4 of the Treasury Regulations, the parties hereby

agree that each party (and each employee, representative, or other agent of such party) may disclose to any and all persons, without limitation of any kind, the U.S. tax treatment and U.S. tax structure of the Transaction and all materials of any kind (including opinions or other tax analyses) that are provided to such party 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.

(h) Securities Contract; Swap Agreement. The parties hereto intend for: (i) each Transaction hereunder to be a "securities contract" and a "swap agreement" as defined in the Bankruptcy Code (Title 11 of the United States Code) (the " Bankruptcy Code"), a derivatives transaction under the Mexican *Ley de Concursos Mercantiles*, the Agreement to be a "master netting agreement" and the parties hereto to be entitled to the protections afforded by, among other Sections, Sections 362(b)(6), 362(b)(17), 362(o), 546(e), 546(g), 546(j), 548(d), 555, 560 and 561 of the Bankruptcy Code and the applicable provisions of the *Ley de Concursos Mercantiles*; (ii) a party's right to liquidate a Transaction and to exercise any other remedies upon the occurrence of any Event of Default under the Agreement with respect to the other party to constitute a "contractual right … to cause the liquidation, termination or acceleration" and any payments owed under this Transaction or the Agreement with respect thereto to be a "termination value", "payment amount" or "other transfer obligation", in each case as described in the Bankruptcy Code; (iii) all payments for, under or in connection with a Transaction to constitute "margin payments", "settlement payments" and/or "transfers" under a "securities contract" and/or "swap agreement" as defined in the Bankruptcy Code; and (iv) each party hereto to be a "master netting agreement participant", "financial institution", "swap participant" and/or a "financial participant" as defined in the Bankruptcy Code.

(i) Extension of Settlement. Dealer may postpone any Expiration Date, postpone the Final Disruption Date and/or add additional Expiration Dates with respect to some or all of the Options under any Tranche hereunder (provided that none of such postponed or added Expiration Dates shall occur later than the 20th Scheduled Trading Day immediately succeeding the last Expiration Date (determined without regard to this provision) for the relevant Transaction) if Dealer determines, in its reasonable discretion, that such extension is necessary or advisable to preserve Dealer's hedging activity hereunder in light of existing liquidity conditions or to enable Dealer to effect purchases or sales of Shares or Underlying Shares in connection with its hedging activity hereunder in a manner that would, if Dealer were Counterparty or an affiliated purchaser of Counterparty, be in compliance with applicable legal and regulatory requirements or self-regulatory requirements, or with related reasonable policies and procedures applicable to Dealer.

(j) Registration. Counterparty hereby agrees that if the Shares or Underlying Shares (the " Hedge Shares") acquired by Dealer for the purpose of hedging its obligations pursuant to the Transaction, in Dealer's sole judgment, cannot be sold in the U.S. public market (including by depositing such Underlying Shares with the Depository in exchange for Shares) by Dealer without registration under the Securities Act, Counterparty shall, at its election: (i) in order to allow Dealer to sell the Hedge Shares in a registered offering, make available to Dealer an effective registration statement under the Securities Act to cover the resale of such Hedge Shares and (A) enter into an agreement, in form and substance satisfactory to Dealer and Counterparty, substantially in the form of an underwriting agreement for a registered secondary offering, (B) provide accountant's "comfort" letters in customary form for registered offerings of equity securities, (C) provide disclosure opinions of nationally recognized outside counsel to Counterparty reasonably acceptable to Dealer, (D) provide other customary opinions, certificates and closing documents customary in form for registered offerings of equity securities and (E) afford Dealer a reasonable opportunity to conduct a "due diligence" investigation with respect to Counterparty customary in scope for underwritten offerings of equity securities; provided that if Dealer, in its sole reasonable discretion, is not satisfied with access to due diligence materials, the results of its due diligence investigation, or the procedures and documentation for the registered offering referred to above, then, subject to the conditions set forth therein, clause (ii) or (iii) of this section shall apply at the election of Counterparty; (ii) in order to allow Dealer to sell the Hedge Shares in a private placement, enter into a private placement agreement substantially similar to private placement Underwriting Agreements customary for private placements of equity securities, in form and substance satisfactory to Dealer and Counterparty, including customary representations, covenants, blue sky and other governmental filings and/or registrations, indemnities to Dealer, due diligence rights (for Dealer or any designated buyer of the Hedge Shares from Dealer), opinions and certificates and such other documentation as is customary for private placements agreements, all reasonably acceptable to Dealer (in which case, the Calculation Agent shall make any adjustments to the terms of the Transaction that are necessary, in its reasonable judgment, to compensate Dealer for

any discount from the public market price of the Shares incurred on the sale of Hedge Shares in a private placement); or (iii) to the extent that such purchases would not violate any applicable law or other restriction applicable to Counterparty, purchase the Hedge Shares from Dealer at the VWAP Price on such Exchange Business Days (with references to "Valuation Date" in the definition of "VWAP Price" deemed to be references to such Exchange Business Days for this purpose), and in such amounts, requested by Dealer. This paragraph (j) shall survive the termination, expiration or early unwind of the Transaction.

(k) Early Unwind. In the event the sale of Convertible Notes for the Transaction (as set forth in the Confirmation for such Transaction) is not consummated with the initial purchasers for any reason by the close of business in New York City on the Early Unwind Date set forth in the Confirmation for such Transaction, such Transaction shall automatically terminate on such Early Unwind Date and (i) such Transaction and all of the respective rights and obligations of Dealer and Counterparty under such Transaction shall be cancelled and terminated and (ii) each party shall be released and discharged by the other party from and agrees not to make any claim against the other party with respect to any obligations or liabilities of the other party arising out of and to be performed in connection with such Transaction either prior to or after such Early Unwind Date; provided that, if such failure is due to a breach or default on the part of Counterparty under the Purchase Agreement dated as of March 9, 2011 among CEMEX, S.A.B. de C.V. and Citigroup Global Markets, Inc. and J.P. Morgan Securities LLC, among others, as representatives of the "Initial Purchasers" (as defined therein), Counterparty shall assume, or reimburse the cost of, derivatives or other transactions entered into by Dealer or one or more of its Affiliates in connection with hedging such Transaction. The amount paid by Counterparty shall be Dealer's actual cost of such derivatives or other transactions as Dealer informs Counterparty and shall be paid in immediately available funds on such Early Unwind Date.

(l) Acknowledgment of Pledge. Counterparty's rights under the Agreement may, from time to time, be pledged to Dealer to secure Counterparty's obligations to Dealer arising under other agreements in accordance with such terms as the parties may separately agree.

(m) Optional Early Termination. (i) At any time during the term of this Transaction, Counterparty may, by written notice to Dealer, designate, with respect to one or more specified Tranches, an Early Termination Date to occur on the third Scheduled Trading Day following the date such notice is effective, in which case an Additional Termination Event shall be deemed to have occurred in respect of which (1) Counterparty shall be the sole Affected Party and (2) the portion of the relevant Transaction represented by such Tranche(s) shall be the sole Affected Transaction.

(ii) Counterparty may, prior to electing to terminate any Tranche pursuant to subparagraph (i) above, request a quotation (which may be in the form of a grid of percentages that depends on the price of the Shares or Underlying Shares over a specified period) from Dealer as to the applicable terms of such termination, and Dealer shall be bound by the terms of such quotation if Counterparty then makes such election within one full Scheduled Trading Day.

(iii) By providing the notice referred to in this paragraph, Counterparty shall be deemed to repeat, on the date such notice is effective, the representations in clauses (v), (vi), (vii) and (ix) of Section 11(b).

(n) Counterparty's Obligation to Pay Cancellation Amounts and Early Termination Amounts. Seller and Counterparty hereby agree that, notwithstanding anything to the contrary herein or in the Agreement, following Seller's receipt from Counterparty of the Premium on the Premium Payment Date, in the event that (a) an Early Termination Date (whether as a result of an Event of Default or a Termination Event) occurs or is designated with respect to a Transaction and, as a result, Counterparty owes to Seller an amount under Section 6(e) of the Agreement or (b) Counterparty owes to Seller, pursuant to Section 12.7 or Section 12.9 of the Definitions, a Cancellation Amount, such amount shall be deemed to be zero. If Counterparty pays the Premium on the Premium Payment Date, then under no circumstances shall Counterparty be required to pay any amount in addition to the Premium under the Transaction. For the avoidance of doubt, the preceding sentence shall not be construed as

limiting any damages that may be payable by Counterparty as a result of a breach of, or an indemnity under, this Master Confirmation or the Agreement.

(o) Modifications to DR Supplement. The DR Supplement is hereby amended as follows:

(i) The definitions of the following terms in Section 1 thereof are hereby deleted and replaced as follows:

"Depository" means, in relation to the Shares or the Underlying Shares, the Issuer of the Shares or the Underlying Shares, as applicable.

"Deposit Agreement" means, in relation to the Shares or the Underlying Shares, the agreements, deeds or other instruments constituting the Shares or Underlying Shares, as applicable, as from time to time amended or supplemented in accordance with their terms.

"Underlying Shares" means, in relation to the applicable Deposit Agreement, the shares or other securities which are the subject of such Deposit Agreement.

"Underlying Shares Issuer" means, in relation to the applicable Underlying Shares, the issuer of such Underlying Shares.

(ii) Section 2(c) thereof is hereby deleted in its entirety.

(iii) Section 3(a) thereof is hereby amended by adding in the second line therein after the term "'Share-for-Combined'" the following parenthetical: "(including defined terms used in such definitions)".

(p) Settlement Amendment. Dealer acknowledges that Counterparty may, to the extent permitted by law and any agreements Counterparty may be subject to, prior to the settlement of any Transaction hereunder, request that the provisions of this Master Confirmation be modified to enable Counterparty to effect share settlement in lieu of the settlement provisions under Section 5 of this Master Confirmation. In the event of such a request, Dealer agrees to negotiate with Counterparty, in good faith, such amendments to this Master Confirmation as may be required to effect such changes, it being understood and agreed that as of the date hereof, Counterparty has no right or option to require share settlement of any Transaction hereunder; *provided* that Dealer may in good faith refuse to enter into any such amendments so as to comply with applicable legal and regulatory requirements or self-regulatory requirements, or with related policies and procedures applicable to Dealer.

(q) Designation by Dealer. Notwithstanding any other provision in this Confirmation to the contrary requiring or allowing Dealer to purchase, sell, receive or deliver any Shares or other securities to or from Issuer, Dealer may designate any of its affiliates to purchase, sell, receive or deliver such shares or other securities and otherwise to perform Dealer obligations in respect of the Transaction and any such designee may assume such obligations. Dealer shall be discharged of its obligations to Issuer to the extent of any such performance.

**13. Addresses for Notice:**

If to Dealer: Bank of America, N.A.
c/o Merrill Lynch, Pierce, Fenner & Smith Incorporated
One Bryant Park
New York, NY 10036
Attention: John Servidio
Telephone No.: 646-855-7127
Facsimile No.: 704-208-2869

If to Counterparty: CEMEX, S.A.B. de C.V.
Avenida Ricardo Margain Zozaya 325
Colonia Valle del Campestre
San Pedro Garza Garcia, Nuevo Leon 66265
Attention: Francisco Javier Contreras Navarro
Financial Operations Manager - Corporate Treasury - Mexico
Office : +52(81)88884093
Fax: +52(81)88884519
e-Mail: franciscojavier.contreras@cemex.com

**14. Accounts for Payment:**

To Dealer: Bank of America, N.A.
New York, NY
SWIFT: BOFAUS3N
Bank Routing: 026 009 593
Account Name: Bank of America
Account No. : 0012334-61892

To Counterparty:

| | |
|---|---|
| Beneficiary: | CEMEX, S.A.B. de C.V. |
| Bank: | Citibank, NY |
| Account: | 36964215 |
| ABA: | 021000089 |
| SWIFT: | CITIUS33 |

**15. Schedule Provisions:**

(a) Process Agent. For the purpose of Section 13(c) of the Agreement:

Counterparty appoints as its Process Agent:

Corporate Creations Network Inc.
1040 Avenue of the Americas #2400
New York, NY 10018
Fax: (561) 694-1639
Tel: (212) 382-4699

(b) Delivery of Tax Forms. For the purposes of Section 4(a)(i) of the Agreement, Counterparty agrees to deliver such documents as Dealer may request in order to allow Dealer to make a payment under this Transaction without any deduction or withholding for or on account of any Tax or with such deduction or withholding at a reduced rate including, without limitation, an executed United States Internal Revenue Service Form W-8BEN (or any successor thereto), (i) upon execution of this Transaction; (ii) promptly upon reasonable demand by Dealer; and (iii) promptly upon learning that any such document, including Form W-8BEN (or any successor thereto), previously provided by Counterparty has become obsolete or incorrect.

**16. Valuation Notice:**

Dealer agrees to provide to Counterparty, as soon as practicable following the end of each calendar month, a statement showing the Exposure (within the meaning of the 1994 ISDA Credit Support Annex), calculated with respect to the Transaction and determined as if such last day (or the immediately preceding Exchange Business Day) was the Valuation Date.

**17. Offices**

The Office of Dealer for the Transactions is: New York

Bank of America, N.A.
c/o Merrill Lynch, Pierce, Fenner & Smith Incorporated
Bank of America Tower at One Bryant Park
New York, NY 10036
Attention: John Servidio
Telephone: 646-855-7127
Facsimile: 704-208-2869

The Office of Counterparty for the Transaction is: Not applicable

[Signature page follows]

Yours sincerely,

BANK OF AMERICA, N.A.

By: /s/ Christopher A. Hutmaker
Name: Christopher A. Hutmaker
Title: Managing Director

Confirmed as of the
date first above written:

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

By: /s/ Rodrigo Treviño
Name: Rodrigo Treviño
Title: Attorney-in-Fact

**EXHIBIT A**
**FORM OF CAPPED CALL OPTION**
**TRANSACTION CONFIRMATION**

CONFIRMATION

| | |
|---|---|
| Date: | March [ ], 2011 |
| To: | CEMEX, S.A.B. de C.V. ("Counterparty") |
| Telefax No.: | +52(81)88884519 |
| Attention: | Francisco Javier Contreras Navarro - Financial Operations Manager - Corporate Treasury - Mexico |
| From: | Bank of America, N.A. ("Dealer")<br>c/o Merrill Lynch, Pierce, Fenner & Smith Incorporated<br>One Bryant Park<br>New York, NY 10036<br>Attn: John Servidio<br>Telephone: 646-855-8900<br>Facsimile: 704-208-2869<br>Telefax No.: 212-615-8985 |

Transaction Reference Number: _____

The purpose of this communication (this "Confirmation") is to set forth the terms and conditions of the above-referenced Transaction (the "Transaction") entered into on the Trade Date specified below between you and us. This Confirmation supplements, forms a part of, and is subject to the Master Terms and Conditions for Capped Call Transactions dated as of March 9, 2011 and as amended from time to time (the " Master Confirmation") between you and us.

1. The definitions and provisions contained in the Definitions (as such term is defined in the Master Confirmation) and in the Master Confirmation are incorporated into this Confirmation. In the event of any inconsistency between those definitions and provisions and this Confirmation, this Confirmation will govern.

2. The particular Transaction to which this Confirmation relates shall have the following terms:

| | |
|---|---|
| Trade Date: | March [ ], 2011 |
| Effective Date: | The closing date of the initial issuance of the Convertible Notes. |
| Lower Strike Price: | USD [ ]. |
| Upper Strike Price: | USD [ ]. |
| Initial Reference Price: | USD [*Insert Exchange closing price per share for the Shares on the Trade Date*] |
| Premium: | USD [ ]. |
| Premium Payment Date: | The Effective Date |

| | |
|---|---|
| Convertible Notes: | [ ]% Convertible Subordinated Notes of Counterparty due [ ], offered pursuant to an Offering Memorandum to be dated [ ]. |
| Indenture: | The indenture governing the issuance of the Convertible Notes to be dated as of the closing date of the initial issuance of the Convertible Notes, by and between Counterparty and The Bank of New York Mellon, as trustee (as may be amended, modified or supplemented from time to time, but only if such amendment, modification or supplement is consented to by Dealer in writing, which consent shall not be unreasonably withheld or delayed). |
| Early Unwind Date: | [ ], 2011, or such later date as agreed by the parties hereto. |
| Final Disruption Date: | [ ] |

[Remainder of page intentionally left blank]

The Number of Options and Expiration Date for each Tranche of the Transaction are set forth below.

| Tranche Number | Number of Options | Expiration Date |
|---|---|---|
| 1. | [ ] | [ ] |
| 2. | [ ] | [ ] |
| 3. | [ ] | [ ] |
| 4. | [ ] | [ ] |
| 5. | [ ] | [ ] |
| 6. | [ ] | [ ] |
| 7. | [ ] | [ ] |
| 8. | [ ] | [ ] |
| 9. | [ ] | [ ] |
| 10. | [ ] | [ ] |
| 11. | [ ] | [ ] |
| 12. | [ ] | [ ] |
| 13. | [ ] | [ ] |
| 14. | [ ] | [ ] |
| 15. | [ ] | [ ] |
| 16. | [ ] | [ ] |
| 17. | [ ] | [ ] |
| 18. | [ ] | [ ] |
| 19. | [ ] | [ ] |
| 20. | [ ] | [ ] |
| 21. | [ ] | [ ] |
| 22. | [ ] | [ ] |
| 23. | [ ] | [ ] |
| 24. | [ ] | [ ] |
| 25. | [ ] | [ ] |
| 26. | [ ] | [ ] |
| 27. | [ ] | [ ] |
| 28. | [ ] | [ ] |
| 29. | [ ] | [ ] |
| 30. | [ ] | [ ] |
| 31. | [ ] | [ ] |
| 32. | [ ] | [ ] |
| 33. | [ ] | [ ] |
| 34. | [ ] | [ ] |
| 35. | [ ] | [ ] |
| 36. | [ ] | [ ] |
| 37. | [ ] | [ ] |
| 38. | [ ] | [ ] |
| 39. | [ ] | [ ] |
| 40. | [ ] | [ ] |
| 41. | [ ] | [ ] |
| 42. | [ ] | [ ] |
| 43. | [ ] | [ ] |
| 44. | [ ] | [ ] |
| 45. | [ ] | [ ] |
| 46. | [ ] | [ ] |
| 47. | [ ] | [ ] |
| 48. | [ ] | [ ] |
| 49. | [ ] | [ ] |
| 50. | [ ] | [ ] |
| 51. | [ ] | [ ] |

| | | |
|---|---|---|
| 52. | [ ] | [ ] |
| 53. | [ ] | [ ] |
| 54. | [ ] | [ ] |
| 55. | [ ] | [ ] |
| 56. | [ ] | [ ] |
| 57. | [ ] | [ ] |
| 58. | [ ] | [ ] |
| 59. | [ ] | [ ] |
| 60. | [ ] | [ ] |

3. Counterparty hereby agrees (a) to check this Confirmation promptly upon receipt so that errors or discrepancies can be promptly identified and rectified and (b) to confirm that the foregoing correctly sets forth the terms of the agreement between us with respect to the particular Transaction to which this Confirmation relates, by manually signing this Confirmation and providing any other information requested herein or in the Master Confirmation and immediately returning an executed copy to us.

Yours sincerely,

BANK OF AMERICA, N.A.

By: _____
Name:
Title:

Confirmed as of the
date first above written:

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

By: _____
Name:
Title:

**Exhibit 4.67**

***EXECUTION VERSION***

MASTER TERMS AND CONDITIONS FOR CAPPED CALL TRANSACTIONS
BETWEEN THE ROYAL BANK OF SCOTLAND PLC AND CEMEX, S.A.B. de C.V.

The purpose of this Master Terms and Conditions for Capped Call Transactions (this "Master Confirmation"), dated as of March 9, 2011, is to set forth certain terms and conditions for capped call option transactions that CEMEX, S.A.B. de C.V. (" Counterparty") will enter into with The Royal Bank of Scotland plc, acting through RBS Securities Inc., as its agent (" Dealer"). Each such transaction (a "Transaction") entered into between Dealer and Counterparty that is to be subject to this Master Confirmation shall be evidenced by a written confirmation substantially in the form of Exhibit A hereto, with such modifications thereto as to which Counterparty and Dealer mutually agree (a " Confirmation"). This Master Confirmation and each Confirmation together constitute a "Confirmation" as referred to in the Agreement specified below.

This Master Confirmation and a Confirmation evidence a complete binding agreement between you and us as to the terms of the Transaction to which this Master Confirmation and such Confirmation relates. This Master Confirmation and each Confirmation hereunder shall supplement, form a part of, and be subject to an agreement in the form of the 1992 ISDA Master Agreement (Multicurrency – Cross Border) as if we had executed an agreement in such form (with a Schedule that had the provisions in Section 15 of this Master Confirmation and the other elections set forth in this Master Confirmation) on the Trade Date and such agreement shall be considered the "Agreement" hereunder.

The Transactions governed by this Master Confirmation shall be the sole Transactions under the Agreement. If there exists any ISDA Master Agreement between Dealer and Counterparty or any confirmation or other agreement between Dealer and Counterparty pursuant to which an ISDA Master Agreement is deemed to exist between Dealer and Counterparty, then notwithstanding anything to the contrary in such ISDA Master Agreement, such confirmation or agreement or any other agreement to which Dealer and Counterparty are parties, the Transactions governed by this Master Confirmation shall not be considered Transactions under, or otherwise governed by, such existing or deemed ISDA Master Agreement.

The definitions and provisions contained in the 2002 ISDA Equity Derivatives Definitions as supplemented by the 2007 Partial Lookthrough Depository Receipt Supplement to the 2002 ISDA Equity Derivatives Definitions (as amended in this Master Confirmation, the " DR Supplement" and the 2002 ISDA Equity Derivatives Definitions as so supplemented, the "Definitions"), each as published by ISDA are incorporated into this Master Confirmation.

THIS MASTER CONFIRMATION WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REFERENCE TO CHOICE OF LAW DOCTRINE. THE PARTIES HERETO IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND THE UNITED STATES COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, AND TO THE JURISDICTION OF THEIR OWN CORPORATE DOMICILE, IN RESPECT OF ACTIONS BROUGHT AGAINST SUCH PARTY AS A DEFENDANT, IN CONNECTION WITH ALL MATTERS RELATING HERETO AND WAIVE ANY OBJECTION TO THE LAYING OF VENUE IN, AND ANY CLAIM OF INCONVENIENT FORUM WITH RESPECT TO, THESE COURTS, AND ANY RIGHT TO WHICH ANY OF THEM MAY BE ENTITLED ON ACCOUNT OF PLACE OF RESIDENCE OR DOMICILE.

1. In the event of any inconsistency between this Master Confirmation, on the one hand, and the Definitions or the Agreement, on the other hand, this Master Confirmation will control for the purpose of the Transaction to which a Confirmation relates. In the event of any inconsistency between the Definitions, the Agreement and this Master Confirmation, on the one hand, and a Confirmation, on the other hand, the Confirmation will govern. With respect to a Transaction, capitalized terms used herein that are not otherwise defined shall have the meaning assigned to them in the Confirmation relating to such Transaction.

2. Each party will make each payment specified in this Master Confirmation or a Confirmation as being payable by such party, not later than the due date for value on that date in the place of the account specified

below or otherwise specified in writing, in freely transferable funds and in a manner customary for payments in the required currency.

3. **Confirmations and General Terms:**

This Master Confirmation and the Agreement, together with the Confirmation relating to a Transaction, shall constitute the written agreement between Counterparty and Dealer with respect to such Transaction.

Each Transaction to which a Confirmation relates is a Capped Call Option Transaction, which shall be considered a Share Option Transaction for purposes of the Definitions (with references to "Strike Price" therein deemed to include "Lower Strike Price" and/or "Upper Strike Price", as applicable), and shall have the following terms:

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| Option Style: | European |
| Option Type: | Call |
| Seller: | Dealer |
| Buyer: | Counterparty |
| Shares: | American depository shares (Symbol: CX), each representing ten Ordinary Participation Certificates (*Certificados de Participación Ordinarios*) of Counterparty. |
| Trade Date: | As set forth in the Confirmation for such Transaction |
| Tranches: | Each Transaction will be divided into individual Tranches, each with the terms set forth in this Master Confirmation and the Confirmation for such Transaction, and in particular with the Number of Options and Expiration Date set forth in the Confirmation for such Transaction. The payments and deliveries to be made upon settlement of each Transaction will be determined separately for each Tranche as if each Tranche were a separate Transaction under the Agreement. |
| Number of Options: | For each Tranche of such Transaction, as set forth in the Confirmation for such Transaction |
| Option Entitlement: | One Share per Option |
| Lower Strike Price: | As set forth in the Confirmation for such Transaction |
| Upper Strike Price: | As set forth in the Confirmation for such Transaction |
| Premium: | As set forth in the Confirmation for such Transaction |
| Premium Payment Date: | As set forth in the Confirmation for such Transaction |
| Exchange: | New York Stock Exchange |
| Related Exchanges: | All Exchanges |

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| Calculation Agent: | Dealer, which shall make all calculations, adjustments and determinations required pursuant to a Transaction in a good faith and commercially reasonable manner, and upon request of Counterparty shall provide to Counterparty written support (without disclosing any of Dealer's proprietary models) as to any such calculations, adjustments and determinations required pursuant to a Transaction. |

**4. Procedure for Exercise and Valuation:**

In respect of any Tranche:

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| Expiration Time: | The Valuation Time |
| Expiration Date: | As provided in the relevant Confirmation (or, if such date is not a Scheduled Trading Day, the next following Scheduled Trading Day that is not already an Expiration Date for another Tranche); provided that if that date is a Disrupted Day, the Expiration Date for such Tranche shall be the first succeeding Scheduled Trading Day that is not a Disrupted Day and is not or is not deemed to be an Expiration Date in respect of any other Tranche of any Transaction hereunder; and provided further that if the Expiration Date has not occurred pursuant to the preceding proviso as of the Final Disruption Date, the Final Disruption Date shall be the Expiration Date (irrespective of whether such date is an Expiration Date in respect of any other Tranche for the Transaction). Notwithstanding the foregoing and anything to the contrary in the Definitions, if a Market Disruption Event occurs on any Expiration Date, the Calculation Agent may determine that such Expiration Date is a Disrupted Day only in part, in which case the Calculation Agent shall determine that such day shall be the Expiration Date for a portion of the Number of Options for the relevant Tranche and shall designate the Scheduled Trading Day determined in the manner described in the immediately preceding sentence as the Expiration Date for the remaining Options for such Tranche. Section 6.6 of the Definitions shall not apply to any Valuation Date and the final sentence of Section 3.1(f) of the Definitions shall not apply to any Expiration Date. |
| Automatic Exercise: | Applicable |
| Seller's Telephone Number, Facsimile Number and Contact Details for Purpose of Giving Notice: | As provided in Section 13 below. |
| VWAP Price: | The volume-weighted average price per Share on the Valuation Date 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 Valuation Date for any reason or is, in the Calculation Agent's reasonable discretion following notice in reasonable detail to, and consultation with, Counterparty, erroneous, or |

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| | such Valuation Date is a Disrupted Day in whole or in part, the VWAP Price shall be as reasonably determined by the Calculation Agent using, except in the case of the Final Disruption Date, a substantially similar volume-weighted method. |
| Valuation Time: | As defined in Section 6.1 of the Definitions. |
| Valuation Date: | The Expiration Date |
| Final Disruption Date: | As set forth in the Confirmation for such Transaction |
| Market Disruption Event: | The third and fourth lines of Section 6.3(a) of the Definitions are hereby amended by deleting the words "during the one hour period that ends at the relevant Valuation Time" and replacing them with "prior to the relevant Valuation Time".<br><br>Section 6.3(d) of the Definitions is hereby amended by deleting the remainder of the provision following the term "Scheduled Closing Time" in the fourth line thereof. |

**5. Settlement Terms:**

In respect of any Tranche:

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| Settlement Method: | Cash Settlement |
| Settlement Currency: | USD |
| Cash Settlement: | Settlement shall occur in accordance with Section 8.1 of the Definitions. |
| Cash Settlement Payment Date: | For each Tranche, the third Currency Business Day after the Valuation Date for such Tranche. |
| Strike Price Differential: | An amount equal to the lesser of:<br><br>(i) the greater of (a) the VWAP Price minus the Lower Strike Price and (b) zero; and<br><br>(ii) the Upper Strike Price minus the Lower Strike Price. |

**6. Dividends:**

In respect of any Tranche:

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| Dividend Adjustments: | If at any time during the period from and including the date that is one Settlement Cycle following the Trade Date to but excluding the date that is one Settlement Cycle following the Expiration Date a record date for a distribution, dividend or recapitalization of retained earnings by an Underlying Issuer occurs, then, and upon consultation with Buyer which shall be taken into account in good faith by the Calculation Agent, (i) if such event (including, for the avoidance of doubt, a |

recapitalization of retained earnings by an Underlying Issuer) results in a corresponding record date (whether or not falling on the same date) for a Share dividend (excluding a Share dividend in connection with a circumstance described in clause (ii) below), the Calculation Agent (x) shall make an adjustment to the Lower Strike Price and the Option Entitlement that corresponds to the adjustment methodology for such type of dividend set forth in the Indenture (as set forth in the Confirmation for such Transaction) and (y) shall make a proportionate adjustment to the Upper Strike Price on the same basis as the adjustment to the Lower Strike Price described above, and (ii) if (1) such event results in a corresponding record date for a cash dividend on the Shares or both a Share dividend and a cash dividend on the Shares, (2) the holders of the Shares would be entitled to elect the form of consideration they receive, including the right to acquire Shares with a cash dividend, or would not be entitled to receive the entire distribution of Underlying Shares in Shares with respect to a corresponding record date for such event, (3) such event results in both (x) a change to the number of Underlying Shares represented, directly or indirectly, by a Share and (y) an adjustment to the "Conversion Rate" (as defined in the Indenture) for the Convertible Notes (as set forth in the Confirmation for such Transaction) and/or (4) with respect to such event, Counterparty makes a discretionary adjustment to the "Conversion Rate" (as defined in the Indenture) for the Convertible Notes or determines under the Indenture that the adjustments set forth in the Indenture do not provide a fair and equitable result, then the Calculation Agent (A) shall make an adjustment to the Lower Strike Price and the Option Entitlement that corresponds to the adjustment methodology for such type of dividend set forth in the Indenture and (B) shall make adjustments consistent with the Calculation Agent Adjustment provision in Section 11.2(c) of the Definitions (as modified herein) to the Upper Strike Price and/or any other term of the Transaction (except the Lower Strike Price and Option Entitlement) to preserve the fair value of the Transaction after taking into account the effect of such event (including whether such event, taken as a whole, effectively resulted in a Share dividend) and any adjustment made pursuant to clause (ii)(A) above; *provided* that, notwithstanding the foregoing, if Counterparty does not initially make an adjustment to the "Conversion Rate" with respect to such event due to the prescribed adjustment not reaching the one percent threshold for such adjustments described in the Indenture, no adjustment will be made pursuant to clauses (i) or (ii) with respect to such event until any such time as such adjustments occur pursuant to the Indenture. Counterparty shall provide to Dealer written notice (such notice, a "Conversion Rate Adjustment Notice") as soon as reasonably practicable but in any event prior to the corresponding record date for such an event that would lead to a change in the "Conversion Rate" (as defined in the Indenture) (a " Conversion Rate Adjustment Event"), which Conversion Rate Adjustment Notice shall set forth in

reasonable detail the adjustment to the "Conversion Rate" resulting from such Conversion Rate Adjustment Event. In connection with the delivery of any Conversion Rate Adjustment Notice to Dealer, unless all information included in such Conversion Rate Adjustment Notice has previously been provided to holders of the Convertible Notes, Counterparty shall, concurrently with or prior to such delivery, (x) publicly announce and disclose the Conversion Rate Adjustment Event and the resulting adjustment to the "Conversion Rate" or (y) represent and warrant that the information set forth in such Conversion Rate Adjustment Notice does not constitute material non-public information with respect to Counterparty, the Shares or the Underlying Shares.

**7. Share Adjustments:**

Method of Adjustment: Calculation Agent Adjustment; provided, however, that the Definitions shall be amended by (i) replacing the words "diluting or concentrative" in Sections 11.2(a), 11.2(c) (in two instances) and 11.2(e)(vii), and Section 2(a) of the DR Supplement, with the word "material", (ii) by adding the words "or the Transaction" after the words "theoretical value of the relevant Shares" in Sections 11.2(a), 11.2(c) and 11.2(e)(vii), and Section 2(a) of the DR Supplement, and (iii) replacing the words "the Strike Price," in Section 11.2(c)(A) with the words "the Lower Strike Price, the Upper Strike Price,"; provided, further, that adjustments may be made to account for changes in volatility, expected dividends, stock loan rate and liquidity relative to the relevant Share or the Transaction.

**8. Extraordinary Events:**

New Shares: For purposes of Merger Events and Tender Offers affecting the Issuer or Shares only (as such terms would be defined absent any modification in the DR Supplement), in the definition of New Shares in Section 12.1(i) of the Definitions, (a) the text in clause (i) thereof shall be deleted in its entirety (including the word "and" following clause (i)) and replaced with "publicly quoted, traded or listed on any of the New York Stock Exchange, the American Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or their respective successors)," and (b) the phrase "and (iii) of an entity or person organized under the laws of the United States, any State thereof or the District of Columbia" shall be inserted immediately prior to the period.

Consequences of Merger Events:

(a) Share-for-Share: Modified Calculation Agent Adjustment

(b) Share-for-Other: Cancellation and Payment (Calculation Agent Determination)

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| (c) Share-for- Combined: | Component Adjustment |
| Tender Offer: | Applicable; provided that Sections 12.1(d), 12.1(e) and 12.1(l)(ii) of the Definitions are hereby amended by replacing "voting shares" with "Shares" prior to the application of the DR Amendment. |
| Consequences of Tender Offers: | |
| (a) Share-for-Share: | Modified Calculation Agent Adjustment |
| (b) Share-for-Other: | Cancellation and Payment (Calculation Agent Determination) |
| (c) Share-for-Combined: | Component Adjustment |
| Composition of Combined Consideration: | Not Applicable |
| Nationalization, Insolvency or Delisting: | Cancellation and Payment (Calculation Agent Determination); provided that Insolvency shall not be applicable if Counterparty is a debtor (or similar participant) with respect to such Insolvency.<br><br>In addition to the provisions of Section 12.6(a)(iii) of the Definitions, it will also constitute a Delisting if the Exchange is located in the United States and the Shares are not immediately re-listed, re-traded or re-quoted on any of the New York Stock Exchange, the American Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or their respective successors); if the Shares are immediately re-listed, re-traded or re-quoted on any such exchange or quotation system, such exchange or quotation system shall thereafter be deemed to be the Exchange. |

**9. Additional Disruption Events:**

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| Change in Law: | Applicable; provided that Section 12.9(a)(ii) of the Definitions is hereby amended by (i) replacing the phrase "the interpretation" in the third line thereof with the phrase "or announcement of the formal or informal interpretation" and (ii) immediately following the word "Transaction" in clause (X) thereof, adding the phrase "in the manner contemplated by the Hedging Party on the Trade Date". |
| Insolvency Filing: | Applicable, except if Counterparty is a debtor (or similar participant) with respect to such Insolvency Filing |
| Hedging Disruption: | Applicable |
| Increased Cost of Hedging: | Applicable |
| Hedging Party: | For all applicable Additional Disruption Events, Dealer |
| Determining Party: | For all applicable Additional Disruption Events, Dealer |

**10. Acknowledgments:**

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| Non-Reliance: | Applicable |
| Agreements and Acknowledgments Regarding Hedging Activities: | Applicable |
| Additional Acknowledgments: | Applicable |

**11. Representations, Warranties and Agreements:**

(a) In connection with this Master Confirmation, each Confirmation, each Transaction to which a Confirmation relates and any other documentation relating to the Agreement, each party to this Master Confirmation represents and warrants to, and agrees with, the other party that:

(i) it is an "accredited investor" as defined in Section 2(a)(15)(ii) of the Securities Act of 1933, as amended (the " Securities Act"); and

(ii) it is an "eligible contract participant" as defined in the Commodity Exchange Act, as amended (the " CEA"), and this Master Confirmation and each Transaction hereunder are subject to individual negotiation by the parties and have not been executed or traded on a "trading facility" as defined in the CEA.

(b) Counterparty represents and warrants to, and agrees with, Dealer on the Trade Date of each Transaction that:

(i) its financial condition is such that it has no need for liquidity with respect to its investment in such Transaction and no need to dispose of any portion thereof to satisfy any existing or contemplated undertaking or indebtedness, its investments in and liabilities in respect of such Transaction, which it understands are not readily marketable, are not disproportionate to its net worth, and it is able to bear any loss in connection with such Transaction, including the loss of its entire investment in such Transaction;

(ii) it understands that Dealer has no obligation or intention to register such Transaction under the Securities Act or any state securities law or other applicable federal or non-U.S. securities laws;

(iii) it understands that no obligations of Dealer to it hereunder will be entitled to the benefit of deposit insurance and that such obligations will not be guaranteed by any Affiliate of Dealer or any governmental agency;

(iv) IT UNDERSTANDS THAT SUCH TRANSACTION IS SUBJECT TO COMPLEX RISKS THAT MAY ARISE WITHOUT WARNING AND MAY AT TIMES BE VOLATILE AND THAT LOSSES MAY OCCUR QUICKLY AND IN UNANTICIPATED MAGNITUDE AND IS WILLING TO ACCEPT SUCH TERMS AND CONDITIONS AND ASSUME (FINANCIALLY AND OTHERWISE) SUCH RISKS;

(v) (A) Counterparty is not aware of any material non-public information regarding Counterparty, the Shares or the Underlying Shares and (B) each of its filings under the Securities Exchange Act of 1934, as amended (the " Exchange Act"), or other applicable securities laws that were required to be filed since January 1, 2010 have been filed and as of the date of this representation, when considered as a whole (with the more recent such reports and documents deemed to amend inconsistent statements contained in any earlier such report or document), there is no misstatement of material fact contained therein or omission of a material fact required to be stated therein or necessary to make the statements made therein, in the light of the circumstances under which they were made, not misleading;

(vi) on the Trade Date, transactions in the Shares or the Underlying Shares are not prohibited by Regulation M under the Exchange Act ( "Regulation M") as a result of such transactions meeting the requirements of the exceptions set forth in Rules 101(b)(10) and 102(b)(7) of Regulation M;

(vii) it is not entering into, or exercising any right under, any Transaction to create, and will not engage in any other securities or derivatives transactions to create, actual or apparent trading activity in the Shares or the Underlying Shares (or any security convertible into or exchangeable for Shares or Underlying Shares) or to raise or depress or to manipulate the price of the Shares or the Underlying Shares (or any security convertible into or exchangeable for Shares or Underlying Shares) or to otherwise violate any applicable laws or other restrictions applicable to Counterparty;

(viii) it shall deliver to Dealer opinions of counsel, dated as of the Effective Date, with respect to the matters set forth in Section 3(a) of the Agreement;

(ix) on the Trade Date, other than purchases from, by or on behalf of directors, officers and employees of Counterparty and its affiliates that are not "Rule 10b-18 purchases" as such term is defined in Rule 10b-18 under the Exchange Act (" Rule 10b-18"), neither Counterparty nor any "affiliated purchaser" (as defined in Rule 10b-18) shall directly or indirectly purchase, offer to purchase, place any bid or limit order that would effect a purchase of, or commence any tender offer relating to, any Shares or Underlying Shares;

(x) on the Trade Date and the Premium Payment Date for such Transaction (A) the assets of Counterparty at their fair valuation exceed the liabilities of Counterparty, including contingent liabilities, (B) the capital of Counterparty is adequate to conduct the business of Counterparty, and (C) Counterparty has the ability to pay its debts and obligations as such debts mature and does not intend to, or does not believe that it will, incur debt beyond its ability to pay as such debts mature;

(xi) it is not, and after giving effect to the transactions contemplated hereby will not be, and "investment company" as such term is defined in the Investment Company Act of 1940, as amended; and

(xii) it is not on the Trade Date for such Transaction engaged in a distribution, as such term is used in Regulation M, of any securities of Counterparty (other than a distribution meeting the requirements of the exception set forth in Rules 101(b)(10) and 102(b)(7) of Regulation M) and shall not, until the second Scheduled Trading Day immediately following the Effective Date (as set forth in the Confirmation for a Transaction), engage in any such distribution.

**12. Miscellaneous:**

(a) Early Termination. The parties agree that Second Method and Loss will apply to each Transaction under this Master Confirmation as such terms are defined under the 1992 ISDA Master Agreement (Multicurrency-Cross Border).

(b) Repurchase Notices. Counterparty shall, on any day on which Counterparty effects any repurchase of Shares or Underlying Shares, promptly give Dealer a written notice of such repurchase (a " Repurchase Notice") on such day if, following such repurchase, the Ratio Equity Percentage as determined on such day is (i) equal to or greater than 8.0% and (ii) greater by 0.5% than the Ratio Equity Percentage included in the immediately preceding Repurchase Notice (or, in the case of the first such Repurchase Notice, greater by 0.5% than the Ratio Equity Percentage as of the date hereof). The " Ratio Equity Percentage" as of any day is the fraction the numerator of which is the aggregate of the Base Amounts for (1) all Tranches for all Transactions hereunder, (2) all transactions of the type described in the definition of "Specified Transactions" relating to Shares or Underlying Shares between Dealer and Counterparty or their respective Affiliates and (3) all transactions of the type described in the definition of "Specified Transactions" relating to Shares or Underlying Shares between Dealer or its Affiliates and trusts or other entities with respect to which the beneficiaries or grantors (however described) are Counterparty, its Affiliates and/or employees of Counterparty or its Affiliates (the transactions described in clauses (1), (2) and (3)

collectively, the "Specified Portfolio") and the denominator of which is the number of Underlying Shares outstanding on such day and the " Base Amount" for a Tranche or a transaction is an amount equal to the product of the Number of Shares (or similar term in the relevant transaction) for such Tranche or transaction, as applicable and, if such Tranche or transaction is denominated in Shares, the number of Underlying Shares represented by a Share.

(c) Section 16 Indemnity. If Counterparty ceases to be a "foreign private issuer" (as defined in Rule 3b-4 under the Exchange Act) at any time during the term of this Transaction, Counterparty agrees to indemnify and hold harmless Dealer and its Affiliates and their respective officers, directors and controlling persons (each, a "Section 16 Indemnified Person") from and against any and all losses (including losses relating to Dealer's hedging activities as a consequence of becoming, or of the risk of becoming, subject to the reporting and profit disgorgement provisions of Section 16 of the Exchange Act, including without limitation, any forbearance from hedging activities or cessation of hedging activities and any losses in connection therewith with respect to any Transaction), claims, damages, judgments, liabilities and expenses (including reasonable attorney's fees), joint or several, to which a Section 16 Indemnified Person may become subject, as a result of Counterparty's failure to provide Dealer with a Repurchase Notice on the day and in the manner specified in this paragraph (b), and to reimburse, upon written request, each such Section 16 Indemnified Person for any reasonable legal or other expenses incurred in connection with investigating, preparing for, providing testimony or other evidence in connection with or defending any of the foregoing. If any suit, action, proceeding (including any governmental or regulatory investigation), claim or demand shall be brought or asserted against any Section 16 Indemnified Person, such Section 16 Indemnified Person shall promptly notify Counterparty in writing, and Counterparty, upon request of such Section 16 Indemnified Person, shall retain counsel reasonably satisfactory to such Section 16 Indemnified Person to represent such Section 16 Indemnified Person and any others Counterparty may designate in such proceeding and shall pay the fees and expenses of such counsel related to such proceeding. Counterparty shall be relieved from liability to the extent that such Section 16 Indemnified Person fails to promptly notify Counterparty of any action commenced against it in respect of which indemnity may be sought hereunder; provided that failure to notify Counterparty (i) shall not relieve Counterparty from any liability hereunder to the extent it is not materially prejudiced as a result thereof and (ii) shall not, in any event, relieve Counterparty from any liability that it may have otherwise than on account of this paragraph (c). Counterparty shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, Counterparty agrees to indemnify any Section 16 Indemnified Person from and against any loss or liability by reason of such settlement or judgment. Counterparty shall not, without the prior written consent of each Section 16 Indemnified Person, effect any settlement of any pending or threatened proceeding in respect of which any Section 16 Indemnified Person is or could have been a party and indemnity could have been sought hereunder by any such Section 16 Indemnified Person, unless such settlement includes an unconditional release of each such Section 16 Indemnified Person from all liability on claims that are the subject matter of such proceeding on terms reasonably satisfactory to each such Section 16 Indemnified Person. If the indemnification provided for in this paragraph (c) is unavailable to a Section 16 Indemnified Person or insufficient in respect of any losses, claims, damages or liabilities referred to therein, then Counterparty, in lieu of indemnifying such Section 16 Indemnified Person thereunder, shall contribute to the amount paid or payable by such Section 16 Indemnified Person as a result of such losses, claims, damages or liabilities. The remedies provided for in this paragraph (c) are not exclusive and shall not limit any rights or remedies that may otherwise be available to any Section 16 Indemnified Person at law or in equity. The indemnity and contribution agreements contained in this paragraph (c) shall remain operative and in full force and effect regardless of the termination of any Transaction.

(d) Transfer or Assignment. Dealer may, with Counterparty's prior written consent (not to be unreasonably withheld or delayed), transfer or assign all (but not less than all) of its rights and obligations under any Transaction to any of its Affiliates with a rating (or whose guarantor has a rating) for its long term, unsecured and unsubordinated indebtedness equal to or better than A- by Standard & Poor's Ratings Services or its successor (" S&P"), or A3 by Moody's Investors Service, Inc. or its successor ("Moody's") or, if either S&P or Moody's ceases to rate such debt, at least an equivalent rating or better by a substitute rating agency mutually agreed by Counterparty and Dealer; *provided* that Counterparty shall not withhold or delay its consent if Dealer certifies to Counterparty that the requested transfer is made in connection with the transfer of all or substantially all similar transactions that Dealer and its affiliates are parties thereto resulting from the enactment of the Dodd Frank Wall Street Reform and Consumer Protection Act of 2010 and rules and regulation thereunder, and such transfer will not result in an increased cost to Counterparty. Counterparty may, with Dealer's prior written consent (not to be

unreasonably withheld or delayed) sell or pledge to any third party all (but not less than all) of its rights and obligations under any Transaction at a time when such Transaction is not subject to a security interest in favor of Dealer or any of its Affiliates. If, as determined in Dealer's sole discretion, (a) at any time (1) the Equity Percentage exceeds 8.5%, (2) Dealer, Dealer Group (as defined below) or any person whose ownership position would be aggregated with that of Dealer or Dealer Group (Dealer, Dealer Group or any such person, a "Dealer Person") under U.S. federal, non-U.S., state or local laws, regulations or regulatory orders applicable to ownership of Shares or Underlying Shares ("Applicable Laws"), owns, beneficially owns, constructively owns, controls, holds the power to vote or otherwise meets a relevant definition of ownership, or could be reasonably viewed as meeting any of the foregoing, in excess of a number of Shares or Underlying Shares, as applicable, equal to (x) the number of Shares or Underlying Shares, as applicable, that would give rise to reporting, registration, filing or notification obligations or other requirements (including obtaining prior approval by a state, U.S. federal or non-U.S. regulator) of a Dealer Person under Applicable Laws and with respect to which such requirements have not been met or the relevant approval has not been received *minus* (y) 1% of the number of Shares or Underlying Shares, as applicable, outstanding on the date of determination or (3) the Ratio Equity Percentage exceeds 9.9% (any such condition described in clause (1), (2) or (3), an "Excess Ownership Position") and (b) Dealer is unable, after commercially reasonable efforts, to effect a transfer or assignment on pricing and terms and within a time period reasonably acceptable to it of all or a portion of one or more Transactions pursuant to the preceding paragraph such that an Excess Ownership Position no longer exists, Dealer may designate any Scheduled Trading Day as an Early Termination Date with respect to a portion (the "Terminated Portion") of any Transaction(s), such that an Excess Ownership Position no longer exists following such partial termination. In the event that Dealer so designates an Early Termination Date with respect to a portion of any Transaction(s), a payment shall be made pursuant to Section 6 of the Agreement as if (i) an Early Termination Date had been designated in respect of a Transaction having terms identical to the Terminated Portion of the Transaction(s), (ii) Counterparty shall be the sole Affected Party with respect to such partial termination and (iii) such portion of the Transaction(s) shall be the only Terminated Transaction. The "Equity Percentage" as of any day is the fraction, expressed as a percentage, (A) the numerator of which is the number of Underlying Shares that Dealer and any of its affiliates subject to aggregation with Dealer for purposes of the "beneficial ownership" test under Section 13 of the Exchange Act and all persons who may form a "group" (within the meaning of Rule 13d-5(b)(1) under the Exchange Act) with Dealer (collectively, "Dealer Group") "beneficially own" (within the meaning of Section 13 of the Exchange Act) in connection with transactions in the Specified Portfolio without duplication on such day (or, if Counterparty ceases to be a "foreign private issuer" (as defined in Rule 3b-4 under the Exchange Act) and the equivalent calculation under Section 16 of the Exchange Act and the rules and regulations thereunder results in a higher number, such number) and (B) the denominator of which is the number of Underlying Shares outstanding on such day.

(e) Severability; Illegality. If compliance by either party with any provision of a Transaction would be unenforceable or illegal, (i) the parties shall negotiate in good faith to resolve such unenforceability or illegality in a manner that preserves the economic benefits of the transactions contemplated hereby and (ii) the other provisions of the Transaction shall not be invalidated, but shall remain in full force and effect.

(f) Waiver of Trial by Jury. EACH OF COUNTERPARTY AND DEALER HEREBY IRREVOCABLY WAIVES (ON ITS OWN BEHALF AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ON BEHALF OF ITS STOCKHOLDERS) ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO ANY TRANSACTION OR THIS MASTER CONFIRMATION OR THE ACTIONS OF DEALER OR ITS AFFILIATES IN THE NEGOTIATION, PERFORMANCE OR ENFORCEMENT THEREOF.

(g) Confidentiality. Notwithstanding any provision in this Master Confirmation, any Confirmation or the Agreement, in connection with Section 1.6011-4 of the Treasury Regulations, the parties hereby agree that each party (and each employee, representative, or other agent of such party) may disclose to any and all persons, without limitation of any kind, the U.S. tax treatment and U.S. tax structure of the Transaction and all materials of any kind (including opinions or other tax analyses) that are provided to such party 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.

(h) Securities Contract; Swap Agreement. The parties hereto intend for: (i) each Transaction hereunder to be a "securities contract" and a "swap agreement" as defined in the Bankruptcy Code (Title 11 of the United States Code) (the "Bankruptcy Code"), a derivatives transaction under the Mexican *Ley de Concursos Mercantiles*, the Agreement to be a "master netting agreement" and the parties hereto to be entitled to the protections afforded by, among other Sections, Sections 362(b)(6), 362(b)(17), 362(o), 546(e), 546(g), 546(j), 548(d), 555, 560 and 561 of the Bankruptcy Code and the applicable provisions of the *Ley de Concursos Mercantiles*; (ii) a party's right to liquidate a Transaction and to exercise any other remedies upon the occurrence of any Event of Default under the Agreement with respect to the other party to constitute a "contractual right … to cause the liquidation, termination or acceleration" and any payments owed under this Transaction or the Agreement with respect thereto to be a "termination value", "payment amount" or "other transfer obligation", in each case as described in the Bankruptcy Code; (iii) all payments for, under or in connection with a Transaction to constitute "margin payments", "settlement payments" and/or "transfers" under a "securities contract" and/or "swap agreement" as defined in the Bankruptcy Code; and (iv) each party hereto to be a "master netting agreement participant", "financial institution", "swap participant" and/or a "financial participant" as defined in the Bankruptcy Code.

(i) Extension of Settlement. Dealer may postpone any Expiration Date, postpone the Final Disruption Date and/or add additional Expiration Dates with respect to some or all of the Options under any Tranche hereunder (provided that none of such postponed or added Expiration Dates shall occur later than the 20th Scheduled Trading Day immediately succeeding the last Expiration Date (determined without regard to this provision) for the relevant Transaction) if Dealer determines, in its reasonable discretion, that such extension is necessary or advisable to preserve Dealer's hedging activity hereunder in light of existing liquidity conditions or to enable Dealer to effect purchases or sales of Shares or Underlying Shares in connection with its hedging activity hereunder in a manner that would, if Dealer were Counterparty or an affiliated purchaser of Counterparty, be in compliance with applicable legal and regulatory requirements or self-regulatory requirements, or with related reasonable policies and procedures applicable to Dealer.

(j) Registration. Counterparty hereby agrees that if the Shares or Underlying Shares (the "Hedge Shares") acquired by Dealer for the purpose of hedging its obligations pursuant to the Transaction, in Dealer's sole judgment, cannot be sold in the U.S. public market (including by depositing such Underlying Shares with the Depository in exchange for Shares) by Dealer without registration under the Securities Act, Counterparty shall, at its election: (i) in order to allow Dealer to sell the Hedge Shares in a registered offering, make available to Dealer an effective registration statement under the Securities Act to cover the resale of such Hedge Shares and (A) enter into an agreement, in form and substance satisfactory to Dealer and Counterparty, substantially in the form of an underwriting agreement for a registered secondary offering, (B) provide accountant's "comfort" letters in customary form for registered offerings of equity securities, (C) provide disclosure opinions of nationally recognized outside counsel to Counterparty reasonably acceptable to Dealer, (D) provide other customary opinions, certificates and closing documents customary in form for registered offerings of equity securities and (E) afford Dealer a reasonable opportunity to conduct a "due diligence" investigation with respect to Counterparty customary in scope for underwritten offerings of equity securities; provided that if Dealer, in its sole reasonable discretion, is not satisfied with access to due diligence materials, the results of its due diligence investigation, or the procedures and documentation for the registered offering referred to above, then, subject to the conditions set forth therein, clause (ii) or (iii) of this section shall apply at the election of Counterparty; (ii) in order to allow Dealer to sell the Hedge Shares in a private placement, enter into a private placement agreement substantially similar to private placement Underwriting Agreements customary for private placements of equity securities, in form and substance satisfactory to Dealer and Counterparty, including customary representations, covenants, blue sky and other governmental filings and/or registrations, indemnities to Dealer, due diligence rights (for Dealer or any designated buyer of the Hedge Shares from Dealer), opinions and certificates and such other documentation as is customary for private placements agreements, all reasonably acceptable to Dealer (in which case, the Calculation Agent shall make any adjustments to the terms of the Transaction that are necessary, in its reasonable judgment, to compensate Dealer for any discount from the public market price of the Shares incurred on the sale of Hedge Shares in a private placement); or (iii) to the extent that such purchases would not violate any applicable law or other restriction applicable to Counterparty, purchase the Hedge Shares from Dealer at the VWAP Price on such Exchange Business Days (with references to "Valuation Date" in the definition of "VWAP Price" deemed to be references to such Exchange Business Days for this purpose), and in such amounts, requested by Dealer. This paragraph (j) shall survive the termination, expiration or early unwind of the Transaction.

(k) Early Unwind. In the event the sale of Convertible Notes for the Transaction (as set forth in the Confirmation for such Transaction) is not consummated with the initial purchasers for any reason by the close of business in New York City on the Early Unwind Date set forth in the Confirmation for such Transaction, such Transaction shall automatically terminate on such Early Unwind Date and (i) such Transaction and all of the respective rights and obligations of Dealer and Counterparty under such Transaction shall be cancelled and terminated and (ii) each party shall be released and discharged by the other party from and agrees not to make any claim against the other party with respect to any obligations or liabilities of the other party arising out of and to be performed in connection with such Transaction either prior to or after such Early Unwind Date; provided that, if such failure is due to a breach or default on the part of Counterparty under the Purchase Agreement dated as of March 9, 2011 among CEMEX, S.A.B. de C.V. and Citigroup Global Markets, Inc. and J.P. Morgan Securities LLC, among others, as representatives of the "Initial Purchasers" (as defined therein), Counterparty shall assume, or reimburse the cost of, derivatives or other transactions entered into by Dealer or one or more of its Affiliates in connection with hedging such Transaction. The amount paid by Counterparty shall be Dealer's actual cost of such derivatives or other transactions as Dealer informs Counterparty and shall be paid in immediately available funds on such Early Unwind Date.

(l) Acknowledgment of Pledge. Counterparty's rights under the Agreement may, from time to time, be pledged to Dealer to secure Counterparty's obligations to Dealer arising under other agreements in accordance with such terms as the parties may separately agree.

(m) Optional Early Termination. (i) At any time during the term of this Transaction, Counterparty may, by written notice to Dealer, designate, with respect to one or more specified Tranches, an Early Termination Date to occur on the third Scheduled Trading Day following the date such notice is effective, in which case an Additional Termination Event shall be deemed to have occurred in respect of which (1) Counterparty shall be the sole Affected Party and (2) the portion of the relevant Transaction represented by such Tranche(s) shall be the sole Affected Transaction.

(ii) Counterparty may, prior to electing to terminate any Tranche pursuant to subparagraph (i) above, request a quotation (which may be in the form of a grid of percentages that depends on the price of the Shares or Underlying Shares over a specified period) from Dealer as to the applicable terms of such termination, and Dealer shall be bound by the terms of such quotation if Counterparty then makes such election within one full Scheduled Trading Day.

(iii) By providing the notice referred to in this paragraph, Counterparty shall be deemed to repeat, on the date such notice is effective, the representations in clauses (v), (vi), (vii) and (ix) of Section 11(b).

(n) Counterparty's Obligation to Pay Cancellation Amounts and Early Termination Amounts. Seller and Counterparty hereby agree that, notwithstanding anything to the contrary herein or in the Agreement, following Seller's receipt from Counterparty of the Premium on the Premium Payment Date, in the event that (a) an Early Termination Date (whether as a result of an Event of Default or a Termination Event) occurs or is designated with respect to a Transaction and, as a result, Counterparty owes to Seller an amount under Section 6(e) of the Agreement or (b) Counterparty owes to Seller, pursuant to Section 12.7 or Section 12.9 of the Definitions, a Cancellation Amount, such amount shall be deemed to be zero. If Counterparty pays the Premium on the Premium Payment Date, then under no circumstances shall Counterparty be required to pay any amount in addition to the Premium under the Transaction. For the avoidance of doubt, the preceding sentence shall not be construed as limiting any damages that may be payable by Counterparty as a result of a breach of, or an indemnity under, this Master Confirmation or the Agreement.

(o) Modifications to DR Supplement. The DR Supplement is hereby amended as follows:

(i) The definitions of the following terms in Section 1 thereof are hereby deleted and replaced as follows:

"Depository" means, in relation to the Shares or the Underlying Shares, the Issuer of the Shares or the Underlying Shares, as applicable.

"Deposit Agreement" means, in relation to the Shares or the Underlying Shares, the agreements, deeds or other instruments constituting the Shares or Underlying Shares, as applicable, as from time to time amended or supplemented in accordance with their terms.

"Underlying Shares" means, in relation to the applicable Deposit Agreement, the shares or other securities which are the subject of such Deposit Agreement.

"Underlying Shares Issuer" means, in relation to the applicable Underlying Shares, the issuer of such Underlying Shares.

(ii) Section 2(c) thereof is hereby deleted in its entirety.

(iii) Section 3(a) thereof is hereby amended by adding in the second line therein after the term "'Share-for-Combined'" the following parenthetical: "(including defined terms used in such definitions)".

(p) Settlement Amendment. Dealer acknowledges that Counterparty may, to the extent permitted by law and any agreements Counterparty may be subject to, prior to the settlement of any Transaction hereunder, request that the provisions of this Master Confirmation be modified to enable Counterparty to effect share settlement in lieu of the settlement provisions under Section 5 of this Master Confirmation. In the event of such a request, Dealer agrees to negotiate with Counterparty, in good faith, such amendments to this Master Confirmation as may be required to effect such changes, it being understood and agreed that as of the date hereof, Counterparty has no right or option to require share settlement of any Transaction hereunder; *provided* that Dealer may in good faith refuse to enter into any such amendments so as to comply with applicable legal and regulatory requirements or self-regulatory requirements, or with related policies and procedures applicable to Dealer.

(q) Limited Role of Agent. THE ROYAL BANK OF SCOTLAND PLC HAS ENTERED AS PRINCIPAL TO THE TRANSACTION AND IS CEMEX, S.A.B. DE C.V.'S COUNTERPARTY HERETO. THE ROYAL BANK OF SCOTLAND PLC IS NOT REGISTERED AS A BROKER-DEALER UNDER THE SECURITIES AND EXCHANGE ACT OF 1934, AS AMENDED. THE PARTIES ACKNOWLEDGE THAT RBS SECURITIES INC. HAS ACTED AS AGENT FOR THE PARTIES IN CONNECTION WITH THE TRANSACTION. TO THE EXTENT RBS SECURITIES INC. HAS ACTED AS AGENT IN CONNECTION WITH THE TRANSACTION, ITS OBLIGATIONS ARE STRICTLY LIMITED TO THE DELIVERY OF ANY CASH AND SECURITIES THAT IT ACTUALLY RECEIVES FROM THE ROYAL BANK OF SCOTLAND PLC OR THE COUNTERPARTY, AS THE CASE MAY BE, OR DELIVERS TO THE ROYAL BANK OF SCOTLAND PLC OR THE COUNTERPARTY. RBS SECURITIES INC. HAS NO OBLIGATIONS HEREUNDER, BY GUARANTY, ENDORSEMENT OR OTHERWISE, WITH RESPECT TO PERFORMANCE OF THE ROYAL BANK OF SCOTLAND PLC'S OR COUNTERPARTY'S OBLIGATIONS HEREUNDER.

**13. Addresses for Notice:**

If to Dealer:

The Royal Bank of Scotland plc
c/o RBS Securities Inc.
600 Washington Blvd.
Stamford, CT 06901
Attention: Legal Department (Tam Beattie)
Facsimile: (203) 873-4571
Telephone: (203) 897-6086
Email: Tamerlaine.Beattie@rbs.com

| | |
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| with a copy to: | The Royal Bank of Scotland plc<br>c/o RBS Global Banking & Markets<br>280 Bishopsgate<br>London EC2M 4RB<br>Attention: Swap Administration<br>Facsimile: +44 (0) 20 7085 5050 |
| If to Counterparty: | CEMEX, S.A.B. de C.V.<br>Avenida Ricardo Margain Zozaya 325<br>Colonia Valle del Campestre<br>San Pedro Garza Garcia, Nuevo Leon 66265<br>Attention: Francisco Javier Contreras Navarro<br>Financial Operations Manager - Corporate Treasury - Mexico<br>Office : +52(81)88884093<br>Fax: +52(81)88884519<br>e-Mail: franciscojavier.contreras@cemex.com |

**14. Accounts for Payment:**

| | | |
|---|---|---|
| To Dealer: | Beneficiary: Royal Bank Of Scotland PLC<br>Bank: JP Morgan Chase Bank New York<br>[CHASUS33]<br>Account No.: 400930153<br>[RBOSGB2LTCM] | |
| To Counterparty: | Beneficiary:<br>Bank:<br>Account:<br>ABA:<br>SWIFT: | CEMEX, S.A.B. de C.V.<br>Citibank, NY<br>36964215<br>021000089<br>CITIUS33 |

**15. Schedule Provisions:**

(a) Process Agent. For the purpose of Section 13(c) of the Agreement:

Counterparty appoints as its Process Agent:

Corporate Creations Network Inc.
1040 Avenue of the Americas #2400
New York, NY 10018
Fax: (561) 694-1639
Tel: (212) 382-4699

(b) Delivery of Tax Forms. For the purposes of Section 4(a)(i) of the Agreement, Counterparty agrees to deliver such documents as Dealer may request in order to allow Dealer to make a payment under this Transaction without any deduction or withholding for or on account of any Tax or with such deduction or withholding at a reduced rate including, without limitation, an executed United States Internal Revenue Service Form W-8BEN (or any successor thereto), (i) upon execution of this Transaction; (ii) promptly upon reasonable demand by Dealer; and (iii) promptly upon learning that any such document, including Form W-8BEN (or any successor thereto), previously provided by Counterparty has become obsolete or incorrect.

**16. Valuation Notice:**

Dealer agrees to provide to Counterparty, as soon as practicable following the end of each calendar month, a statement showing the Exposure (within the meaning of the 1994 ISDA Credit Support Annex),

calculated with respect to the Transaction and determined as if such last day (or the immediately preceding Exchange Business Day) was the Valuation Date.

**17. Offices**

The Office of Dealer for the Transaction is:

The Royal Bank of Scotland plc
c/o RBS Securities Inc.
600 Washington Blvd.
Stamford, CT 06901

The Office of Counterparty for the Transaction is: Not applicable

[Signature page follows]

Yours sincerely,

THE ROYAL BANK OF SCOTLAND PLC

By: RBS Securities Inc., as its agent

By: /s/ Eric Wallar
Name: Eric Wallar
Title: Managing Director

Confirmed as of the
date first above written:

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

By: /s/ Rodrigo Treviño
Name: Rodrigo Treviño
Title: Attorney-in-Fact

**EXHIBIT A**
**FORM OF CAPPED CALL OPTION**
**TRANSACTION CONFIRMATION**

CONFIRMATION

| | |
|---|---|
| Date: | March [ ], 2011 |
| To: | CEMEX, S.A.B. de C.V. ("Counterparty") |
| Telefax No.: | +52(81)88884519 |
| Attention: | Francisco Javier Contreras Navarro - Financial Operations Manager - Corporate Treasury - Mexico |
| From: | The Royal Bank of Scotland plc, acting through RBS Securities Inc., as its agent (" Dealer") |
| Telefax No.: | (203) 873-4571 |

Transaction Reference Number: _____

The purpose of this communication (this "Confirmation") is to set forth the terms and conditions of the above-referenced Transaction (the "Transaction") entered into on the Trade Date specified below between you and us. This Confirmation supplements, forms a part of, and is subject to the Master Terms and Conditions for Capped Call Transactions dated as of March 9, 2011 and as amended from time to time (the " Master Confirmation") between you and us.

1. The definitions and provisions contained in the Definitions (as such term is defined in the Master Confirmation) and in the Master Confirmation are incorporated into this Confirmation. In the event of any inconsistency between those definitions and provisions and this Confirmation, this Confirmation will govern.

2. The particular Transaction to which this Confirmation relates shall have the following terms:

| | |
|---|---|
| Trade Date: | March [ ], 2011 |
| Effective Date: | The closing date of the initial issuance of the Convertible Notes. |
| Lower Strike Price: | USD [ ]. |
| Upper Strike Price: | USD [ ]. |
| Initial Reference Price: | USD [*Insert Exchange closing price per share for the Shares on the Trade Date*] |
| Premium: | USD [ ]. |
| Premium Payment Date: | The Effective Date |
| Convertible Notes: | [ ]% Convertible Subordinated Notes of Counterparty due [ ], offered pursuant to an Offering Memorandum to be dated [ ]. |
| Indenture: | The indenture governing the issuance of the Convertible Notes to be dated as of the closing date of the initial issuance of the Convertible Notes, by and between Counterparty and The Bank of New York |

| | |
|---|---|
| | Mellon, as trustee (as may be amended, modified or supplemented from time to time, but only if such amendment, modification or supplement is consented to by Dealer in writing, which consent shall not be unreasonably withheld or delayed). |
| Early Unwind Date: | [ ], 2011, or such later date as agreed by the parties hereto. |
| Final Disruption Date: | [ ] |

[Remainder of page intentionally left blank]

The Number of Options and Expiration Date for each Tranche of the Transaction are set forth below.

| Tranche Number | Number of Options | Expiration Date |
|---|---|---|
| 1. | [ ] | [ ] |
| 2. | [ ] | [ ] |
| 3. | [ ] | [ ] |
| 4. | [ ] | [ ] |
| 5. | [ ] | [ ] |
| 6. | [ ] | [ ] |
| 7. | [ ] | [ ] |
| 8. | [ ] | [ ] |
| 9. | [ ] | [ ] |
| 10. | [ ] | [ ] |
| 11. | [ ] | [ ] |
| 12. | [ ] | [ ] |
| 13. | [ ] | [ ] |
| 14. | [ ] | [ ] |
| 15. | [ ] | [ ] |
| 16. | [ ] | [ ] |
| 17. | [ ] | [ ] |
| 18. | [ ] | [ ] |
| 19. | [ ] | [ ] |
| 20. | [ ] | [ ] |
| 21. | [ ] | [ ] |
| 22. | [ ] | [ ] |
| 23. | [ ] | [ ] |
| 24. | [ ] | [ ] |
| 25. | [ ] | [ ] |
| 26. | [ ] | [ ] |
| 27. | [ ] | [ ] |
| 28. | [ ] | [ ] |
| 29. | [ ] | [ ] |
| 30. | [ ] | [ ] |
| 31. | [ ] | [ ] |
| 32. | [ ] | [ ] |
| 33. | [ ] | [ ] |
| 34. | [ ] | [ ] |
| 35. | [ ] | [ ] |
| 36. | [ ] | [ ] |
| 37. | [ ] | [ ] |
| 38. | [ ] | [ ] |
| 39. | [ ] | [ ] |
| 40. | [ ] | [ ] |
| 41. | [ ] | [ ] |
| 42. | [ ] | [ ] |
| 43. | [ ] | [ ] |
| 44. | [ ] | [ ] |
| 45. | [ ] | [ ] |
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| 47. | [ ] | [ ] |
| 48. | [ ] | [ ] |
| 49. | [ ] | [ ] |
| 50. | [ ] | [ ] |
| 51. | [ ] | [ ] |

| | | |
|---|---|---|
| 52. | [ ] | [ ] |
| 53. | [ ] | [ ] |
| 54. | [ ] | [ ] |
| 55. | [ ] | [ ] |
| 56. | [ ] | [ ] |
| 57. | [ ] | [ ] |
| 58. | [ ] | [ ] |
| 59. | [ ] | [ ] |
| 60. | [ ] | [ ] |

3. Counterparty hereby agrees (a) to check this Confirmation promptly upon receipt so that errors or discrepancies can be promptly identified and rectified and (b) to confirm that the foregoing correctly sets forth the terms of the agreement between us with respect to the particular Transaction to which this Confirmation relates, by manually signing this Confirmation and providing any other information requested herein or in the Master Confirmation and immediately returning an executed copy to us.

Yours sincerely,

THE ROYAL BANK OF SCOTLAND PLC

By: RBS Securities Inc., as its agent

By: _____
Name:
Title:

Confirmed as of the
date first above written:

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

By: _____
Name:
Title:

**Exhibit 4.68**

***EXECUTION VERSION***

MASTER TERMS AND CONDITIONS FOR CAPPED CALL TRANSACTIONS
BETWEEN HSBC BANK USA, NATIONAL ASSOCIATION AND CEMEX, S.A.B. de C.V.

The purpose of this Master Terms and Conditions for Capped Call Transactions (this "Master Confirmation"), dated as of March 9, 2011, is to set forth certain terms and conditions for capped call option transactions that CEMEX, S.A.B. de C.V. ("Counterparty") will enter into with HSBC Bank USA, National Association ("Dealer"). Each such transaction (a "Transaction") entered into between Dealer and Counterparty that is to be subject to this Master Confirmation shall be evidenced by a written confirmation substantially in the form of Exhibit A hereto, with such modifications thereto as to which Counterparty and Dealer mutually agree (a "Confirmation"). This Master Confirmation and each Confirmation together constitute a "Confirmation" as referred to in the Agreement specified below.

This Master Confirmation and a Confirmation evidence a complete binding agreement between you and us as to the terms of the Transaction to which this Master Confirmation and such Confirmation relates. This Master Confirmation and each Confirmation hereunder shall supplement, form a part of, and be subject to an agreement in the form of the 1992 ISDA Master Agreement (Multicurrency – Cross Border) as if we had executed an agreement in such form (with a Schedule that had the provisions in Section 15 of this Master Confirmation and the other elections set forth in this Master Confirmation) on the Trade Date and such agreement shall be considered the "Agreement" hereunder.

The Transactions governed by this Master Confirmation shall be the sole Transactions under the Agreement. If there exists any ISDA Master Agreement between Dealer and Counterparty or any confirmation or other agreement between Dealer and Counterparty pursuant to which an ISDA Master Agreement is deemed to exist between Dealer and Counterparty, then notwithstanding anything to the contrary in such ISDA Master Agreement, such confirmation or agreement or any other agreement to which Dealer and Counterparty are parties, the Transactions governed by this Master Confirmation shall not be considered Transactions under, or otherwise governed by, such existing or deemed ISDA Master Agreement.

The definitions and provisions contained in the 2002 ISDA Equity Derivatives Definitions as supplemented by the 2007 Partial Lookthrough Depository Receipt Supplement to the 2002 ISDA Equity Derivatives Definitions (as amended in this Master Confirmation, the " DR Supplement" and the 2002 ISDA Equity Derivatives Definitions as so supplemented, the "Definitions"), each as published by ISDA are incorporated into this Master Confirmation.

THIS MASTER CONFIRMATION WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REFERENCE TO CHOICE OF LAW DOCTRINE. THE PARTIES HERETO IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND THE UNITED STATES COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, AND TO THE JURISDICTION OF THEIR OWN CORPORATE DOMICILE, IN RESPECT OF ACTIONS BROUGHT AGAINST SUCH PARTY AS A DEFENDANT, IN CONNECTION WITH ALL MATTERS RELATING HERETO AND WAIVE ANY OBJECTION TO THE LAYING OF VENUE IN, AND ANY CLAIM OF INCONVENIENT FORUM WITH RESPECT TO, THESE COURTS, AND ANY RIGHT TO WHICH ANY OF THEM MAY BE ENTITLED ON ACCOUNT OF PLACE OF RESIDENCE OR DOMICILE.

1. In the event of any inconsistency between this Master Confirmation, on the one hand, and the Definitions or the Agreement, on the other hand, this Master Confirmation will control for the purpose of the Transaction to which a Confirmation relates. In the event of any inconsistency between the Definitions, the Agreement and this Master Confirmation, on the one hand, and a Confirmation, on the other hand, the Confirmation will govern. With respect to a Transaction, capitalized terms used herein that are not otherwise defined shall have the meaning assigned to them in the Confirmation relating to such Transaction.

2. Each party will make each payment specified in this Master Confirmation or a Confirmation as being payable by such party, not later than the due date for value on that date in the place of the account specified

below or otherwise specified in writing, in freely transferable funds and in a manner customary for payments in the required currency.

3. **Confirmations and General Terms:**

This Master Confirmation and the Agreement, together with the Confirmation relating to a Transaction, shall constitute the written agreement between Counterparty and Dealer with respect to such Transaction.

Each Transaction to which a Confirmation relates is a Capped Call Option Transaction, which shall be considered a Share Option Transaction for purposes of the Definitions (with references to "Strike Price" therein deemed to include "Lower Strike Price" and/or "Upper Strike Price", as applicable), and shall have the following terms:

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| Option Style: | European |
| Option Type: | Call |
| Seller: | Dealer |
| Buyer: | Counterparty |
| Shares: | American depository shares (Symbol: CX), each representing ten Ordinary Participation Certificates (*Certificados de Participación Ordinarios*) of Counterparty. |
| Trade Date: | As set forth in the Confirmation for such Transaction |
| Tranches: | Each Transaction will be divided into individual Tranches, each with the terms set forth in this Master Confirmation and the Confirmation for such Transaction, and in particular with the Number of Options and Expiration Date set forth in the Confirmation for such Transaction. The payments and deliveries to be made upon settlement of each Transaction will be determined separately for each Tranche as if each Tranche were a separate Transaction under the Agreement. |
| Number of Options: | For each Tranche of such Transaction, as set forth in the Confirmation for such Transaction |
| Option Entitlement: | One Share per Option |
| Lower Strike Price: | As set forth in the Confirmation for such Transaction |
| Upper Strike Price: | As set forth in the Confirmation for such Transaction |
| Premium: | As set forth in the Confirmation for such Transaction |
| Premium Payment Date: | As set forth in the Confirmation for such Transaction |
| Exchange: | New York Stock Exchange |
| Related Exchanges: | All Exchanges |

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| Calculation Agent: | Dealer, which shall make all calculations, adjustments and determinations required pursuant to a Transaction in a good faith and commercially reasonable manner, and upon request of Counterparty shall provide to Counterparty written support (without disclosing any of Dealer's proprietary models) as to any such calculations, adjustments and determinations required pursuant to a Transaction. |

**4. Procedure for Exercise and Valuation:**

In respect of any Tranche:

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| Expiration Time: | The Valuation Time |
| Expiration Date: | As provided in the relevant Confirmation (or, if such date is not a Scheduled Trading Day, the next following Scheduled Trading Day that is not already an Expiration Date for another Tranche); provided that if that date is a Disrupted Day, the Expiration Date for such Tranche shall be the first succeeding Scheduled Trading Day that is not a Disrupted Day and is not or is not deemed to be an Expiration Date in respect of any other Tranche of any Transaction hereunder; and provided further that if the Expiration Date has not occurred pursuant to the preceding proviso as of the Final Disruption Date, the Final Disruption Date shall be the Expiration Date (irrespective of whether such date is an Expiration Date in respect of any other Tranche for the Transaction). Notwithstanding the foregoing and anything to the contrary in the Definitions, if a Market Disruption Event occurs on any Expiration Date, the Calculation Agent may determine that such Expiration Date is a Disrupted Day only in part, in which case the Calculation Agent shall determine that such day shall be the Expiration Date for a portion of the Number of Options for the relevant Tranche and shall designate the Scheduled Trading Day determined in the manner described in the immediately preceding sentence as the Expiration Date for the remaining Options for such Tranche. Section 6.6 of the Definitions shall not apply to any Valuation Date and the final sentence of Section 3.1(f) of the Definitions shall not apply to any Expiration Date. |
| Automatic Exercise: | Applicable |
| Seller's Telephone Number, Facsimile Number and Contact Details for Purpose of Giving Notice: | As provided in Section 13 below |
| VWAP Price: | The volume-weighted average price per Share on the Valuation Date 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 Valuation Date for any reason or is, in the Calculation Agent's reasonable discretion following notice in reasonable detail to, and consultation with, Counterparty, erroneous, or |

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| | such Valuation Date is a Disrupted Day in whole or in part, the VWAP Price shall be as reasonably determined by the Calculation Agent using, except in the case of the Final Disruption Date, a substantially similar volume-weighted method. |
| Valuation Time: | As defined in Section 6.1 of the Definitions. |
| Valuation Date: | The Expiration Date |
| Final Disruption Date: | As set forth in the Confirmation for such Transaction |
| Market Disruption Event: | The third and fourth lines of Section 6.3(a) of the Definitions are hereby amended by deleting the words "during the one hour period that ends at the relevant Valuation Time" and replacing them with "prior to the relevant Valuation Time".<br><br>Section 6.3(d) of the Definitions is hereby amended by deleting the remainder of the provision following the term "Scheduled Closing Time" in the fourth line thereof. |

**5. Settlement Terms:**

In respect of any Tranche:

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| Settlement Method: | Cash Settlement |
| Settlement Currency: | USD |
| Cash Settlement: | Settlement shall occur in accordance with Section 8.1 of the Definitions. |
| Cash Settlement Payment Date: | For each Tranche, the third Currency Business Day after the Valuation Date for such Tranche. |
| Strike Price Differential: | An amount equal to the lesser of:<br><br>(i) the greater of (a) the VWAP Price minus the Lower Strike Price and (b) zero; and<br><br>(ii) the Upper Strike Price minus the Lower Strike Price. |

**6. Dividends:**

In respect of any Tranche:

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| Dividend Adjustments: | If at any time during the period from and including the date that is one Settlement Cycle following the Trade Date to but excluding the date that is one Settlement Cycle following the Expiration Date a record date for a distribution, dividend or recapitalization of retained earnings by an Underlying Issuer occurs, then, and upon consultation with Buyer which shall be taken into account in good faith by the Calculation Agent, (i) if such event (including, for the avoidance of doubt, a |

recapitalization of retained earnings by an Underlying Issuer) results in a corresponding record date (whether or not falling on the same date) for a Share dividend (excluding a Share dividend in connection with a circumstance described in clause (ii) below), the Calculation Agent (x) shall make an adjustment to the Lower Strike Price and the Option Entitlement that corresponds to the adjustment methodology for such type of dividend set forth in the Indenture (as set forth in the Confirmation for such Transaction) and (y) shall make a proportionate adjustment to the Upper Strike Price on the same basis as the adjustment to the Lower Strike Price described above, and (ii) if (1) such event results in a corresponding record date for a cash dividend on the Shares or both a Share dividend and a cash dividend on the Shares, (2) the holders of the Shares would be entitled to elect the form of consideration they receive, including the right to acquire Shares with a cash dividend, or would not be entitled to receive the entire distribution of Underlying Shares in Shares with respect to a corresponding record date for such event, (3) such event results in both (x) a change to the number of Underlying Shares represented, directly or indirectly, by a Share and (y) an adjustment to the "Conversion Rate" (as defined in the Indenture) for the Convertible Notes (as set forth in the Confirmation for such Transaction) and/or (4) with respect to such event, Counterparty makes a discretionary adjustment to the "Conversion Rate" (as defined in the Indenture) for the Convertible Notes or determines under the Indenture that the adjustments set forth in the Indenture do not provide a fair and equitable result, then the Calculation Agent (A) shall make an adjustment to the Lower Strike Price and the Option Entitlement that corresponds to the adjustment methodology for such type of dividend set forth in the Indenture and (B) shall make adjustments consistent with the Calculation Agent Adjustment provision in Section 11.2(c) of the Definitions (as modified herein) to the Upper Strike Price and/or any other term of the Transaction (except the Lower Strike Price and Option Entitlement) to preserve the fair value of the Transaction after taking into account the effect of such event (including whether such event, taken as a whole, effectively resulted in a Share dividend) and any adjustment made pursuant to clause (ii)(A) above; *provided* that, notwithstanding the foregoing, if Counterparty does not initially make an adjustment to the "Conversion Rate" with respect to such event due to the prescribed adjustment not reaching the one percent threshold for such adjustments described in the Indenture, no adjustment will be made pursuant to clauses (i) or (ii) with respect to such event until any such time as such adjustments occur pursuant to the Indenture. Counterparty shall provide to Dealer written notice (such notice, a "Conversion Rate Adjustment Notice") as soon as reasonably practicable but in any event prior to the corresponding record date for such an event that would lead to a change in the "Conversion Rate" (as defined in the Indenture) (a "Conversion Rate Adjustment Event"), which Conversion Rate Adjustment Notice shall set forth in

reasonable detail the adjustment to the "Conversion Rate" resulting from such Conversion Rate Adjustment Event. In connection with the delivery of any Conversion Rate Adjustment Notice to Dealer, unless all information included in such Conversion Rate Adjustment Notice has previously been provided to holders of the Convertible Notes, Counterparty shall, concurrently with or prior to such delivery, (x) publicly announce and disclose the Conversion Rate Adjustment Event and the resulting adjustment to the "Conversion Rate" or (y) represent and warrant that the information set forth in such Conversion Rate Adjustment Notice does not constitute material non-public information with respect to Counterparty, the Shares or the Underlying Shares.

**7. Share Adjustments:**

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| Method of Adjustment: | Calculation Agent Adjustment; provided, however, that the Definitions shall be amended by (i) replacing the words "diluting or concentrative" in Sections 11.2(a), 11.2(c) (in two instances) and 11.2(e)(vii), and Section 2(a) of the DR Supplement, with the word "material", (ii) by adding the words "or the Transaction" after the words "theoretical value of the relevant Shares" in Sections 11.2(a), 11.2(c) and 11.2(e)(vii), and Section 2(a) of the DR Supplement, and (iii) replacing the words "the Strike Price," in Section 11.2(c)(A) with the words "the Lower Strike Price, the Upper Strike Price,"; provided, further, that adjustments may be made to account for changes in volatility, expected dividends, stock loan rate and liquidity relative to the relevant Share or the Transaction. |

**8. Extraordinary Events:**

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| New Shares: | For purposes of Merger Events and Tender Offers affecting the Issuer or Shares only (as such terms would be defined absent any modification in the DR Supplement), in the definition of New Shares in Section 12.1(i) of the Definitions, (a) the text in clause (i) thereof shall be deleted in its entirety (including the word "and" following clause (i)) and replaced with "publicly quoted, traded or listed on any of the New York Stock Exchange, the American Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or their respective successors)," and (b) the phrase "and (iii) of an entity or person organized under the laws of the United States, any State thereof or the District of Columbia" shall be inserted immediately prior to the period. |
| Consequences of Merger Events: | |
| (a) Share-for-Share: | Modified Calculation Agent Adjustment |
| (b) Share-for-Other: | Cancellation and Payment (Calculation Agent Determination) |

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| (c) Share-for- Combined: | Component Adjustment |
| Tender Offer: | Applicable; provided that Sections 12.1(d), 12.1(e) and 12.1(l)(ii) of the Definitions are hereby amended by replacing "voting shares" with "Shares" prior to the application of the DR Amendment. |
| Consequences of Tender Offers: | |
| (a) Share-for-Share: | Modified Calculation Agent Adjustment |
| (b) Share-for-Other: | Cancellation and Payment (Calculation Agent Determination) |
| (c) Share-for-Combined: | Component Adjustment |
| Composition of Combined Consideration: | Not Applicable |
| Nationalization, Insolvency or Delisting: | Cancellation and Payment (Calculation Agent Determination); provided that Insolvency shall not be applicable if Counterparty is a debtor (or similar participant) with respect to such Insolvency.<br><br>In addition to the provisions of Section 12.6(a)(iii) of the Definitions, it will also constitute a Delisting if the Exchange is located in the United States and the Shares are not immediately re-listed, re-traded or re-quoted on any of the New York Stock Exchange, the American Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or their respective successors); if the Shares are immediately re-listed, re-traded or re-quoted on any such exchange or quotation system, such exchange or quotation system shall thereafter be deemed to be the Exchange. |

**9. Additional Disruption Events:**

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| Change in Law: | Applicable; provided that Section 12.9(a)(ii) of the Definitions is hereby amended by (i) replacing the phrase "the interpretation" in the third line thereof with the phrase "or announcement of the formal or informal interpretation" and (ii) immediately following the word "Transaction" in clause (X) thereof, adding the phrase "in the manner contemplated by the Hedging Party on the Trade Date". |
| Insolvency Filing: | Applicable, except if Counterparty is a debtor (or similar participant) with respect to such Insolvency Filing |
| Hedging Disruption: | Applicable |
| Increased Cost of Hedging: | Applicable |
| Hedging Party: | For all applicable Additional Disruption Events, Dealer |
| Determining Party: | For all applicable Additional Disruption Events, Dealer |

**10. Acknowledgments:**

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| Non-Reliance: | Applicable |
| Agreements and Acknowledgments Regarding Hedging Activities: | Applicable |
| Additional Acknowledgments: | Applicable |

**11. Representations, Warranties and Agreements:**

(a) In connection with this Master Confirmation, each Confirmation, each Transaction to which a Confirmation relates and any other documentation relating to the Agreement, each party to this Master Confirmation represents and warrants to, and agrees with, the other party that:

(i) it is an "accredited investor" as defined in Section 2(a)(15)(ii) of the Securities Act of 1933, as amended (the " Securities Act"); and

(ii) it is an "eligible contract participant" as defined in the Commodity Exchange Act, as amended (the " CEA"), and this Master Confirmation and each Transaction hereunder are subject to individual negotiation by the parties and have not been executed or traded on a "trading facility" as defined in the CEA.

(b) Counterparty represents and warrants to, and agrees with, Dealer on the Trade Date of each Transaction that:

(i) its financial condition is such that it has no need for liquidity with respect to its investment in such Transaction and no need to dispose of any portion thereof to satisfy any existing or contemplated undertaking or indebtedness, its investments in and liabilities in respect of such Transaction, which it understands are not readily marketable, are not disproportionate to its net worth, and it is able to bear any loss in connection with such Transaction, including the loss of its entire investment in such Transaction;

(ii) it understands that Dealer has no obligation or intention to register such Transaction under the Securities Act or any state securities law or other applicable federal or non-U.S. securities laws;

(iii) it understands that no obligations of Dealer to it hereunder will be entitled to the benefit of deposit insurance and that such obligations will not be guaranteed by any Affiliate of Dealer or any governmental agency;

(iv) IT UNDERSTANDS THAT SUCH TRANSACTION IS SUBJECT TO COMPLEX RISKS THAT MAY ARISE WITHOUT WARNING AND MAY AT TIMES BE VOLATILE AND THAT LOSSES MAY OCCUR QUICKLY AND IN UNANTICIPATED MAGNITUDE AND IS WILLING TO ACCEPT SUCH TERMS AND CONDITIONS AND ASSUME (FINANCIALLY AND OTHERWISE) SUCH RISKS;

(v) (A) Counterparty is not aware of any material non-public information regarding Counterparty, the Shares or the Underlying Shares and (B) each of its filings under the Securities Exchange Act of 1934, as amended (the " Exchange Act"), or other applicable securities laws that were required to be filed since January 1, 2010 have been filed and as of the date of this representation, when considered as a whole (with the more recent such reports and documents deemed to amend inconsistent statements contained in any earlier such report or document), there is no misstatement of material fact contained therein or omission of a material fact required to be stated therein or necessary to make the statements made therein, in the light of the circumstances under which they were made, not misleading;

(vi) on the Trade Date, transactions in the Shares or the Underlying Shares are not prohibited by Regulation M under the Exchange Act ( "Regulation M") as a result of such transactions meeting the requirements of the exceptions set forth in Rules 101(b)(10) and 102(b)(7) of Regulation M;

(vii) it is not entering into, or exercising any right under, any Transaction to create, and will not engage in any other securities or derivatives transactions to create, actual or apparent trading activity in the Shares or the Underlying Shares (or any security convertible into or exchangeable for Shares or Underlying Shares) or to raise or depress or to manipulate the price of the Shares or the Underlying Shares (or any security convertible into or exchangeable for Shares or Underlying Shares) or to otherwise violate any applicable laws or other restrictions applicable to Counterparty;

(viii) it shall deliver to Dealer opinions of counsel, dated as of the Effective Date, with respect to the matters set forth in Section 3(a) of the Agreement;

(ix) on the Trade Date, other than purchases from, by or on behalf of directors, officers and employees of Counterparty and its affiliates that are not "Rule 10b-18 purchases" as such term is defined in Rule 10b-18 under the Exchange Act (" Rule 10b-18"), neither Counterparty nor any "affiliated purchaser" (as defined in Rule 10b-18) shall directly or indirectly purchase, offer to purchase, place any bid or limit order that would effect a purchase of, or commence any tender offer relating to, any Shares or Underlying Shares;

(x) on the Trade Date and the Premium Payment Date for such Transaction (A) the assets of Counterparty at their fair valuation exceed the liabilities of Counterparty, including contingent liabilities, (B) the capital of Counterparty is adequate to conduct the business of Counterparty, and (C) Counterparty has the ability to pay its debts and obligations as such debts mature and does not intend to, or does not believe that it will, incur debt beyond its ability to pay as such debts mature;

(xi) it is not, and after giving effect to the transactions contemplated hereby will not be, and "investment company" as such term is defined in the Investment Company Act of 1940, as amended; and

(xii) it is not on the Trade Date for such Transaction engaged in a distribution, as such term is used in Regulation M, of any securities of Counterparty (other than a distribution meeting the requirements of the exception set forth in Rules 101(b)(10) and 102(b)(7) of Regulation M) and shall not, until the second Scheduled Trading Day immediately following the Effective Date (as set forth in the Confirmation for a Transaction), engage in any such distribution.

**12. Miscellaneous:**

(a) Early Termination. The parties agree that Second Method and Loss will apply to each Transaction under this Master Confirmation as such terms are defined under the 1992 ISDA Master Agreement (Multicurrency-Cross Border).

(b) Repurchase Notices. Counterparty shall, on any day on which Counterparty effects any repurchase of Shares or Underlying Shares, promptly give Dealer a written notice of such repurchase (a " Repurchase Notice") on such day if, following such repurchase, the Ratio Equity Percentage as determined on such day is (i) equal to or greater than 8.0% and (ii) greater by 0.5% than the Ratio Equity Percentage included in the immediately preceding Repurchase Notice (or, in the case of the first such Repurchase Notice, greater by 0.5% than the Ratio Equity Percentage as of the date hereof). The " Ratio Equity Percentage" as of any day is the fraction the numerator of which is the aggregate of the Base Amounts for (1) all Tranches for all Transactions hereunder, (2) all transactions of the type described in the definition of "Specified Transactions" relating to Shares or Underlying Shares between Dealer and Counterparty or their respective Affiliates and (3) all transactions of the type described in the definition of "Specified Transactions" relating to Shares or Underlying Shares between Dealer or its Affiliates and trusts or other entities with respect to which the beneficiaries or grantors (however described) are Counterparty, its Affiliates and/or employees of Counterparty or its Affiliates (the transactions described in clauses (1), (2) and (3)

collectively, the "Specified Portfolio") and the denominator of which is the number of Underlying Shares outstanding on such day and the " Base Amount" for a Tranche or a transaction is an amount equal to the product of the Number of Shares (or similar term in the relevant transaction) for such Tranche or transaction, as applicable and, if such Tranche or transaction is denominated in Shares, the number of Underlying Shares represented by a Share.

(c) Section 16 Indemnity. If Counterparty ceases to be a "foreign private issuer" (as defined in Rule 3b-4 under the Exchange Act) at any time during the term of this Transaction, Counterparty agrees to indemnify and hold harmless Dealer and its Affiliates and their respective officers, directors and controlling persons (each, a "Section 16 Indemnified Person") from and against any and all losses (including losses relating to Dealer's hedging activities as a consequence of becoming, or of the risk of becoming, subject to the reporting and profit disgorgement provisions of Section 16 of the Exchange Act, including without limitation, any forbearance from hedging activities or cessation of hedging activities and any losses in connection therewith with respect to any Transaction), claims, damages, judgments, liabilities and expenses (including reasonable attorney's fees), joint or several, to which a Section 16 Indemnified Person may become subject, as a result of Counterparty's failure to provide Dealer with a Repurchase Notice on the day and in the manner specified in this paragraph (b), and to reimburse, upon written request, each such Section 16 Indemnified Person for any reasonable legal or other expenses incurred in connection with investigating, preparing for, providing testimony or other evidence in connection with or defending any of the foregoing. If any suit, action, proceeding (including any governmental or regulatory investigation), claim or demand shall be brought or asserted against any Section 16 Indemnified Person, such Section 16 Indemnified Person shall promptly notify Counterparty in writing, and Counterparty, upon request of such Section 16 Indemnified Person, shall retain counsel reasonably satisfactory to such Section 16 Indemnified Person to represent such Section 16 Indemnified Person and any others Counterparty may designate in such proceeding and shall pay the fees and expenses of such counsel related to such proceeding. Counterparty shall be relieved from liability to the extent that such Section 16 Indemnified Person fails to promptly notify Counterparty of any action commenced against it in respect of which indemnity may be sought hereunder; provided that failure to notify Counterparty (i) shall not relieve Counterparty from any liability hereunder to the extent it is not materially prejudiced as a result thereof and (ii) shall not, in any event, relieve Counterparty from any liability that it may have otherwise than on account of this paragraph (c). Counterparty shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, Counterparty agrees to indemnify any Section 16 Indemnified Person from and against any loss or liability by reason of such settlement or judgment. Counterparty shall not, without the prior written consent of each Section 16 Indemnified Person, effect any settlement of any pending or threatened proceeding in respect of which any Section 16 Indemnified Person is or could have been a party and indemnity could have been sought hereunder by any such Section 16 Indemnified Person, unless such settlement includes an unconditional release of each such Section 16 Indemnified Person from all liability on claims that are the subject matter of such proceeding on terms reasonably satisfactory to each such Section 16 Indemnified Person. If the indemnification provided for in this paragraph (c) is unavailable to a Section 16 Indemnified Person or insufficient in respect of any losses, claims, damages or liabilities referred to therein, then Counterparty, in lieu of indemnifying such Section 16 Indemnified Person thereunder, shall contribute to the amount paid or payable by such Section 16 Indemnified Person as a result of such losses, claims, damages or liabilities. The remedies provided for in this paragraph (c) are not exclusive and shall not limit any rights or remedies that may otherwise be available to any Section 16 Indemnified Person at law or in equity. The indemnity and contribution agreements contained in this paragraph (c) shall remain operative and in full force and effect regardless of the termination of any Transaction.

(d) Transfer or Assignment. Dealer may, with Counterparty's prior written consent (not to be unreasonably withheld or delayed), transfer or assign all (but not less than all) of its rights and obligations under any Transaction to any of its Affiliates with a rating (or whose guarantor has a rating) for its long term, unsecured and unsubordinated indebtedness equal to or better than A- by Standard & Poor's Ratings Services or its successor (" S&P"), or A3 by Moody's Investors Service, Inc. or its successor ("Moody's") or, if either S&P or Moody's ceases to rate such debt, at least an equivalent rating or better by a substitute rating agency mutually agreed by Counterparty and Dealer; *provided* that Counterparty shall not withhold or delay its consent if Dealer certifies to Counterparty that the requested transfer is made in connection with the transfer of all or substantially all similar transactions that Dealer and its affiliates are parties thereto resulting from the enactment of the Dodd Frank Wall Street Reform and Consumer Protection Act of 2010 and rules and regulation thereunder, and such transfer will not result in an increased cost to Counterparty. Counterparty may, with Dealer's prior written consent (not to be

unreasonably withheld or delayed) sell or pledge to any third party all (but not less than all) of its rights and obligations under any Transaction at a time when such Transaction is not subject to a security interest in favor of Dealer or any of its Affiliates. If, as determined in Dealer's sole discretion, (a) at any time (1) the Equity Percentage exceeds 8.5%, (2) Dealer, Dealer Group (as defined below) or any person whose ownership position would be aggregated with that of Dealer or Dealer Group (Dealer, Dealer Group or any such person, a "Dealer Person") under U.S. federal, non-U.S., state or local laws, regulations or regulatory orders applicable to ownership of Shares or Underlying Shares ("Applicable Laws"), owns, beneficially owns, constructively owns, controls, holds the power to vote or otherwise meets a relevant definition of ownership, or could be reasonably viewed as meeting any of the foregoing, in excess of a number of Shares or Underlying Shares, as applicable, equal to (x) the number of Shares or Underlying Shares, as applicable, that would give rise to reporting, registration, filing or notification obligations or other requirements (including obtaining prior approval by a state, U.S. federal or non-U.S. regulator) of a Dealer Person under Applicable Laws and with respect to which such requirements have not been met or the relevant approval has not been received *minus* (y) 1% of the number of Shares or Underlying Shares, as applicable, outstanding on the date of determination or (3) the Ratio Equity Percentage exceeds 9.9% (any such condition described in clause (1), (2) or (3), an "Excess Ownership Position") and (b) Dealer is unable, after commercially reasonable efforts, to effect a transfer or assignment on pricing and terms and within a time period reasonably acceptable to it of all or a portion of one or more Transactions pursuant to the preceding paragraph such that an Excess Ownership Position no longer exists, Dealer may designate any Scheduled Trading Day as an Early Termination Date with respect to a portion (the "Terminated Portion") of any Transaction(s), such that an Excess Ownership Position no longer exists following such partial termination. In the event that Dealer so designates an Early Termination Date with respect to a portion of any Transaction(s), a payment shall be made pursuant to Section 6 of the Agreement as if (i) an Early Termination Date had been designated in respect of a Transaction having terms identical to the Terminated Portion of the Transaction(s), (ii) Counterparty shall be the sole Affected Party with respect to such partial termination and (iii) such portion of the Transaction(s) shall be the only Terminated Transaction. The "Equity Percentage" as of any day is the fraction, expressed as a percentage, (A) the numerator of which is the number of Underlying Shares that Dealer and any of its affiliates subject to aggregation with Dealer for purposes of the "beneficial ownership" test under Section 13 of the Exchange Act and all persons who may form a "group" (within the meaning of Rule 13d-5(b)(1) under the Exchange Act) with Dealer (collectively, "Dealer Group") "beneficially own" (within the meaning of Section 13 of the Exchange Act) in connection with transactions in the Specified Portfolio without duplication on such day (or, if Counterparty ceases to be a "foreign private issuer" (as defined in Rule 3b-4 under the Exchange Act) and the equivalent calculation under Section 16 of the Exchange Act and the rules and regulations thereunder results in a higher number, such number) and (B) the denominator of which is the number of Underlying Shares outstanding on such day.

(e) Severability; Illegality. If compliance by either party with any provision of a Transaction would be unenforceable or illegal, (i) the parties shall negotiate in good faith to resolve such unenforceability or illegality in a manner that preserves the economic benefits of the transactions contemplated hereby and (ii) the other provisions of the Transaction shall not be invalidated, but shall remain in full force and effect.

(f) Waiver of Trial by Jury. EACH OF COUNTERPARTY AND DEALER HEREBY IRREVOCABLY WAIVES (ON ITS OWN BEHALF AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ON BEHALF OF ITS STOCKHOLDERS) ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO ANY TRANSACTION OR THIS MASTER CONFIRMATION OR THE ACTIONS OF DEALER OR ITS AFFILIATES IN THE NEGOTIATION, PERFORMANCE OR ENFORCEMENT THEREOF.

(g) Confidentiality. Notwithstanding any provision in this Master Confirmation, any Confirmation or the Agreement, in connection with Section 1.6011-4 of the Treasury Regulations, the parties hereby agree that each party (and each employee, representative, or other agent of such party) may disclose to any and all persons, without limitation of any kind, the U.S. tax treatment and U.S. tax structure of the Transaction and all materials of any kind (including opinions or other tax analyses) that are provided to such party 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.

(h) Securities Contract; Swap Agreement. The parties hereto intend for: (i) each Transaction hereunder to be a "securities contract" and a "swap agreement" as defined in the Bankruptcy Code (Title 11 of the United States Code) (the "Bankruptcy Code"), a derivatives transaction under the Mexican *Ley de Concursos Mercantiles*, the Agreement to be a "master netting agreement" and the parties hereto to be entitled to the protections afforded by, among other Sections, Sections 362(b)(6), 362(b)(17), 362(o), 546(e), 546(g), 546(j), 548(d), 555, 560 and 561 of the Bankruptcy Code and the applicable provisions of the *Ley de Concursos Mercantiles*; (ii) a party's right to liquidate a Transaction and to exercise any other remedies upon the occurrence of any Event of Default under the Agreement with respect to the other party to constitute a "contractual right … to cause the liquidation, termination or acceleration" and any payments owed under this Transaction or the Agreement with respect thereto to be a "termination value", "payment amount" or "other transfer obligation", in each case as described in the Bankruptcy Code; (iii) all payments for, under or in connection with a Transaction to constitute "margin payments", "settlement payments" and/or "transfers" under a "securities contract" and/or "swap agreement" as defined in the Bankruptcy Code; and (iv) each party hereto to be a "master netting agreement participant", "financial institution", "swap participant" and/or a "financial participant" as defined in the Bankruptcy Code.

(i) Extension of Settlement. Dealer may postpone any Expiration Date, postpone the Final Disruption Date and/or add additional Expiration Dates with respect to some or all of the Options under any Tranche hereunder (provided that none of such postponed or added Expiration Dates shall occur later than the 20th Scheduled Trading Day immediately succeeding the last Expiration Date (determined without regard to this provision) for the relevant Transaction) if Dealer determines, in its reasonable discretion, that such extension is necessary or advisable to preserve Dealer's hedging activity hereunder in light of existing liquidity conditions or to enable Dealer to effect purchases or sales of Shares or Underlying Shares in connection with its hedging activity hereunder in a manner that would, if Dealer were Counterparty or an affiliated purchaser of Counterparty, be in compliance with applicable legal and regulatory requirements or self-regulatory requirements, or with related reasonable policies and procedures applicable to Dealer.

(j) Registration. Counterparty hereby agrees that if the Shares or Underlying Shares (the "Hedge Shares") acquired by Dealer for the purpose of hedging its obligations pursuant to the Transaction, in Dealer's sole judgment, cannot be sold in the U.S. public market (including by depositing such Underlying Shares with the Depository in exchange for Shares) by Dealer without registration under the Securities Act, Counterparty shall, at its election: (i) in order to allow Dealer to sell the Hedge Shares in a registered offering, make available to Dealer an effective registration statement under the Securities Act to cover the resale of such Hedge Shares and (A) enter into an agreement, in form and substance satisfactory to Dealer and Counterparty, substantially in the form of an underwriting agreement for a registered secondary offering, (B) provide accountant's "comfort" letters in customary form for registered offerings of equity securities, (C) provide disclosure opinions of nationally recognized outside counsel to Counterparty reasonably acceptable to Dealer, (D) provide other customary opinions, certificates and closing documents customary in form for registered offerings of equity securities and (E) afford Dealer a reasonable opportunity to conduct a "due diligence" investigation with respect to Counterparty customary in scope for underwritten offerings of equity securities; provided that if Dealer, in its sole reasonable discretion, is not satisfied with access to due diligence materials, the results of its due diligence investigation, or the procedures and documentation for the registered offering referred to above, then, subject to the conditions set forth therein, clause (ii) or (iii) of this section shall apply at the election of Counterparty; (ii) in order to allow Dealer to sell the Hedge Shares in a private placement, enter into a private placement agreement substantially similar to private placement Underwriting Agreements customary for private placements of equity securities, in form and substance satisfactory to Dealer and Counterparty, including customary representations, covenants, blue sky and other governmental filings and/or registrations, indemnities to Dealer, due diligence rights (for Dealer or any designated buyer of the Hedge Shares from Dealer), opinions and certificates and such other documentation as is customary for private placements agreements, all reasonably acceptable to Dealer (in which case, the Calculation Agent shall make any adjustments to the terms of the Transaction that are necessary, in its reasonable judgment, to compensate Dealer for any discount from the public market price of the Shares incurred on the sale of Hedge Shares in a private placement); or (iii) to the extent that such purchases would not violate any applicable law or other restriction applicable to Counterparty, purchase the Hedge Shares from Dealer at the VWAP Price on such Exchange Business Days (with references to "Valuation Date" in the definition of "VWAP Price" deemed to be references to such Exchange Business Days for this purpose), and in such amounts, requested by Dealer. This paragraph (j) shall survive the termination, expiration or early unwind of the Transaction.

(k) Early Unwind. In the event the sale of Convertible Notes for the Transaction (as set forth in the Confirmation for such Transaction) is not consummated with the initial purchasers for any reason by the close of business in New York City on the Early Unwind Date set forth in the Confirmation for such Transaction, such Transaction shall automatically terminate on such Early Unwind Date and (i) such Transaction and all of the respective rights and obligations of Dealer and Counterparty under such Transaction shall be cancelled and terminated and (ii) each party shall be released and discharged by the other party from and agrees not to make any claim against the other party with respect to any obligations or liabilities of the other party arising out of and to be performed in connection with such Transaction either prior to or after such Early Unwind Date; provided that, if such failure is due to a breach or default on the part of Counterparty under the Purchase Agreement dated as of March 9, 2011 among CEMEX, S.A.B. de C.V. and Citigroup Global Markets, Inc. and J.P. Morgan Securities LLC, among others, as representatives of the "Initial Purchasers" (as defined therein), Counterparty shall assume, or reimburse the cost of, derivatives or other transactions entered into by Dealer or one or more of its Affiliates in connection with hedging such Transaction. The amount paid by Counterparty shall be Dealer's actual cost of such derivatives or other transactions as Dealer informs Counterparty and shall be paid in immediately available funds on such Early Unwind Date.

(l) Acknowledgment of Pledge. Counterparty's rights under the Agreement may, from time to time, be pledged to Dealer to secure Counterparty's obligations to Dealer arising under other agreements in accordance with such terms as the parties may separately agree.

(m) Optional Early Termination. (i) At any time during the term of this Transaction, Counterparty may, by written notice to Dealer, designate, with respect to one or more specified Tranches, an Early Termination Date to occur on the third Scheduled Trading Day following the date such notice is effective, in which case an Additional Termination Event shall be deemed to have occurred in respect of which (1) Counterparty shall be the sole Affected Party and (2) the portion of the relevant Transaction represented by such Tranche(s) shall be the sole Affected Transaction.

(ii) Counterparty may, prior to electing to terminate any Tranche pursuant to subparagraph (i) above, request a quotation (which may be in the form of a grid of percentages that depends on the price of the Shares or Underlying Shares over a specified period) from Dealer as to the applicable terms of such termination, and Dealer shall be bound by the terms of such quotation if Counterparty then makes such election within one full Scheduled Trading Day.

(iii) By providing the notice referred to in this paragraph, Counterparty shall be deemed to repeat, on the date such notice is effective, the representations in clauses (v), (vi), (vii) and (ix) of Section 11(b).

(n) Counterparty's Obligation to Pay Cancellation Amounts and Early Termination Amounts. Seller and Counterparty hereby agree that, notwithstanding anything to the contrary herein or in the Agreement, following Seller's receipt from Counterparty of the Premium on the Premium Payment Date, in the event that (a) an Early Termination Date (whether as a result of an Event of Default or a Termination Event) occurs or is designated with respect to a Transaction and, as a result, Counterparty owes to Seller an amount under Section 6(e) of the Agreement or (b) Counterparty owes to Seller, pursuant to Section 12.7 or Section 12.9 of the Definitions, a Cancellation Amount, such amount shall be deemed to be zero. If Counterparty pays the Premium on the Premium Payment Date, then under no circumstances shall Counterparty be required to pay any amount in addition to the Premium under the Transaction. For the avoidance of doubt, the preceding sentence shall not be construed as limiting any damages that may be payable by Counterparty as a result of a breach of, or an indemnity under, this Master Confirmation or the Agreement.

(o) Modifications to DR Supplement. The DR Supplement is hereby amended as follows:

(i) The definitions of the following terms in Section 1 thereof are hereby deleted and replaced as follows:

"Depository" means, in relation to the Shares or the Underlying Shares, the Issuer of the Shares or the Underlying Shares, as applicable.

"Deposit Agreement" means, in relation to the Shares or the Underlying Shares, the agreements, deeds or other instruments constituting the Shares or Underlying Shares, as applicable, as from time to time amended or supplemented in accordance with their terms.

"Underlying Shares" means, in relation to the applicable Deposit Agreement, the shares or other securities which are the subject of such Deposit Agreement.

"Underlying Shares Issuer" means, in relation to the applicable Underlying Shares, the issuer of such Underlying Shares.

(ii) Section 2(c) thereof is hereby deleted in its entirety.

(iii) Section 3(a) thereof is hereby amended by adding in the second line therein after the term "'Share-for-Combined'" the following parenthetical: "(including defined terms used in such definitions)".

(p) Settlement Amendment. Dealer acknowledges that Counterparty may, to the extent permitted by law and any agreements Counterparty may be subject to, prior to the settlement of any Transaction hereunder, request that the provisions of this Master Confirmation be modified to enable Counterparty to effect share settlement in lieu of the settlement provisions under Section 5 of this Master Confirmation. In the event of such a request, Dealer agrees to negotiate with Counterparty, in good faith, such amendments to this Master Confirmation as may be required to effect such changes, it being understood and agreed that as of the date hereof, Counterparty has no right or option to require share settlement of any Transaction hereunder; *provided* that Dealer may in good faith refuse to enter into any such amendments so as to comply with applicable legal and regulatory requirements or self-regulatory requirements, or with related policies and procedures applicable to Dealer.

**13. Addresses for Notice:**

| | |
|---|---|
| If to Dealer: | HSBC Bank USA, National Association<br>1 West 39th Street, 3rd Fl.<br>New York, NY 10018<br>Attention: Swap Documentation<br>Facsimile No.: 212-525-0673<br>Telephone No.: 212-525-6888<br>E-mail: eqsfdocs@us.hsbc.com |
| with a copy to: | Frank Weigand - Legal<br>Facsimile No.: 646-366-3803<br>Telephone No.: 212-525-0939<br>E-mail: frank.weigand@us.hsbc.com |
| If to Counterparty: | CEMEX, S.A.B. de C.V.<br>Avenida Ricardo Margain Zozaya 325<br>Colonia Valle del Campestre<br>San Pedro Garza Garcia, Nuevo Leon 66265<br>Attention: Francisco Javier Contreras Navarro<br>Financial Operations Manager - Corporate Treasury - Mexico<br>Office : +52(81)88884093<br>Fax: +52(81)88884519<br>e-Mail: franciscojavier.contreras@cemex.com |

**14. Accounts for Payment:**

| | | |
|---|---|---|
| To Dealer: | [ | ] |
| | ABA #[ | ] |
| | DDA [ | ] |
| | Ref: [ | ] |
| To Counterparty: | Beneficiary: | CEMEX, S.A.B. de C.V. |
| | Bank: | Citibank, NY |
| | Account: | 36964215 |
| | ABA: | 021000089 |
| | SWIFT: | CITIUS33 |

**15. Schedule Provisions:**

(a) Process Agent. For the purpose of Section 13(c) of the Agreement:

Counterparty appoints as its Process Agent:

Corporate Creations Network Inc.
1040 Avenue of the Americas #2400
New York, NY 10018
Fax: (561) 694-1639
Tel: (212) 382-4699

(b) Delivery of Tax Forms. For the purposes of Section 4(a)(i) of the Agreement, Counterparty agrees to deliver such documents as Dealer may request in order to allow Dealer to make a payment under this Transaction without any deduction or withholding for or on account of any Tax or with such deduction or withholding at a reduced rate including, without limitation, an executed United States Internal Revenue Service Form W-8BEN (or any successor thereto), (i) upon execution of this Transaction; (ii) promptly upon reasonable demand by Dealer; and (iii) promptly upon learning that any such document, including Form W-8BEN (or any successor thereto), previously provided by Counterparty has become obsolete or incorrect.

**16. Valuation Notice:**

Dealer agrees to provide to Counterparty, as soon as practicable following the end of each calendar month, a statement showing the Exposure (within the meaning of the 1994 ISDA Credit Support Annex), calculated with respect to the Transaction and determined as if such last day (or the immediately preceding Exchange Business Day) was the Valuation Date.

[Signature page follows]

Yours sincerely,

HSBC BANK USA, NATIONAL ASSOCIATION

By: /s/ Julie Y. Mei
Name: Julie Y. Mei
Title: Vice President
ID # 14537

Confirmed as of the
date first above written:

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

By: /s/ Rodrigo Treviño
Name: Rodrigo Treviño
Title: Attorney-in-Fact

**EXHIBIT A**
**FORM OF CAPPED CALL OPTION**
**TRANSACTION CONFIRMATION**

CONFIRMATION

| | |
|---|---|
| Date: | March [ ], 2011 |
| To: | CEMEX, S.A.B. de C.V. ("Counterparty") |
| Telefax No.: | +52(81)88884519 |
| Attention: | Francisco Javier Contreras Navarro - Financial Operations Manager - Corporate Treasury - Mexico |
| From: | HSBC Bank USA, National Association ("Dealer") |
| Telefax No.: | 212-525-0673 |

Transaction Reference Number: _____

The purpose of this communication (this "Confirmation") is to set forth the terms and conditions of the above-referenced Transaction (the "Transaction") entered into on the Trade Date specified below between you and us. This Confirmation supplements, forms a part of, and is subject to the Master Terms and Conditions for Capped Call Transactions dated as of March 9, 2011 and as amended from time to time (the "Master Confirmation") between you and us.

1. The definitions and provisions contained in the Definitions (as such term is defined in the Master Confirmation) and in the Master Confirmation are incorporated into this Confirmation. In the event of any inconsistency between those definitions and provisions and this Confirmation, this Confirmation will govern.

2. The particular Transaction to which this Confirmation relates shall have the following terms:

| | |
|---|---|
| Trade Date: | March [ ], 2011 |
| Effective Date: | The closing date of the initial issuance of the Convertible Notes. |
| Lower Strike Price: | USD [ ]. |
| Upper Strike Price: | USD [ ]. |
| Initial Reference Price: | USD [*Insert Exchange closing price per share for the Shares on the Trade Date*] |
| Premium: | USD [ ]. |
| Premium Payment Date: | The Effective Date |
| Convertible Notes: | [ ]% Convertible Subordinated Notes of Counterparty due [ ], offered pursuant to an Offering Memorandum to be dated [ ]. |
| Indenture: | The indenture governing the issuance of the Convertible Notes to be dated as of the closing date of the initial issuance of the Convertible Notes, by and between Counterparty and The Bank of New York |

| | |
|---|---|
| | Mellon, as trustee (as may be amended, modified or supplemented from time to time, but only if such amendment, modification or supplement is consented to by Dealer in writing, which consent shall not be unreasonably withheld or delayed). |
| Early Unwind Date: | [ ], 2011, or such later date as agreed by the parties hereto. |
| Final Disruption Date: | [ ] |

[Remainder of page intentionally left blank]

The Number of Options and Expiration Date for each Tranche of the Transaction are set forth below.

| Tranche Number | Number of Options | Expiration Date |
|---|---|---|
| 1. | [ ] | [ ] |
| 2. | [ ] | [ ] |
| 3. | [ ] | [ ] |
| 4. | [ ] | [ ] |
| 5. | [ ] | [ ] |
| 6. | [ ] | [ ] |
| 7. | [ ] | [ ] |
| 8. | [ ] | [ ] |
| 9. | [ ] | [ ] |
| 10. | [ ] | [ ] |
| 11. | [ ] | [ ] |
| 12. | [ ] | [ ] |
| 13. | [ ] | [ ] |
| 14. | [ ] | [ ] |
| 15. | [ ] | [ ] |
| 16. | [ ] | [ ] |
| 17. | [ ] | [ ] |
| 18. | [ ] | [ ] |
| 19. | [ ] | [ ] |
| 20. | [ ] | [ ] |
| 21. | [ ] | [ ] |
| 22. | [ ] | [ ] |
| 23. | [ ] | [ ] |
| 24. | [ ] | [ ] |
| 25. | [ ] | [ ] |
| 26. | [ ] | [ ] |
| 27. | [ ] | [ ] |
| 28. | [ ] | [ ] |
| 29. | [ ] | [ ] |
| 30. | [ ] | [ ] |
| 31. | [ ] | [ ] |
| 32. | [ ] | [ ] |
| 33. | [ ] | [ ] |
| 34. | [ ] | [ ] |
| 35. | [ ] | [ ] |
| 36. | [ ] | [ ] |
| 37. | [ ] | [ ] |
| 38. | [ ] | [ ] |
| 39. | [ ] | [ ] |
| 40. | [ ] | [ ] |
| 41. | [ ] | [ ] |
| 42. | [ ] | [ ] |
| 43. | [ ] | [ ] |
| 44. | [ ] | [ ] |
| 45. | [ ] | [ ] |
| 46. | [ ] | [ ] |
| 47. | [ ] | [ ] |
| 48. | [ ] | [ ] |
| 49. | [ ] | [ ] |
| 50. | [ ] | [ ] |
| 51. | [ ] | [ ] |

| | | |
|---|---|---|
| 52. | [ ] | [ ] |
| 53. | [ ] | [ ] |
| 54. | [ ] | [ ] |
| 55. | [ ] | [ ] |
| 56. | [ ] | [ ] |
| 57. | [ ] | [ ] |
| 58. | [ ] | [ ] |
| 59. | [ ] | [ ] |
| 60. | [ ] | [ ] |

3. Counterparty hereby agrees (a) to check this Confirmation promptly upon receipt so that errors or discrepancies can be promptly identified and rectified and (b) to confirm that the foregoing correctly sets forth the terms of the agreement between us with respect to the particular Transaction to which this Confirmation relates, by manually signing this Confirmation and providing any other information requested herein or in the Master Confirmation and immediately returning an executed copy to us.

Yours sincerely,

HSBC BANK USA, NATIONAL ASSOCIATION

By: _____
Name:
Title:

Confirmed as of the
date first above written:

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

By: _____
Name:
Title:

**Exhibit 4.69**

***EXECUTION VERSION***

MASTER TERMS AND CONDITIONS FOR CAPPED CALL TRANSACTIONS
BETWEEN BANCO SANTANDER, S.A. AND CEMEX, S.A.B. de C.V.

The purpose of this Master Terms and Conditions for Capped Call Transactions (this "Master Confirmation"), dated as of March 9, 2011, is to set forth certain terms and conditions for capped call option transactions that CEMEX, S.A.B. de C.V. (" Counterparty") will enter into with Banco Santander, S.A. ("Dealer"). Each such transaction (a "Transaction") entered into between Dealer and Counterparty that is to be subject to this Master Confirmation shall be evidenced by a written confirmation substantially in the form of Exhibit A hereto, with such modifications thereto as to which Counterparty and Dealer mutually agree (a "Confirmation"). This Master Confirmation and each Confirmation together constitute a "Confirmation" as referred to in the Agreement specified below.

This Master Confirmation and a Confirmation evidence a complete binding agreement between you and us as to the terms of the Transaction to which this Master Confirmation and such Confirmation relates. This Master Confirmation and each Confirmation hereunder shall supplement, form a part of, and be subject to an agreement in the form of the 1992 ISDA Master Agreement (Multicurrency – Cross Border) as if we had executed an agreement in such form (with a Schedule that had the provisions in Section 15 of this Master Confirmation and the other elections set forth in this Master Confirmation) on the Trade Date and such agreement shall be considered the "Agreement" hereunder.

The Transactions governed by this Master Confirmation shall be the sole Transactions under the Agreement. If there exists any ISDA Master Agreement between Dealer and Counterparty or any confirmation or other agreement between Dealer and Counterparty pursuant to which an ISDA Master Agreement is deemed to exist between Dealer and Counterparty, then notwithstanding anything to the contrary in such ISDA Master Agreement, such confirmation or agreement or any other agreement to which Dealer and Counterparty are parties, the Transactions governed by this Master Confirmation shall not be considered Transactions under, or otherwise governed by, such existing or deemed ISDA Master Agreement.

The definitions and provisions contained in the 2002 ISDA Equity Derivatives Definitions as supplemented by the 2007 Partial Lookthrough Depository Receipt Supplement to the 2002 ISDA Equity Derivatives Definitions (as amended in this Master Confirmation, the " DR Supplement" and the 2002 ISDA Equity Derivatives Definitions as so supplemented, the "Definitions"), each as published by ISDA are incorporated into this Master Confirmation.

THIS MASTER CONFIRMATION WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REFERENCE TO CHOICE OF LAW DOCTRINE. THE PARTIES HERETO IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND THE UNITED STATES COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, AND TO THE JURISDICTION OF THEIR OWN CORPORATE DOMICILE, IN RESPECT OF ACTIONS BROUGHT AGAINST SUCH PARTY AS A DEFENDANT, IN CONNECTION WITH ALL MATTERS RELATING HERETO AND WAIVE ANY OBJECTION TO THE LAYING OF VENUE IN, AND ANY CLAIM OF INCONVENIENT FORUM WITH RESPECT TO, THESE COURTS, AND ANY RIGHT TO WHICH ANY OF THEM MAY BE ENTITLED ON ACCOUNT OF PLACE OF RESIDENCE OR DOMICILE.

1. In the event of any inconsistency between this Master Confirmation, on the one hand, and the Definitions or the Agreement, on the other hand, this Master Confirmation will control for the purpose of the Transaction to which a Confirmation relates. In the event of any inconsistency between the Definitions, the Agreement and this Master Confirmation, on the one hand, and a Confirmation, on the other hand, the Confirmation will govern. With respect to a Transaction, capitalized terms used herein that are not otherwise defined shall have the meaning assigned to them in the Confirmation relating to such Transaction.

2. Each party will make each payment specified in this Master Confirmation or a Confirmation as being payable by such party, not later than the due date for value on that date in the place of the account specified

below or otherwise specified in writing, in freely transferable funds and in a manner customary for payments in the required currency.

3. **Confirmations and General Terms:**

This Master Confirmation and the Agreement, together with the Confirmation relating to a Transaction, shall constitute the written agreement between Counterparty and Dealer with respect to such Transaction.

Each Transaction to which a Confirmation relates is a Capped Call Option Transaction, which shall be considered a Share Option Transaction for purposes of the Definitions (with references to "Strike Price" therein deemed to include "Lower Strike Price" and/or "Upper Strike Price", as applicable), and shall have the following terms:

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| Option Style: | European |
| Option Type: | Call |
| Seller: | Dealer |
| Buyer: | Counterparty |
| Shares: | American depository shares (Symbol: CX), each representing ten Ordinary Participation Certificates (*Certificados de Participación Ordinarios*) of Counterparty. |
| Trade Date: | As set forth in the Confirmation for such Transaction |
| Tranches: | Each Transaction will be divided into individual Tranches, each with the terms set forth in this Master Confirmation and the Confirmation for such Transaction, and in particular with the Number of Options and Expiration Date set forth in the Confirmation for such Transaction. The payments and deliveries to be made upon settlement of each Transaction will be determined separately for each Tranche as if each Tranche were a separate Transaction under the Agreement. |
| Number of Options: | For each Tranche of such Transaction, as set forth in the Confirmation for such Transaction |
| Option Entitlement: | One Share per Option |
| Lower Strike Price: | As set forth in the Confirmation for such Transaction |
| Upper Strike Price: | As set forth in the Confirmation for such Transaction |
| Premium: | As set forth in the Confirmation for such Transaction |
| Premium Payment Date: | As set forth in the Confirmation for such Transaction |
| Exchange: | New York Stock Exchange |
| Related Exchanges: | All Exchanges |

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| Calculation Agent: | Dealer, which shall make all calculations, adjustments and determinations required pursuant to a Transaction in a good faith and commercially reasonable manner, and upon request of Counterparty shall provide to Counterparty written support (without disclosing any of Dealer's proprietary models) as to any such calculations, adjustments and determinations required pursuant to a Transaction. |

**4. Procedure for Exercise and Valuation:**

In respect of any Tranche:

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| Expiration Time: | The Valuation Time |
| Expiration Date: | As provided in the relevant Confirmation (or, if such date is not a Scheduled Trading Day, the next following Scheduled Trading Day that is not already an Expiration Date for another Tranche); provided that if that date is a Disrupted Day, the Expiration Date for such Tranche shall be the first succeeding Scheduled Trading Day that is not a Disrupted Day and is not or is not deemed to be an Expiration Date in respect of any other Tranche of any Transaction hereunder; and provided further that if the Expiration Date has not occurred pursuant to the preceding proviso as of the Final Disruption Date, the Final Disruption Date shall be the Expiration Date (irrespective of whether such date is an Expiration Date in respect of any other Tranche for the Transaction). Notwithstanding the foregoing and anything to the contrary in the Definitions, if a Market Disruption Event occurs on any Expiration Date, the Calculation Agent may determine that such Expiration Date is a Disrupted Day only in part, in which case the Calculation Agent shall determine that such day shall be the Expiration Date for a portion of the Number of Options for the relevant Tranche and shall designate the Scheduled Trading Day determined in the manner described in the immediately preceding sentence as the Expiration Date for the remaining Options for such Tranche. Section 6.6 of the Definitions shall not apply to any Valuation Date and the final sentence of Section 3.1(f) of the Definitions shall not apply to any Expiration Date. |
| Automatic Exercise: | Applicable |
| Seller's Telephone Number, Facsimile Number and Contact Details for Purpose of Giving Notice: | As provided in Section 13 below. |
| VWAP Price: | The volume-weighted average price per Share on the Valuation Date 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 Valuation Date for any reason or is, in the Calculation Agent's reasonable discretion following notice in reasonable detail to, and consultation with, Counterparty, erroneous, or |

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| | such Valuation Date is a Disrupted Day in whole or in part, the VWAP Price shall be as reasonably determined by the Calculation Agent using, except in the case of the Final Disruption Date, a substantially similar volume-weighted method. |
| Valuation Time: | As defined in Section 6.1 of the Definitions. |
| Valuation Date: | The Expiration Date |
| Final Disruption Date: | As set forth in the Confirmation for such Transaction |
| Market Disruption Event: | The third and fourth lines of Section 6.3(a) of the Definitions are hereby amended by deleting the words "during the one hour period that ends at the relevant Valuation Time" and replacing them with "prior to the relevant Valuation Time".<br><br>Section 6.3(d) of the Definitions is hereby amended by deleting the remainder of the provision following the term "Scheduled Closing Time" in the fourth line thereof. |

**5. Settlement Terms:**

In respect of any Tranche:

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| Settlement Method: | Cash Settlement |
| Settlement Currency: | USD |
| Cash Settlement: | Settlement shall occur in accordance with Section 8.1 of the Definitions. |
| Cash Settlement Payment Date: | For each Tranche, the third Currency Business Day after the Valuation Date for such Tranche. |
| Strike Price Differential: | An amount equal to the lesser of:<br><br>(i) the greater of (a) the VWAP Price minus the Lower Strike Price and (b) zero; and<br><br>(ii) the Upper Strike Price minus the Lower Strike Price. |

**6. Dividends:**

In respect of any Tranche:

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| Dividend Adjustments: | If at any time during the period from and including the date that is one Settlement Cycle following the Trade Date to but excluding the date that is one Settlement Cycle following the Expiration Date a record date for a distribution, dividend or recapitalization of retained earnings by an Underlying Issuer occurs, then, and upon consultation with Buyer which shall be taken into account in good faith by the Calculation Agent, (i) if such event (including, for the avoidance of doubt, a |

recapitalization of retained earnings by an Underlying Issuer) results in a corresponding record date (whether or not falling on the same date) for a Share dividend (excluding a Share dividend in connection with a circumstance described in clause (ii) below), the Calculation Agent (x) shall make an adjustment to the Lower Strike Price and the Option Entitlement that corresponds to the adjustment methodology for such type of dividend set forth in the Indenture (as set forth in the Confirmation for such Transaction) and (y) shall make a proportionate adjustment to the Upper Strike Price on the same basis as the adjustment to the Lower Strike Price described above, and (ii) if (1) such event results in a corresponding record date for a cash dividend on the Shares or both a Share dividend and a cash dividend on the Shares, (2) the holders of the Shares would be entitled to elect the form of consideration they receive, including the right to acquire Shares with a cash dividend, or would not be entitled to receive the entire distribution of Underlying Shares in Shares with respect to a corresponding record date for such event, (3) such event results in both (x) a change to the number of Underlying Shares represented, directly or indirectly, by a Share and (y) an adjustment to the "Conversion Rate" (as defined in the Indenture) for the Convertible Notes (as set forth in the Confirmation for such Transaction) and/or (4) with respect to such event, Counterparty makes a discretionary adjustment to the "Conversion Rate" (as defined in the Indenture) for the Convertible Notes or determines under the Indenture that the adjustments set forth in the Indenture do not provide a fair and equitable result, then the Calculation Agent (A) shall make an adjustment to the Lower Strike Price and the Option Entitlement that corresponds to the adjustment methodology for such type of dividend set forth in the Indenture and (B) shall make adjustments consistent with the Calculation Agent Adjustment provision in Section 11.2(c) of the Definitions (as modified herein) to the Upper Strike Price and/or any other term of the Transaction (except the Lower Strike Price and Option Entitlement) to preserve the fair value of the Transaction after taking into account the effect of such event (including whether such event, taken as a whole, effectively resulted in a Share dividend) and any adjustment made pursuant to clause (ii)(A) above; *provided* that, notwithstanding the foregoing, if Counterparty does not initially make an adjustment to the "Conversion Rate" with respect to such event due to the prescribed adjustment not reaching the one percent threshold for such adjustments described in the Indenture, no adjustment will be made pursuant to clauses (i) or (ii) with respect to such event until any such time as such adjustments occur pursuant to the Indenture. Counterparty shall provide to Dealer written notice (such notice, a "Conversion Rate Adjustment Notice") as soon as reasonably practicable but in any event prior to the corresponding record date for such an event that would lead to a change in the "Conversion Rate" (as defined in the Indenture) (a "Conversion Rate Adjustment Event"), which Conversion Rate Adjustment Notice shall set forth in

reasonable detail the adjustment to the "Conversion Rate" resulting from such Conversion Rate Adjustment Event. In connection with the delivery of any Conversion Rate Adjustment Notice to Dealer, unless all information included in such Conversion Rate Adjustment Notice has previously been provided to holders of the Convertible Notes, Counterparty shall, concurrently with or prior to such delivery, (x) publicly announce and disclose the Conversion Rate Adjustment Event and the resulting adjustment to the "Conversion Rate" or (y) represent and warrant that the information set forth in such Conversion Rate Adjustment Notice does not constitute material non-public information with respect to Counterparty, the Shares or the Underlying Shares.

**7. Share Adjustments:**

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| Method of Adjustment: | Calculation Agent Adjustment; provided, however, that the Definitions shall be amended by (i) replacing the words "diluting or concentrative" in Sections 11.2(a), 11.2(c) (in two instances) and 11.2(e)(vii), and Section 2(a) of the DR Supplement, with the word "material", (ii) by adding the words "or the Transaction" after the words "theoretical value of the relevant Shares" in Sections 11.2(a), 11.2(c) and 11.2(e)(vii), and Section 2(a) of the DR Supplement, and (iii) replacing the words "the Strike Price," in Section 11.2(c)(A) with the words "the Lower Strike Price, the Upper Strike Price,"; provided, further, that adjustments may be made to account for changes in volatility, expected dividends, stock loan rate and liquidity relative to the relevant Share or the Transaction. |

**8. Extraordinary Events:**

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| New Shares: | For purposes of Merger Events and Tender Offers affecting the Issuer or Shares only (as such terms would be defined absent any modification in the DR Supplement), in the definition of New Shares in Section 12.1(i) of the Definitions, (a) the text in clause (i) thereof shall be deleted in its entirety (including the word "and" following clause (i)) and replaced with "publicly quoted, traded or listed on any of the New York Stock Exchange, the American Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or their respective successors)," and (b) the phrase "and (iii) of an entity or person organized under the laws of the United States, any State thereof or the District of Columbia" shall be inserted immediately prior to the period. |
| Consequences of Merger Events: | |
| (a) Share-for-Share: | Modified Calculation Agent Adjustment |
| (b) Share-for-Other: | Cancellation and Payment (Calculation Agent Determination) |

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| (c) Share-for-Combined: | Component Adjustment |
| Tender Offer: | Applicable; provided that Sections 12.1(d), 12.1(e) and 12.1(l)(ii) of the Definitions are hereby amended by replacing "voting shares" with "Shares" prior to the application of the DR Amendment. |
| Consequences of Tender Offers: | |
| (a) Share-for-Share: | Modified Calculation Agent Adjustment |
| (b) Share-for-Other: | Cancellation and Payment (Calculation Agent Determination) |
| (c) Share-for-Combined: | Component Adjustment |
| Composition of Combined Consideration: | Not Applicable |
| Nationalization, Insolvency or Delisting: | Cancellation and Payment (Calculation Agent Determination); provided that Insolvency shall not be applicable if Counterparty is a debtor (or similar participant) with respect to such Insolvency.<br><br>In addition to the provisions of Section 12.6(a)(iii) of the Definitions, it will also constitute a Delisting if the Exchange is located in the United States and the Shares are not immediately re-listed, re-traded or re-quoted on any of the New York Stock Exchange, the American Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or their respective successors); if the Shares are immediately re-listed, re-traded or re-quoted on any such exchange or quotation system, such exchange or quotation system shall thereafter be deemed to be the Exchange. |

**9. Additional Disruption Events:**

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| Change in Law: | Applicable; provided that Section 12.9(a)(ii) of the Definitions is hereby amended by (i) replacing the phrase "the interpretation" in the third line thereof with the phrase "or announcement of the formal or informal interpretation" and (ii) immediately following the word "Transaction" in clause (X) thereof, adding the phrase "in the manner contemplated by the Hedging Party on the Trade Date". |
| Insolvency Filing: | Applicable, except if Counterparty is a debtor (or similar participant) with respect to such Insolvency Filing |
| Hedging Disruption: | Applicable |
| Increased Cost of Hedging: | Applicable |
| Hedging Party: | For all applicable Additional Disruption Events, Dealer |
| Determining Party: | For all applicable Additional Disruption Events, Dealer |

**10. Acknowledgments:**

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| Non-Reliance: | Applicable |
| Agreements and Acknowledgments Regarding Hedging Activities: | Applicable |
| Additional Acknowledgments: | Applicable |

**11. Representations, Warranties and Agreements:**

(a) In connection with this Master Confirmation, each Confirmation, each Transaction to which a Confirmation relates and any other documentation relating to the Agreement, each party to this Master Confirmation represents and warrants to, and agrees with, the other party that:

(i) it is an "accredited investor" as defined in Section 2(a)(15)(ii) of the Securities Act of 1933, as amended (the " Securities Act"); and

(ii) it is an "eligible contract participant" as defined in the Commodity Exchange Act, as amended (the " CEA"), and this Master Confirmation and each Transaction hereunder are subject to individual negotiation by the parties and have not been executed or traded on a "trading facility" as defined in the CEA.

(b) Counterparty represents and warrants to, and agrees with, Dealer on the Trade Date of each Transaction that:

(i) its financial condition is such that it has no need for liquidity with respect to its investment in such Transaction and no need to dispose of any portion thereof to satisfy any existing or contemplated undertaking or indebtedness, its investments in and liabilities in respect of such Transaction, which it understands are not readily marketable, are not disproportionate to its net worth, and it is able to bear any loss in connection with such Transaction, including the loss of its entire investment in such Transaction;

(ii) it understands that Dealer has no obligation or intention to register such Transaction under the Securities Act or any state securities law or other applicable federal or non-U.S. securities laws;

(iii) it understands that no obligations of Dealer to it hereunder will be entitled to the benefit of deposit insurance and that such obligations will not be guaranteed by any Affiliate of Dealer or any governmental agency;

(iv) IT UNDERSTANDS THAT SUCH TRANSACTION IS SUBJECT TO COMPLEX RISKS THAT MAY ARISE WITHOUT WARNING AND MAY AT TIMES BE VOLATILE AND THAT LOSSES MAY OCCUR QUICKLY AND IN UNANTICIPATED MAGNITUDE AND IS WILLING TO ACCEPT SUCH TERMS AND CONDITIONS AND ASSUME (FINANCIALLY AND OTHERWISE) SUCH RISKS;

(v) (A) Counterparty is not aware of any material non-public information regarding Counterparty, the Shares or the Underlying Shares and (B) each of its filings under the Securities Exchange Act of 1934, as amended (the " Exchange Act"), or other applicable securities laws that were required to be filed since January 1, 2010 have been filed and as of the date of this representation, when considered as a whole (with the more recent such reports and documents deemed to amend inconsistent statements contained in any earlier such report or document), there is no misstatement of material fact contained therein or omission of a material fact required to be stated therein or necessary to make the statements made therein, in the light of the circumstances under which they were made, not misleading;

(vi) on the Trade Date, transactions in the Shares or the Underlying Shares are not prohibited by Regulation M under the Exchange Act ( "Regulation M") as a result of such transactions meeting the requirements of the exceptions set forth in Rules 101(b)(10) and 102(b)(7) of Regulation M;

(vii) it is not entering into, or exercising any right under, any Transaction to create, and will not engage in any other securities or derivatives transactions to create, actual or apparent trading activity in the Shares or the Underlying Shares (or any security convertible into or exchangeable for Shares or Underlying Shares) or to raise or depress or to manipulate the price of the Shares or the Underlying Shares (or any security convertible into or exchangeable for Shares or Underlying Shares) or to otherwise violate any applicable laws or other restrictions applicable to Counterparty;

(viii) it shall deliver to Dealer opinions of counsel, dated as of the Effective Date, with respect to the matters set forth in Section 3(a) of the Agreement;

(ix) on the Trade Date, other than purchases from, by or on behalf of directors, officers and employees of Counterparty and its affiliates that are not "Rule 10b-18 purchases" as such term is defined in Rule 10b-18 under the Exchange Act (" Rule 10b-18"), neither Counterparty nor any "affiliated purchaser" (as defined in Rule 10b-18) shall directly or indirectly purchase, offer to purchase, place any bid or limit order that would effect a purchase of, or commence any tender offer relating to, any Shares or Underlying Shares;

(x) on the Trade Date and the Premium Payment Date for such Transaction (A) the assets of Counterparty at their fair valuation exceed the liabilities of Counterparty, including contingent liabilities, (B) the capital of Counterparty is adequate to conduct the business of Counterparty, and (C) Counterparty has the ability to pay its debts and obligations as such debts mature and does not intend to, or does not believe that it will, incur debt beyond its ability to pay as such debts mature;

(xi) it is not, and after giving effect to the transactions contemplated hereby will not be, and "investment company" as such term is defined in the Investment Company Act of 1940, as amended; and

(xii) it is not on the Trade Date for such Transaction engaged in a distribution, as such term is used in Regulation M, of any securities of Counterparty (other than a distribution meeting the requirements of the exception set forth in Rules 101(b)(10) and 102(b)(7) of Regulation M) and shall not, until the second Scheduled Trading Day immediately following the Effective Date (as set forth in the Confirmation for a Transaction), engage in any such distribution.

**12. Miscellaneous:**

(a) Early Termination. The parties agree that Second Method and Loss will apply to each Transaction under this Master Confirmation as such terms are defined under the 1992 ISDA Master Agreement (Multicurrency-Cross Border).

(b) Repurchase Notices. Counterparty shall, on any day on which Counterparty effects any repurchase of Shares or Underlying Shares, promptly give Dealer a written notice of such repurchase (a " Repurchase Notice") on such day if, following such repurchase, the Ratio Equity Percentage as determined on such day is (i) equal to or greater than 8.0% and (ii) greater by 0.5% than the Ratio Equity Percentage included in the immediately preceding Repurchase Notice (or, in the case of the first such Repurchase Notice, greater by 0.5% than the Ratio Equity Percentage as of the date hereof). The " Ratio Equity Percentage" as of any day is the fraction the numerator of which is the aggregate of the Base Amounts for (1) all Tranches for all Transactions hereunder, (2) all transactions of the type described in the definition of "Specified Transactions" relating to Shares or Underlying Shares between Dealer and Counterparty or their respective Affiliates and (3) all transactions of the type described in the definition of "Specified Transactions" relating to Shares or Underlying Shares between Dealer or its Affiliates and trusts or other entities with respect to which the beneficiaries or grantors (however described) are Counterparty, its Affiliates and/or employees of Counterparty or its Affiliates (the transactions described in clauses (1), (2) and (3)

collectively, the "Specified Portfolio") and the denominator of which is the number of Underlying Shares outstanding on such day and the " Base Amount" for a Tranche or a transaction is an amount equal to the product of the Number of Shares (or similar term in the relevant transaction) for such Tranche or transaction, as applicable and, if such Tranche or transaction is denominated in Shares, the number of Underlying Shares represented by a Share.

(c) Section 16 Indemnity. If Counterparty ceases to be a "foreign private issuer" (as defined in Rule 3b-4 under the Exchange Act) at any time during the term of this Transaction, Counterparty agrees to indemnify and hold harmless Dealer and its Affiliates and their respective officers, directors and controlling persons (each, a "Section 16 Indemnified Person") from and against any and all losses (including losses relating to Dealer's hedging activities as a consequence of becoming, or of the risk of becoming, subject to the reporting and profit disgorgement provisions of Section 16 of the Exchange Act, including without limitation, any forbearance from hedging activities or cessation of hedging activities and any losses in connection therewith with respect to any Transaction), claims, damages, judgments, liabilities and expenses (including reasonable attorney's fees), joint or several, to which a Section 16 Indemnified Person may become subject, as a result of Counterparty's failure to provide Dealer with a Repurchase Notice on the day and in the manner specified in this paragraph (b), and to reimburse, upon written request, each such Section 16 Indemnified Person for any reasonable legal or other expenses incurred in connection with investigating, preparing for, providing testimony or other evidence in connection with or defending any of the foregoing. If any suit, action, proceeding (including any governmental or regulatory investigation), claim or demand shall be brought or asserted against any Section 16 Indemnified Person, such Section 16 Indemnified Person shall promptly notify Counterparty in writing, and Counterparty, upon request of such Section 16 Indemnified Person, shall retain counsel reasonably satisfactory to such Section 16 Indemnified Person to represent such Section 16 Indemnified Person and any others Counterparty may designate in such proceeding and shall pay the fees and expenses of such counsel related to such proceeding. Counterparty shall be relieved from liability to the extent that such Section 16 Indemnified Person fails to promptly notify Counterparty of any action commenced against it in respect of which indemnity may be sought hereunder; provided that failure to notify Counterparty (i) shall not relieve Counterparty from any liability hereunder to the extent it is not materially prejudiced as a result thereof and (ii) shall not, in any event, relieve Counterparty from any liability that it may have otherwise than on account of this paragraph (c). Counterparty shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, Counterparty agrees to indemnify any Section 16 Indemnified Person from and against any loss or liability by reason of such settlement or judgment. Counterparty shall not, without the prior written consent of each Section 16 Indemnified Person, effect any settlement of any pending or threatened proceeding in respect of which any Section 16 Indemnified Person is or could have been a party and indemnity could have been sought hereunder by any such Section 16 Indemnified Person, unless such settlement includes an unconditional release of each such Section 16 Indemnified Person from all liability on claims that are the subject matter of such proceeding on terms reasonably satisfactory to each such Section 16 Indemnified Person. If the indemnification provided for in this paragraph (c) is unavailable to a Section 16 Indemnified Person or insufficient in respect of any losses, claims, damages or liabilities referred to therein, then Counterparty, in lieu of indemnifying such Section 16 Indemnified Person thereunder, shall contribute to the amount paid or payable by such Section 16 Indemnified Person as a result of such losses, claims, damages or liabilities. The remedies provided for in this paragraph (c) are not exclusive and shall not limit any rights or remedies that may otherwise be available to any Section 16 Indemnified Person at law or in equity. The indemnity and contribution agreements contained in this paragraph (c) shall remain operative and in full force and effect regardless of the termination of any Transaction.

(d) Transfer or Assignment. Dealer may, with Counterparty's prior written consent (not to be unreasonably withheld or delayed), transfer or assign all (but not less than all) of its rights and obligations under any Transaction to any of its Affiliates with a rating (or whose guarantor has a rating) for its long term, unsecured and unsubordinated indebtedness equal to or better than A- by Standard & Poor's Ratings Services or its successor (" S&P"), or A3 by Moody's Investors Service, Inc. or its successor ("Moody's") or, if either S&P or Moody's ceases to rate such debt, at least an equivalent rating or better by a substitute rating agency mutually agreed by Counterparty and Dealer; *provided* that Counterparty shall not withhold or delay its consent if Dealer certifies to Counterparty that the requested transfer is made in connection with the transfer of all or substantially all similar transactions that Dealer and its affiliates are parties thereto resulting from the enactment of the Dodd Frank Wall Street Reform and Consumer Protection Act of 2010 and rules and regulation thereunder, and such transfer will not result in an increased cost to Counterparty. Counterparty may, with Dealer's prior written consent (not to be

unreasonably withheld or delayed) sell or pledge to any third party all (but not less than all) of its rights and obligations under any Transaction at a time when such Transaction is not subject to a security interest in favor of Dealer or any of its Affiliates. If, as determined in Dealer's sole discretion, (a) at any time (1) the Equity Percentage exceeds 8.5%, (2) Dealer, Dealer Group (as defined below) or any person whose ownership position would be aggregated with that of Dealer or Dealer Group (Dealer, Dealer Group or any such person, a "Dealer Person") under U.S. federal, non-U.S., state or local laws, regulations or regulatory orders applicable to ownership of Shares or Underlying Shares ("Applicable Laws"), owns, beneficially owns, constructively owns, controls, holds the power to vote or otherwise meets a relevant definition of ownership, or could be reasonably viewed as meeting any of the foregoing, in excess of a number of Shares or Underlying Shares, as applicable, equal to (x) the number of Shares or Underlying Shares, as applicable, that would give rise to reporting, registration, filing or notification obligations or other requirements (including obtaining prior approval by a state, U.S. federal or non-U.S. regulator) of a Dealer Person under Applicable Laws and with respect to which such requirements have not been met or the relevant approval has not been received *minus* (y) 1% of the number of Shares or Underlying Shares, as applicable, outstanding on the date of determination or (3) the Ratio Equity Percentage exceeds 9.9% (any such condition described in clause (1), (2) or (3), an "Excess Ownership Position") and (b) Dealer is unable, after commercially reasonable efforts, to effect a transfer or assignment on pricing and terms and within a time period reasonably acceptable to it of all or a portion of one or more Transactions pursuant to the preceding paragraph such that an Excess Ownership Position no longer exists, Dealer may designate any Scheduled Trading Day as an Early Termination Date with respect to a portion (the "Terminated Portion") of any Transaction(s), such that an Excess Ownership Position no longer exists following such partial termination. In the event that Dealer so designates an Early Termination Date with respect to a portion of any Transaction(s), a payment shall be made pursuant to Section 6 of the Agreement as if (i) an Early Termination Date had been designated in respect of a Transaction having terms identical to the Terminated Portion of the Transaction(s), (ii) Counterparty shall be the sole Affected Party with respect to such partial termination and (iii) such portion of the Transaction(s) shall be the only Terminated Transaction. The "Equity Percentage" as of any day is the fraction, expressed as a percentage, (A) the numerator of which is the number of Underlying Shares that Dealer and any of its affiliates subject to aggregation with Dealer for purposes of the "beneficial ownership" test under Section 13 of the Exchange Act and all persons who may form a "group" (within the meaning of Rule 13d-5(b)(1) under the Exchange Act) with Dealer (collectively, "Dealer Group") "beneficially own" (within the meaning of Section 13 of the Exchange Act) in connection with transactions in the Specified Portfolio without duplication on such day (or, if Counterparty ceases to be a "foreign private issuer" (as defined in Rule 3b-4 under the Exchange Act) and the equivalent calculation under Section 16 of the Exchange Act and the rules and regulations thereunder results in a higher number, such number) and (B) the denominator of which is the number of Underlying Shares outstanding on such day.

(e) Severability; Illegality. If compliance by either party with any provision of a Transaction would be unenforceable or illegal, (i) the parties shall negotiate in good faith to resolve such unenforceability or illegality in a manner that preserves the economic benefits of the transactions contemplated hereby and (ii) the other provisions of the Transaction shall not be invalidated, but shall remain in full force and effect.

(f) Waiver of Trial by Jury. EACH OF COUNTERPARTY AND DEALER HEREBY IRREVOCABLY WAIVES (ON ITS OWN BEHALF AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ON BEHALF OF ITS STOCKHOLDERS) ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO ANY TRANSACTION OR THIS MASTER CONFIRMATION OR THE ACTIONS OF DEALER OR ITS AFFILIATES IN THE NEGOTIATION, PERFORMANCE OR ENFORCEMENT THEREOF.

(g) Confidentiality. Notwithstanding any provision in this Master Confirmation, any Confirmation or the Agreement, in connection with Section 1.6011-4 of the Treasury Regulations, the parties hereby agree that each party (and each employee, representative, or other agent of such party) may disclose to any and all persons, without limitation of any kind, the U.S. tax treatment and U.S. tax structure of the Transaction and all materials of any kind (including opinions or other tax analyses) that are provided to such party 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.

(h) Securities Contract; Swap Agreement. The parties hereto intend for: (i) each Transaction hereunder to be a "securities contract" and a "swap agreement" as defined in the Bankruptcy Code (Title 11 of the United States Code) (the "Bankruptcy Code"), a derivatives transaction under the Mexican *Ley de Concursos Mercantiles*, the Agreement to be a "master netting agreement" and the parties hereto to be entitled to the protections afforded by, among other Sections, Sections 362(b)(6), 362(b)(17), 362(o), 546(e), 546(g), 546(j), 548(d), 555, 560 and 561 of the Bankruptcy Code and the applicable provisions of the *Ley de Concursos Mercantiles*; (ii) a party's right to liquidate a Transaction and to exercise any other remedies upon the occurrence of any Event of Default under the Agreement with respect to the other party to constitute a "contractual right … to cause the liquidation, termination or acceleration" and any payments owed under this Transaction or the Agreement with respect thereto to be a "termination value", "payment amount" or "other transfer obligation", in each case as described in the Bankruptcy Code; (iii) all payments for, under or in connection with a Transaction to constitute "margin payments", "settlement payments" and/or "transfers" under a "securities contract" and/or "swap agreement" as defined in the Bankruptcy Code; and (iv) each party hereto to be a "master netting agreement participant", "financial institution", "swap participant" and/or a "financial participant" as defined in the Bankruptcy Code.

(i) Extension of Settlement. Dealer may postpone any Expiration Date, postpone the Final Disruption Date and/or add additional Expiration Dates with respect to some or all of the Options under any Tranche hereunder (provided that none of such postponed or added Expiration Dates shall occur later than the 20th Scheduled Trading Day immediately succeeding the last Expiration Date (determined without regard to this provision) for the relevant Transaction) if Dealer determines, in its reasonable discretion, that such extension is necessary or advisable to preserve Dealer's hedging activity hereunder in light of existing liquidity conditions or to enable Dealer to effect purchases or sales of Shares or Underlying Shares in connection with its hedging activity hereunder in a manner that would, if Dealer were Counterparty or an affiliated purchaser of Counterparty, be in compliance with applicable legal and regulatory requirements or self-regulatory requirements, or with related reasonable policies and procedures applicable to Dealer.

(j) Registration. Counterparty hereby agrees that if the Shares or Underlying Shares (the "Hedge Shares") acquired by Dealer for the purpose of hedging its obligations pursuant to the Transaction, in Dealer's sole judgment, cannot be sold in the U.S. public market (including by depositing such Underlying Shares with the Depository in exchange for Shares) by Dealer without registration under the Securities Act, Counterparty shall, at its election: (i) in order to allow Dealer to sell the Hedge Shares in a registered offering, make available to Dealer an effective registration statement under the Securities Act to cover the resale of such Hedge Shares and (A) enter into an agreement, in form and substance satisfactory to Dealer and Counterparty, substantially in the form of an underwriting agreement for a registered secondary offering, (B) provide accountant's "comfort" letters in customary form for registered offerings of equity securities, (C) provide disclosure opinions of nationally recognized outside counsel to Counterparty reasonably acceptable to Dealer, (D) provide other customary opinions, certificates and closing documents customary in form for registered offerings of equity securities and (E) afford Dealer a reasonable opportunity to conduct a "due diligence" investigation with respect to Counterparty customary in scope for underwritten offerings of equity securities; provided that if Dealer, in its sole reasonable discretion, is not satisfied with access to due diligence materials, the results of its due diligence investigation, or the procedures and documentation for the registered offering referred to above, then, subject to the conditions set forth therein, clause (ii) or (iii) of this section shall apply at the election of Counterparty; (ii) in order to allow Dealer to sell the Hedge Shares in a private placement, enter into a private placement agreement substantially similar to private placement Underwriting Agreements customary for private placements of equity securities, in form and substance satisfactory to Dealer and Counterparty, including customary representations, covenants, blue sky and other governmental filings and/or registrations, indemnities to Dealer, due diligence rights (for Dealer or any designated buyer of the Hedge Shares from Dealer), opinions and certificates and such other documentation as is customary for private placements agreements, all reasonably acceptable to Dealer (in which case, the Calculation Agent shall make any adjustments to the terms of the Transaction that are necessary, in its reasonable judgment, to compensate Dealer for any discount from the public market price of the Shares incurred on the sale of Hedge Shares in a private placement); or (iii) to the extent that such purchases would not violate any applicable law or other restriction applicable to Counterparty, purchase the Hedge Shares from Dealer at the VWAP Price on such Exchange Business Days (with references to "Valuation Date" in the definition of "VWAP Price" deemed to be references to such Exchange Business Days for this purpose), and in such amounts, requested by Dealer. This paragraph (j) shall survive the termination, expiration or early unwind of the Transaction.

(k) Early Unwind. In the event the sale of Convertible Notes for the Transaction (as set forth in the Confirmation for such Transaction) is not consummated with the initial purchasers for any reason by the close of business in New York City on the Early Unwind Date set forth in the Confirmation for such Transaction, such Transaction shall automatically terminate on such Early Unwind Date and (i) such Transaction and all of the respective rights and obligations of Dealer and Counterparty under such Transaction shall be cancelled and terminated and (ii) each party shall be released and discharged by the other party from and agrees not to make any claim against the other party with respect to any obligations or liabilities of the other party arising out of and to be performed in connection with such Transaction either prior to or after such Early Unwind Date; provided that, if such failure is due to a breach or default on the part of Counterparty under the Purchase Agreement dated as of March 9, 2011 among CEMEX, S.A.B. de C.V. and Citigroup Global Markets, Inc. and J.P. Morgan Securities LLC, among others, as representatives of the "Initial Purchasers" (as defined therein), Counterparty shall assume, or reimburse the cost of, derivatives or other transactions entered into by Dealer or one or more of its Affiliates in connection with hedging such Transaction. The amount paid by Counterparty shall be Dealer's actual cost of such derivatives or other transactions as Dealer informs Counterparty and shall be paid in immediately available funds on such Early Unwind Date.

(l) Acknowledgment of Pledge. Counterparty's rights under the Agreement may, from time to time, be pledged to Dealer to secure Counterparty's obligations to Dealer arising under other agreements in accordance with such terms as the parties may separately agree.

(m) Optional Early Termination. (i) At any time during the term of this Transaction, Counterparty may, by written notice to Dealer, designate, with respect to one or more specified Tranches, an Early Termination Date to occur on the third Scheduled Trading Day following the date such notice is effective, in which case an Additional Termination Event shall be deemed to have occurred in respect of which (1) Counterparty shall be the sole Affected Party and (2) the portion of the relevant Transaction represented by such Tranche(s) shall be the sole Affected Transaction.

(ii) Counterparty may, prior to electing to terminate any Tranche pursuant to subparagraph (i) above, request a quotation (which may be in the form of a grid of percentages that depends on the price of the Shares or Underlying Shares over a specified period) from Dealer as to the applicable terms of such termination, and Dealer shall be bound by the terms of such quotation if Counterparty then makes such election within one full Scheduled Trading Day.

(iii) By providing the notice referred to in this paragraph, Counterparty shall be deemed to repeat, on the date such notice is effective, the representations in clauses (v), (vi), (vii) and (ix) of Section 11(b).

(n) Counterparty's Obligation to Pay Cancellation Amounts and Early Termination Amounts. Seller and Counterparty hereby agree that, notwithstanding anything to the contrary herein or in the Agreement, following Seller's receipt from Counterparty of the Premium on the Premium Payment Date, in the event that (a) an Early Termination Date (whether as a result of an Event of Default or a Termination Event) occurs or is designated with respect to a Transaction and, as a result, Counterparty owes to Seller an amount under Section 6(e) of the Agreement or (b) Counterparty owes to Seller, pursuant to Section 12.7 or Section 12.9 of the Definitions, a Cancellation Amount, such amount shall be deemed to be zero. If Counterparty pays the Premium on the Premium Payment Date, then under no circumstances shall Counterparty be required to pay any amount in addition to the Premium under the Transaction. For the avoidance of doubt, the preceding sentence shall not be construed as limiting any damages that may be payable by Counterparty as a result of a breach of, or an indemnity under, this Master Confirmation or the Agreement.

(o) Modifications to DR Supplement. The DR Supplement is hereby amended as follows:

(i) The definitions of the following terms in Section 1 thereof are hereby deleted and replaced as follows:

"Depository" means, in relation to the Shares or the Underlying Shares, the Issuer of the Shares or the Underlying Shares, as applicable.

"Deposit Agreement" means, in relation to the Shares or the Underlying Shares, the agreements, deeds or other instruments constituting the Shares or Underlying Shares, as applicable, as from time to time amended or supplemented in accordance with their terms.

"Underlying Shares" means, in relation to the applicable Deposit Agreement, the shares or other securities which are the subject of such Deposit Agreement.

"Underlying Shares Issuer" means, in relation to the applicable Underlying Shares, the issuer of such Underlying Shares.

(ii) Section 2(c) thereof is hereby deleted in its entirety.

(iii) Section 3(a) thereof is hereby amended by adding in the second line therein after the term "'Share-for-Combined'" the following parenthetical: "(including defined terms used in such definitions)".

(p) Settlement Amendment. Dealer acknowledges that Counterparty may, to the extent permitted by law and any agreements Counterparty may be subject to, prior to the settlement of any Transaction hereunder, request that the provisions of this Master Confirmation be modified to enable Counterparty to effect share settlement in lieu of the settlement provisions under Section 5 of this Master Confirmation. In the event of such a request, Dealer agrees to negotiate with Counterparty, in good faith, such amendments to this Master Confirmation as may be required to effect such changes, it being understood and agreed that as of the date hereof, Counterparty has no right or option to require share settlement of any Transaction hereunder; *provided* that Dealer may in good faith refuse to enter into any such amendments so as to comply with applicable legal and regulatory requirements or self-regulatory requirements, or with related policies and procedures applicable to Dealer.

**13. Addresses for Notice:**

If to Dealer:

**Banco Santander, S.A., Madrid**
SANTANDER S.B.G.M
PASEO CLUB DEPORTIVO, 1
PARQUE EMPRESARIAL "LA FINCA"
EDIFICIO 10 PLANTA 0
28330 POZUELO DE ALARCON (MADRID)

Attn.: Swaps Administratio
Telex: 42362 / 45928 BADER E
Swift: BSCHESMM
Fax: (341) 2571228
Tel.: (341) 2893116

If to Counterparty:

CEMEX, S.A.B. de C.V.
Avenida Ricardo Margain Zozaya 325
Colonia Valle del Campestre
San Pedro Garza Garcia, Nuevo Leon 66265
Attention: Francisco Javier Contreras Navarro
Financial Operations Manager - Corporate Treasury - Mexico
Office : +52(81)88884093
Fax: +52(81)88884519

e-Mail: franciscojavier.contreras@cemex.com

**14. Accounts for Payment:**

| | | |
|---|---|---|
| To Dealer: | To be advised | |
| To Counterparty: | Beneficiary: | CEMEX, S.A.B. de C.V. |
| | Bank: | Citibank, NY |
| | Account: | 36964215 |
| | ABA: | 021000089 |
| | SWIFT: | CITIUS33 |

**15. Schedule Provisions:**

(a) Process Agent. For the purpose of Section 13(c) of the Agreement:

Counterparty appoints as its Process Agent:

Corporate Creations Network Inc.
1040 Avenue of the Americas #2400
New York, NY 10018
Fax: (561) 694-1639
Tel: (212) 382-4699

(b) Delivery of Tax Forms. For the purposes of Section 4(a)(i) of the Agreement, Counterparty agrees to deliver such documents as Dealer may request in order to allow Dealer to make a payment under this Transaction without any deduction or withholding for or on account of any Tax or with such deduction or withholding at a reduced rate including, without limitation, an executed United States Internal Revenue Service Form W-8BEN (or any successor thereto), (i) upon execution of this Transaction; (ii) promptly upon reasonable demand by Dealer; and (iii) promptly upon learning that any such document, including Form W-8BEN (or any successor thereto), previously provided by Counterparty has become obsolete or incorrect.

**16. Valuation Notice:**

Dealer agrees to provide to Counterparty, as soon as practicable following the end of each calendar month, a statement showing the Exposure (within the meaning of the 1994 ISDA Credit Support Annex), calculated with respect to the Transaction and determined as if such last day (or the immediately preceding Exchange Business Day) was the Valuation Date.

[Signature page follows]

Yours sincerely,

BANCO SANTANDER, S.A.

By: /s/ Jesús Suárez Jaraba
Name: Jesús Suárez Jaraba
Title: Authorized Signatory

By: /s/ Miguel Ángel Martínez Villegas
Name: Miguel Ángel Martínez Villegas
Title: Authorized Signatory

Confirmed as of the
date first above written:

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

By: /s/ Rodrigo Treviño
Name: Rodrigo Treviño
Title: Attorney-in-Fact

**EXHIBIT A**
**FORM OF CAPPED CALL OPTION**
**TRANSACTION CONFIRMATION**

CONFIRMATION

Date: March [ ], 2011

To: CEMEX, S.A.B. de C.V. ("Counterparty")

Telefax No.: +52(81)88884519

Attention: Francisco Javier Contreras Navarro - Financial Operations Manager - Corporate Treasury - Mexico

From: Banco Santander, S.A. ("Dealer")

Transaction Reference Number: _____

The purpose of this communication (this "Confirmation") is to set forth the terms and conditions of the above-referenced Transaction (the "Transaction") entered into on the Trade Date specified below between you and us. This Confirmation supplements, forms a part of, and is subject to the Master Terms and Conditions for Capped Call Transactions dated as of March 9, 2011 and as amended from time to time (the " Master Confirmation") between you and us.

1. The definitions and provisions contained in the Definitions (as such term is defined in the Master Confirmation) and in the Master Confirmation are incorporated into this Confirmation. In the event of any inconsistency between those definitions and provisions and this Confirmation, this Confirmation will govern.

2. The particular Transaction to which this Confirmation relates shall have the following terms:

| | |
|---|---|
| Trade Date: | March [ ], 2011 |
| Effective Date: | The closing date of the initial issuance of the Convertible Notes. |
| Lower Strike Price: | USD [ ]. |
| Upper Strike Price: | USD [ ]. |
| Initial Reference Price: | USD [*Insert Exchange closing price per share for the Shares on the Trade Date*] |
| Premium: | USD [ ]. |
| Premium Payment Date: | The Effective Date |
| Convertible Notes: | [ ]% Convertible Subordinated Notes of Counterparty due [ ], offered pursuant to an Offering Memorandum to be dated [ ]. |
| Indenture: | The indenture governing the issuance of the Convertible Notes to be dated as of the closing date of the initial issuance of the Convertible Notes, by and between Counterparty and The Bank of New York Mellon, as trustee (as may be amended, modified or supplemented from time to time, but only if such amendment, modification or supplement |

is consented to by Dealer in writing, which consent shall not be unreasonably withheld or delayed).

Early Unwind Date: [ ], 2011, or such later date as agreed by the parties hereto.

Final Disruption Date: [ ]

[Remainder of page intentionally left blank]

The Number of Options and Expiration Date for each Tranche of the Transaction are set forth below.

| Tranche Number | Number of Options | Expiration Date |
|---|---|---|
| 1. | [ ] | [ ] |
| 2. | [ ] | [ ] |
| 3. | [ ] | [ ] |
| 4. | [ ] | [ ] |
| 5. | [ ] | [ ] |
| 6. | [ ] | [ ] |
| 7. | [ ] | [ ] |
| 8. | [ ] | [ ] |
| 9. | [ ] | [ ] |
| 10. | [ ] | [ ] |
| 11. | [ ] | [ ] |
| 12. | [ ] | [ ] |
| 13. | [ ] | [ ] |
| 14. | [ ] | [ ] |
| 15. | [ ] | [ ] |
| 16. | [ ] | [ ] |
| 17. | [ ] | [ ] |
| 18. | [ ] | [ ] |
| 19. | [ ] | [ ] |
| 20. | [ ] | [ ] |
| 21. | [ ] | [ ] |
| 22. | [ ] | [ ] |
| 23. | [ ] | [ ] |
| 24. | [ ] | [ ] |
| 25. | [ ] | [ ] |
| 26. | [ ] | [ ] |
| 27. | [ ] | [ ] |
| 28. | [ ] | [ ] |
| 29. | [ ] | [ ] |
| 30. | [ ] | [ ] |
| 31. | [ ] | [ ] |
| 32. | [ ] | [ ] |
| 33. | [ ] | [ ] |
| 34. | [ ] | [ ] |
| 35. | [ ] | [ ] |
| 36. | [ ] | [ ] |
| 37. | [ ] | [ ] |
| 38. | [ ] | [ ] |
| 39. | [ ] | [ ] |
| 40. | [ ] | [ ] |
| 41. | [ ] | [ ] |
| 42. | [ ] | [ ] |
| 43. | [ ] | [ ] |
| 44. | [ ] | [ ] |
| 45. | [ ] | [ ] |
| 46. | [ ] | [ ] |
| 47. | [ ] | [ ] |
| 48. | [ ] | [ ] |
| 49. | [ ] | [ ] |
| 50. | [ ] | [ ] |
| 51. | [ ] | [ ] |

| | | |
|---|---|---|
| 52. | [ ] | [ ] |
| 53. | [ ] | [ ] |
| 54. | [ ] | [ ] |
| 55. | [ ] | [ ] |
| 56. | [ ] | [ ] |
| 57. | [ ] | [ ] |
| 58. | [ ] | [ ] |
| 59. | [ ] | [ ] |
| 60. | [ ] | [ ] |

3. Counterparty hereby agrees (a) to check this Confirmation promptly upon receipt so that errors or discrepancies can be promptly identified and rectified and (b) to confirm that the foregoing correctly sets forth the terms of the agreement between us with respect to the particular Transaction to which this Confirmation relates, by manually signing this Confirmation and providing any other information requested herein or in the Master Confirmation and immediately returning an executed copy to us.

Yours sincerely,

BANCO SANTANDER, S.A.

By: _____
Name:
Title:

Confirmed as of the
date first above written:

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

By: _____
Name:
Title:

**Exhibit 4.70**

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

**U.S.$800,000,000**
**FLOATING RATE SENIOR SECURED NOTES DUE 2015**

**PURCHASE AGREEMENT**

March 29, 2011

Merrill Lynch, Pierce, Fenner & Smith Incorporated
J.P. Morgan Securities LLC
RBS Securities Inc.
As Representatives of the Initial Purchasers
c/o Merrill Lynch, Pierce, Fenner & Smith Incorporated
One Bryant Park
New York, New York 10036

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.$800,000,000 principal amount of its Floating Rate Senior Secured Notes due 2015 (the "Securities"). The Securities will be unconditionally guaranteed (the "Guarantees") by each of (i) CEMEX México, S.A. de C.V. ("CEMEX México"), (ii) New Sunward Holding B.V. ("New Sunward"), and (iii) CEMEX España, S.A. ("CEMEX España" and together with CEMEX México and New Sunward, the "Note Guarantors"), and are to be issued under an indenture (the "Indenture"), to be dated as of the Closing Date, 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 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 25 hereof.

The Securities will be secured in accordance with the terms of the 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 29, 2011 (as amended or supplemented at the date thereof, including any and all exhibits thereto and any information incorporated by reference therein, the "Preliminary Memorandum"), and a final offering memorandum, dated March 29, 2011 (as amended or supplemented at the Execution Time, including any and all exhibits thereto and any information incorporated by reference therein, the "Final Memorandum"). Each of 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 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 of the Note Guarantors, 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, 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 under the Transaction Security Documents. 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 España:

(A) 0.2444% of the issued share capital, comprised of shares owned by subsidiaries of CEMEX España; and

(B) 0.1164% of the issued share capital, comprised of shares owned by persons that are not subsidiaries or affiliates of the Company;

(ii) in the case of CEMEX Trademarks Holding Ltd., 0.4326% of the issued share capital, comprised of shares owned by CEMEX, Inc.;

(iii) 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;

(iv) 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; (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 Financing Agreement, the Transaction Security Documents and the 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 Mexican FRS 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 Financing Agreement, the Transaction Security Documents and the 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 Mexican FRS 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's 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 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 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. 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 any of its subsidiaries 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 98.346% of the principal amount thereof, plus accrued interest, if any, from April 5, 2011 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 April 5, 2011, 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 will promptly advise the Representatives of the receipt by the Company 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 45 days following the Execution Time, without the prior written consent of BAML, JP Morgan and RBS, 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 Company's perpetual debentures or the CEMEX España Euro Notes, an offer to exchange new securities for the Company'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.

(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; (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 of its 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 in respect of the legal advisors for the Initial Purchasers pursuant to this Section 5(t) and Section 7 hereof will be limited to U.S.$200,000 (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 or any of its subsidiaries 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, 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, 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 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, BAML agrees to furnish a representation letter to Arthur Cox to the effect that it has offered the Securities to at least five persons within the Republic of Ireland.

(g) 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 at 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 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 VIII attached hereto.

(i) 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, in form and substance satisfactory to the Representatives and confirming that they are independent auditors within the meaning of the Exchange Act and the applicable published rules and regulations thereunder substantially in the form of Schedule IX attached hereto.

(j) Any and all applicable amendments, supplements or modifications to the Financing Agreement, any of the Transaction Security Documents, the 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.

(k) The Trustee shall be entitled to all rights and benefits provided in the Intercreditor Agreement as an Additional Notes Trustee (as such term is defined in the 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 Intercreditor Agreement).

(l) 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 (i) 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).

(m) The Securities shall be eligible for clearance and settlement through DTC, Euroclear and Clearstream, as applicable, and any other relevant clearing system.

(n) 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.

(o) Prior to the Closing Date, the Company 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 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 BAML, JP Morgan and RBS 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 electronic road show, 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 written information 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 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 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 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 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 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), 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 will be in writing and effective only on receipt, and, if sent to the Representatives, will be mailed, delivered or telefaxed to BAML's Legal Department (fax no.: 917-267-2085) and confirmed to BAML at One Bryant Park, New York, New York 10036, Attention: Legal Department; or, if sent to the Company, will be mailed, delivered or telefaxed to +5281-8888-4399 and confirmed to it at CEMEX, S.A.B. de C.V., Av. Ricardo Margáin, Zozaya #325, Colonia Valle del Campestre, Garza García, Nuevo León, México 66265. 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(l) 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. The Company and each of the Note Guarantors hereby appoints Corporate Creations Network Inc., 1040 Avenue of the Americas #2400, New York, NY 10018, U.S.A.; fax: (561) 694-1639; telephone: (212) 382-4699, 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 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 the Note Guarantors.

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 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.

"BAML" shall mean Merrill Lynch, Pierce, Fenner & Smith Incorporated.

"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. and guaranteed by CEMEX España.

"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 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 8:00 a.m. (New York time) on March 30, 2011.

"Financing Agreement" shall mean the Financing Agreement dated August 14, 2009, as amended, between the Company, the Financial Institutions and Noteholders named therein, as participating creditors, Citibank International PLC, as administrative agent and Wilmington Trust (London) Limited, as security agent.

"Intercreditor Agreement" shall mean the Intercreditor Agreement dated August 14, 2009, as amended, between Citibank International PLC, as administrative agent, the participating creditors named therein, the Company and certain of its subsidiaries named therein, as original borrowers, original guarantors and original security providers, Wilmington Trust (London) Limited, as security agent, and others.

"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 X hereto.

"JP Morgan" shall mean J.P. Morgan Securities LLC.

"Mexican FRS" shall mean the Mexican financial reporting standards ( *Normas de Información Financiera aplicables en Mexico* ) as in effect from time to time issued by the Mexican Financial Reporting Standards Board ( *Consejo Mexicano para la Investigación y Desarrollo de Normas de Información Financiera* ).

"RBS" shall mean RBS Securities Inc.

"Regulation D" shall mean Regulation D under the Act.

"Regulation S" shall mean Regulation S under the Act.

"Security Agent" shall mean Wilmington Trust (London) Limited, as security agent under the Financing Agreement.

"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 Financing 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 and the several Initial Purchasers.

Very truly yours,

**CEMEX, S.A.B. DE C.V.**

By: /s/ Humberto Lozano
Name: Humberto Lozano
Title: Attorney-in-Fact

**EACH OF THE NOTE GUARANTORS LISTED BELOW**

**CEMEX MÉXICO, S.A. DE C.V.**

By: /s/ Rodrigo Treviño
Name: Rodrigo Treviño
Title: Attorney-in-Fact

**NEW SUNWARD HOLDING B.V.**

By: /s/ Agustín Blanco
Name: Agustín Blanco
Title: Attorney-in-Fact

**CEMEX ESPAÑA, S.A.**

By: /s/ Humberto Lozano
Name: Humberto Lozano
Title: Attorney-in-Fact

The foregoing Agreement is hereby confirmed and accepted as of the date first above written.

**MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED**

By: /s/ Augusto Urmeneta
Name: Augusto Urmeneta
Title: Managing Director

**J.P. MORGAN SECURITIES LLC**

By: /s/ Roberto D'Avola
Name: Roberto D'Avola
Title: Executive Director

**RBS SECURITIES INC.**

By: /s/ Michael F. Newcomb II
Name: Michael F. Newcomb II
Title: Managing Director

For themselves 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 |
|---|---|
| Merrill Lynch, Pierce, Fenner & Smith Incorporated | U.S.$225,955,000 |
| J.P. Morgan Securities LLC | U.S.$225,955,000 |
| RBS Securities Inc | U.S.$ 225,954,000 |
| Banco Bilbao Vizcaya Argentaria, S.A | U.S.$ 30,534,000 |
| BNP Paribas Securities Corp | U.S.$ 30,534,000 |
| Caja de Ahorros y Monte de Piedad de Madrid | U.S.$ 30,534,000 |
| Santander Investment Securities Inc | U.S.$ 30,534,000 |
| Total | U.S.$ 800,000,000 |

**SCHEDULE II**

**Pricing Term Sheet**
**March 29, 2011**

**CEMEX, S.A.B. de C.V.**
**Floating Rate Senior Secured Notes due 2015 (the "Notes")**

| | |
|---|---|
| **Issuer** | CEMEX, S.A.B. de C.V. |
| **Security description** | Floating Rate Senior Secured Notes |
| **Note Guarantors** | CEMEX México, S.A. de C.V., CEMEX España, S.A. and New Sunward Holding B.V. |
| **Security** | First-priority security interest over the Collateral and 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 Intercreditor Agreement. |
| **Format** | 144A Global Notes / Regulation S Global Notes |
| **Joint Bookrunners** | Merrill Lynch, Pierce, Fenner & Smith Incorporated<br>J.P. Morgan Securities LLC<br>RBS Securities Inc. |
| **Co-Managers** | Banco Bilbao Vizcaya Argentaria, S.A.<br>BNP Paribas Securities Corp.<br>Caja de Ahorros y Monte de Piedad de Madrid<br>Santander Investment Securities Inc. |
| **Identifiers (144 A Notes)** | CUSIP: 151290BD4<br>ISIN: US151290BD46 |
| **Identifiers (Reg S Notes)** | CUSIP: P2253THX0<br>ISIN: USP2253THX02 |
| **Issue amount** | U.S.$800 million |
| **Settlement date** | April 5, 2011 |
| **Final maturity** | September 30, 2015 |
| **Interest basis** | Payable quarterly in arrears |
| **Interest payment dates** | March 30, June 30, September 30 and December 30 of each year, beginning on June 30, 2011 |
| **Day count convention** | Actual / 360 |
| **Benchmark** | Three-month U.S. Dollar LIBOR ("3m$L") |
| **Coupon** | 3m$L plus 500 basis points |
| **Issue price** | 99.001% of principal amount, *plus* accrued interest, if any, from April 5, 2011 |

| | |
|---|---|
| **Discount Margin** | 3m$L plus 525 basis points, reflecting the issue price of 99.001% |
| **Optional Redemption** | On or after the Interest Payment Date immediately preceding the maturity date, the Issuer will have the right, at its option, to redeem all of the Notes, at any time prior to their maturity, at par plus any accrued and unpaid interest on the principal amount of the Notes to the date of redemption.<br><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. |
| **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.$786 million. The Issuer intends to use the net proceeds from the offering to repay indebtedness under the Financing Agreement. |
| **Denominations** | U.S.$150,000 and integral multiples of U.S.$1,000 |
| **Governing law** | New York |
| **Listing** | Global Exchange Market of the Irish Stock Exchange |
| **Clearing** | The Depositary Trust Company, Euroclear and Clearstream |

**Financial Information**

As of December 31, 2010, after giving *pro forma* effect to (1) the issuance of the January 2011 Notes and the 2011 Optional Convertible Subordinated Notes, (2) the 2011 Prepayments, (3) the 2011 Private Exchange and (4) the issuance of the Notes and the application of proceeds from the offering, the Issuer had consolidated total debt of Ps208,062 million (U.S.$16,834 million) (not including approximately Ps14,342 million (U.S.$1,160 million) of SPV Perpetuals). As of December 31,2010, after giving *pro forma* effect to (1) the issuance of the January 2011 Notes and the 2011 Optional Convertible Subordinated Notes, (2) the 2011 Prepayments, (3) the 2011 Private Exchange and (4) the issuance of the Notes and the application of proceeds from the offering, the Issuer had consolidated total obligations of Ps177,925 million (U.S.$14,395 million) outstanding secured by a first-priority security interest over the Collateral, consisting of obligations of approximately Ps92,156 million (U.S.$7,456 million) outstanding under the Financing Agreement, approximately Ps14,342 million (U.S.$1,160 million) outstanding under the SPV Perpetuals, approximately Ps66,293 million (U.S.$5,364 million) outstanding under the December 2009 Notes, the May 2010 Notes, the January 2011 Notes and the Notes, and approximately Ps5,133 million (U.S.$415 million) outstanding under long-term *Certificados Bursátiles*.

**Capitalization**

The following table sets forth our consolidated cash and temporary investments, indebtedness and capitalization as of December 31, 2010 (1) on an actual basis; (2) as adjusted to give effect to (i) the issuance of the January 2011 Notes, (ii) the issuance of the 2011 Optional Convertible Subordinated Notes, (iii) the 2011 Prepayments, and (iv) the 2011 Private Exchange; and (3) as further adjusted to give effect to the issuance and sale in this offering of U.S.$800 million aggregate principal amount of the Notes, the payment of the initial purchasers' discounts and commissions and the estimated expenses in connection with the offering, and the application of the estimated net proceeds of the offering as described under "Use of Proceeds."

The financial information set forth below is based on information derived from our financial statements, which have been prepared in accordance with MFRS, which differ in significant respects from U.S. GAAP. For further information about our financial presentation, see "Selected Consolidated Financial Information."

| | As of December 31, 2010 | | | | |
|---|---|---|---|---|---|
| | Actual | As adjusted(1) | | As further adjusted(2) | |
| | (in millions of Pesos and Dollars) | | | | |
| Cash and investments(3) | Ps 8,354 | Ps 12,585 | U.S.$ 1,018 | Ps 12,585 | U.S.$ 1,018 |
| Short-term debt(4) | | | | | |
| Secured | | | | | |
| Banobras(5) | Ps 36 | Ps 36 | U.S.$ 3 | Ps 36 | U.S.$ 3 |
| Bancomext(5) | | | | | |
| Other secured(6) | 4,358 | 506 | 41 | 506 | 41 |
| Unsecured | | | | | |
| Other unsecured | 1,243 | 517 | 42 | 517 | 42 |
| Total short-term debt | 5,637 | 1,059 | 86 | 1,059 | 86 |
| Long-term debt | | | | | |
| Secured by the Collateral | | | | | |
| Financing Agreement | 118,241 | 101,875 | 8,242 | 92,156 | 7,456 |
| CBs(7) | 8,867 | 4,628 | 374 | 4,628 | 374 |
| Senior Secured Notes(8)(9) | 42,496 | 56,405 | 4,564 | 56,405 | 4,564 |
| The Notes(10) | — | — | — | 9,789 | 792 |
| Other secured | | | | | |
| Banobras | 169 | 169 | 14 | 169 | 14 |
| Bancomext | 2,007 | 2,007 | 162 | 2,007 | 162 |
| Unsecured | | | | | |
| CEMEX España Euro Notes(11) | 14,834 | 14,834 | 1,200 | 14,834 | 1,200 |
| Other unsecured | 2,874 | 2,874 | 233 | 2,874 | 233 |
| 2010 Optional Convertible Subordinated Notes(12) | 7,693 | 7,693 | 622 | 7,693 | 622 |
| 2011 Optional Convertible Subordinated Notes(13) | — | 16,448 | 1,331 | 16,448 | 1,331 |
| Total long-term debt | 197,181 | 206,933 | 16,742 | 207,003 | 16,748 |
| Total debt | 202,818 | 207,992 | 16,828 | 208,062 | 16,834 |
| Liability component of Mandatory Convertible Notes(14) | 1,994 | 1,994 | 161 | 1,994 | 161 |
| Stockholders' equity | | | | | |
| Non-controlling interest | | | | | |
| Perpetual debentures(15) | 16,310 | 14,342 | 1,160 | 14,342 | 1,160 |
| Other | 3,214 | 3,214 | 260 | 3,214 | 260 |
| Controlling interest(12)(13)(14) | 194,176 | 198,261 | 16,041 | 198,264 | 16,041 |
| Total stockholders' equity | 213,700 | 215,817 | 17,461 | 215,820 | 17,461 |
| Total capitalization(16) | 418,512 | 425,803 | 34,450 | 425,876 | 34,456 |

(1) Reflects the issuance of U.S.$1.0 billion aggregate principal amount of the January 2011 Notes, the issuance of the 2011 Optional Convertible Subordinated Notes, the 2011 Prepayments and the 2011 Private Exchange. Amounts in Dollars have been converted from Pesos at an exchange rate of Ps12.36 to U.S.$1.00, the CEMEX accounting rate as of December 31, 2010.

(2) Reflects additional application of the net proceeds from the offerings. Amounts in Dollars have been converted from Pesos at an exchange rate of Ps12.36 to U.S.$ 1.00, the CEMEX accounting rate as of December 31, 2010.

(3) In the "as adjusted" and "as further adjusted" columns, includes cash used to create a reserve for CBs maturing in September 2011 of approximately U.S.$81 million, of which approximately U.S.$56 million were used to prepay CBs pursuant to the March 2011 private cash tender offer to holders of CBs in Mexico.

(4) Includes current portion of long-term debt.

(5) Represent obligations with Mexican development banks, which are secured by fixed assets.

(6) Represent long-term CBs with maturities during 2011, for which U.S.$25 million of cash has been reserved.

(7) Represent CBs maturing in 2012 and thereafter.

(8) Includes (i) U.S.$1,250,000,000 aggregate principal amount of 9.50% Senior Secured Notes due 2016 and €350,000,000 aggregate principal amount of 9.625% Senior Secured Notes due 2017 issued by CEMEX Finance LLC on December 14, 2009; (ii) U.S.$500,000,000 additional aggregate principal amount of 9.50% Senior Secured Notes due 2016 issued by CEMEX Finance LLC on January 19, 2010, (iii) U.S.$1,067,665,000 aggregate principal amount of 9.25% Senior Secured Notes due 2020 and €115,346,000 aggregate principal amount of 8.875% Senior Secured Notes due 2017 issued by CEMEX España, acting through its Luxembourg branch, on May 12, 2010 (iv) U.S.$1,000,000,000 aggregate principal amount of 9.000% Senior Secured Notes due 2018 issued by CEMEX on January 11, 2011, and (v) U.S.$125,331,000 additional aggregate principal amount of 9.25% Senior Secured Notes due 2020 issued by CEMEX España, acting through its Luxembourg branch, on March 4, 2011.

(9) Amounts in Dollars have been converted from Euros at an exchange rate of U.S.$1.3335 to €1.00, the CEMEX foreign exchange rate as of December 31, 2010.

(10) Reflects the liability represented by the $800 million aggregate principal amount of the Notes, after deducting the $8 million of original issue discount, which will be expensed over the life of the Notes in accordance with MFRS.

(11) Issued by CEMEX Finance Europe B.V., a special purpose vehicle and wholly-owned subsidiary of CEMEX España, and solely guaranteed by CEMEX España.

(12) Under MFRS C-12, the 2010 Optional Convertible Subordinated Notes represent a compound instrument, which has a liability component and an equity component. The liability component amounted to U.S.$622 million as of December 31, 2010 and U.S.$614 million at issuance. The equity component, which represents a premium over the option of the noteholders to convert into equity, was recognized net of commissions, within "Other equity reserves" and amounted to U.S.$93 million at issuance (see note 12A and 16B to our consolidated financial statements included in the offering memorandum). If the conversion option is exercised, this amount will be reclassified as additional paid-in capital. Although we have not completed our U.S. GAAP reconciliation of our 2010 financial statements, we currently anticipate that there will be a new reconciliation item in our U.S. GAAP reconciliation of our 2010 financial statements in respect of the 2010 Optional Convertible Subordinated Notes, the entire principal amount of which we expect will be recorded as debt until conversion under U.S. GAAP. We cannot assure you that we will not identify additional reconciliation items or that this reconciliation item will be reflected therein in accordance with our current expectations.

(13) Under MFRS C-12, the 2011 Optional Convertible Subordinated Notes, like the 2010 Optional Convertible Subordinated Notes referred to in note (11) above, represent a compound instrument, which has a liability component and an equity component, and we expect to have a similar U.S. GAAP reconciliation item in respect of the 2011 Optional Convertible Subordinated Notes in our future financial statements. However, the 2011 Optional Convertible Subordinated Notes will not be considered as debt for purposes of the leverage ratio calculations under the Financing Agreement. The "as adjusted" column reflects (i) the expected liability component of the 2011 Optional Convertible Subordinated Notes of U.S.$1,331 million, calculated as of the date of this offering memorandum and (ii) the expected equity component of the 2011 Optional Convertible Subordinated Notes of U.S.$331 million, calculated net of commissions as of the date of this offering memorandum. The equity component, which represents a premium over the option of the noteholders to convert into equity, is expected to be recognized net of commissions, within "Other equity reserves," and if the conversion option is exercised, will be reclassified as additional paid-in capital.

(14) Under MFRS, the Mandatory Convertible Securities issued in Mexico on December 10, 2009 in exchange for CBs represent a combined instrument with liability and equity components. The liability component, approximately Ps1,994 million (U.S.$161 million) as of December 31, 2010, corresponds to the net present value of interest payments due under the Mandatory Convertible Securities, assuming no early conversion, and was recognized under "Other Financial Obligations" in our balance sheet. The equity component, approximately Ps1,971 million (U.S.$159 million) as of December 31, 2010, represents the difference between principal amount and the liability component, and was recognized within "Other equity reserves" net of commissions in our balance sheet. See notes 12A and 16B to our consolidated financial statements included in the offering memorandum.

(15) Issued by special purpose vehicles. In accordance with MFRS, these securities are accounted for as equity due to the fact that they do not have a specified maturity date and our option to defer payment of interest However, for purposes of our U.S. GAAP reconciliation, we record these debentures as debt and interest payments thereon as part of financial expenses in our consolidated income statement.

(16) As used in this table, total capitalization equals short- and long-term debt plus the Mandatory Convertible Notes plus the Notes and plus total stockholders' equity.

* * *

The Initial Purchasers propose to resell the Notes at the offering price set forth on the cover page of the offering memorandum within the United States to persons they reasonably believe to be qualified institutional buyers (as defined in Rule 144A) in reliance on Rule 144A and outside the United States in reliance on Regulation S. See "Transfer Restrictions; Notice to Investors." Sales in the United States may be made through certain affiliates of the Initial Purchasers. The price at which the Notes are offered may be changed at any time without notice.

* * *

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 Company's preliminary offering memorandum, dated March 29, 2011 (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. Terms used herein but not defined herein shall have the respective meanings as set forth in the Preliminary Memorandum.

**SCHEDULE III**

**Forms of Opinion of Skadden, Arps, Slate, Meagher & Flom LLP,
special U.S. counsel for the Company**

**SCHEDULE IV**

**Form of Opinion of Ramiro G. Villarreal, General Counsel of the Company**

[INTRODUCTORY PARAGRAPH AND RELIANCE SECTIONS]

In rendering this opinion, I have assumed the legal capacity of all natural persons, the genuineness of all signatures, the authenticity of all documents submitted to me as originals, the conformity to original documents of all documents submitted to me as facsimile, electronic, certified or photostatic copies, and the authenticity of the originals of such copies. In making my examination of executed documents, I have assumed that the parties thereto (other than the Company and CEMEX México) had the power, corporate or other, to enter into and perform all obligations thereunder and have also assumed the due authorization by all requisite action, corporate or other, and the execution and delivery by such parties (other than the Company and CEMEX México) of such documents and the validity and binding effect thereof on such parties. I have also assumed that each of the parties (other than the Company and CEMEX México) to the Transaction Documents (as defined herein) has been duly organized and is validly existing in good standing, if applicable, and has requisite legal status and legal capacity, under the laws of its jurisdiction of organization and that each of such parties has complied and will comply with all aspects of the laws of all relevant jurisdictions (including the laws of its jurisdiction of organization) in connection with the transactions contemplated by, and the performance of its obligations under, the Transaction Documents, other than the laws of Mexico insofar as I express my opinions herein.

In rendering this opinion I have reviewed originals or copies of the following documents (referred to herein collectively as the " Transaction Documents"):

(a) an executed copy of the Purchase Agreement;

(b) the Preliminary Memorandum, the documents incorporated by reference therein and the final term sheet, dated March [ ___], 2011 (the "Final Term Sheet");

(c) the Final Memorandum and the documents incorporated by reference therein;

(d) an executed copy of the Indenture;

(e) the Securities in global form as executed by the Company and authenticated by the Trustee;

(f) an executed copy of the Financing Agreement dated August 14, 2009 (the "Financing Agreement") between the Company, the financial institutions and noteholders named therein, as participating creditors, Citibank International PLC, as administrative agent, and Wilmington Trust (London) Limited, as security agent (the "Security Agent");

(g) an executed copy of the security trust agreement ( *contrato de fideicomiso de garantía* ) entered into among (i) the Company, CEMEX México, Empresas Tolteca de México, S.A. de C.V., Impra Café, S.A. de C.V., Interamerican Investments, Inc. 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) Banco Nacional de México, S.A., Integrante del Grupo Financiero Banamex, División Fiduciaria, as trustee; and (iv) the Security Agent (the "Mexican Security Trust"); and

(h) the documents executed and delivered by each of the Company and the Note Guarantors at the closing pursuant to the Purchase Agreement.

Based upon the foregoing, and subject to the further qualifications set forth below, I am of the opinion that:

1. Each of the Company and CEMEX México has been duly incorporated and is validly existing as a corporation under the laws of Mexico, with full corporate 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 to execute and deliver, and to perform its obligations under, the Transaction Documents and any transaction contemplated thereunder.

2. All the outstanding shares of capital stock of each of the Company and CEMEX México has 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 the Subsidiaries are owned by the Company either directly or through wholly owned subsidiaries free and clear of any perfected security interest and, to the knowledge of such counsel, after due inquiry, any other security interest, claim, lien or encumbrance.

3. Each of the Transaction Documents to which each of the Company and CEMEX México is a party, has been duly authorized, executed and delivered by the Company and CEMEX México, respectively, and constitutes a legal, valid and binding agreement, enforceable against the Company and CEMEX México, respectively, in accordance with its terms.

4. The Mexican Security Trust creates in favor of the Security Agent, for the benefit of holders of the Securities, valid security interests in the Collateral for the payment of the Securities.

5. Neither the execution and delivery of the Transaction Documents, nor the consummation of any other of the transactions therein contemplated, nor the fulfillment of the terms thereof will conflict with, result in a breach or violation of, or imposition of any lien, charge or encumbrance upon any property or asset of any of the Company or CEMEX México pursuant to, (i) the charter or by laws ( *estatutos sociales*) of any of the Company or CEMEX México; (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 each of the Company and CEMEX México is a party or bound or to which their property is subject; or (iii) any statute, law, rule, regulation, judgment, order or decree applicable to the Company or CEMEX México of any court, regulatory body, administrative agency, governmental body,

arbitrator or other authority having jurisdiction over the Company or CEMEX México or any of their respective properties.

6. No consent, approval, authorization, filing with, order of, notice to, or qualification with any Mexican governmental or regulatory authority or court is required for the execution, delivery and performance by each of the Company and CEMEX México of the Purchase Agreement, the Indenture, the issuance and sale of the Securities, and the consummation of the transactions contemplated therein, except for the notice to be given to the Mexican National Banking and Securities Commission ( *Comisión Nacional Bancaria y de Valores*), no later than one Business Day after the Closing Date, under Article 7 of the Securities Market Law, in respect of the issuance of the Securities.

7. The choice of New York state law as the governing law of the Purchase Agreement, the Indenture, and the Securities, is legal, valid and binding to each of the Company and CEMEX México under the laws of Mexico and there is no reason why the courts of Mexico would not give effect to the choice of New York law as the proper law of the Purchase Agreement, the Indenture, and the Securities; each of the Company and CEMEX México has the legal capacity to sue and be sued in its own name under the laws of Mexico; each of the Company and CEMEX México has the power to submit, and has irrevocably submitted, to the jurisdiction of the New York courts and each of the Company and CEMEX México has validly and irrevocably appointed Corporate Creations Network Inc. as its authorized agent under the laws of Mexico for service of process under the Purchase Agreement, the Indenture and the Securities; the irrevocable submission of each of the Company and CEMEX México to the jurisdiction of the New York courts and the waivers by each of the Company and CEMEX México of any immunity and any objection to the venue of the proceeding in a New York court in the Purchase Agreement, in the Indenture, and in the Securities, are legal, valid and binding under the laws of Mexico and there is no reason why the courts of Mexico would not give effect to such submission and waivers; and the courts in Mexico will recognize as valid and final, and will enforce, any final and conclusive judgment against each of the Company and CEMEX México obtained in a New York court arising out of or in relation to the obligations of each of the Company and CEMEX México under the Purchase Agreement, the Indenture, or the Securities, without re-examination of the issues pursuant to Articles 569 and 571 of the Mexican Federal Code of Civil Procedure and Article 1347A of the Mexican Commerce Code, which provide, *inter alia*, that any judgment rendered outside of Mexico may be enforced by Mexican Courts, provided that:

(i) such judgment is obtained in compliance with (a) all legal requirements of the jurisdiction of the court rendering such judgment, and (b) all legal requirements of the relevant Transaction Documents;

(ii) such judgment is not rendered in a real action ( *acción real*);

(iii) such judgment is final, non-appealable and authenticated by the appropriate governmental authorities, and is strictly for the payment of a certain sum of money, provided that, under Mexican Monetary Law, payments that should be made in Mexico in foreign currency, whether by agreement or upon a

judgment of a Mexican Court, may be discharged in Mexican currency at a rate of exchange for such currency prevailing at the time of payment;

(iv) the court rendering such judgment is competent to render such judgment in accordance with applicable rules under international law and such rules are compatible with the rules adopted under the Mexican Code of Commerce;

(v) service of process was made personally on the Company and CEMEX México, as applicable, or on an appropriate Process Agent of the Company and CEMEX México, as applicable;

(vi) such judgment does not contravene Mexican public policy or laws (and we have no reason to believe that a judgment based upon the Transaction Documents would contravene Mexican public policy);

(vii) the applicable procedure under the laws of Mexico with respect to the enforcement for foreign judgments (including the issuance of a letter rogatory by the competent authority of such jurisdiction requesting enforcement of such judgment and the certification of such judgment as authentic by the corresponding authorities of such jurisdiction in accordance with the laws thereof) is complied with;

(viii) the courts of such jurisdiction recognize the principles of reciprocity in connection with the enforcement of Mexican judgments in such jurisdiction; and

(ix) the cause of action in connection with which such judgment is rendered is not the same cause of action between the same parties that is pending before a Mexican court.

8. Except as described in the Disclosure Package and the Final Memorandum, with respect to non-residents of Mexico, no stamp or other issuance or transfer taxes or duties and no capital gains, income, withholding or other taxes are payable by or on behalf of the Initial Purchasers to Mexico or to any political subdivision or taxing authority thereof or therein in connection with the sale and delivery by the Company of the Securities as contemplated in the Purchase Agreement to the Initial Purchasers, the sale and delivery by the Initial Purchasers of the Securities as contemplated in the Purchase Agreement or the entering into or performance of the terms of the Purchase Agreement.

9. Other than as described in the Disclosure Package and the Final Memorandum, under the current laws and regulations of Mexico, all payments of principal, premium (if any) and interest on the Securities may be paid, if applicable, by each of the Company and CEMEX México to the registered holder thereof in U.S. dollars (that may be obtained through conversion of Mexican Pesos) that may be freely transferred out of Mexico, and all such payments and other distributions made to holders of the Securities who are non-residents of Mexico, will not be subject to Mexican income, withholding or other taxes under the laws and regulations of Mexico and are otherwise free and clear of any other tax, duty

withholding or deduction in Mexico and without the necessity of obtaining any governmental authorization in Mexico.

10. It is not necessary in order to enable the Initial Purchasers, the Trustee or the holders of the Securities to exercise or enforce its rights under the Purchase Agreement, the Indenture or the Securities in Mexico or by reason of the entry into and/or the performance of the Purchase Agreement and the Indenture, that the Initial Purchasers, the Trustee or the holders of Securities should be licensed or qualified to do business in Mexico. The Initial Purchasers and the non-Mexican holders of the Securities will not be deemed resident, domiciled, carrying on business or subject to taxation in Mexico solely by reason of the execution, delivery, performance or enforcement of the Purchase Agreement.

11. Except as disclosed in the Disclosure Package and the Final Memorandum, there is no pending or, to the best of my knowledge, threatened 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 that is not adequately disclosed in the Disclosure Package and the Final Memorandum, except in each case for such proceedings that, if the subject of an unfavorable decision, ruling or finding would not singly or in the aggregate, have a Material Adverse Effect;

12. (i) The statements in the Disclosure Package and the Final Memorandum under the headings “Important Federal Tax Considerations,” “Description of Notes” and “Regulatory Matters and Legal Proceedings,” fairly summarize the matters therein described.

13. There is no reason to believe that the Disclosure Package, as amended or supplemented at the Execution Time, contained any untrue statement of a material fact or omitted 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 (in each case, other than the financial statements and other financial information contained therein, as to which I express no opinion).

14. There is no reason to believe that the Final Memorandum, as of its date or on the Closing Date, contained or contains any untrue statement of a material fact or omitted or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading (in each case, other than the financial statements and other financial information contained therein, as to which I express no opinion).

I express no opinion as to any laws other than the laws of Mexico. In rendering my opinion, I have relied, (i) as to matters governed by United States Federal and New York law, upon the opinion of Skadden, Arps, Slate, Meagher & Flom LLP delivered pursuant to the Purchase Agreement and (ii) as to matters of fact, on certificates of responsible officers of each of the Company and CEMEX México and public officials that are furnished to the Initial Purchasers.

This opinion is subject to the following qualifications:

a. Enforcement of the Transaction Documents may be limited by *concurso mercantil,* bankruptcy, insolvency, liquidation, reorganization, moratorium and other similar laws affecting the rights of creditors generally;

b. Labor claims, claims of tax authorities for unpaid taxes, social security quotas, worker's housing fund quotas, retirement fund quotas, as well as claims from secured or privileged creditors, will have priority over claims of the parties to, or in connection with, the Purchase Agreement, the Indenture and the Securities;

c. In the event that proceedings are brought in Mexico seeking performance of the obligations of the Company or CEMEX México in Mexico, pursuant to the Mexican Monetary Law, such entity may discharge its obligations by paying any sums due in a currency other than Mexican currency, in Mexican currency at the rate of exchange prevailing in Mexico on the date when payment is made;

d. In the event that any legal proceedings are brought in the courts of Mexico, a Spanish translation of the documents required in such proceedings prepared by a court-approved translator would have to be approved by the court after the defendant has 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;

e. In the event of foreclosure of the Mexican Security Trust, the purchaser or purchasers of any transferred shares of a Mexican entity 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* );

f. Claims may become barred under the statutes of limitation, which are not waivable under Mexican law, or may become subject to defenses or set-off or counterclaim;

g. A Mexican court may stay proceedings held in such court if concurrent proceedings are being held elsewhere;

h. Under the laws of Mexico, the obligations of a guarantor are not independent from, and may not exceed, the obligations of the main obligor;

i. With respect to the provisions contained in each of the Transaction Documents in connection with service of process, it should be noted that service of process by mail does not constitute personal service of process under Mexican law and, since such service is considered to be a basic procedural requirement, if for purposes of proceedings outside Mexico service of process is made by mail, a final judgment based on such process would not be enforced by the courts of Mexico; and

j. An obligation to pay interest on interest may not be enforceable in Mexico.

This opinion is furnished only to you as representative of the Initial Purchasers and is solely for the Initial Purchasers' benefit in connection with the closing occurring today and the offering of the Securities, in each case pursuant to the Purchase Agreement. Without my prior written consent, this opinion may not be used, circulated, quoted or otherwise referred to

for any other purpose or relied upon by, or assigned to, any other person for any purpose, including any other person that acquires any Securities or that seeks to assert your rights in respect of this opinion (other than an Initial Purchaser's successor in interest by means of merger, consolidation, transfer of a business or other similar transaction), except that The Bank of New York Mellon may rely upon this opinion in its capacity as trustee under the Indenture and that Skadden, Arps, Slate, Meagher & Flom LLP may rely upon this opinion as to matters of the laws of the Mexico in rendering their opinion pursuant to Section 6(a) of the Purchase Agreement.

**SCHEDULE V**

**Form of Opinion of Juan Pelegrí y Girón, General Counsel of CEMEX España**

[Letterhead of Cemex España]

**Merrill Lynch, Pierce, Fenner & Smith Incorporated**
One Bryant Park
New York, New York 10036
U.S.A.

**J.P. Morgan Securities LLC**
383 Madison Avenue
New York, New York 10179
U.S.A.

**RBS Securities Inc.**
600 Washington Boulevard
Stamford, CT 06901

Madrid, [ ] April 2011

Dear Sirs,

**Issue of USD [ ] Floating Rate Senior Secured Notes due 20[ ]**

I have acted as the General Counsel for Europe, Middle East, Africa and Asia of the Cemex group and Secretary to the Board of Directors of CEMEX ESPAÑA, S.A. in connection with the issue by CEMEX, S.A.B. DE C.V. of U.S.$[ ] principal amount of its Floating Rate Senior Secured Notes due [ ] pursuant to the terms of the Indenture (as defined below). This opinion letter is being furnished pursuant to Section 6(c) of the Purchase Agreement (as defined below) in connection with the participation of CEMEX ESPAÑA, S.A. as guarantor to the referred issue of notes, the pledges over shares in CEMEX ESPAÑA, S.A. created as security interest and certain other documents in relation thereto listed in Schedule 1 ( *Description of Documents*).

1. **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions**

In this Opinion Letter:

1.1.1 "**Collateral**" means the 99.6392 per cent of the shares in the Spanish Note Guarantor pledged through the Spanish Share Pledges Agreement and the New Spanish Share Pledges Agreement;

1.1.2 "**Financing Agreement**" means the Financing Agreement dated 14 August 2009, as amended, between, *inter alia*, the Parent, the Original Borrowers, the Original Guarantors, the Original Security Providers, the Original Participating Creditors, the Creditors' Representatives, the Administrative Agent and the Security Agent (all as defined therein), which has been raised to Spanish public document status on 29 September 2009 by virtue of a deed granted before the Notary of Madrid, Mr. Rafael Monjó Carrió;

1.1.3 "**Foreign Pledgors**" means:

(a) CEMEX, S.A.B. DE C.V., an entity 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**"); and

(b) New Sunward Holding B.V., a private company with limited liability (*besloten vennootschap met beperkte* aansprakelijkheid) incorporated under the laws of The Netherlands, having its registered office at Amsteldijk 166, 1079 LH Amsterdam, The Netherlands and registered with the Chamber of Commerce in Amsterdam under number 34133556 and with tax identification number N-0032922-G (hereinafter, "**Holding**");

1.1.4 "**Indenture**" means the indenture dated [ ] April 2011 between, *inter alia*, the Issuer, the Spanish Note Guarantor and the Bank of New York Mellon, as Trustee;

1.1.5 "**Intercreditor Agreement**" means the Intercreditor Agreement dated 14 August 2009 between, *inter alia*, the Administrative Agent, the Original Participating Creditors, the Participating Creditors' Representatives, the Parent, the Original Borrowers, the Original Guarantors, the Original Security Providers and the Security Agent (all as defined therein), as amended;

1.1.6 "**Issuer**" means CEMEX S.A.B. de C.V.;

1.1.7 "**Purchase Agreement**" means the Purchase Agreement dated 29 March 2011 between, *inter alia*, the Issuer, the Representatives of the Initial Purchasers named therein, and the Spanish Note Guarantor;

1.1.8 "**Spanish Note Guarantor**" means CEMEX España, S.A., a company incorporated under the laws of Spain, with registered office in 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; and

1.1.9 "**Spanish Share Pledges Agreement**" means the notarial deed (*póliza*) of pledges agreement over shares in the Spanish Note Guarantor granted by Holding, the Parent and Sunward Acquisitions N.V., before the notary of Madrid, Mr. Rafael Monjó Carrió on 29 September 2009.

1.1.10 "**New Spanish Share Pledges Agreement**" means the notarial deed (*póliza*) of pledges agreement over shares in the Spanish Note Guarantor granted by Holding, before the notary of Madrid, Mr. Rafael Monjó Carrió on 23 December 2010.

1.2 **Interpretation**

Terms defined or given a particular construction in the Indenture and/or the Purchase Agreement have the same meaning in this Opinion Letter unless a contrary indication appears.

2. **OPINION**

Based upon the assumptions set out in **Schedule 2** (*Assumptions*) and subject to the qualifications set out in **Schedule 3** (*Qualifications*), I am of the opinion that:

2.1 **Status**

2.1.1 The Spanish Note Guarantor is a public limited liability company ("*sociedad anónima*") duly incorporated, duly organised and validly existing under the laws of Spain, with full corporate power and authority to own or lease, as the case may be, property and assets and to carry on its business pursuant to its articles of incorporation.

2.1.2 The Spanish Note Guarantor has filed its last financial statements with the Mercantile Registry and neither the commencement of winding up procedures nor the commencement of insolvency proceedings in relation to the Spanish Note Guarantor have been entered into the Mercantile Registry

2.2 **Due Authorization and conflict**

2.2.1 Each of the Transaction Security Documents governed by Spanish law (i) has been duly authorized, executed and delivered by the parties thereto, as far as Spanish law is applicable; (ii) constitutes a valid and binding agreement, enforceable over the Collateral in accordance with its terms; and (iii) creates valid security interest in the Collateral in favour of the holders of the Securities.

2.2.2 The Purchase Agreement and the Indenture, including the guarantee by the Spanish Note Guarantor provided for therein, have been duly authorised, executed and delivered by the Spanish Note Guarantor as far as Spanish law is applicable.

2.2.3 Neither the execution nor the delivery of the Purchase Agreement, the Indenture, the issuance and sale of Securities, the Transaction Security Documents nor the consummation of the transactions therein contemplated, nor the fulfilment of the terms thereof conflict with or will conflict with, result in a violation of, or imposition of any lien, charge or encumbrance upon any property or asset of the Spanish Note Guarantor or of any of its Spanish subsidiaries pursuant to:

(a) the constitutional documents of the Spanish Note Guarantor or any of its Spanish subsidiaries;

(b) the terms of any Spanish law governed indenture, contract, lease, mortgage, deed of trust, note agreement, loan agreement or other agreement, obligation, condition, covenant or instrument to which the Spanish Note Guarantor or any of its Spanish subsidiaries is a party or bound or to which its or their property is subject; or

(c) any present statute, law, regulation or rule of Spain or, to my knowledge, any judgment, order of any Spanish governmental, judicial or other authority or arbitrator having jurisdiction over the Spanish Note Guarantor or any of its Spanish subsidiaries or any of their respective properties located in Spain.

2.3 **Filings, Registrations or Consents**

It is not necessary under the laws of Spain that:

2.3.1 any document be filed, registered or recorded before or with any court or public office; or

2.3.2 any stamp or documentary tax or any other tax or duty whatsoever be paid; or

2.3.3 any consent, approval or authorisation of any person or authority (including without limitation, any tax or other monetary authority) be obtained except for obtaining the relevant financial transaction number ( *Número de Operación Financiera* or NOF) from the Bank of Spain prior to the Spanish Note Guarantor making any payment as guarantor under the Purchase Agreement, the Indenture or the Securities; or

2.3.4 any other action whatsoever be taken, except for the sworn translation into Spanish of the Purchase Agreement, the Indenture and the Securities and any other documents drafted in a language different than Spanish should they need to be submitted to a Spanish court,

to ensure the legality, validity, enforceability and the admissibility in evidence of the Purchase Agreement, the Indenture, the Securities and/or the Transaction Security Documents governed by Spanish law.

2.4 **Bank Domicile and Place of Business**

2.4.1 None of the Initial Purchasers, the Trustee or the holders of the Securities is or will become (or be deemed to have become) resident, domiciled, engaged in the carrying on of business or subject to taxation in Spain by reason only of the execution, delivery, performance or enforcement of the Purchase Agreement, the Indenture, the Securities or the Transaction Security Documents governed by Spanish law.

2.4.2 It is not necessary for any of the Initial Purchasers, the Trustee or the holders of the Securities to be licensed or qualified to do business in Spain to exercise or enforce its rights under the Purchase Agreement, the Indenture, the Securities or the Transaction Security Documents governed by Spanish law.

2.5 **Governing Law**

2.5.1 The choice of law provisions set forth in the Purchase Agreement, the Indenture and the Securities are legal valid and binding as far as Spanish law is applicable.

2.5.2 In any proceedings for the enforcement of the guarantee given by the Spanish Note Guarantor, the Spanish courts would give effect to the choice of New York law as

the governing law of the Purchase Agreement, the Indenture and the Securities in accordance with, and subject to the limitations set forth in, Regulation (EC) no. 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations ( "**Rome I**").

2.6 **Submission to Jurisdiction**

2.6.1 The Spanish Note Guarantor has the legal capacity to sue and be sued in its own name.

2.6.2 The Spanish Note Guarantor has the power to submit, and has irrevocably submitted to the jurisdiction of the New York courts and has validly and irrevocably appointed Corporate Creations Network Inc. as its authorized agent for the purpose described in the Purchase Agreement, the Indenture and in the Securities.

2.6.3 The irrevocable submission by the Spanish Note Guarantor to the jurisdiction of the New York courts and the waivers by the Spanish Note Guarantor of any immunity and any objection to the venue of the proceeding in a New York court in the Purchase Agreement and the Indenture are legal, valid and binding.

2.6.4 Pursuant to the interpretation given by the Spanish Supreme Court (Tribunal Supremo) to article 22.2 of the Organic Law 6/1985, dated 1 July 1985, on the Judiciary ("**LOPJ**") the Spanish courts would give effect to the Spanish Note Guarantor's submission to the New York courts and the waiver to any objection to the venue of the proceeding in a New York court.

2.7 **Recognition and enforcement of judgments**

Any judgment obtained in the United States would be recognised in Spain in accordance with articles 951 to 958 of the Civil Procedural Act of 1881 (*Ley de Enjuiciamiento Civil*, *hereinafter*, **LEC 1881**) in connection with the Civil Procedural Act of 2000 (hereinafter, **LEC 2000**). Pursuant to these articles (as interpreted by the Spanish Supreme Court - *Tribunal Supremo*-), in the absence of any treaty providing for the reciprocal recognition and enforcement of judgments (currently there is no such treaty between the United States and Spain) and in the absence of proof that similar Spanish judgments are not recognised and enforced in the specific State rendering the judgment (in which case the US judgment will not be recognised in Spain), such US judgment will be recognised and enforced in Spain provided that it meets the following requirements:

(a) the judgment must be final, translated into Spanish and apostilled;

(b) the judgment is not contrary to Spanish public policy;

(c) there is not a pending proceeding between the same parties and in relation to the same issues in Spain;

(d) there is not a judgment rendered between the same parties and for the same cause of action in Spain or in another country provided that in this latter case the judgment has been recognised in Spain;

(e) where rendering the judgment, the courts rendering it must have decided upon an action characterised as an action *in personam* (in the interpretation made by the Spanish Supreme Court of article 954.1 of the LEC 1881), have not infringed an exclusive ground of jurisdiction provided for in Spanish law and have not based their jurisdiction on exorbitant grounds; and

(f) the rights of defence of the defendant should have been protected where rendering the foreign judgment, including but not limited to a proper service of process carried out with sufficient time for the defendant to prepare its defence.

Under Spanish procedural law, process must be served personally on each defendant. The Spanish Supreme Court, taking into account the circumstances of the case, may construe that service of process on an agent appointed by the Spanish Note Guarantor has infringed Spanish public policy or the rights of defence of the Spanish Note Guarantor. Should this be the case, the judgment rendered in the State of New York would not be recognised in Spain.

## 3. ADDRESSEES AND PURPOSE

This Opinion Letter is limited to matters of Spanish law in force on the date hereof. I express no opinion with respect to the law of any other jurisdiction.

This Opinion Letter expresses and describes Spanish legal concepts in English and not in the original Spanish terms; therefore, this opinion is issued and may only be relied upon on the expressed conditions that it shall be governed by and that all words and expressions used herein shall be construed and interpreted in accordance with the laws of Spain.

This Opinion Letter is limited to the matters set forth herein and no opinion may be inferred or implied beyond that expressly stated herein.

This Opinion Letter is provided in connection with the satisfaction of the Conditions to the Obligations of the Initial Purchasers in the Purchase Agreement and is addressed to and is solely for the benefit of the Initial Purchasers as at the date hereof. It may not, without my prior written consent, be relied upon for any other purpose or be disclosed to or relied upon by any other person, except that The Bank of New York Mellon may rely upon this opinion in its capacity as trustee under the Indenture, and save that it may be disclosed without such consent to:

(a) any person to whom disclosure is required to be made by applicable law or court order or pursuant to the rules or regulations of any supervisory or regulatory body or in connection with any judicial proceedings;

(b) the officers, employees, auditors and professional advisers of any addressee;

(c) any person, not otherwise an addressee of this Opinion Letter, who (i) becomes a Securities holder or (ii) is a potential purchaser of the Securities, and their respective professional advisers; and

(d) each of Fitch Ratings Ltd., Moody's Investors Service, Inc. and Standard & Poors' Ratings Group, a division of McGraw Hill Companies, Inc. and their respective professional advisers,

on the basis that (i) such disclosure is made solely to enable any such person to be informed that an opinion has been given and to be made aware of its terms but not for the purposes of reliance, (ii) I do not assume any duty or liability to any person to whom such disclosure is made and (iii) such person agrees not to further disclose this Opinion Letter or its contents to any other person, other than as permitted above, without my prior written consent. Moreover, I assume no obligation to advise either you, the Trustee, the Agents or any other party of changes of law or facts that could occur after the date hereof, regardless of whether the change affects the legal analysis or conclusions given herein.

Yours faithfully,

Juan Pelegrí y Girón

General Counsel for Europe, Middle East, Africa and Asia
and Secretary of the Board of Directors of Cemex España, S.A.

## SCHEDULE 1

## DESCRIPTION OF DOCUMENTS

In arriving at the opinions expressed in Section 2 of this Opinion Letter, I have examined and relied upon the following documents:

1. **TRANSACTION DOCUMENTS**

1.1 Photocopy of the execution version of the Purchase Agreement.

1.2 Photocopy of the execution version of the Indenture.

1.3 Photocopy of the execution version of the Securities.

The Purchase Agreement, the Indenture and the Securities are together referred to as the "**General Documents**".

1.4 Original of the Spanish Share Pledges Agreement.

1.5 Original of the New Spanish Share Pledges Agreement.

1.6 Originals of the following irrevocable powers of attorney granted by each of the Foreign Pledgors (the " **Irrevocable Powers of Attorney**"):

(a) irrevocable power of attorney, dated 29 September 2009, granted by Holding in favour of the Security Agent in connection with the Spanish Share Pledges Agreement, before the notary of Madrid, Mr. Rafael Monjó Carrió;

(b) irrevocable power of attorney, dated 29 September 2009, granted by Acquisitions in favour of the Security Agent in connection with the Spanish Share Pledges Agreement, before the notary of Madrid, Mr. Rafael Monjó Carrió;

(c) irrevocable power of attorney, dated 29 September 2009, granted by Parent in favour of the Security Agent in connection with the Spanish Share Pledges Agreement, before the notary of Madrid, Mr. Rafael Monjó Carrió.

1.7 Original notarial deed (*escritura*) of accession to the New Spanish Share Pledges Agreement, dated [5] April 2011, executed in the name of the Trustee acting on behalf of the Securities holders before the notary of Madrid, Mr. Rafael Monjó Carrió (the " **Deed of Accession**").

1.8 Photocopy of the powers of attorney granted by the Trustee in favour of [Mr. Juan Perlaza and Mrs. Paloma Álvarez-Uría before the notary of New York, Mr. Danny Lee] on [5] April 2011 (the "**Trustee Powers of Attorney**").

2. **CORPORATE DOCUMENTS**

Copies of the following public deeds, certificates and other corporate documentation relating to the Spanish Note Guarantor as I have required in order to opine on its capacity to execute the Spanish Share Pledges Agreement and the New Spanish Share Pledges Agreement, including:

2.1 certificate issued by the Spanish Note Guarantor on 11 January 2011;

2.2 certificate of the resolution of the Board of Directors of the Spanish Note Guarantor dated 28 March 2011, raised to the status of Spanish public document on [4] April 2011, before Mr. Rafael Monjó Carrió, Notary in Madrid, approving the terms and the execution of the General Documents and granting special powers of attorney for such purposes in favour of the persons named therein (any of them, acting severally);

2.3 executed original power of attorney granted on 29 July 2009 by Parent in favour of Mr. Roger Saldaña Madera, Mr. Héctor José Vela Dib, Mr. Agustín de Jesús Blanco Garza, Mr. Francisco Javier García Ruiz de Morales and Mr. Juan Pelegrí Girón executed before Mr. Juan Manuel García García, Notary in Monterrey (Mexico), with number 47206 of his protocol and duly apostilled;

2.4 executed original power of attorney granted on 7 August 2009 by Holding in favour of Mr. Héctor Medina Aguiar, Mr. Ramiro G. Villarreal Morales, Mr. Rodrigo Treviño Muguerza, Mr. Humberto Francisco Lozano Vargas, Mr. Jaime Armando Chapa González, Mr. Agustín de Jesús Blanco Garza, Mr. Héctor José Vela Dib, Mr. Juan Pelegrí y Girón, Mr. Francisco Javier García Ruiz de Morales, Mr. Ángel Méndez Molina and Mr. Juan Alberto Urionabarrenechea Güenechea executed before Mr. Kjell Stelling, Notary in Amsterdam (The Netherlands) and duly apostilled; and

2.5 executed original power of attorney granted on 28 July 2009 by Acquisitions in favour of Mr. Héctor Medina Aguiar, Mr. Ramiro G. Villarreal Morales, Mr. Rodrigo Treviño Muguerza, Mr. Humberto Francisco Lozano Vargas, Mr. Jaime Armando Chapa González, Mr. Agustín de Jesús Blanco Garza, Mr. Héctor José Vela Dib, Mr. Juan Pelegrí y Girón, Mr. Francisco Javier García Ruiz de Morales, Mr. Ángel Méndez Molina and Mr. Juan Alberto Urionabarrenechea Güenechea executed before Mr. Kjell Stelling, Notary in Amsterdam (The Netherlands) and duly apostilled.

I have reviewed all documents and laws that I have considered appropriate for the purposes of this opinion; however, I have assumed that there is no factual information or that there are no documents possessed or discoverable by persons other than myself of which I should be aware for the purposes of this Opinion Letter.

## SCHEDULE 2

## ASSUMPTIONS

This Opinion Letter assumes:

2.1 the genuineness of all signatures;

2.2 the completeness and conformity to originals of all documents supplied to me as certified or photostatic copies and the authenticity of the originals of such documents;

2.3 each of the parties to the Purchase Agreement, the Indenture and the Transaction Security Documents (other than the Spanish Note Guarantor): (i) is a company duly incorporated and validly existing pursuant to its applicable laws of incorporation; (ii) has the requisite corporate power and authority to enter into and perform its obligations thereunder and all necessary corporate action on its part has been taken to enable it validly to execute and deliver them; and likewise (iii) has the capacity, power and authority to enter into and to exercise its respective rights and to perform its respective obligations thereunder;

2.4 the formalities required by Spanish law for the Trustee Powers of Attorney to be valid and effective in Spain have been or will be duly fulfilled and these powers of attorney will be delivered to the Spanish notary before whom the Deed of Accession was executed;

2.5 the due execution and delivery of the General Documents by each of the parties thereto (in the capacity they are supposed to act therein) other than the Spanish Note Guarantor;

2.6 that the provisions of the General Documents and the obligations assumed by the parties therein are legal, valid, binding and enforceable in accordance with the laws of the State of New York;

2.7 that any representations and warranties made by the relevant parties to the General Documents and the Transaction Security Documents (other than any representations and warranties in relation to any of the matters specifically the subject of the opinions in this Opinion Letter) are and will be when made or repeated or when deemed made or repeated, as the case may be, true and accurate in all respects and that such representations and warranties were at all relevant times true and accurate;

2.8 that the parties have executed the General Documents and the Security Transaction Documents in good faith, without the presence of fraud, for legitimate commercial purposes and on an arms' length basis;

2.9 that, as of the date of this Opinion Letter or, later on, in the event of the commencement of insolvency proceedings, the Foreign Pledgors neither have nor will have:

(a) their "centre of main interests" (which corresponds to the place where the debtor conducts the administration of its interests on a regular basis and is therefore ascertainable by third parties); nor

(b) an "establishment" (which shall mean any place of operations where the debtor carries out a non-transitory economic activity with human means and goods);

in Spanish Territory for the purposes of Regulation (EC) 1346/2000, dated 29 May 2000, on Insolvency Proceedings and article 10 of the Spanish Insolvency Law; and

2.10 the absence of any other document, agreement, contract, arrangement or resolution that modifies or supersedes any term or condition of the documents listed in Schedule 1 above or which might entail the invalidity or non-enforceability of such documents.

## SCHEDULE 3

3. **QUALIFICATIONS**

3.1 **General Qualifications**

3.1.2 The validity and enforceability of the obligations of the Foreign Pledgors and the Spanish Note Guarantor under the Spanish Share Pledges Agreement and the New Spanish Share Pledges Agreement are subject to the laws regulating insolvency or liquidation proceedings and to other laws of general application relating to or affecting the enforcement of creditors rights and remedies, as welt as to any principles of public policy ("orden público").

3.1.3 Under Spanish law, any provision of a contract allowing a party to unilaterally determine or decide the fulfilment of an obligation may be declared null and void.

3.1.4 The terms "enforceable", "enforceability", "valid", "legal", "binding" and "effective" (or any combination thereof) mean that ail the obligations assumed by the relevant party under the General Documents or the Transaction Security Documents are of a type that Spanish courts enforce; it does not mean that these obligations will necessarily be enforced in all circumstances in accordance with their terms; in particular, enforcement before the courts will in any event be subject to:

3.1.5 the nature of the remedies available in the courts (and nothing in this Opinion Letter must be taken as indicating that specific performance or injunctive relief would be available as remedies for the enforcement of such obligations); and

3.1.6 the availability of defences such as (without limitation), set-off (unless validly waived), circumvention of law ("fraude de ley"), abuse in the exercise of rights ("abuso de derecho"), misrepresentation, force majeure, unforeseen circumstances, undue influence, duress, error, abatement and counter-claim.

3.1.7 A clause, which provides that in the event of any invalidity, illegality or unenforceability of any provision of an agreement the remaining provisions thereof shall not be affected, may not be effective if a particular provision of that agreement: (i) is found to be null; and (ii) held by the courts to have been an essential element without which the parties would not have entered into such agreement. In that case, such agreement as a whole may be declared null and void.

3.2 **Specific Qualifications**

3.2.1 In general terms, under Spanish law, any guarantee, pledge or mortgage must guarantee or secure another obligation to which it is ancillary and which must be clearly identified in the relevant guarantee or security agreement. Therefore, the guarantee or security follows the underlying obligation in such a way that nullity of the underlying obligation entails nullity of the guarantee or security and termination of the underlying obligation entails cancellation of the guarantee or security.

3.2.2 The irrevocable nature of the Irrevocable Powers of Attorney is based on some previous decisions of the Spanish Supreme Court (Tribunal Supremo) (STS dated 31 October 1987, 27 April 1989 and 26 November 1991). However, since such irrevocable nature may be considered as an exception to the rules generally applicable to powers of attorney under Spanish law, a different view by the competent Spanish courts in connection with the referenced power of attorney could not be disregarded.

3.2.3 The enforcement of the Spanish Share Pledges Agreement and/or the New Spanish Share Pledges Agreement must be made in accordance with the procedures provided by Spanish law and referred to therein. As a general rule (and save for certain exceptions like the one mentioned in 3.2.4 below), the beneficiaries do not have the right to become owners of the assets subject to the specific security once a default of the secured obligations has occurred. However, the beneficiaries have the right to be reimbursed from the sale proceeds obtained from the public auction of the relevant assets and to act themselves as bidders in such public auction. Royal Decree Law 5/2005, of 11 March on "reformas urgentes para el impulso de la productividad y para la mejora de la contratación pública", (" **RDL 5/2005**") provides for the possibility of enforcing a pledge over shares by appropriation of the shares by the creditors or through a sale provided that certain conditions are met.

3.2.4 Using the enforcement procedures provided for in RDL 5/2005 for a pledge created over shares as security for the obligations arising under the General Documents is consistent with the literal reference of RDL 5/2005 to financial obligations. Although there are certain resolutions from lower courts supporting the applicability of the enforcement procedures provided for in RDL 5/2005 to the enforcement of a pledge created over shares as security for the obligations arising under a financing agreement (to the best of my knowledge, there is no case law from the Spanish Supreme Court in relation to this matter), there is some doctrinal debate about the applicability of RDL 5/2005 to cases like this. Therefore it cannot be disregarded that, upon enforcement of the Spanish Share Pledges Agreement and/or the New Spanish Share Pledges Agreement, a court may consider that the enforcement procedures provided for in RDL 5/2005 cannot be used for the enforcement of the Spanish Shares Pledge Agreement. In such a case, provisions of the Spanish Share Pledges Agreement and the New Spanish Share Pledges Agreement dealing with these enforcement proceedings would be rendered null and void notwithstanding, in any event, the validity and effectiveness of the remaining provisions and, consequently, of the beneficiaries' right to resort to any other type of enforcement proceeding permitted by law and to any rights of separation and abstention.

3.2.5 Since the Spanish Supreme Court ("Tribunal Supremo") has rendered extra judicial proceedings for mortgage foreclosure regulated formerly under Articles 129.2 of the Law on Mortgages ("Ley Hipotecaria") and 234 and 236 of the Spanish Regulation on Mortgages ("Reglamento Hipotecario") null and void on the basis of the supervening unconstitutionality of these proceedings (STS dated 4 May 1998 and 30 January and 20 April of 1999), the possibility that the Spanish courts might pass a similar resolution in respect of the extrajudicial proceedings for the enforcement of the pledge regulated under Article 1,872 of the Spanish Civil Code cannot be disregarded. In such a case, clauses of the Spanish Share Pledges Agreement and the New Spanish Share Pledges Agreement

dealing with such extra judicial proceedings would be rendered null and void notwithstanding the validity and effectiveness otherwise of the pledge and, consequently, of the beneficiaries' right to resort to any other type of enforcement proceeding permitted by law and to any rights of separation and abstention.

3.2.6 It is not beyond doubt that the Security Agent may validly establish a liquidated sum in respect of a claim in a proceeding for the enforcement of the security created pursuant to the Spanish Share Pledges Agreement and the New Spanish Share Pledges Agreement in accordance with the procedure established in Article 572.2 of LEC 2000, as long as, to the best of my knowledge, the Spanish courts have not handed down a judgment in relation to the applicability of said Article to agreements governed by a law other than Spanish law. Therefore, it may not be completely disregarded that the enforcement of the Spanish Share Pledges Agreement and/or the New Spanish Share Pledges Agreement could require that a judgement be obtained in England in relation to the Financing Agreement and/or New York, in relation to the General Documents, establishing that a default has been made in payment of the secured obligations and a liquidated sum became payable thereunder or, where appropriate in relation to the Financing Agreement, a European Enforcement Order Certificate under Regulation (EC) No 805/2004 from the European Parliament and the Council, dated 21 April 2004, creating a European enforcement order for uncontested claims be issued and then be recognised and enforced in Spain over the assets subject to the Spanish Share Pledges Agreement and the New Spanish Share Pledges Agreement.

3.2.7 The Spanish Share Pledges Agreement and the New Spanish Share Pledges Agreement exclusively secure compliance with the relevant secured obligations stated therein, and no other obligations will be deemed to be secured by the Spanish Share Pledges Agreement and the New Spanish Share Pledges Agreement. Consequently, the Spanish Share Pledges Agreement and the New Spanish Share Pledges Agreement will only be enforceable for failure to comply with such obligations up to the defaulted amount under such obligations and the proceeds of the relevant security will be applied to reduce this defaulted amount consistently. Notwithstanding this, the Security Agent may then distribute the proceeds in accordance with the terms of the Intercreditor Agreement amongst the parties thereto.

3.2.8 No statutory provision of Spanish law regulates the possibility of creating concurrently (i) a second or subsequent pledge over assets already pledged; and/or (ii) a diversity of pledges of equal rank over the same assets and, in addition, there is, to the best of my knowledge, no case law in relation to this matter. Second and subsequent pledges are expressly prohibited by Article 569-15.1 of the Catalonian Law 5/2006 of 10 May, regulating the right of pledge (but which is not the governing law of the Spanish governed Transaction Security Documents) but, on the contrary, Spanish law recognises the possibility of having concurrent and second or subsequent ranking real estate mortgages and the possibility of creating security over assets already subject to chattel mortgage or pledge without delivery possession and some scholars admit (by analogy with real estate mortgages regulation and related case law and in the absence of specific legislation relating to ordinary pledges) the creation of (i) second or subsequent ranking pledges; and (ii) a diversity of pledges of equal rank.

As a consequence of the above, although there are grounds to sustain the effectiveness of concurrent and/or second ranking pledges, it cannot be completely disregarded that a court may take a different view and consider such pledges ineffective and not admissible in Spain.

3.2.9 Pursuant to Article 132.1 of the Law on Capital Companies ( *Ley de Sociedades de Capital*), if there is a pledge over the shares, the exercise of the shareholder's rights corresponding to the pledged shares will be attributed to the pledgor, unless the by-laws provide otherwise. According to the Spanish Share Pledges Agreement and the New Spanish Share Pledges Agreement, the Foreign Pledgors have undertaken, upon the occurrence of an event of default and once notice has been given to them, to promptly perform as many actions as may be necessary or desirable in order to allow the exercise of the rights attached to the pledged shares by the Secured Parties. In the event that the Foreign Pledgors do not comply with the abovementioned undertaking, or in the event that the Mercantile Registrar refuses to enter the relevant amendments of the by-laws into the Mercantile Registry, the exercise of the rights attached to the shares shall not be attributed to the Secured Parties upon the notification of an event of default and shall remain with the Foreign Pledgors, even though the referenced undertaking will be valid and binding on the parties thereto.

3.2.10 Whilst, to the best of my knowledge, there has been no judicial decision on the point, there is a risk that the parallel debt provisions may be set aside for public policy reasons under Spanish law, on the basis that a Spanish court may consider that the debt owed to the Security Agent did not have a lawful cause (*causa lícita*) because it did not arise from any funds actually lent by such Security Agent and, in that case, any security for such parallel debt would not be valid in Spain even if the parallel debt is legal, valid and binding under the law by which it is expressed to be governed.

3.3 **Insolvency Qualifications**

3.3.1 The rules relating to ranking of creditors in case of insolvency, and insolvency rules in general, are mandatory and as such, I do not express any opinion in respect of the recognition by a Spanish court of the private arrangements (which may be valid between the parties) agreed between the parties in respect of a Spanish insolvency.

3.3.2 The Spanish Insolvency Law provides for the possibility of annulment of acts detrimental to the estate of the insolvent carried out during the two (2) years preceding the declaration of insolvency as well as for the possibility of setting aside transactions based on general legal grounds such as transactions carried out in fraud of creditors.

3.3.3 According to articles 92 and 158 of the Spanish Insolvency Law, claims of persons characterised thereunder as specially related to the insolvent entity or individual shall be subordinated and shall not be paid until ordinary credits have been fully discharged; security granted for securing these claims shall be cancelled. Article 93 of the Spanish Insolvency Law sets out that the following persons are specially related to the insolvent company:

(a) Shareholders who are personally liable for the debts of the company or hold a stake in the company of at least 5%, where the company is listed, or 10%, if the company is unlisted;

(b) Directors, directors-in-fact, liquidators and general attorneys appointed within two years prior to the insolvency adjudication;

(c) Companies within the group of the insolvent company and their shareholders.

Article 93 of the Spanish Insolvency Law establishes the refutable presumption that the assignees of the above are also specially related persons if the assignment has occurred within two years prior to the adjudication of insolvency.

Although to the best of my knowledge there is no case law on this matter, should the Security Agent become entitled to exercise the voting rights in the Spanish Note Guarantor pursuant to the Spanish Share Pledges Agreement and the New Spanish Share Pledges Agreement, the actual exercise of these voting rights by the Security Agent might entail the Security Agent being considered as a shadow director of the Spanish Note Guarantor. In this case, the claims filed in insolvency proceedings affecting the Spanish Note Guarantor and deriving from the General Documents could be considered detrimental to the estate unless evidence to the contrary is provided.

3.4 **GOVERNING LAW**

When applying English law and/or the law of the State of New York as the law governing the Financing Agreement and General Documents, the courts of Spain, by virtue of Rome I:

(a) may give effect to the overriding mandatory rules of the law of the country where the obligations arising out of the Financing Agreement and/or the General Documents have to be or have been performed, insofar as those overriding mandatory provisions render the performance of the Financing Agreement and/or the General Documents unlawful. In considering whether to give effect to those provisions regard shall be had to their nature and purpose and to the consequences of their application or non-application;

(b) will apply the overriding mandatory provisions of the law of Spain; and

(c) (may refuse to apply English law or the NY law in relation to the Financing Agreement and the General Documents if such application is manifestly incompatible with the public policy (orden público) of Spain, or if submission English law or New York law is deemed to have been made with the aim of avoiding the application of mandatory Spanish laws or legal requirements.

3.5 **APPLICATION OF FOREIGN LAW**

(a) When applying English law and/or the law of the State of New York as the law governing the Financing Agreement and/or the General Documents, the courts of Spain, by virtue of Rome I, shall have regard to the law of the country in which performance takes place in relation to the manner of performance and the steps to be taken in the event of defective performance; and

(b) When applying English law and/or the law of the State of New York as the law governing the Financing Agreement and/or the General Documents, the courts of Spain, may require evidence satisfactory to them of the English law and/or New York law in accordance with article 281 of the LEC 2000.

3.6 **JURISDICTION**

Articles 21 to 25 of LOPJ regulates the extension and limits of Spanish courts jurisdiction. The LOPJ does not establish the requirements for the submission to a foreign court to be considered valid nor does it establish the consequences of this submission. Nonetheless, the Spanish Supreme Court (Tribunal Supremo) has interpreted in certain cases article 22 of the LOPJ in a bilateral way, considering that voluntary submission to a foreign court is a valid ground for jurisdiction. Nonetheless, should a claim be filed before a Spanish court where the plaintiff had agreed to submit this claim to the courts of New York, the Spanish courts would not be bound to reject the claim if the defendant appears before them for a purpose other than rejecting its jurisdiction or they had a ground to adjudication in accordance with Spanish law.

3.7 **TAXATION**

Any payments made by the Spanish Note Guarantor (as guarantor) under the Purchase Agreement, the Indenture and/or the Securities may be characterised as an indemnity and, accordingly, be made free and clear of, and without withholding or deduction for, any taxes, duties, assessments or governmental charges of whatsoever nature imposed, levied, collected, withheld or assessed by the Kingdom of Spain or any political subdivision or authority thereof or therein having power to tax.

However, although there is no precedent or specific statement of law or regulation on the matter, in the event that the Spanish Tax Authorities take the view that the Spanish Note Guarantor has validly, legally and effectively assumed (automatically or by a contract or by whatever means necessary) all the obligations of the Issue, the Spanish Tax Authorities may attempt to impose withholding tax in the Kingdom of Spain on any payments made by the Spanish Note Guarantor in respect of interest on the Securities, unless the recipient is resident for tax purposes in a Member State of the European Union, other than Spain, and not acting through a territory considered as a tax haven pursuant to Spanish Law (currently as set out in Royal Decree 1080/1991, of 5 of July) nor through a permanent establishment in Spain, or is resident for tax purposes in a jurisdiction that has entered into a double taxation treaty with Spain providing for the exemption of the withholding, provided that such recipients submit to the Spanish Note Guarantor the relevant tax residence certificate, issued by the corresponding Tax Authorities, each certificate being valid for a period of one year beginning on the date of issue of the tax residence certificate.

**SCHEDULE VI**

**Form of Opinion of Warendorf**

**SCHEDULE VII**

**Form of Opinion of GHR Rechtsanwälte AG**

**SCHEDULE VIII**

**Officer's Certificate**

**[_____], 2011**

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(h) of the Purchase Agreement, dated as of [ ___], 2011, executed in connection with the offering by [the Company][CEMEX, S.A.B. de C.V.] of U.S.$[___] aggregate principal amount of its Floating Rate 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 IX**

**Form of Comfort Letter by KPMG Cárdenas Dosal, S.C.**

**SCHEDULE X**

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 General Disclosure Package:

None.

**Exhibit 4.71**

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

THE NOTE GUARANTORS PARTY HERETO

AND

THE BANK OF NEW YORK MELLON,

AS TRUSTEE

FLOATING RATE SENIOR SECURED NOTES DUE 2015

INDENTURE

Dated as of April 5, 2011

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INDENTURE, dated as of April 5, 2011, 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"), CEMEX México, S.A. de C.V. ("CEMEX México"), CEMEX España, S.A. ("CEMEX España") and New Sunward Holding B.V. ("New Sunward Holding"), as Note Guarantors of the Issuer's obligations under this Indenture and the Notes (the " Note Guarantors"), and The Bank of New York Mellon (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 Floating Rate Senior Secured Notes due 2015 (the "Notes") issued hereunder.

## ARTICLE I

## DEFINITIONS AND INCORPORATION BY REFERENCE

Section 1.1 Definitions.

"3-month Dollar LIBO Rate" has the meaning assigned to it in Section 2.13(b).

"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 the 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 2.15(b).

"Additional Note Guarantor" means New Sunward Holding.

"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" means the Notes originally issued after the Issue Date pursuant to Section 2.15, as specified in the relevant Additional Note Certificate or Additional Note Supplemental Indenture issued therefor in accordance with this Indenture.

"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 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 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) 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(e) and Section 3.12(f), 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.$150,000 or an integral multiple 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.$150,000 or an integral multiple 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).

"Asset Sale Offer Period" has the meaning assigned to it in Section 3.12(e).

"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, 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 March13, 2009, as replaced by a long form confirmation dated September 22, 2009, 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-MX479311); 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, (B) approving as properly filed a petition seeking reorganization, 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, (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 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*).

"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, Sociedad Nacional de Crédito, Institución de Banca de Desarrollo, 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 or Amsterdam are authorized or required by law or other governmental action to remain closed.

"Business Day Convention" means the following: If any LIBO Rate Reset Date or Interest Payment Date (other than the Maturity Date) would otherwise be a day that is not a Business Day, that LIBO Rate Reset Date or Interest Payment Date will be postponed to the next succeeding Business Day, *provided, however*, that if that date would fall in the next succeeding calendar month, such date will be the immediately preceding Business Day. If any such LIBO Rate Reset Date or Interest Payment Date (other than the Maturity Date) is postponed or brought forward as described above, the Interest Amount will be adjusted accordingly. If the Maturity Date falls on a day that is not a Business Day, payment of principal and interest on the Notes will be made on the next Business Day, and no interest will accrue for the period from and after the Maturity Date. Postponement as described above will not result in a default.

"Calculation Agent" has the meaning assigned to it in Section 2.13(b).

"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 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 the corporation named as such in the introductory paragraph to this Indenture and its successors and assigns.

"CEMEX México" means the party named as such in the introductory paragraph to this Indenture 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., 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.

"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, with appropriate legends as specified in Section 2.7 and Exhibit A.

"Change of Control" means the beneficial ownership (within the meaning of Rule 13d-3 promulgated by the Commission under the Securities Exchange Act of 1934, as amended) 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.$150,000 or an integral multiple 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.$150,000 or an integral multiple 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 (i) substantially all the shares of CEMEX España, 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 Holding, and CEMEX Trademarks Holding Ltd.; and (ii) all proceeds of such Collateral.

"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; and

(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.

*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 non-cash charges that were added back in determining Consolidated EBITDA in any prior period.

Notwithstanding the foregoing, the items specified in clauses (1) and (3) above for any Subsidiary (Restricted Subsidiary in the case of the Issuer) will be added to Consolidated Net Income in calculating Consolidated EBITDA for any period:

(a) in proportion to the percentage of the total Capital Stock of such Subsidiary (Restricted Subsidiary in the case of the Issuer) held directly or indirectly by such Person at the date of determination, and

(b) to the extent that a corresponding amount would be permitted at the date of determination to be distributed to such Person by such Restricted Subsidiary pursuant to its charter and bylaws and each law, regulation, agreement or judgment applicable to such distribution.

"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 (Restricted 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 (Restricted 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) any increase or decrease in net income attributable to minority interests in any Subsidiary (Restricted Subsidiaries in the case of the Issuer);

(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(a).

"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, 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 1, paragraph 2 of the Form of Reverse Side of Note contained in Exhibit A.

"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 Exhibit A, Section 5.

"Euroclear" means Euroclear Bank S.A./N.V., as operator of the Euroclear System, 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.

"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.

"GAAP" means Mexican Financial Reporting Standards as in effect on September 30, 2009. At any time after the Issue Date, the Issuer may elect to apply IFRS 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 2.7 and Exhibit A.

"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 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 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 from time to time.

"Interest Amount" has the meaning assigned to it in Section 2.13(f).

"Interest Payment Date" means the stated due date of an installment of interest on the Notes as specified in Section 2.13(a).

"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 S&P, BBB- (or the equivalent) by Fitch and Baa3 (or the equivalent) by Moody's.

"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; and

(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, 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.$800 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.

"LIBO Rate Reset Date" has the meaning assigned to it in Section 2.13(b).

"LIBOR Interest Determination Date" means the second London Banking Day preceding each LIBO Rate Reset Date.

"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).

"London Banking Day" means any day on which commercial banks are open for general business (including dealings in foreign exchange and foreign currency deposits) in London.

"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 September 30, 2015.

"Mexican Financial Reporting Standards" means Mexican financial reporting standards ( *Normas de Información Financiera Aplicables en México*) as issued by the Mexican Financial Reporting Standards Board ( *Consejo Mexicano para la Investigación y Desarrollo de Normas de Información Financiera, A.C.*).

"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 Sunward Holding" means the party named as such in the introductory paragraph to this Indenture and its successors and assigns.

"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, collectively, CEMEX México, CEMEX España and the Additional Note Guarantor.

"Note Register" has the meaning assigned to it in Section 2.3(a).

"Notes" means the Issuer's Floating Rate Senior Secured Notes due 2015, 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 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 theretofor authenticated and delivered under this Indenture, *except*:

(1) Notes theretofor 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 theretofor deposited with the Trustee or any Paying Agent (other than the Issuer, a Note Guarantor or an Affiliate of the Issuer) in trust or set aside and segregated in trust by the Issuer, a Note Guarantor or an Affiliate of the Issuer (if the Issuer, such Note Guarantor 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 the U.S. Dollar-denominated 9.50% Senior Secured Notes due 2016, the Euro-denominated 9.625% Senior Secured Notes due 2017, the 8.875% Senior Secured Notes due 2017, the 9.25% Senior Secured Notes due 2020, the U.S. Dollar-denominated 9.000% Senior Secured Notes due 2018 (collectively, the "December 2009, May 2010 and January 2011 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 Financing Agreement;

(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, capitalization 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 of the Notes;

(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 by one or more creditors under the Financing Agreement Indebtedness (or their respective Affiliates); *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 Financing Agreement Indebtedness and any refinancing thereof made in accordance with the Financing Agreement that is secured by the Collateral, (ii) notes (or similar instruments, including *Certificados Bursátiles*) outstanding on the date of the Financing Agreement required to be secured by the Collateral pursuant to their terms, or any refinancing thereof permitted by the Financing Agreement, (iii) future Indebtedness secured by the Collateral to the extent permitted by the Financing Agreement and (iv) the December 2009, May 2010 and January 2011 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" or "Ps" means the lawful money of Mexico.

"Private Placement Legend" has the meaning assigned to it in Section 2.8(b).

"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.

"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.

"Redemption Date" means, with respect to any redemption of the Notes, the date fixed for such redemption pursuant to this Indenture and the Notes.

"Redemption Price" has the meaning assigned to it in the Form of Note in Exhibit A.

"Reference Banks" has the meaning assigned to it in Section 2.13(c)(ii).

"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, the maturity of the Notes; 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 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.

"Reuters Page LIBOR01" means the display designated as "Page LIBOR01" on Reuters Money 3000 Service or any successor service (or such other page as may replace Page LIBOR01 on that service) or such other service displaying the London Inter-Bank offered rates of major banks, as may replace Reuters Money 3000 Service.

"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 2.14(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" means the period of time between the Suspension Date and the Reversion Date.

"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.

"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.

"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 29, 2011, among the Issuer, the Note Guarantors party hereto, Merrill Lynch, Pierce, Fenner & Smith Incorporated, J.P. Morgan Securities LLC and RBS Securities Inc., as representatives of the 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.$150,000 and 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.$150,000 and any integral multiple 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, 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 2.7 or as otherwise required by law, stock exchange rule or DTC, Euroclear or Clearstream rule or usage. The Issuer and the Trustee shall approve the form of the Notes and any notation, legend or endorsement 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").

(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 a supplemental indenture 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, 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 shall maintain an office or agency (the "Registrar") that shall keep a register of the Notes and of their transfer and exchange (the "Note Register"). 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.

(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 one 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. 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 on behalf 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, on the face thereof.

(b) Each Restricted Note shall bear the private placement legend specified therefor in Exhibit A, on the face thereof (the "Private Placement Legend").

(c) Each Note shall bear the Mexican law legend specified therefor in Exhibit A, 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, as applicable, duly executed by the Rule 144A 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 Note Custodian and 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 an amount equal to the beneficial interest being 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, 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 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 2.15(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 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 numbers 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 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, and upon 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 Regulation S Global Note to the unrestricted CUSIP number for the Regulation S Global Note.

(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 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.

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 any office or agency maintained by the Issuer 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 Computation of Interest. Interest on the Notes shall be computed as follows:

(a) The Notes bear interest at a floating rate equal to the 3-month Dollar LIBO Rate for deposits in U.S. dollars determined for the relevant interest period plus 5.00% (500 basis points) from April 5, 2011. Interest on the Notes will be payable, in cash, quarterly in arrears on March 30, June 30, September 30 and December 30 of each year, subject to adjustment in accordance with the Business Day Convention, commencing on June 30, 2011 and at maturity (each an "Interest Payment Date"), to Holders of record on the immediately preceding March 15, June 15, September 15 and December 15. Interest on the Notes will accrue

from the most recent date to which interest has been paid or, if no interest has been paid, from the date of original issuance. Each interest payment period shall end on (but not include) the relevant Interest Payment Date. Interest on the Notes will be computed on the basis of the actual number of days in the interest period divided by 360.

(b) As long as any Notes are outstanding, the Issuer will maintain a calculation agent (the " Calculation Agent") for calculating the interest rates on the Notes. The Issuer has initially appointed The Bank of New York Mellon to serve as the Calculation Agent, and The Bank of New York Mellon hereby accepts such appointment. The Calculation Agent will reset the rate of interest on the Notes on each Interest Payment Date and with respect to the first interest period, the Issue Date (each also a "LIBO Rate Reset Date"). The interest rate set for the Notes on a particular LIBO Rate Reset Date will remain in effect during the interest period commencing on that LIBO Rate Reset Date. Each interest period will be the period from and including a LIBO Rate Reset Date to but excluding the next LIBO Rate Reset Date or until the maturity date of the Notes, as the case may be.

(c) The "3-month Dollar LIBO Rate" means the rate determined in accordance with the following provision:

(i) On the LIBOR Interest Determination Date, the Calculation Agent will determine the 3-month Dollar LIBO Rate, which will be the rate for deposits in U.S. Dollars having a three-month maturity which appears on the Reuters Screen LIBOR01 as of 11:00 a.m., London time, on the LIBOR Interest Determination Date.

(ii) If no rate appears on the Reuters Screen LIBOR01 on the LIBOR Interest Determination Date the rate will be determined on the basis of the rates at which deposits in U.S. Dollars are offered by four major banks in the London interbank market (the " Reference Banks") at approximately 11:00 a.m., London time, on that LIBOR Interest Determination Date to prime banks in the London interbank market for the period of three months commencing on the applicable LIBO Rate Reset Date and in a principal amount that is representative for a single transaction in U.S. Dollars in that market at that time. The Calculation Agent, after consultation with the Issuer, will request the principal London office of each of the Reference Banks to provide a quotation for its rate. If at least two such quotations are provided, then the 3-month Dollar LIBO Rate for that LIBOR Interest Determination Date will be the arithmetic mean of the quotations (rounded, if necessary, to the nearest one-hundredth (0.01) of a percent). If fewer than two quotations are provided as requested, the rate for that LIBOR Interest Determination Date will be the arithmetic mean (rounded, if necessary, to the nearest one-hundredth (0.01) of a percent) of the rates quoted by major banks in New York City, selected by the Calculation Agent, after consultation with the Issuer, at approximately 11:00 a.m., New York City time on that LIBOR Interest Determination Date for loans in U.S. Dollars to leading European banks having a three-month

maturity commencing on the applicable LIBO Rate Reset Date and in a principal amount that is representative for a single transaction in U.S. Dollars in that market at that time.

(d) The interest rate determined on a LIBOR Interest Determination Date will become effective on and as of the next LIBO Rate Reset Date. The initial LIBOR Interest Determination Date will be April 1, 2011 for the interest period commencing on April 5, 2011.

(e) The interest rate payable on the Notes will not be higher than the maximum rate permitted by New York state law as that law may be modified by U.S. law of general application.

(f) The Calculation Agent will, as soon as practicable after 11:00 a.m., London time, on each LIBOR Interest Determination Date, in relation to each interest period, calculate the amount of interest (the " Interest Amount") payable in respect of each Note for such interest period. The Interest Amount will be calculated by applying the rate of interest for such interest period to the principal amount of such Note, multiplying the product by the actual number of days in such interest period divided by 360.

(g) The Calculation Agent will cause the rate of interest and Interest Amount for each interest period determined by it, together with the relevant Interest Payment Date, to be notified to the Issuer and the Paying Agent. The Calculation Agent will also notify to each listing authority, stock exchange and/or quotation system (if any) by which the Notes have been admitted to listing, trading and/or quotation as soon as practicable after such determination but in any event not later than the first day of the relevant interest period, the rate of interest, the amount of interest payable in respect of each U.S.$1,000 principal amount of Notes and the Interest Payment Date Notice thereof shall also promptly be given to the holders of the Notes. The Calculation Agent will be entitled to recalculate any Interest Amount (on the basis of the foregoing provisions) without notice in the event of an extension or shortening of the relevant interest period.

(h) All notifications, opinions, determinations, certificates, calculations, quotations and decisions given, expressed, made or obtained for the purposes of this condition by the Calculation Agent will (in the absence of willful default, bad faith or manifest error) be binding on the Issuer, the Paying Agent and the holders of the Notes and (subject to aforesaid) no liability to any such person will attach to the Calculation Agent in connection with the exercise or non-exercise by it of its powers, duties and discretions for such purposes.

(i) All percentages resulting from any of the above calculations will be rounded, if necessary, to the nearest one hundred-thousandth of a percentage point, with five one-millionths of a percentage point being rounded upwards (e.g., 9.876545% (or .09876545) being rounded to 9.87655% (or .0987655)) and all dollar amounts resulting from such calculations will be rounded to the nearest cent (with one-half cent being rounded upwards).

Section 2.14 Defaulted Interest. When any installment of interest becomes Defaulted Interest on Notes, 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 2.14(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 2.14(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 2.15 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, and, notwithstanding anything to the contrary in the Notes or in this Indenture, in accordance with the Business Day Convention. 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 any or all such purposes 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.$150,000 or an integral multiple 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 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.$800 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) Indebtedness of the Issuer and/or any of the Note Guarantors Incurred to fund amounts payable upon the exercise of the put option (calculated according to the terms in effect on the Issue Date of the agreements giving rise to such obligations) requiring CEMEX, Inc. to purchase 50.01% of the Capital Stock of Ready Mix USA, LLC and/or 49.99% of the Capital Stock of CEMEX Southeast, LLC, the combined amount of which was estimated to be U.S.$355 million (excluding debt of such entities) as of December 31, 2010, subject to subsequent adjustments;

(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 Indebtedness pursuant to this Section 3.9 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 US$1.00 of additional Debt pursuant to Section 3.11(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 " Asset Sale Offer Period"). 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 denominations of U.S.$150,000 and integral multiples of U.S.$1,000 in excess thereof (provided that the unredeemed portion will be in a denomination of at least U.S.$150,000) 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. 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 Financing 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

(D) in case the Issuer continues to apply Mexican Financial Reporting Standards as in effect on September 30, 2009 for purposes of calculations under this Indenture (and not for purposes of the financial statements provided pursuant to (A) and (B) above), no later than when due under (A) and (B), respectively, (1) a description of the differences between accounting principles in the financial statements provided pursuant to (A) or (B) above and used for calculations under this Indenture and (2) a quantitative reconciliation *provided, however*, that such description and reconciliation shall only be provided to the extent material to the calculation of any amounts under this Indenture; 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, 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 we have 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, 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 it 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 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 Ministry of Finance and Public Credit ( *Secretaría de Hacienda y Crédito Público* ) or the Mexican Tax Revenue Service (*Servicio de Administración Tributaria)* to establish 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 we 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 Guarantor shall be released from its obligation to guarantee the Notes on the date of a Partial Covenant Suspension Event of a Covenant Suspension Event, as the case may be.

(d) The Additional Note Guarantor 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 Guarantor 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 Guarantor (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 guarantee 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.

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 and the Restricted Subsidiaries substantially as an entirety (the "Successor Issuer"):

(1) shall be a corporation 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 all of the Obligations of the Issuer under this Indenture and the Notes 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 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 corporation, 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 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 another Note Guarantor or a Wholly Owned Subsidiary of the Issuer.

The Successor Issuer shall succeed to, and be substituted for such Issuer under this Indenture, the Notes and/or the Note Guarantee, as 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 the Redemption Price, plus any accrued and unpaid interest on the principal amount of the Notes to the Redemption Date, subject to the conditions specified in the Form of Note in Exhibit A.

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 CUSIP numbers of the Notes and (c) the Redemption Price.

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) The notice 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) 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, and, unless the Issuer defaults in making the redemption payment, that interest on each Note, will cease to accrue on and after the Redemption Date,

(iv) 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

(v) 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).

(d) The notice of redemption, once delivered by the Issuer to the Trustee, shall be irrevocable.

Section 5.5 [Reserved].

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, the Notes.

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 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 shall cease to bear interest. Upon surrender of the Notes 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 the Notes called for redemption upon their surrender for redemption, the principal shall, until paid, bear interest from the Redemption Date at the applicable rate borne by the Notes in accordance with Section 2.13.

## 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-Note 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 (and 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 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 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 actual knowledge thereof or unless written notice of any event which is in fact such a default is received by a Trust Officer of the Trustee at the Corporate Trust Office of the Trustee, 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 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 payment 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 corporation or banking association, the resulting, surviving or transferee corporation 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 corporation 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 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 satisfactory 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 satisfactory 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, Section 3.21, 3.22, 4.1(a) and Section 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 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 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 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 2.15, which will have terms substantially identical to the other Outstanding Notes except as specified in Section 2.14, or Section 2.15, and which will be treated, together with any other Outstanding Notes, as a single issue of securities;

(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 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 Dollar Equivalent of 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) 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) with respect to any Note Guarantee there is a Legal Defeasance of the Notes pursuant to Section 8.1 or 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 the Additional Note Guarantor, either (A) the Financing Agreement Indebtedness has been repaid in full and the Additional Note Guarantor is not a guarantor of the Indebtedness Incurred to refinance such Financing 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 the 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.

## 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 Financing Agreement Indebtedness in full as a result of which the Collateral does not secure Indebtedness Incurred to refinance such Financing 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 4415

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 and Amsterdam. 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 Corporate Creations Network Inc., 1040 Avenue of the Americas #2400, New York, NY 10018 (U.S.A.) 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.

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. 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 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).

(a) 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/ Rodrigo Treviño
Name: Rodrigo Treviño
Title: Attorney-in-fact

CEMEX España, S.A., as Note Guarantor

By: /s/ Humberto Lozano
Name: Humberto Lozano
Title: Attorney-in-fact

CEMEX México, S.A. de C.V., as Note Guarantor

By: /s/ Humberto Lozano
Name: Humberto Lozano
Title: Attorney-in-fact

New Sunward Holding B.V., as Note Guarantor

By: /s/ Humberto Lozano
Name: Humberto Lozano
Title: Attorney-in-fact

THE BANK OF NEW YORK
MELLON, as Trustee and
Calculation Agent

By: /s/ Catherine F. Donahue
Name: Catherine F. Donahue
Title: Vice President

**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 legend on all Notes as Mexican law legend:*

"THE NOTES 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 THE SUBJECT OF BROKERAGE ACTIVITIES, IN MEXICO, EXCEPT THAT THE NOTES MAY BE OFFERED IN MEXICO PURSUANT TO A PRIVATE PLACEMENT EXEMPTION SET FORTH UNDER ARTICLE 8 OF THE MEXICAN SECURITIES MARKET LAW (*LEY DEL MERCADO DE VALORES*), TO MEXICAN INSTITUTIONAL AND QUALIFIED INVESTORS. UPON THE ISSUANCE OF THE NOTES, THE ISSUER WILL NOTIFY THE CNBV OF THE ISSUANCE OF THE NOTES, INCLUDING THE PRINCIPAL CHARACTERISTICS OF THE NOTES AND THE OFFERING OF THE NOTES OUTSIDE MEXICO. SUCH NOTICE WILL BE DELIVERED TO THE CNBV TO COMPLY WITH A LEGAL REQUIREMENT AND FOR INFORMATION PURPOSES ONLY, AND THE DELIVERY TO AND THE RECEIPT BY THE CNBV OF SUCH NOTICE DOES NOT CONSTITUTE OR IMPLY ANY CERTIFICATION AS TO THE INVESTMENT QUALITY OF THE NOTES OR OF THE ISSUER'S OR THE NOTE GUARANTORS' SOLVENCY, LIQUIDITY OR CREDIT QUALITY OR THE ACCURACY OR COMPLETENESS OF THE INFORMATION SET FORTH IN THE OFFERING MEMORANDUM OR HEREIN. THE INFORMATION CONTAINED IN THE OFFERING MEMORANDUM OR HEREIN HAS NOT BEEN REVIEWED OR AUTHORIZED BY THE CNBV."]

**FORM OF FACE OF NOTE**

**Floating Rate Senior Secured Notes Due 2015**

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 [_____] 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 September 30, 2015.

Interest Payment Dates: March 30, June 30, September 30 and December 30, commencing on June 30, 2011

Record Dates: March 15, June 15, September 15 and December 15

[1] CUSIP No. for Rule 144A Note : 151290BD4

CUSIP No. for Regulation S Note : P2253THX0

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**

**Floating Rate Senior Secured Notes Due 2015**

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 a floating rate, reset quarterly, equal to 3-month LIBOR (as defined below) for deposits on U.S. dollars plus 5.00% (500 basis points).

The Issuer will pay interest quarterly in arrears on each Interest Payment Date of each year commencing June 30, 2011, and, notwithstanding anything to the contrary in this Note or in the Indenture, in accordance with the Business Day Convention. 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 April 5, 2011; *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 April 5, 2011), 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 April 5, 2011. Each interest payment period shall end on (but not include) the relevant Interest Payment Date. 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 on the Notes will be computed on the basis of the actual number of days in the interest period divided by 360.

The Calculation Agent will reset the rate of interest on the Notes on each Interest Payment Date and, with respect to the first interest period, the Issue Date (each also a "LIBO Rate Reset Date"). The interest rate set for the Notes on a particular LIBO Rate Reset Date will remain in effect during the interest period commencing on that LIBO Rate Reset Date. Each interest period will be the period from and including a LIBO Rate Reset Date to but excluding the next LIBO Rate Reset Date or until the Maturity Date of the Notes, as the case may be.

The "3-month Dollar LIBO Rate" means the rate determined in accordance with the following provision:

- On the LIBOR Interest Determination Date, the Calculation Agent will determine the 3-month Dollar LIBO Rate, which will be the rate for deposits in U.S. Dollars having a three-month maturity which appears on the Reuters Screen LIBOR01 as of 11:00 a.m., London time, on the LIBOR Interest Determination Date.

- If no rate appears on the Reuters Screen LIBOR01 on the LIBOR Interest Determination Date the rate will be determined on the basis of the rates at which deposits in U.S. Dollars are offered by four major banks in the London interbank market (the " Reference Banks") at approximately 11:00 a.m., London time, on that LIBOR Interest Determination Date to prime banks in the London interbank market for the period of three months commencing on the applicable LIBO Rate Reset Date and in a principal amount that is representative for a single transaction in U.S. Dollars in that market at that time. The Calculation Agent, after consultation with the Issuer, will request the principal London office of each of the Reference Banks to provide a quotation for its rate. If at least two such quotations are provided, then the 3-month Dollar LIBO Rate for that LIBOR Interest Determination Date will be the arithmetic mean of the quotations (rounded, if necessary, to the nearest one-hundredth (0.01) of a percent). If fewer than two quotations are provided as requested, the rate for that LIBOR Interest Determination Date will be the arithmetic mean (rounded, if necessary, to the nearest one-hundredth (0.01) of a percent) of the rates quoted by major banks in New York City, selected by the Calculation Agent, after consultation with the Issuer, at approximately 11:00 a.m., New York City time on that LIBOR Interest Determination Date for loans in U.S. Dollars to leading European banks having a three-month maturity commencing on the applicable LIBO Rate Reset Date and in a principal amount that is representative for a single transaction in U.S. Dollars in that market at that time.

The interest rate determined on a LIBOR Interest Determination Date will become effective on and as of the next LIBO Rate Reset Date. The initial LIBOR Interest Determination Date will be April 1, 2011 for the interest period commencing on April 5, 2011.

The interest rate payable on the Notes will not be higher than the maximum rate permitted by New York state law as that law may be modified by U.S. law of general application.

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, in accordance with the Business Day Convention, 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 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, 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 April 5, 2011 (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.$800 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, CEMEX España, S.A., CEMEX México, S.A. de C.V. and New Sunward Holding B.V. 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.

On or after the Interest Payment Date immediately preceding the Maturity Date, the Issuer will have the right, at its option, to redeem all of the Notes, at any time prior to their maturity, at par (the "Redemption Price"), plus any accrued and unpaid interest on the principal amount of the Notes to the Redemption Date.

*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 Mexico or any political subdivision or taxing authority thereof or therein 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 Mexican withholding tax rate of 10% with respect to payments under 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 the Redemption Price, plus any accrued and unpaid interest on the principal amount of the Notes to the Redemption Date; *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 Financing Agreement.

Prior to the publication of any notice of redemption in accordance with the above, we will deliver to the Trustee:

- an Officer's Certificate stating that we are entitled to effect the redemption and setting forth a statement of facts showing that the conditions precedent to our right to redeem have occurred, and
- an opinion of outside Mexican legal counsel of recognized standing to the effect that we have or will become obligated to pay such Additional Amounts as a result of such change or amendment.

This notice, once delivered by us to the Trustee, will be irrevocable.

On and after the Redemption Date, interest will cease to accrue on the Notes as long as the Issuer has deposited with the Paying Agent funds in satisfaction of the 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.$150,000 and 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 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 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 Corporate Creations Network Inc., 1040 Avenue of the Americas #2400, New York, NY 10018 (U.S.A.) 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 Section 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 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 CERTIFICATE 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: Floating Rate Senior Secured Notes due 2015 (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 April 5, 2011 (as amended and supplemented from time to time, the " Indenture"), among the Issuer, the Note Guarantors party thereto 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: Floating Rate Senior Secured Notes due 2015 (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 April 5, 2011 (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 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 CERTIFICATE 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: Floating Rate Senior Secured Notes due 2015 (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 April 5, 2011 (as amended and supplemented from time to time, the " Indenture"), among the Issuer, the Note Guarantors party thereto 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 (the " Securities Act") 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 of the date hereof 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.

"**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 Note Guarantor**" means a company that becomes an Additional Note 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. New York City time 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. New York City time 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 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 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 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

(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,

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:

(a) 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;

(b) 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

(c) 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

(d) 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 Operación*), 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 Party**" means the Administrative Agent, the Security Agent, each Creditor's Representative or a Participating Creditor.

"**Finance Document**" means each New Finance Document and each Existing Finance Document.

"**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.

"**Note Guarantors**" means the Original Note Guarantors and any Additional Note Guarantor other than any Original Note Guarantor or Additional Note Guarantor which has ceased to be a Note Guarantor pursuant to Clause 28.4 ( *Resignation of Note Guarantor)* of the Financing Agreement and has not subsequently become an Additional Note Guarantor pursuant to Clause 28.3 ( *Additional Note Guarantors and Additional Security Providers* ) of the Financing Agreement and "**Note 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.

"**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.

"**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 Note 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 Note 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.

"**Party**" means a party to 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.

"**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.

"**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 Issuer, 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 Note Guarantor, the Acquiring Company must be a Note 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 date falling 364 days thereafter.

"**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).

"**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 Note 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.

"**Syndicated Bank Facilities**" means the facilities described in Part IA of Part II of Schedule 1 ( *The Original Participating Creditors*) of the Financing Agreement.

"**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.

"**S&P**" means Standard & Poor's Rating Services, a division of The McGraw-Hill Companies, Inc., or any successor thereto from time to time.

**"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.

"**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 8.1**

The following is a list of the significant subsidiaries of CEMEX, S.A.B. de C.V. as of December 31, 2010, including the name of each subsidiary and its country of incorporation.

| | | |
|---|---|---|
| 1. | CEMEX México, S.A. de C.V. | MEXICO |
| 2. | CEMEX, S.A.B de C.V. | MEXICO |
| 3. | CEMEX España, S.A. | SPAIN |
| 4. | CEMEX Construction Materials Florida, LLC | UNITED STATES |
| 5. | CEMEX Materials, LLC | UNITED STATES |
| 6. | CEMEX Agregados, S.A. de C.V. | MEXICO |
| 7. | CEMEX Central, S.A. de C.V. | MEXICO |
| 8. | CEMEX Concretos, S.A. de C.V. | MEXICO |
| 9. | Proveedora Mexicana de Materiales, S.A. de C.V. | MEXICO |
| 10. | Servicios Cemento CEMEX, S.A. de C.V. | MEXICO |
| 11. | Servicios Concreto CEMEX, S.A. de C.V. | MEXICO |
| 12. | Servicios CEMEX Mexico, S.A. de C.V. | MEXICO |
| 13. | CEMEX Finance LLC | UNITED STATES |
| 14. | CEMEX Colombia, S.A. | COLOMBIA |
| 15. | Assiut Cement Company | EGYPT |
| 16. | CEMEX, Inc. | UNITED STATES |
| 17. | CEMEX Construction Materials Pacific, LLC | UNITED STATES |

**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: June 16, 2011

/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: June 16, 2011

/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, 2010, 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 Planning and Finance 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: June 16, 2011

/s/ Fernando A. González

Name: Fernando A. González
Title: Executive Vice President of Finance and Administration and Chief Financial Officer
Date: June 16, 2011

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 hereby consent to the incorporation by reference in (i) the Registration Statement on Form S-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 May , 2011, with respect to the consolidated balance sheets of CEMEX, S.A.B. de C.V. and subsidiaries (the Company) as of December 31, 2010 and 2009, and the related consolidated statements of operations, changes in stockholders' equity, and cash flows for each of the years in the three-year period ended December 31, 2010, and the effectiveness of internal control over financial reporting as of December 31, 2010, which reports appear in the December 31, 2010 Annual Report on Form 20-F of CEMEX, S.A.B. de C.V.

KPMG Cárdenas Dosal, S.C.

/s/ Celin Zorrilla Rizo

Monterrey, N.L., Mexico
June 15, 2011